# MORNINGTON PENINSULA SHIRE COUNCIL

## WARDS AND COUNCILLORS

<table>
<thead>
<tr>
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<tr>
<td>Briars</td>
<td>Cr. Bev Colomb – Mayor</td>
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<td>Cr. Andrew Dixon</td>
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<td>Cr. Anne Shaw</td>
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<td>Cerberus</td>
<td>Cr. David Garnock</td>
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<td>Nepean</td>
<td>Cr. Hugh Fraser</td>
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<td>Cr. Tim Rodgers</td>
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<td>Red Hill</td>
<td>Cr. Tim Wood</td>
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<td>Seawinds</td>
<td>Cr. Antonella Celi</td>
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<td>Cr. David Gibb</td>
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<td>Cr. Graham Pittock – Deputy Mayor</td>
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<td>Watson</td>
<td>Cr. Lynn Bowden</td>
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## EXECUTIVE TEAM

<table>
<thead>
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<th>Position</th>
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<tr>
<td>Mr. Carl Cowie</td>
<td>Chief Executive Officer</td>
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<tr>
<td>Ms. Alison Leighton</td>
<td>Chief Operating Officer</td>
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<tr>
<td>Mr. Matthew Hubbard</td>
<td>Interim Chief Financial Officer</td>
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<tr>
<td>Mr. Robin Adams</td>
<td>Director – Communities</td>
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## AUDIO RECORDING

Please note that an audio recording of this Council Meeting will be made and be available on the Shire’s website within seven days of the meeting.
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1 OPENING AND WELCOME

Appointed Chairperson - Mayor, Cr. Bev Colomb

The meeting opened at 7:04 p.m.

1.1 Acknowledgment of Traditional Land Owners

(Read by Cr. Gibb)

“In the spirit of respect, the Mornington Peninsula Shire acknowledges the Boon wurrung/Bunurong, members of the Kulin Nation, who have traditional connections for the land on which Council meets.”

1.2 Prayer

(Read by Cr. Wood)

“Almighty God, we humbly seek Thy blessings upon this Council. Direct and prosper its deliberations to the advancement of Thy glory and the true welfare of the people of the Mornington Peninsula Shire. Give us the strength and courage to make wise decisions with grace and dignity. Amen.”
2 PROCEDURAL MATTERS

Present

Mayor, Cr. Bev Colomb (Chairperson)
Cr. Antonella Celi
Cr. Andrew Dixon
Cr. Hugh Fraser
Cr. David Garnock
Cr. David Gibb
Cr. Graham Pittock
Cr. Tim Rodgers
Cr. Anne Shaw
Cr. Tim Wood

Mr. Carl Cowie, Chief Executive Officer

2.1 Apologies

Cr. Lynn Bowden (Leave of Absence)

2.2 Disclosure of Conflicts of Interest Pursuant to Section 79 of the Local Government Act 1989

Cr. Anne Shaw declared a Conflict of Interest in relation to Item 3.3 Lease to Mornington Yacht Club as her husband's business supplies the sub-lease.

Cr. Antonella Celi declared a Conflict of Interest in relation to Item 8.1 Confidential Report.

Cr. David Gibb declared a Conflict of Interest in relation to Item 8.3 Leave of Absence – Cr. David Gibb, as he is the subject of the report.
2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Council Meeting held on 10 August, 2015 be confirmed.

COUNCIL DECISION

Moved: Cr. Fraser
Seconded: Cr. Garnock

That the Minutes of the previous Council Meeting held on 10 August, 2015 be confirmed subject to the word ‘operation’ being changed to ‘operational’ in Recommendation 5 of Item 3.4 Carbon Neutral Options Report.

Carried

2.4 Advice to the Public

All reports, information and recommendations contained in ‘Section 8 - Confidential Items’ of this Agenda have been designated by the Chief Executive Officer as confidential pursuant to Section 77(2)(c) of the Local Government Act 1989.

The Council may resolve that the meeting be closed to members of the public in accordance with Section 89(2) of the Local Government Act 1989.

2.5 Assembly of Councillors

Assembly of Councillors - 3 August, 2015 and 10 August, 2015

RECOMMENDATION

That Council receives and notes the record of Assembly of Councillors for 3 August, 2015 and 10 August, 2015.

COUNCIL DECISION

Moved: Cr. Garnock
Seconded: Cr. Celi

That the recommendation be adopted.

Carried

VIEW ATTACHMENT 1
2.6 **Councillor Briefing Sessions**

Matters discussed at Councillor Briefing Sessions (other than those matters designated to be of a confidential nature) are reported on at ordinary Council meetings.

The matters listed below were presented to Councillor Briefing Sessions on 3 August, 2015 and 10 August, 2015.

**Matters Presented for Discussion**

<table>
<thead>
<tr>
<th>Item</th>
<th>Briefing Session</th>
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<tr>
<td>1. <strong>Family Services</strong></td>
<td>3 August, 2015</td>
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<td>Councillors were briefed on the Shire’s Family Services Program.</td>
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<td>2. <strong>Public Memorial Policy Development</strong></td>
<td>3 August, 2015</td>
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<td>Councillors were provided with a framework in order to develop a Public Memorial Policy.</td>
<td></td>
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<td>3. <strong>Peninsula Wide and Communications Options</strong></td>
<td>3 August, 2015</td>
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<tr>
<td>Councillors were provided information on the future purpose, design and frequency of Peninsula Wide.</td>
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<tr>
<td>Councillors were provided with an update on the Customer Service Organisation Transformation Project.</td>
<td></td>
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<tr>
<td>5. <strong>Rosebud/ Jetty Road Precinct Seawall and Fill – Removal or Retention</strong></td>
<td>3 August, 2015</td>
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<td>Councillors were provided with an update on the rejuvenation of the Rosebud foreshore.</td>
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<td>6. <strong>Development Options for Peninsula Swimming and Aquatic Centre, Colchester Road, Rosebud</strong></td>
<td>10 August, 2015</td>
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<tr>
<td>Councillors were provided with an overview of the feasibility study providing analysis and options available to assist the Peninsula Swimming and Aquatic Centre as per Council Decision of 13 April, 2015.</td>
<td></td>
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RECOMMENDATION
That Council receives and notes the Briefing Session information provided above.

COUNCIL DECISION
Moved: Cr. Fraser
Seconded: Cr. Garnock
That the recommendation be adopted.

2.7 Committee
Nil.

2.8 Petitions and Joint Letters
Concerns re Change of Exercise Class Time at Civic Reserve Recreation Centre, Mornington
A petition containing 12 signatures has been received from a group of elderly persons who have expressed their discontent regarding the change of time of their exercise class at the Civic Reserve Recreation Centre from 9:00 a.m. to 1:30 p.m. The group is concerned because 1:30 p.m. is an awkward time as they cannot have lunch before attending, therefore it means a late lunch which is not recommended for their state of health as they have strict medication times. They are also concerned the afternoon heat will prevent them from attending classes.

Immediate Comment: We continually review our previous attendances to the 9:00 a.m. Lungs In Action Class to ensure we can run the classes that the community want and need and since reviewing the attendances an average of 5.7 participants attended per class from January to 9 July, 2015. Since moving the class to the 1:30 p.m. time slot, attendance averages have climbed to 11.75 per class which is a great result for the community and service.

Feedback from participants and the class instructor indicated lower attendances at 9:00 a.m. as it was too early in the day for people with chronic lung conditions to be up and ready to attend.

The centre has recently introduced a 'Traffic Light' system to enable us to review classes easily and get participants to vote with their feet and schedule accordingly. This also assists us to ensure all classes can operate above break even costs. By moving the Lungs In Action class to 1:30 p.m. the centre has removed any 'red flag' from the class and promoted its viability into the future. The centre recognises there are little to no other local and specialised exercise groups for ongoing pulmonary rehab and is reluctant to red flag any class answering a specific community need, but all classes are required to operate under the traffic light system to represent a fair playing field for all class customers and staff.
As mentioned in the petition doctors and medical associations insist on regular exercise for people with chronic lung issues. The centre has worked hard to build partnerships and a referral system with Peninsula Health professionals across the Mornington Peninsula to ensure customers are informed about ongoing exercise opportunities.

We are unable to comment on the time of day our customers choose to eat lunch. The centre runs Stay on Your Feet classes (for a similar demographic) on Thursday at 12:45 p.m. and 2:00 p.m. and Friday 1:00 p.m. and 2:15 p.m. and has not received any feedback from any of these customers about when they have lunch and how it impacts on their exercise experience.

In relation to the comment about summer and hot cars for people with a pulmonary health condition, we have also had feedback about winter and cold mornings – hence reflected by their lower attendances at 9:00 a.m. The centre will re-assess all classes at the end of this timetable cycle in late October 2015.

Action Officer: Ms. Sandy Lawrence, Program Coordinator, Civic Reserve Recreation Centre

Objection to Proposed Somers Path Network

A petition with 197 signatures has been received from local residents objecting to the currently proposed Somers path network. Residents would like to submit for paths in line with Council’s priority of the two roads in the top 10 with others left as nature strip. Residents would like a path on Camp Hill Road to link Sandy Point Road to the existing path that already leads to the school, a boardwalk or similar around the Lord Somers corner, with nature strip management for Parklands Avenue, South Beach Road and Tasman Road.

Immediate Comment: The petition is being treated as a submission to the Somers Path Network Special Charge Scheme and a detailed response will be provided to the lead petitioner. The petition will be considered with all submissions to the Scheme in a report to Council to consider the declaration of the special charge.

Action Officer: Mr. Jeremy Grieve, Project Manager – Infrastructure Strategy

RECOMMENDATION

That Council receives and notes the above petitions and refers them back to the appropriate Council officers for action or to report back to Council on the matters.

COUNCIL DECISION

Moved: Cr. Gibb
Seconded: Cr. Wood

That the recommendation be adopted.
2.9 Public Question Time

Questions from the public shall be dealt with at commencement of the meeting.

The aim of public question time is to provide an opportunity for the public to ask general questions at Council Meetings requiring routine responses. Questions are received without notice and are responded to without research or reference to Council records.

Questions must be in writing, with the person submitting the question to be in the public gallery at the time.

Questions which contain material that relates to specific people or properties will be summarised at the discretion of Council.

Responses to public questions answered at the meeting, will be general in nature, provided in good faith and should not exceed two minutes. These responses will be summarised in the minutes of the meeting.

Questions requiring research or a detailed reply will be provided a written response as soon as possible following the meeting from the nominated officer. These written responses will be collated for each meeting and available via the Shire’s website.

This segment does not substitute for appeal or other formal business procedures with the Council.

- Changes to Staff Personnel

Mr. Antonio Telera, a resident of Dromana, asked the following question: ... “I am aware and support the changes that you are making with the restructuring of personnel and hope that you are also changing the culture that exists in the Shire. Also, it would be appreciated if you can tell me how long is needed before we will be able to contact the right personnel that can answer our queries and also have the authority to make decisions?”

The question was answered at the meeting by Mr. Carl Cowie, Chief Executive Officer, who thanked Mr. Telera for his support and responded that we have been reporting the changes to the organisation as we go through the process. As for the cultural change throughout the organisation, Mr. Cowie said he could report that in the first nine months he has been with the Shire, that there is a very significant number of people who are very focused on giving the best possible service to all the ratepayers and residents of the Shire. In some respects some of our systems and processes don’t lend themselves to people like you being able to get to the right person as quickly as possible, and it’s part of what also has been initiated under the guidance of Council’s Customer Service Transformation Project which seeks to remedy a number of these particular issues so that you are able to get through to the right person very quickly and have your question answered in a timely manner. Mr. Cowie invited Mr. Telera to contact him directly if he wished to raise any query personally with him.
3 MANAGEMENT REPORTS


Prepared By: Carl Cowie, Chief Executive Officer
Authorised By: Chief Executive Officer
Document ID: A5996027
Attachment(s): YES

PURPOSE

The Monthly Report to the Community is a key component of our accountability to the community. It is a detailed overview of the Council activities in the month, reporting items of achievement, progress, interest or concern.

The Monthly Report also presents monthly financial statements and commentary relating to the monthly financial performance and position of Council, including financial performance by Unit. To that end, presentation of the Monthly Report ensures compliance with Section 138 of the Local Government Act 1989 in relation to financial reporting.

BACKGROUND

The Monthly Report is compiled from the monthly reports of performance from each Unit of Council. The intent of the Monthly Report is to highlight what has been achieved in the month, what is underway, what is of interest and what is of concern.

The Financial Commentary is provided in summary in the Monthly Finance Report at an organisational level, a Group/Unit level and in more detail in a Standard Financial Statements format. There is also commentary included regarding the status of Priority Projects, Priority Works and Capital Works. The requirements of Section 138 are that a report comparing budgeted revenue and expenditure with actual financial performance occurs on a quarterly basis – our financial reporting is on a monthly basis.

A detailed commentary on the progress of Capital Works is also included.

In accordance with Section 138, the Monthly Report is presented to a meeting of Council which is open to the public. On adoption, it is also made available on the Shire website.

PROCESS

The Monthly Report is written by Unit Managers, overseen by Directors and the Chief Executive Officer (CEO). The CEO reviews the document in full before being presented to Council.
POLICY CONTEXT

The Monthly Report is a compilation of reports from all areas of Council. It is prepared by Managers and their team and overviewed by Directors and the CEO.

It is important to note that apart from the public accountability, the preparation of the Monthly Report instils an important internal discipline in having Managers and their teams review and assess the Unit performance for the month.

DISCUSSION

The Monthly Report is presented for review and discussion as required.

Councillors and members of the public are encouraged to communicate with relevant Managers should they have an enquiry or issue of concern within the report.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONSULTATION

Internal consultation only.

FINANCIAL ISSUES

Financial statements are provided in the report. Financial reviews are completed monthly with detailed reviews being completed and reported quarterly in the September, November/December, April and June reports.

CONCLUSION


The report has been circulated to Councillors and now requires formal adoption.

Copies of this report will be available to the community at the meeting and hereafter via Council’s website (www.mornpen.vic.gov.au) and at Council offices and libraries.

RECOMMENDATION

That the report titled ‘Monthly Report to the Community – July 2015’ be received and noted.
3.1 Monthly Report to the Community – July 2015 (Cont.)

COUNCIL DECISION

Moved: Cr. Rodgers
Seconded: Cr. Fraser

That the reports titled ‘Monthly Report to the Community and Monthly Financial Report – July 2015’ be received and noted.

Carried

VIEW ATTACHMENT 1
3.2 Lease to Lions Club of Rye Inc.

PREPARED BY: Greg Collins, Team Leader – Property Operations

AUTHORISED BY: Interim Chief Financial Officer

DOCUMENT ID: A6028411

ATTACHMENT(S): NO

PURPOSE

This report seeks Council approval to enter into a lease with the Lions Club of Rye Inc. (Rye Lions) for the purpose of constructing and using a storage shed on Council owned land at the RJ Rowley Reserve, 20 Melbourne Road, Rye for a term of five years with two further options of five years duration.

BACKGROUND

Australian Lions Clubs assist local community fundraising for special causes and help with development and building of local parks, community venues and sporting centres. Clubs may either provide service or raise money for their community, with 100% of funds donated by the public through fundraising being directed to the project for which they are intended.

Lions Clubs provide community support for disaster and emergency relief, medical research and community service. The range of activities Lions Clubs have been involved in include Cyclone Tracy, the Black Saturday bushfires and the Queensland floods and medical research including development of the bionic ear, cervical cancer vaccine Gardisil and funding for diabetes and autism initiatives.

The Lions Club of Rye was established in 1972 and serves the community through fundraising activities including raffles and catering at community events in the Shire. The Rye Lions have 26 members and is one of the few local service organisations with an increase in membership in recent years. The Rye Lions have provided free catering with barbecues for Rye Netball Club, Rye Gift, Bendigo Bank, Mornington Peninsula Tourism Association as well as feeding volunteer fundraisers for the Royal Children’s Hospital appeal.

DISCUSSION

The Rye Lions have a range of equipment including barbecue trailer, marquees and shelters, which is used in the provision of their community activities, and is stored at member’s homes. The equipment is spread across various locations and is time consuming to retrieve and put away, particularly with changes in personnel and access to properties. The proposal to construct a new storage facility, large enough for all the equipment, will provide a centralised location.

Shire Officers have reviewed other possible locations in the Rye area for use by the Rye Lions, including a small storage area at the Rye Community Hall, however there is nothing available of a suitable size that is not currently being utilised by community groups.
The Rye Lions are proposing to construct an ‘off the shelf’ garage type metal shed with a colour bond finish. The shed size will be approximately 10 metres by 8 metres and located near the South East Water facility at the west side of the reserve. The cost of constructing the shed will be fully met by the Rye Lions.

The reserve is shared with a number of users and activities including a skate park, the Rye Football and Netball Club, and Rye Junior Football Club. The Rye Tennis Club adjoins the reserve and the Alien Fitness Centre operates from premises at the reserve. The reserve is well used and also hosts the annual Rye Gift athletics carnival in January.

Consultation

The reserve user groups have been consulted regarding the construction of the storage shed and all support the proposal. The Rye Lions are well known to the user groups and provide them with support for events and activities. The Building and Facilities Management Unit is also supportive of the storage shed and together with the reserve user groups determined the most appropriate location. The proposed location is level land that previously accommodated cricket practice nets and will not require any vegetation removal. Vehicle access is available and no additional site works will be necessary.

It is recommended that the lease includes a condition that the building be completed within a reasonable timeframe. Without such a condition, the proposed lease site will be unable to be considered for any other use for the term of the lease.
Community Facilities Tenancies Policy

Council’s Community Facilities Tenancies Policy No. 09/24 applies to all community groups, organisations and social clubs who seek to occupy Council facilities. The policy will be applicable to the Rye Lions tenure and requires that the community group:

- Enter into a standard lease or licence;
- Generally be at a subsidised rental of $520 per annum plus GST unless otherwise negotiated and agreed; and
- On the basis that the community group will pay all outgoings including contents insurance and all maintenance as set out in the attached maintenance schedule.

Section 190 of the Local Government Act 1989 requires (in part) that Council publish a public notice of the proposed building lease and consider any submissions received.

Pursuant to the Community Facilities Leasing Policy, the Rye Lions will be required to pay a commencing rent of $520 (plus GST) per annum and outgoings, including service charges, building and contents insurance premiums and the Fire Services Levy.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

The proposed lease will formalise the provision of Council land for the construction of the Rye Lions storage shed.

RECOMMENDATION

1. That pursuant to Section 190 of the Local Government Act 1989, Council advertises its intention to enter into a lease with the Lions Club of Rye Inc. for part of the land at the R J Rowley Recreation Reserve at 20 Melbourne Road, Rye.

2. That any submissions received be considered pursuant to Section 223 of the Local Government Act 1989.

3. That provided no submissions are received, Council agrees to enter into a lease for a term of five years with two further options of five years duration.

4. That the commencement rental be $520 per annum plus GST and then adjusted annually to the Consumer Price Index (all groups Melbourne) and that all outgoings including building insurance, Fire Services Levy and service costs and charges be payable by the Tenant.

5. That Council reserves the right to terminate the lease if the building is not completed by 30 June, 2017.

6. That the Common Seal of the Mornington Peninsula Shire Council be affixed where necessary and the relevant documents are signed by an authorising officer.
3.2 Lease to Lions Club of Rye Inc. (Cont.)

COUNCIL DECISION

Moved: Cr. Fraser
Seconded: Cr. Rodgers

That the recommendation be adopted.

Carried
3.3 Lease to Mornington Yacht Club

Prepared By               Greg Collins, Team Leader – Property Operations
Authorised By            Interim Chief Financial Officer
Document ID              A6033073
Attachment(s)            YES (1)

PURPOSE

This purpose of this report is to summarise the written submissions received by Council and the deputations heard at the Section 223 Submission Committee Hearing on 23 June, 2015 concerning Council’s notice of intention to enter into a 21 year lease with the Mornington Yacht Club (MYC) over the land upon which the clubrooms, restaurant, slipway and various storage buildings and yards are erected.

Having considered the submissions received, this report recommends that Council enters into the lease with MYC.

BACKGROUND

The subject site is Crown land for which the Mornington Peninsula Shire Council is the appointed Committee of Management under Section 14 of the Crown Land (Reserve) Act 1978.

MYC was established in 1946 and the main part of the building dates back to 1963. The northern section of the building, including the Rocks Restaurant, was added in 2000. In 1997 Council granted a 21 year lease to MYC which was later varied to enable the commercial restaurant to operate and the installation of a mobile phone tower. The current lease does not expire until 2018 however a request for an early renewal of the lease has been brought forward by MYC.

Council, at its meeting held on 10 March, 2015, resolved (in part) to give public notice of the intention to enter into the lease with MYC pursuant to Section 190 of the Local Government Act 1989 (the Act).

A public notice was published in the Mornington Peninsula Leader and on the Shire website on 24 March, 2015. The public notice advised that any written submissions received within 28 days of the publication notice would be considered by Council, or a Committee of Council, in accordance with Section 223 of the Act.

Five written submissions were received with three submitters requesting the opportunity to be heard in support of their submissions. A Section 223 Submission Committee Meeting was held on 23 June, 2015 at the Mornington Municipal Offices. Four submitters requested to be heard at the meeting. Details of submissions were provided to the Committee to further assist Council in hearing the submissions.
DISCUSSION

MYC is a very strong, well organised club that provides sail training programs over a wide range of age groups with differing purposes relative to each specific age group. MYC also conducts a Sailability program specifically designed to enable those persons in the community who are physically and/or intellectually handicapped to enjoy the sport.

Central to the continued operations of the MYC has been:

- The increased membership, increased participation by schools, boat licensing courses, disability sailing; and
- The increased revenue from the sub-leases of MYC. Revenue raised has enabled the structural improvement of the facility.

Figure 1: Mornington Yacht Club

FINANCIAL

MYC currently pays Council the following amounts:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Clubrooms and restaurant (ground rent)</td>
<td>$44,230.00</td>
</tr>
<tr>
<td>Telstra (50% share of rent revenue)</td>
<td>$6,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$50,720.00</strong></td>
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Council also receives rates from MYC sub-lessees that total $6,155.22 for the 2015-2016 financial year.

MYC is responsible for all maintenance on the premises and pays all outgoings including utilities, public liability insurance, fire services property levy, building and contents insurances.

A market rental valuation to determine the commencing rent has been undertaken by Bertacco Ferrier, Valuers and Property Consultants, assessing the ground rental payable for MYC clubrooms and the Rocks Restaurant at $45,100 (inclusive of GST).

Proposal

The following lease terms and conditions are proposed:

Subject to Minister’s approval

Commencement Date: 21 years

Term: $41,000 plus GST ($45,100)

Commencement Rent: Annually to Consumer Price Index (All Groups Melbourne) and reviewed to market every three years

Council will also continue to receive 50% of the rent generated from MYC’s lease with Telstra.

ISSUES

A copy of the Section 223 Submission Committee Meeting minutes, including deputations from speakers and full copies of the submissions received, is attached to this report for Council’s consideration (Attachment 1).

An overview of the issues raised in both written and verbal submissions from the Section 223 Submission Committee meeting are provided below.

<table>
<thead>
<tr>
<th>Mornington Environment Association Inc. (MEA) Jan Oliver (Requested to be heard)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issue</strong></td>
</tr>
<tr>
<td>MEA and Mornington Harbour Precinct Working Party should have been advised of report to Council Meeting on 10 March, 2015.</td>
</tr>
<tr>
<td>Lease should be for five years with renewal options.</td>
</tr>
</tbody>
</table>
### 3.3 Lease to Mornington Yacht Club (Cont.)

| Ensure MYC activities are related to Mornington Harbour. | The permitted use of the current lease is for MYC facilities and activities and in accordance with their planning approvals. The current lease requires MYC to maintain a Site Management Plan to the satisfaction of Council. Any new lease will include similar terms. |
| Mornington Harbour Precinct Reference Group should be formed. | At its meeting on 24 November, 2014, Council resolved (in part) “that officers prepare and present a report for Council's consideration regarding the formation of the Mornington Harbour Precinct Reference Group, including recommendations on the membership and the Terms of Reference for this Group”. Council’s Strategic Planning Team is facilitating this report. |
| Proposed lease area and rent not stated. | The proposed lease area is the same as the MYC currently occupies of 5,978 square metres and includes the yacht club facilities, storage yard and slipway. The proposed rent for the new lease (based on registered valuation) will be $41,000 per annum plus GST for the first year reviewed annually to Consumer Price Index (CPI) and reviewed to market every three years. |
| The MYC storage yard is untidy, noisy, has industrial activities. | The current lease states that MYC will not:  
- Cause or allow any loud noise or other nuisance, disturbance or annoyance to be made in or to emanate from the premises; and  
- Permit any rubbish to accumulate in or about the premises unless confined in suitable containers.  
Similar terms will be included in the proposed lease. |
| Public footpath in front of MYC often blocked with boats and ramp activity. | The proposed lease will exclude the public footpath area. Any blockages such as described will only be temporary in nature and reflective of the activities and use contemplated under the proposed lease. |
| Boat storage and maintenance could be undertaken elsewhere and free up space for other stakeholders. | The proposed MYC lease area will be unchanged and current usage such as described is consistent with and allowed under the current lease. It is proposed that similar terms will be included in the new lease. We note that members also currently store and maintain vessels off site. |
### Additional Issues Raised at the Section 223 Submission Committee Meeting

<table>
<thead>
<tr>
<th>Issue</th>
<th>Officer Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mornington Harbour cannot meet current and future needs.</td>
<td>A recommendation of the Mornington Harbour Precinct Plan, which was adopted by Council on 24 November, 2014, is the formation of a Mornington Precinct Reference Group to continue community and stakeholder engagement regarding the future of the Mornington Harbour Precinct.</td>
</tr>
<tr>
<td>The process was poorly advertised with no notification given to stakeholders or attachments to Section 190 public notice provided to the public.</td>
<td>In accordance with Section 190 of the Act, a public notice was published in the Mornington Peninsula Leader newspaper edition of 24 March, 2015, which has circulation in Mornington. The public notice was also published on the Shire’s website. This is the standard method of public notice for Council lease matters.</td>
</tr>
<tr>
<td>There is concern the business is heavily in debt and cannot maintain the lease.</td>
<td>MYC is a strong, well organised club and Council officers have no concerns regarding the club complying with the terms and conditions of the lease.</td>
</tr>
<tr>
<td>MEA is concerned that rent for the new lease is less than the current rent.</td>
<td>The current MYC rent is $44,230 per annum while the proposed rent will be $45,100. Council also receives 50% share of the rent from the Telstra sub lease.</td>
</tr>
<tr>
<td>There are reports that the EPA has seen pollution going into the Harbour and action has been taken with the Club (not Council).</td>
<td>The EPA advises there has been no action with MYC regarding pollution of the Mornington Harbour.</td>
</tr>
<tr>
<td>No other club or potential tenant was approached for use of the restaurant sub-lease.</td>
<td>This report deals with the MYC head lease not the restaurant sub-lease.</td>
</tr>
</tbody>
</table>
### Officer Comment

1. **Issue:** The report to the Council Meeting on 10 March, 2015 was prepared with the knowledge of MYC which is a member of the Mornington Harbour Precinct Working Party. The agenda for the Council meeting is also available on the Shire website in the week prior to the Council meeting.

2. **Public notice in local newspaper is a farce. What other methods of public notice are utilised?**
   - In accordance with Section 190 of the Act, the public notice was published in the Mornington Peninsula Leader newspaper edition of 24 March, 2015, which has circulation in Mornington. The public notice was also published on the Shire’s website. This is the standard method of public notice for Council lease matters.

3. **Notice of proposed lease should have been advised to submitters of previous marina proposal.**
   - Any person is able to make a written submission including submitters to the previous marina proposal.

4. **Site occupied by MYC should be available to others to express interest in leasing.**
   - Granting of a new lease to an incumbent tenant is supported by the *Leasing Policy for Crown Land in Victoria 2000* (Department of Environment, Land, Water and Planning [DELWP]).

5. **What applications with payment received by Council from MYC for lease renewal?**
   - There is no application fee required for lease renewal.

6. **How does proposed lease differ from current lease?**
   - The proposed lease is generally the same as the current lease with the exception of the commencing rent which is proposed to be $41,000 plus GST per annum (based on registered valuation).

7. **MYC rent valuation should be available to the public.**
   - The proposed rental has been assessed at $41,000 plus GST per annum.

8. **Terms of rent payment not clear.**
   - The rent for the proposed new lease will be $41,000 per annum plus GST (payable quarterly) for the first year reviewed annually to CPI and reviewed to market every three years.

9. **Public should know of MYC financial situation.**
   - In accordance with Australian Securities and Investment Commission (ASIC) requirements, MYC is not required to make available annual financial reports to anyone other than ASIC and MYC members.

10. **Approval for Rocks restaurant included provision of transport for patrons and should be included as lease condition.**
    - Planning Permit P98/0614 issued 15 October, 1999 for *Yacht Club Alterations and Additions Including Restaurant* does not include a condition for provision of transport.
The MYC lease area is currently proposed to be unchanged from the current lease.

MYC is required under the current lease to maintain a Site Management Plan and will continue to be required to do so with the proposed new lease.

The proposed MYC lease area will be unchanged. It is proposed that similar terms apart from the rental amount will be included in the new lease.

The current MYC lease is for a 21 year term. This length of tenure is consistent for yacht clubs across the Shire. The 21 year lease term will provide the MYC with security of tenure to enable to the Club to amortise their capital expenditure on the site.

MYC has requested early renewal of the lease to enable implementation of long-term business and strategic plans.

Ms. Rose written submission stated “something should be done about boat storage and boat maintenance on the foreshore. This should take place elsewhere; perhaps in the industrial area of Mornington.”

MYC must comply with the terms and conditions of the lease and the existing planning permit.

The proposed MYC lease area will be unchanged. It is proposed that similar terms apart from the rental amount will be included in the new lease.
3.3 Lease to Mornington Yacht Club (Cont.)

**Additional Issues Raised at the Section 223 Submission Committee Meeting**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Officer Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concerned that new lease being offered three years before expiry of current lease.</td>
<td>MYC has requested early renewal of the lease to enable implementation of long-term business and strategic plans.</td>
</tr>
<tr>
<td>Why is public unable to see a copy of the lease.</td>
<td>A register of property leases is available for public inspection in accordance with the <em>Local Government (General) Regulations 2004</em>. The details include the names of the other party to the lease the terms and the value of the lease.</td>
</tr>
<tr>
<td>Council allowed MYC to dump dredged silt on Mother’s Beach.</td>
<td>Dredging has been undertaken with approval of DELWP and Parks Victoria. An objective of the <em>Mornington Coastal Management Plan</em> (adopted by Council on 24 September, 2012) is to ensure that any conditions of permit and EPA Victoria’s guidelines for dredging includes appropriate notice and consultation with stakeholders.</td>
</tr>
<tr>
<td>MYC will expand by stealth.</td>
<td>The permitted use for MYC lease area is yacht club facilities, slipway and ancillary activities. Neither the permitted use or the lease footprint may be increased or changed without the consent of the Council and the Minister.</td>
</tr>
<tr>
<td>Mornington Harbour needs to be preserved, MYC will want growth however the harbour cannot get any bigger.</td>
<td>A recommendation of the Mornington Harbour Precinct Plan, which was adopted by Council on 24 November, 2014, is the formation of a Mornington Precinct Reference Group to continue community and stakeholder engagement regarding the future of the Mornington Harbour Precinct.</td>
</tr>
</tbody>
</table>
**Carolyn Rose (Did not request to be heard)**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Officer Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not against proposed lease, however need assurance of adequate community input, clarity of lease terms and conditions and that lease satisfies statutory requirements.</td>
<td>The Act requires Council to publish a public notice of the intention to enter into the lease and consider any submissions in accordance with Section 223. A report will be submitted at the next appropriate Council Meeting addressing issues raised in the written submissions and at the Hearing. The proposed lease must comply with Section 17D of the <em>Crown Land (Reserves) Act 1978</em> and must be approved by the Minister.</td>
</tr>
<tr>
<td>Local newspaper not received by everyone. Suggest public notice be placed in Peninsula Wide.</td>
<td>Peninsula Wide is published every two months and may not align with the statutory timelines required for public notices and submissions pursuant to Section 223 of the Act. In accordance with Section 190, a public notice was published in the Mornington Peninsula Leader newspaper edition of 24 March, 2015, which has circulation in Mornington. The public notice was also published on the Shire’s website. This is the standard method of public notice for Council lease matters.</td>
</tr>
<tr>
<td>Notice of proposed lease should have been advised to submitters of previous marina proposal.</td>
<td>In accordance with Section 190 of Act, a public notice was published in the Mornington Peninsula Leader newspaper edition of 24 March, 2015 which has circulation in Mornington. The public notice was also published on the Shire’s website. This is the standard method of public notice for Council lease matters.</td>
</tr>
<tr>
<td>What part, if any, does the Mornington Harbour Precinct Working Party play in the proposed lease?</td>
<td>In accordance with Section 223 of the Act anyone, including the Mornington Harbour Precinct Working Party, can make a written submission to the proposed lease which will be considered prior to a lease being granted.</td>
</tr>
<tr>
<td>Have other parties been asked to express interest in a lease for the MYC site?</td>
<td>Granting of a new lease to an incumbent tenant is supported by the <em>Leasing Policy for Crown Land in Victoria 2000</em> (DELWP).</td>
</tr>
<tr>
<td>Why is the proposed lease to commence three years before expiry of current lease?</td>
<td>MYC has requested early renewal of the lease to enable implementation of long-term business and strategic plans.</td>
</tr>
<tr>
<td>What type of lease is proposed and what part does the Minister play in the proposed lease?</td>
<td>The lease must comply with Section 17D of the <em>Crown Land (Reserves) Act 1978</em> and must be approved by the Minister.</td>
</tr>
<tr>
<td>How does the lease differ from the current lease?</td>
<td>The proposed lease will be generally the same as the current lease with the exception of the commencing rent increasing to $41,000 plus GST per annum.</td>
</tr>
<tr>
<td>How will MYC be held accountable?</td>
<td>The MYC must comply with the terms and conditions of the lease and the existing planning permit.</td>
</tr>
</tbody>
</table>
### 3.3 Lease to Mornington Yacht Club (Cont.)

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>How does the proposed rent compare with current rent and with other Crown Land leases in Victoria?</td>
<td>Crown Land leases cover a myriad of uses including community, commercial and a mix of both. The proposed rent has been determined having taken comparable rentals of similar tenancies into account. The proposed rent will represent a slight (&lt;3%) increase above the current lease.</td>
</tr>
<tr>
<td>How is rent determined, why CPI reviews and what is the frequency of rent payments?</td>
<td>In determining the proposed rent, the Valuer considered similar facilities such as The Baths Restaurant in Sorrento, Parsons Marina Williamstown and Royal Brighton Yacht Club. Rent review to CPI and periodic market review is accepted as a suitable commercial standard and is consistent with Council’s Lease Policy. Rent is payable by quarterly instalments.</td>
</tr>
<tr>
<td>Proposed lease term of 21 years is too long.</td>
<td>The current MYC lease is for a 21 year term. This length of tenure is consistent for yacht clubs across the Shire. The 21 year lease term will provide MYC with security of tenure to enable the Club to amortise their capital expenditure on the site.</td>
</tr>
<tr>
<td>Footprint should not be increased.</td>
<td>The proposed MYC lease area will be unchanged. It is proposed that similar terms apart from the rental amount will be included in the new lease.</td>
</tr>
<tr>
<td>Sub-leasing, if permitted, should be appropriate.</td>
<td>Sub-leasing requires the written approval of Council and the Minister but cannot be unreasonably withheld.</td>
</tr>
<tr>
<td>Boat storage and maintenance should take place elsewhere.</td>
<td>The proposed MYC lease area will be unchanged and current usage such as described is consistent with and allowed under the current lease. It is proposed that similar terms will be included in the new lease. We note that members also currently store and maintain vessels off site.</td>
</tr>
<tr>
<td>Approval for Rocks restaurant included provision of transport for patrons and should be included as lease condition.</td>
<td>Planning Permit P98/0614 issued 15 October, 1999 for Yacht Club Alterations and Additions Including Restaurant does not include a condition for provision of transport.</td>
</tr>
<tr>
<td>No additional funds should be provided to MYC by Council or Government.</td>
<td>MYC, as a community organisation, is entitled to apply for available grant funding and cannot be prevented in doing so as a condition of the lease.</td>
</tr>
</tbody>
</table>
### OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

### CONCLUSION

The proposed lease will provide MYC with sufficient security of tenure to maintain the site and continue its operations for the benefit of all members and other users of the facility and allow amortisation at an acceptable rate over the period of the lease.

### RECOMMENDATION

1. That Council resolves to enter into a 21 year lease with Mornington Yacht Club for part of the foreshore at Mornington, at a commencement rental of $41,000 plus GST per annum, with annual rent reviews to CPI and reviewed to market every three years.

2. That Council receives 50% of the revenue received by Mornington Yacht Club from the sub-lease to Telstra.
3.3 Lease to Mornington Yacht Club (Cont.)

3. That subject to the issuing of the new lease, the existing Mornington Yacht Club lease be surrendered.

4. That the Common Seal of Mornington Peninsula Shire be affixed to the surrender of lease agreement, the new lease agreement, any sub-lease agreements and the relevant documents be signed by the authorised officers.

Attendance

Cr. Shaw having declared a Conflict of Interest in relation to this report, left the Chamber prior to consideration and voting on this item and returned after voting on this item was concluded.

COUNCIL DECISION

Moved: Cr. Gibb
Seconded: Cr. Celi

That the recommendation be adopted.

Carried

VIEW ATTACHMENT 1
3.4 Instrument of Appointment and Authorisation

Prepared By  
Nadine Hudson, Governance Support Officer

Authorised By  
Manager – Governance

Document ID  
A6032544

Attachment(s)  
YES (2)

PURPOSE

The purpose of this report is for Council to authorise officers for the purposes of enforcing the Planning and Environment Act 1987 and Section 188A of the Land Act 1958, and to revoke Instruments of Appointment and Authorisation made by Council for staff that no longer require it.

BACKGROUND

To allow for practical, efficient and effective delivery of services, a Council can delegate or authorise staff, and others, to undertake functions or exercise powers on its behalf. Council is granted these powers through the Delegations (Clause 98) and Authorised Officers (Clause 224(1)) clauses of the Local Government Act 1989.

Under Clause 224(1) of the Local Government Act 1989, Council “may appoint any person other than a Councillor to be an authorised officer for the purposes of the administration and enforcement of any Act, regulations or local laws which relate to the functions and powers of the Council.”

Delegations involve a Council giving its powers to staff, who then act on behalf of Council. When Council authorises an individual, that person has the power of the statutory position i.e. they are not acting as delegates, or on behalf, of the Council.

The Planning and Environment Act 1987 and Section 188A of the Land Act 1958 provides that Council cannot delegate the power to authorise officers for the purposes of enforcing these Acts, rather Council must authorise officers directly.

DISCUSSION

Instrument of Appointment and Authorisation (Planning and Environment Act 1987)

When officers enter a property, make observations or gather evidence, if the matter were to proceed to enforcement, their entry, observations and gathering of evidence is only lawful if the officer is an Authorised Officer under the particular Act.

In addition, there is a requirement for some administration staff to be Authorised Officers if they have a role in the issuing or review of Planning Infringement Notices issued pursuant to the Planning and Environment Act 1987.

The extent of Authorisation is limited by the Position Description and operating procedure for each team.
The Instrument of Appointment prepared by the Shire’s solicitors Maddocks, provides for Council to appoint officers by a resolution, pursuant to Section 147(4) of the Planning and Environment Act 1987. The Instrument also includes the general appointment provision in Section 232 of the Local Government Act 1989 to commence proceedings in a Council's name.

Instrument of Appointment and Authorisation (Land Act 1958)

Section 188A applies to Crown land that is under the control of a Committee of Management (CoM) and provides that if a person constructs a building/works on that land, a person authorised by the CoM can demand that that person produce a current permit authorising them to keep the building. If, after 21 days, that person has not produced such a permit, then the Authorised Person may cause a complaint and a summons to appear before the Magistrates Court to be served on the person who constructed the building/works.

The Mornington Peninsula Shire is appointed as a CoM for a number of Crown land reserves within the municipality. It is in this capacity that Council can authorise officers for the purposes of Section 188A of the Land Act 1958.

Maddocks have prepared an Instrument of Authorisation and Appointment to enable Council, in its capacity as a CoM, to authorise relevant officers under this legislation.

REVOCATION OF INSTRUMENTS

The process to revoke Instruments of Appointment and Authorisation is necessary when an officer no longer requires the authorisation, i.e. if they move between departments, if they require additional Acts to be added to their authorisation, or if they are no longer employed at the Shire.

Maddocks have advised any appointments made by Council for the Planning and Environment Act 1987 and Land Act 1958 must be revoked by Council resolution.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

The attached Instruments of Appointment and Authorisation have been prepared to ensure relevant officers are properly authorised under the legislation (Attachments 1 and 2).

Updating the Shire’s Instruments of Appointment and Authorisation will assist in the achievement of demonstrating good corporate governance in our operations and ensuring that Council processes are efficient, effective and undertaken in accordance with legal requirements.

It is recommended that Council appoints the relevant Council officers as Authorised Persons under the Planning and Environment Act 1987, and in its role as a CoM, Section 188A of the Land Act 1958. In addition Council should revoke the Instruments of Appointment and Authorisation for those staff who no longer require it, as listed below.
RECOMMENDATION

1. In the exercise of the powers conferred by Section 224 of the Local Government Act 1989 and the other legislation referred to in the attached Instruments of Appointment and Authorisation, Council resolves that:

   A. The members of Council staff referred to in Attachment 1 be appointed and authorised under the Planning and Environment Act 1987;

   B. Council, in its capacity as a Committee of Management, appoints and authorises Council staff under Section 188A of the Land Act 1958, as referred to in Attachment 2;

   C. The Instruments come into force immediately when the Common Seal of Council is affixed to the Instruments and remains in force until Council determines to vary or revoke it;

   D. That the Common Seal of Council be affixed to the Instruments as attached;

   E. That Council revokes the following Planning and Environment Act 1987 Instruments of Appointment and Authorisation, effective immediately; and

<table>
<thead>
<tr>
<th>Authorising</th>
<th>Instrument Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stephen Chapple</td>
<td>15 March, 2011</td>
</tr>
<tr>
<td>John Ault-Connell</td>
<td>8 August, 2011</td>
</tr>
<tr>
<td>Craig Cinquegrana</td>
<td>8 August, 2011</td>
</tr>
<tr>
<td>Lisa Hunt</td>
<td>24 November, 2014</td>
</tr>
<tr>
<td>Nicolas Jay</td>
<td>25 June, 2012</td>
</tr>
<tr>
<td>Megan Jinks</td>
<td>27 February, 2012</td>
</tr>
<tr>
<td>Malin Johnson</td>
<td>24 November, 2014</td>
</tr>
<tr>
<td>Danielle Pepyat</td>
<td>15 March, 2011</td>
</tr>
<tr>
<td>Rob Macindoe</td>
<td>24 November, 2104</td>
</tr>
<tr>
<td>Stephen Powell</td>
<td>20 December, 2010</td>
</tr>
<tr>
<td>Bruce Rendall</td>
<td>24 November, 2014</td>
</tr>
<tr>
<td>Victoria Smith</td>
<td>15 March, 2011</td>
</tr>
<tr>
<td>Claire Smith</td>
<td>13 August, 2012</td>
</tr>
<tr>
<td>Steve Tuck</td>
<td>24 November, 2014</td>
</tr>
</tbody>
</table>
That Council revokes the following Land Act 1958 Instruments of Appointment and Authorisation, effective immediately:

Stephen Chapple 12 September, 2011
Megan Jinks 24 November, 2014
Rob Macindoe 24 November, 2014
Claire Smith 12 September, 2011
Bruce Rendall 24 November, 2014

COUNCIL DECISION

Moved: Cr. Gibb
Seconded: Cr. Rodgers

That the recommendation be adopted.  

Carried
3.5 Update on Rosebud Foreshore Resolution

Prepared By        Neil Daykin, Strategic Planner – Coastal
Authorised By      Manager – Strategic Planning
Document ID        A6044152
Attachment(s)      YES (2)

PURPOSE

This report responds to a previous resolution of Council (from 22 September, 2014) which, inter alia required consideration of the rejuvenation of the Rosebud foreshore and Jetty Road beach “including removal of sand bagging, builder’s rubble and fill either as a standalone project or in conjunction with the development of the Civic Precinct”. A copy of the full resolution is included as Attachment 1.

Many elements of the September 2014 resolution are aimed at a comprehensive re-assessment of Rosebud activity centre and consideration of a wide range of potential facilities and options (including the use of the land in Wannaeue Place), and many of these issues are still under review. However, Council is also currently developing plans and seeking substantial grant funding to implement changes in the Jetty Road precinct and therefore it is considered important to clarify Council’s position on this matter, even though the other elements required to be addressed by the resolution may not be determined for some time. It is considered that this approach does not require any rescission of the September 2014 resolution.

In this context, investigations to date suggest that the removal of existing fill from the Jetty Road area would involve significant costs and limited benefits, particularly following recent beach renourishment works by Department of Environment, Land, Water and Planning (DELWP).

Although the removal of the sand bag wall and (substantial parts of the) fill area would not necessarily preclude the proposed upgrade of Jetty Road, the jetty forecourt area or establishment of a new major playground area, it would create uncertainty in relation to the timing of construction and potential waste of resources.

Accordingly, for the sake of clarity, it is recommended that Council resolves that it is satisfied at this time that the rejuvenation of the Rosebud foreshore does not require removal of the existing sand bag wall or fill materials, provided current renourishment works are successful and are properly maintained by DEWLP. However, it is also recommended that the foreshore area continues to be monitored and assessed and if future erosion reduces the amenity of the beach area, results in the exposure/dispersal of fill material and/or undermines the sand bag wall, Council should reserve the right to advocate for fill removal and/or an alternative protective treatment by the State government.

BACKGROUND

There appear to have been two eras of filling of the Rosebud foreshore in proximity to the Rosebud Pier, one with relatively clean fill from the construction of the Mornington Peninsula Freeway (in the 1960s) and a later period associated with a sewerage installation program.
The works during the latter period appear to be the source of the rubble material that contributed to the decision to construct the geotextile sand bag seawall (to prevent the rubble dispersing). The best estimate from the assessment of the aerial photography is that something in the order of 25,000 to 50,000 cubic metres of fill material was deposited on the foreshore over both periods. An aerial photo indicating the approximately extent of fill is shown below.

Through the development of the Rosebud Activity Centre Structure Plan, the Rosebud Urban Design Framework and the Rosebud Coastal Management Plan, all of which included extensive public consultation processes, Council has established a clear framework for the rejuvenation and revitalisation of the Rosebud centre and the adjacent foreshore area.

While these documents are currently being revised to reflect Council’s decisions in relation to the Southern Peninsula Aquatic Centre and associated resolutions, it is considered that the basic principles expressed through these plans are still valid, for example:

- The establishment of a ‘heart precinct’ in the vicinity of Ninth Avenue/Wannaeue Place, with further foreshore ‘recreation nodes’ at Boneo Road, Jetty Road and McCrae Lighthouse;
- Strong pedestrian connections from the commercial centre to the foreshore, with new public spaces providing access and visual connection to the beach front and enhanced access along the foreshore Bay Trail; and
- The development of ‘landmark’ public spaces, revitalising Rosebud as a strong visitor destination, as well as providing additional amenity for residents, and reinforcing the role of Rosebud as the major activity centre of the southern Peninsula.

These plans did not envisage the removal of the existing seawall (consisting of geotextile sand bags) or the areas of fill in the vicinity of the Rosebud jetty, although the appearance and condition of the foreshore in this area has been an ongoing concern.

The issue has been further canvassed both in the exhibition of the Jetty Road Landscape Master Plan (where 76 submissions/petition signatories supported removal of seawall and fill and 131 supported its retention), and in the DELWP response to public enquires regarding their recent beach renourishment project, where DELWP indicated that removal of the seawall and fill was not considered a viable option.

It should be noted that the submissions regarding the seawall were received prior to the current beach renourishment works which have substantially improved the appearance of this section of the foreshore, in effect raising the sand level to (near) the top of the wall.
It may also be noted that Council resolved to support DELWP’s beach renourishment program in the following (qualified) terms:

“That Council advises the Department of Environment, Land, Water and Planning (DELWP) that it endorses and supports the current Rosebud renourishment project.

That Council further advises DELWP that the final design should be determined on the basis of thorough engineering advice on coastal processes in this location and that the impact of the proposed groynes on other sections of the foreshore and the overall beach condition will need to be closely monitored.”

A copy of the coastal engineering advice provided by DELWP is included as Attachment 2 (excluding a series of aerial photographs and soil tests which run to some 200 pages). It is noted that the renourishment project has an anticipated design life of 3-4 years i.e. further renourishment would need to be provided by DEWLP at the end of that time. However, at this stage it is considered appropriate to monitor the on-ground performance (as groynes in other locations have provided a more stable outcome), and the actual performance of the groyne field and current renourishment project will provide Council with a clearer basis for future decision making and advocacy.

In terms of Council’s previous resolutions relating to this matter, in September 2014, in the context of considering proposals for the Southern Peninsula Aquatic Centre and the use of land in Wannaeue Place, Council adopted a multi-part resolution. This resolution, in effect, requires a comprehensive review of plans for the Rosebud Activity Centre and the formation of an inter-governmental taskforce to facilitate the implementation of such plans. A copy of the full resolution is included as Attachment 1.

For the purposes of considering this report the resolution states:

“That on or before 8 December, 2014 an up to date needs analysis and report be brought to a meeting of Council as to the provision and better provision and development of the following facilities in and about Rosebud and the analysis and report to consider:

H. The rejuvenation of the Rosebud Crown Land foreshore and Jetty Road beach, including removal of the sand bagging, builders rubble and fill either as a standalone project or in conjunction with the development of the Civic Precinct.”

It is understood that a report (by the previous Director – Infrastructure), was submitted to the meeting on 8 December, 2014 per the resolution, but that consideration of the matter was deferred. Subsequently, there have been further resolutions by Council on a range of related matters, including further investigation of the Colchester Road swimming pool.

At this stage, the current report aims to enable consideration of an aspect of the rejuvenation of the Rosebud Crown Land foreshore and Jetty Road beach including removal of the sand bagging, builders rubble and fill. The September 2014 resolution does not determine that sand bagging, rubble and fill must be removed, it requires consideration of rejuvenation including such removal.

Accordingly, it appears open to Council to consider this report, which concludes that on the basis of current conditions (i.e. the recent beach renourishment) that it is reasonable for Council to determine that at this stage the rejuvenation of the Rosebud foreshore does not require removal of the existing sand bag wall or fill materials, provided current renourishment works are successful and are properly maintained by DELWP. In these circumstances it is considered that this report is consistent with the resolution of September 2014, and that no rescission of that previous resolution is required.
DISCUSSION

Although restoration of the natural coastline has some attractions, it is important to recognise that the Jetty Road precinct is already highly modified and that ‘restoring’ this area would have a significant impact on the availability of public space.

Equally, concerns regarding the impact of future coastal processes attributable to climate change suggest that removal of the existing sea wall may be counterproductive in the long run and that it is appropriate to maximise the buffer between the beachfront and private properties/public infrastructure, not decrease it.

It is possible that some adjoining landowners would prefer access to a more natural coastline, even if this involves less public use, however this private benefit would incur significant public costs.

Table 2 below provides an up-to-date estimate of the cost (prices based on discussions with contractor Southern Excavation Services) to remove the fill material based on the estimated quantity of fill.

Table 2: Estimate of Cost to Removal Fill

<table>
<thead>
<tr>
<th>Area (m²)</th>
<th>Depth of Excavation (m)</th>
<th>Cut to Waste (m³)</th>
<th>Unit Rate ($/m³)*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$20</td>
<td>$30</td>
<td>$40</td>
</tr>
<tr>
<td>25,000</td>
<td>1</td>
<td>25,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>2*</td>
<td>50,000</td>
<td>$1,000,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>3</td>
<td>75,000</td>
<td>$1,500,000</td>
<td>$2,250,000</td>
</tr>
</tbody>
</table>

*2 metres appears the most likely depth of required excavation.

It should be noted that these costs are preliminary and could substantially increase depending on the quality of the fill material, costs of disposal etc. There may also be costs associated with the relocation of infrastructure and the future/ongoing maintenance/stabilisation of the area.

While it is recognised that there have been submissions to Council seeking the removal of the sand bag seawall, as well as some or all of the fill material, it is considered that in terms of impact on the availability of open space, disruption of the foreshore and the management of potential erosion, that the retention of the seawall and fill area is reasonable and will not impede rejuvenation of the Rosebud foreshore.

The recent beach renourishment works have also significantly improved the appearance and condition of the foreshore in this area.

It is recognized, however, that the coastal environment is dynamic and future patterns of erosion are unpredictable. Accordingly, the foreshore area will continue to be monitored and assessed. If future erosion undermines the current beach renourishment works, an alternative management approach or protective treatment could be advocated to the State government.
OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

While renourishment and the use of groynes are yet to be established as a long term solution to maintaining this area, it is considered reasonable to allow the performance of the current works to be assessed in terms of the appearance of the sea wall and the condition of the beach. This approach is also more likely to maintain State ‘ownership’ of the foreshore going forward.

However, the recommendation has been framed to provide for a re-assessment of the situation on an ongoing basis, having regard to Council’s concerns regarding the amenity of this area, the risk of rubble ‘escape’ and the appearance of the sand bag wall.

RECOMMENDATION

1. That Council resolves that it is satisfied at this time that the rejuvenation of the Rosebud foreshore does not require removal of the existing sand bag wall or fill materials provided current renourishment works are successful and are properly maintained by Department of Environment, Land, Water and Planning.

2. That Council resolves that the Jetty Road foreshore area should continue to be monitored and assessed and if future erosion reduces the amenity of the beach area, results in the exposure/dispersal of fill material and/or undermines the sand bag wall, Council reserves the right to advocate for fill removal and/or an alternative management approach or protective treatment by the State Government.

COUNCIL DECISION

Moved: Cr. Pittock
Seconded: Cr. Celi

That the recommendation be adopted.

Carried

VIEW ATTACHMENT 1

VIEW ATTACHMENT 2
EXECUTIVE SUMMARY

The purpose of this report is to present the Mornington Peninsula Planning Scheme Amendment C184 (Part 2) to Council for adoption.

At the Council Meeting held on 23 March, 2015, it was recommended that Amendment C184 be split into two parts, with Part 2 being referred to an Independent Panel, including items R1084 (former reservoir at Part 57 Kunyung Road, Mount Eliza) and R1156 (141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington). Please refer to the minutes in Attachment 1.

An Independent Panel has now considered all submissions in relation to Planning Scheme Amendment C184 (Part 2) and its report has been received (Attachment 2).

In summary, the Panel’s recommendations support item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington as exhibited subject to minor adjustments and improvements. However, the Panel recommended substantial changes to item R1084 – Part 57 Kunyung Road, Mount Eliza.

It is considered that the Panel’s recommendations in relation to item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington should be adopted. In relation to item R1084 – Part 57 Kunyung Road, Mount Eliza the Panel’s recommendations are not as compelling for the reasons discussed later in this report.

It is recommended that the Amendment be further split and that C184 Part 2A pertaining to item R1156 be adopted as recommended by the Panel (Attachment 3). In relation to C184 Part 2B pertaining to item R1084, it is recommended that Council defer further consideration whilst seeking responses from:

- The State Government about whether the subject land could be included in the anticipated pilot project for the provision of a social housing contributions in connection with the disposal of public land or other social housing initiatives; and
- South East Water about whether it would be prepared to enter into an agreement under Section 173 of the Act to provide for the modified provisions largely as recommended by the Panel but with provision for a public open space contribution of 10% and any alternative social housing provision/contribution.
3.6 Mornington Peninsula Planning Scheme Amendment C184 (Part 2) – General Amendment Including Former Mount Eliza Reservoir (Cont.)

BACKGROUND

Proposal

Amendment C184 (Part 2) includes the two items described in Table 1.

Table 1

<table>
<thead>
<tr>
<th>Request No.</th>
<th>Affected land</th>
<th>What the Amendment Does</th>
<th>Why the Amendment is Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1084</td>
<td>Part 57 Kunyung Road, Mount Eliza</td>
<td>Rezone the land on the south-western corner of Kanya Road and Barmah Street, Mount Eliza from Public Use Zone, Schedule 1 (PUZ1) to Neighbourhood Residential Zone, Schedule 1 (NRZ1). Apply the Environmental Audit Overlay (EAO). Introduce a site specific housing provision to prohibit dwellings on two of the 24 lots unless for persons eligible for public housing. (Amends the Schedule to Clause 52.03 and creates an Incorporated document).</td>
<td>To enable sale of surplus South East Water land for residential use.</td>
</tr>
<tr>
<td>R1156</td>
<td>141 and 173 Bungower Road, 61 Baldock Road and part 71 Baldock Road, Mornington</td>
<td>Delete the Design and Development Overlay, Schedule 7 (DDO7) and apply a Development Plan Overlay, Schedule 19 (DPO19) and a Design and Development Overlay, Schedule 22 (DDO22).</td>
<td>To facilitate the land to be developed as a low-density residential estate, in line with the strategic planning policy for the Mornington North area.</td>
</tr>
</tbody>
</table>

Process

Amendment C184 originally included eight separate items. On 11 August, 2014, the Minister for Planning authorised Council to prepare Amendment C184 subject to technical conditions relating to the explanatory report and the then pending new residential zones. However, the letter also noted that the Minister’s Department recommended that the proposed site specific provision (in relation to the item R1084 – Part 57 Kunyung Road, Mount Eliza) should be removed and that Council should explore mechanisms outside the Planning Scheme to encourage greater housing diversity and affordability in the Shire (Attachment 4).
The Amendment was exhibited for just over seven weeks (17 November, 2014 to 9 January, 2015). The exhibited Amendment retained the site specific provision on the grounds that there was (and still is) no apparent alternative mechanism to achieve housing contributions, and that this approach had been supported by Council and could be tested during the exhibition process.

There were 87 submissions to Amendment C184 including four late submissions in relation to item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington.

On 23 March, 2015, Council resolved to process the Amendment by splitting it into two parts:
- Part 1 being the items where no objections were received (six out of eight items); and
- Part 2 being the items that received submissions and which were to be referred to an Independent Panel (the remaining two items).

A two member Panel was appointed on 10 April 2015 by Planning Panels Victoria to consider the submissions. The Panel conducted its hearing in relation to item R1084 – Part 57 Kunyung Road, Mount Eliza on 18 and 20 May 2015 and in relation to item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington on 22 May, 2015. Council received the Panel report on 30 June, 2015 (Attachment 2).

The next step in the process is for Council to consider all submissions and the Panel’s report, as required under Section 27 of the Planning and Environment Act 1987 (the Act), as well as a range of other matters that are addressed in the Explanatory Report, and then decide whether or not to adopt Amendment C184 (Part 2), with or without changes for submission to the Minister for Planning for approval.

In making its decision, Council also has an ability to change or abandon any part, or all, of an Amendment. Council should only adopt the Amendment if it is satisfied that it has complied with Divisions 1 and 2 of Part 3 of the Act, which deal with exhibition and submission procedures. In this case it is considered that these requirements have been met.

**Policy Context**

The Policy Context is derived from the State and Local Planning Policy Framework of the Planning Scheme, as well as the Shire’s Strategic Plan.

The Explanatory Report for the Amendment and the Panel Report both set out the detailed Policy context for each item in the Amendment. These can be respectively viewed in Attachment 1 (the Council minutes) and Attachment 2 (Panel report).

It should be noted that Clause 10.04 – Integrated Decision Making of the State Planning Policy Framework, provides in part that:

“Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.”
During the exhibition period, 71 submissions were received, while 16 late submissions were received and considered as late submissions under Section 22(2) of the Act. Four of those submissions were not reported at the previous Council meeting but were subsequently accepted as late submissions and also considered by the Panel. In summary:

- A total of 68 submissions objected to item R1084 – Part 57 Kunyung Road, Mount Eliza (Submissions 1, 4, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 36, 37, 39, 40 (petition with 264 signatures), 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 81, 82 and 83);

- One submission supported item R1084 – Part 75 Kunyung Road, Mount Eliza (Submission 80);

- A total of 14 submissions objected to item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington (Submissions 6, 29, 34, 35, 38, 52, 53, 55, 75, 79, 84, 85, 86 and 87);

- One submission supported item R1156 – 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington (Submission 3); and

- Three submissions (Submissions 2, 5 and 10) had no objection to both items.

<table>
<thead>
<tr>
<th>Items</th>
<th>Objections</th>
<th>Other Submissions (Support and No Objection)</th>
<th>Total Number of Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1084 – former reservoir</td>
<td>68 Submissions 1, 4, 7, 8, 9, 11, 12, 13, 14 (Mornington Peninsula Ratepayers and Residents Association), 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 36, 37, 39, 40 (petition with 264 signatures), 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 56, 57, 58, 59, 60, 61, 62, 63 (Mount Eliza Association for Environmental Care), 64, 65 (late submission), 66, 67, 68, 69, 70 (late submission), 71 (late submission), 72, 73 (Kunyung Residents Group), 74, 76 (late submission), 77 (late submission), 78 (late submission), 81 (late submission), 82 (late submission) and 83 (late submission)</td>
<td>1 Submission 80 (in support – late submission): Mornington Human Rights Group</td>
<td>69 (68 opposing and one supporting)</td>
</tr>
<tr>
<td>R1156 – Bungower Road/Baldock Road, Mornington</td>
<td>14</td>
<td>1 Submission 3 (in support)</td>
<td>15 (10 opposing and one supporting)</td>
</tr>
</tbody>
</table>
### 3.6 Mornington Peninsula Planning Scheme Amendment C184 (Part 2) – General Amendment Including Former Mount Eliza Reservoir (Cont.)

<table>
<thead>
<tr>
<th>Submissions</th>
<th>Total for C184</th>
</tr>
</thead>
<tbody>
<tr>
<td>6, 29, 34, 35 (late submission), 38, 52, 53, 55, 75, 79 (Retirement Communities Australia Pty Ltd – late submission), 84, 85, 86 and 87</td>
<td>82</td>
</tr>
<tr>
<td>Both items – general submissions</td>
<td>5</td>
</tr>
<tr>
<td>Submissions 2: Department of Environment and Primary Industries, 5: VicRoads, 10: South East Water (no objection)</td>
<td>87</td>
</tr>
</tbody>
</table>

### Independent Panel

All submissions are shown in Confidential Attachment 5 and the submitters’ additional written material, including expert evidence, presented at the Panel hearing is shown in Confidential Attachment 6. This is supplemented by the proponents expert witness statements relating to item R1156 in Attachment 7 and those relating to item R1084 – former reservoir in Attachment 8 being South East Water’s experts on planning and ecology.

The Shire’s submission to the Panel, including expert witness statements, is shown in Attachment 9. In relation to item R1084 and in particular the proposed site specific housing provision, the Shire’s argument was supported by expert evidence from the Women’s Property Initiative and a former Mount Eliza resident of low income who is seeking new accommodation in Mount Eliza as well as by the submission from the Mornington Peninsula Human Rights Group and their experts representing Salvo Care – Homelessness and Support Services, Peninsula Advisory Committee for Elders and Mornington Community House.

**141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington (Item R1156)**

The key findings and recommendations of the Panel in relation to item R11156 can be summarised as follows:

1. Add a new dot point in Clause 2.0 of Schedule 19 to the DPO to state: “A drainage report to determine the location of retardation basins and other drainage measures across the site.”

2. Amend the second dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to the DPO to state: “Land for a 13 metre road widening along Bungower Road.”
3. Add an additional dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to state: “A 30 metre building setback from the land at 61 Baldock Road.”

**Former Reservoir at Part 57 Kunyung Road, Mount Eliza (Item R1084)**

The key findings and recommendations of the Panel in relation to item R1084 can be summarised as:

- The land should be placed in a General Residential Zone – Schedule 1, consistent with the zoning of the surrounding land (note: the existing Design and Development Overlay, Schedule 2 (DDO2) would remain in place and would effectively control any further development or subdivision of the lots);
- A residential zoning is appropriate in the absence of any acquiring body for an alternative public purpose;
- There is no basis on which to recommend any or all of the land should be zoned Public Park and Recreation Zone or Public Conservation and Resource Zone as a result of its potential habitat values;
- The site specific housing provision is not strategically justified or sufficiently implementable as a site specific provision for the land;
- There is no need to apply the EAO to the land, provided the environmental assessments proposed in the draft agreement are entered into; and
- The proposed agreement to apply to the land could be amended to address a number of changes considered by the Panel at the request of South East Water and Council being:
  - The decommissioning of and removal of all redundant South East Water infrastructure within the site and surrounding road reserves;
  - The vegetation in areas of earthworks being removed from the site and not burnt on site;
  - The vegetation to be retained being protected during any construction period;
  - The earth embankments being removed and used to fill the basin in accordance with the recommendations of a geotechnical report;
  - The topography of the land generally being reinstated to the same state as prior to the land being used as a water holding basin;
  - Each lot being provided with a drainage property inlet and reinforced concrete vehicle crossings;
  - Each lot being serviced to the satisfaction of all relevant servicing authorities;
  - Two raised road platforms being constructed with the section of Bethanga Street to be constructed;
  - Standard street lighting within Bethanga Street including to the lighting of the raised road platforms;
  - Electricity being undergrounded within Bethanga Street from the existing overhead electricity pole to the south of the site to Kanya Road;
  - Street name signage and regulatory signing;
  - Bethanga Street from Kanya Road to the existing road pavement to the south within Bethanga Street being constructed with a sealed road pavement, underground drainage and 1.5 metre wide sealed footpaths; and
  - 1.5 metre wide footpaths within Kanya Road from Barmah Street fronting the site.
DISCUSSION

Response to Panel Recommendations: Part 57 Kunyung Road, Mount Eliza (Item R1084)

Was Appropriate Notice and Consultation Held with the Community?

The Panel was satisfied that the Council met its statutory obligations.

Should the Land be Zoned Solely for Residential Purposes or is a Park Appropriate?

The Panel, after considering all submissions, found that a park could not be justified for various reasons that can be summarised as:

- Potential habitat values could be reasonably protected through other mechanisms;
- There is no body acquiring the land for the purpose of a park;
- The Shire’s Open Space Strategy does not provide a strategic rationale to direct any need for this specific land to be identified as future open space;
- Any under-provision of open space in the area would be correctly addressed by other processes; and
- The land was part of a broader 825 lot subdivision that included open space and reinstatement of the lots for residential use should not face the burden of an additional open space provision.

Given the above views, it was unsurprising that the Panel viewed the issue of whether part of the adjoining South East Water pumping station lot should be made available as a park as a separate matter to this Amendment. South East Water had previously indicated it would consider this matter in response to a previous approach by the Shire but it has not been secured.

Whilst the Panel’s rationale is understandable, it is considered that it places too much weight upon the adequacy of the open space contribution as part of the subdivision of the land in 1929 and not enough on the actual availability of public open space in the neighbourhood.

The relevant State Policy Clause 11.03-1 Open Space Planning Objective is: “To assist creation of a diverse and integrated network of public open space commensurate with the needs of the community”.

The implications for ‘new’ land are that consideration should be given to providing open space for the local needs associated with the community that will live in the ‘new’ land as well as to providing open space for other needs associated with creating more functional areas and networks of open space in the wider area and better protecting biodiversity.

It is considered that the ‘release’ of this land for residential use will generate additional demand for open space and in this situation, relevant State policy calls for open space to be provided. The site should be effectively treated as new land in terms of current standards.

Whilst it cannot be provided by way of Clause 52.01 (i.e. through a standard open space requirement), there is an alternative mechanism available. That is by Council not adopting this Planning Scheme Amendment before there is a Section 173 Agreement in place providing for an open space contribution to be transferred to Council if the rezoning comes into effect. This would avoid the problematic situation of proposing a Public Park and Recreation Zone at a time before the land has been acquired for that purpose.
Taking this proposition as a starting point, it would be reasonable to provide at least a 5% (approximately 0.01 hectare roughly equivalent to one lot) contribution, being the standard contribution to provide for any new community.

For other ‘new’ land in recent times Council has sought higher contributions such as 7.5% in Tyabb and up to 12.5% in the Design and Development Schedule 11 area in Mount Eliza.

In this case, a similar higher contribution would be justifiable because it would create a better sized park and also provide better access to a local park for the wider area despite there being no strategic plan in place that identifies any specific area for future acquisition for the purposes of a park.

A 10% contribution would yield a park of approximately 2,000 square metres (this size whilst less than ideal for a neighbourhood park is an acceptable size for a local park for informal recreation – see evidence in the Shire’s Recreation, Culture and Open Space Plan 1998) and would be consistent with the principles for guiding the planning of open space in Council’s later 2003 adopted Open Space Strategy (although it is noted that it would not have any priority for capital improvements.)

The Panel elected not to express any view on the open space needs of the wider area other than to refer to Council’s existing and proposed strategic plans. The Shire had argued to the Panel that a new park of up to 1 hectare (40% contribution) would be the ideal provision having regard to strategic considerations addressing the under-provision of open space in the wider area.

However, given it is a low priority need and not one that is recognised in relevant Council strategies and priorities and there is no commitment from State Government nor South East Water in response to community pressure for a park, the Panel’s rationale in not supporting a park of this size (i.e. 1 hectare) can be respected.

In conclusion, it is recommended that Council partly accept the Panel’s recommendation but indicate to South East Water a preference for the provision of a 10% public open space contribution with a land component of at least 2,000 square metres and invite South East Water to positively respond to this by way of a Section 173 Agreement, if it is so inclined, before Council makes a final decision on the amendment.

Should the Neighbourhood Residential Zone (NRZ) be Used?

The Panel agrees that it is possible for the NRZ to be used on this land. However, the Panel considers that using the General Residential Zone, Schedule 1 (GRZ1) with retention of the DDO2 is a more consistent approach to the application of zoning to all surrounding land. There is no specific or identified neighbourhood character that applies to this land, or which differs to the surrounding GRZ1 land, that would warrant a different approach to the zoning (see page 13 of the Panel report).

It is accepted that whether the land is rezoned to the NRZ or GRZ the fundamental outcome sought by SEW could still be achieved and there is unlikely to be any significant difference in the onground outcomes given the overarching provisions of the DDO2.

Amendment C184 originally proposed the NRZ to achieve consistency with draft Amendment C179 which proposed to introduce the reformed residential zones across the Shire with the NRZ applying to all the DDO2 areas.

However given Amendment C179 was subsequently changed by the former Minister for Planning to instead apply the GRZ as the default zone over all Residential 1 zoned areas, consistency would now favour the GRZ, as recommended by the Panel.
Use of the GRZ or the NRZ is unlikely to prejudice any future decision making by Council for any wider application of the NRZ in relation to the opportunity that still exists for this in connection with the former Minister’s response to the Residential Zones Standing Advisory Committee.

Given the above, the Panel recommendation is accepted.

**Should the Site Specific Housing Provision (Amended Schedule to Clause 52.03) be Deleted?**

The Panel found that Council’s objective to provide for affordable and social housing in Mount Eliza was admirable but it viewed the site specific housing provision as inappropriate. In essence, the Panel seemed to oppose the provision on the following grounds:

- The location was not ‘close to jobs, transport and services’ as sought by policy;
- There was no evidence of a willing developer;
- The DDO2 and ‘private dwelling house’ covenant, in combination, would unreasonably restrict the type of housing; and
- The need for affordable and social housing is so broad that it does not warrant a site specific provision given that such a provision is only intended for extraordinary circumstances.

The following paragraph from the Panel report provides further insight to its thinking:

“Reducing the value of the land so as to enable the chance that it may deliver two houses that are occupied by persons eligible for public housing in a poorly serviced location seems to the Panel to be a poor use of this land asset. In principle, therefore, the Panel does not support the proposal put by Council.”  (Panel report, page 19)

The Panel saw its role as follows:

“A donation of the land to a housing provider, or putting some of the money collected from the sale of the reservoir land toward provision of affordable or social housing is something the State can choose to do. Or it could seek to retain some of the land for such purposes if it chose to do so. It is not the role of this Panel however to recommend whether, or how the State dispose of its assets or what to do with any funds collected.

The role of this Panel is to determine if the restriction proposed in the Planning Scheme on the two lots is appropriate having regard to State and local policy and the purposes of the provision proposed.” (Panel report, pages 17 and 18)

Despite this view about its role, the Panel still agreed with South East Water that given the lack of funding for affordable and social housing there is a State need to get the most ‘bang for your buck’. Given this thinking, it is somewhat disappointing that the Panel did not provide any positive comment on the most appropriate tool, albeit perhaps a new tool, that might be required to secure contributions to the provision of affordable and social housing that is clearly called for by relevant State policy.

It is agreed with the Panel, and was indeed part of the Shire’s submission to the Panel, that the site specific provision is not an ideal tool but was utilised only after South East Water refused to make any other form of more appropriate affordable housing contribution.

It is also agreed with the Panel that the DDO2 and covenant provisions would constrain the attractiveness of the land for a social housing development compared to less encumbered land. However it is not agreed that the constraints would be so great as to make the provision ineffectual.
They have the benefit of ensuring that any development would address objectors’ concerns and be consistent with the neighbourhood character of the area. If social housing is to gain and retain public support it needs to be designed to fit with the surrounding neighbourhood.

There was also ample evidence presented at the Panel hearing that although not close to the town centre, the land’s location had sufficient attributes to make it attractive and functional for persons on low incomes, particularly those who possessed cars and that the site would be considered by social housing providers if available at the right price.

Preparing a new Planning Scheme Amendment to delete the ‘private dwelling house’ covenant to make the land potentially more attractive to social housing providers by providing greater scope for the type of accommodation provided (e.g. residential accommodation with shared facilities) could be considered, if warranted, in the future. There is also avenue for it to be achieved through a planning permit application if there were no objections by beneficiaries of the covenant. Although desirable, it is not considered critical to progressing the current matter.

In view of the Panel’s findings, it would be reasonable for the Council to seek the views of the Premier of Victoria, the Hon. Daniel Andrews MP; the Hon. Richard Wynne, Minister for Planning; and the Hon. Martin Foley MP, Minister for Housing, Disability and Ageing, about progress on expected State initiatives to secure contributions to affordable housing, including a pilot project associated with the sale of surplus government land, before deciding on whether or not to adopt the site specific housing provision.

If the State Government can offer a better means of securing a contribution, particularly with regard to meeting housing needs on the Mornington Peninsula, this would be preferable.

However, if this is not the case, it is recommended that Council consider adopting the site specific housing provision despite the Panel’s recommendations to the contrary on the grounds that:

- **State Policy 16.01-5 Housing affordability** has a strategy, as below, pertaining to the objective “To deliver more affordable housing closer to jobs, transport and services” that does not preclude affordable housing being provided in places other than at activity centres and strategic redevelopment sites (i.e. the ideal places) and the subject land is a reasonable place given its close proximity to a kindergarten, school and park and the extant housing need for young families that could use those services and would therefore serve to implement that policy.

  “Encouraging a significant proportion of new development, including development at activity centres and strategic redevelopment sites to be affordable for households on low to moderate incomes.”

- The housing need in Mount Eliza is not being met (see evidence of this in the Shire’s submission to the Panel and expert evidence – Attachment 9) and the risk of homelessness is an extraordinary circumstance that warrants a non-conventional action. At this time, when no other more appropriate tool within the Victoria Planning Provisions is available for the securing of social housing contributions, adoption of the site specific provisions as part of Planning Scheme Amendments could strengthen the impetus for an improved system. Leaving the issue of social housing contributions to be dealt with solely through the processes relating to the disposal of surplus government land is also considered inappropriate when State Policy relating to affordable housing makes no distinction between public and private land.

- The site specific provision is not so weakened by the covenant or the absence of a committed developer that it would necessarily become ineffectual. The importance of the local housing
need outweighs the risks of failure and should the provision need strengthening a future Planning Scheme Amendment to potentially remove the covenant could be proposed.

**What Should the Section 173 Agreement Include?**

The Panel’s consideration of submissions and findings in relation to traffic impacts and the Section 173 Agreement supported the concept of a through road rather than a cul de sac as argued by some submitters.

In consideration of traffic impacts, the Panel found, in summary, that amenity impacts were not so severe as to warrant rejection of the rezoning and that additional traffic could be easily accommodated in the road network with amelioration of the amenity impacts through raised road pavements and other measures to slow traffic that could be provided for in the Section 173 Agreement.

The Panel recommended particular amended wording for the preamble but was not opposed to a refinement of the wording if its intention was to ensure the necessary works are undertaken before the land is sold into individual small lot holdings.

It is considered that a refinement would be appropriate with the exact wording best decided by the legal advisors acting for South East Water and Council but with the principle of South East Water not having to carry out all works itself being accepted.

The following minor technical change to the preamble of requirement 2 that was recommended by the Panel is also accepted.

"Works being undertaken in accordance with a geotechnical report endorsed by Council together with construction plans, traffic management plans and environmental management plans to the satisfaction of and approval all approved by Council including the following:"

Many of the changes to the Section 173 Agreement that were recommended by the Panel were not in dispute between the Shire and South East Water at the Panel hearing. Those that were and have been the subject of detailed Panel consideration are reported below.

Two elements relating to road alignment and footpath width were disputed:

- Bethanga Street from Kanya Road to the existing road pavement to the south within Bethanga Street being constructed with a curvilinear sealed road pavement, underground drainage and two metre wide curvilinear exposed aggregate footpaths; and
- Two metre wide curvilinear exposed aggregate footpaths within Kanya Road from Barmah Street to Kunyung Road, within Barmah Street fronting the site and within Bethanga Street from the southern boundary of the site to Acheron Avenue.

It is agreed with the Panel, that 1.5 metre wide footpaths are more appropriate to allow for a further 1.5 metres on either side for landscaping and that a “curvilinear” road requirement can be deleted. The Shire’s Team Leader – Infrastructure Planning and Policy has no objection.

The need for a roundabout in the next two elements was disputed and not supported by the Panel:

- Standard street lighting within Bethanga Street including the lighting of the roundabout and raised road platforms described below; and
- A roundabout being constructed at the intersection of Kanya Road and Bethanga Street.
Council’s Development Engineer is agreeable to the requirement for a roundabout being deleted. There are other traffic calming measures that are required and undisputed to ensure slow and safe speeds are maintained. This includes the two raised pavements in Bethanga Street.

Should the Environmental Audit Overlay be Applied to the Land?

During the Panel hearing, the Shire agreed that the Section 173 Agreement would be a reasonable alternative to satisfy the relevant Minister’s Direction No. 1 Potentially Contaminated Land without the need for an EAO but only if Clause 5.1(a) were amended to require the Phase 1 Environmental Assessment to be carried out by an accredited Environmental Auditor under the Environment Protection Act.

The Panel has recommended that the EAO be deleted with no associated change to the Section 173 Agreement: it did not specifically comment on the merit of the above suggestion.

The Panel’s recommendation would enable any person to carry out the Phase 1 Environmental Assessment and it is considered that this would be inconsistent with the 2005 General Practice Note that the Panel itself quotes on page 26 of its report.

The Panel’s recommendation is therefore accepted subject to Clause 5.1(a) of the Section 173 Agreement being amended to require the Phase 1 Environmental Assessment to be carried out by ‘a suitably qualified environmental professional, the terminology that is used in the Practice Note.

Response to Panel Recommendations: 141 and 173 Bungower Road and 61 and 71 Baldock Road, Mornington (Item R1156)

The majority of submissions seeking to change the proposed Amendment were not accepted by the Panel and the Panel’s findings and recommendation is accepted. This discussion will not further examine those issues as they were outlined in detail in the Panel report (Attachment 2). Shown below are only those issues that warranted change to the exhibited documents:

Will the Likely Development Under DPO19 Lead to Unreasonable Drainage Impacts?

It is submitted that the development of the land for a low-density residential estate will improve the current drainage arrangements, in that all drainage from the property will be properly managed in a manner that will avoid drainage impacts on adjoining land.

“The Panel is of the view that any drainage or traffic impacts as a result of the future development of the land pursuant to DPO19 and DDO22 will not be unreasonable and are able to be appropriately managed through future planning processes associated with the approval of a Development Plan for the site and any subdivision applications.

However, the Panel considers that two additional dots point should be included at Clause 2 of Schedule 19 to the DPO requiring a drainage report to be prepared and confirm the location for retardation basins across the land. The Panel also recommends minor word change to clarify the intent of future widening provision for Bungower Road in DPO19.” (See page 49 of the Panel report)

The Panel recommendation is accepted. A request for a drainage report to determine the location of retardation basins and other drainage measures across the site is included as a separate dot point in the version of DPO19 that is now recommended for adoption (Attachment 3).
Are Sufficient Buffer Distances Provided to the Adjoining Land to the North East?

The requested additional building setback by the submitter (of 30 metres instead of 10 metres) is considered appropriate. Such setback has been accepted by the proponent and has been reflected in the Draft Development Plan. The setback would apply to all surrounding lots, including the future lots on 71 Baldock Road.

"The Panel is of the view that the proposed change to the schedule is appropriate and a greater buffer distance could be provided to 61 Baldock Road.

The Panel considers the required setback is reasonable given the concerns of the landowners, their location on the ‘edge’ of the low density residential area and the likely development outcome for the property which will ultimately have abuttal on three sides to a new rural residential subdivision. A 30 metre setback will help minimise impacts to the landowners as a result of their change in outlook and will ensure there is ample opportunity to provide landscaping on the land adjoining their boundary as a result of the significant setback." (See page 49 of the Panel report).

The acceptance of the submitter’s proposal was outlined at the hearing. It is considered that the location of the land, at 61 Baldock Road along the Urban Growth Boundary and within a band of land to which a 6,000 square metre minimum lot size applies, warrants some special consideration in terms of impact on amenity.

An additional dot point requesting a 30 metre building setback from the land at 61 Baldock Road has been therefore added to the DPO19 as per Panel recommendation.

The Panel also recommended a minor word change to clarify the intent of a future widening provision for Bungower Road in DPO19 and that is supported.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

Submissions made in relation to Amendment C184 (Part 2) raised issues concerning amenity, traffic, protection of ecological values, social housing and the need for a park. The Independent Panel after considering all submissions and conducting its hearings of submitters has made its report. In relation to item R1084 – the former Mount Eliza reservoir the Panel recommended, in summary:

- The land should be placed in a General Residential Zone, Schedule 1, consistent with the zoning of the surrounding land;
- Deletion of the Clause 52.03 provision restricting the use of two lots to residents eligible for public housing as it was not strategically justified or sufficiently implementable as a site specific provision for the land;
- The proposed agreement to apply to the land should be amended to address a number of changes considered by the Panel at the request of South East Water and Council; and
- There is no need to apply the EAO to the land, provided the environmental assessments proposed in the draft agreement are entered into.
3.6 Mornington Peninsula Planning Scheme Amendment C184 (Part 2) – General Amendment Including Former Mount Eliza Reservoir (Cont.)

In relation to Item R1156 – Bungower Road, Mornington the Panel found that the proposal was strategically supported and appropriately provided the final ‘step’ in the implementation of planning controls for this portion of Mornington North. It recommends some relatively small changes that are fully supported.

In relation to the R1084 proposal affecting the former Mount Eliza reservoir the Panel recommendations are only supported in part. Contrary to the recommendations, it is considered that both a public open space contribution and a social housing contribution, as well as a small adjustment to the Section 173 Agreement, are justified and that further response from relevant parties should be sought in relation to these matters before Council makes its final decision.

Accordingly, it is recommended that Council split Amendment C184 (Part 2) into two parts in order to facilitate Amendment C184 (Part 2A) dealing with item R1156 being adopted and submitted to the Minister for Planning for approval and Amendment C184 (Part 2B) dealing with item R1084 being deferred for further consideration pending response from South East Water and relevant Ministers of the State Government.

RECOMMENDATION

1. That Council, in its role as Planning Authority under the Planning and Environment Act 1987 (the Act), split Mornington Peninsula Planning Scheme Amendment C184 (Part 2) into two parts being:

   A. Mornington Peninsula Planning Scheme Amendment C184 (Part 2A) containing all matters pertaining to item R1156; and

   B. Mornington Peninsula Planning Scheme Amendment C184 (Part 2B) containing all matters pertaining to item R1084.

2. That under Section 29(1) of the Act, Council, in its role as Planning Authority, having complied with Divisions 1 and 2 of the Act and having considered:

   A. All submissions made to Mornington Peninsula Planning Scheme Amendment C184 in accordance with Section 22(1) of the Act; and

   B. The Independent Panel’s report under Section 27(1) of the Act; adopts Mornington Peninsula Planning Scheme Amendment C184 (Part 2A) as shown in Attachment 3.

3. That Council submits the adopted Amendment C184 (Part 2A) to the Minister for Planning for approval.

4. That Council invite South East Water to consider and positively respond to the matters below, including by way of an amended Section 173 Agreement if it is so inclined, before Council makes a final decision on whether or not it should abandon or adopt Mornington Peninsula Planning Scheme Amendment C184 Part 2B with or without changes:

   A. Amending the preamble of the Section 173 Agreement to the satisfaction of both South East Water and the Shire’s Manager – Strategic Planning;
Amending Clause 5.1(a) of the Section 173 Agreement to require the Phase 1 Environmental Assessment to be carried out by 'a suitably qualified environmental professional';

C. Amending the Section 173 Agreement to include provision for a 10% public open space contribution with a land component of at least 2,000 square metres; and

D. Providing an alternative social housing contribution to the exhibited site specific housing provision.

5. That Council requests the Premier of Victoria, the Minister for Planning and the Minister for Housing, Disability and Ageing, as appropriate, to consider the social housing issues raised by Mornington Peninsula Planning Scheme Amendment C184 (Part 2A) and advise:

A. Whether the case could be selected for the State’s anticipated pilot project regarding the inclusion of a social housing contribution in the disposal of government land process;

B. Whether there is likely to be any new Victoria Planning Provisions to support the securing of social housing contributions, and if so, when they are likely to be introduced; and

C. Whether the State proposes to make any additional contribution to the stock of social housing on the Mornington Peninsula to meet the needs of Mornington Peninsula residents who are at risk of homelessness.

6. That Council resolves that Attachments 5 and 6 to this report be retained as confidential items pursuant to Section 77(2)(a) and (b) of the Local Government Act 1989 and be placed in a separate minute book for confidential items as they contain information which the Council considers would prejudice Council or any other person.

Addendum – Additional Submissions to Confidential Attachment 5
Circulated Monday, 24 August, 2015

The attached correspondence is provided for your consideration. It is considered that the matters raised have already been generally considered in the main report and do not warrant any change to the recommendations of the report.

- Submission 89 – Further comments from Mr. Peter Brown, resident of Beleura Village, related to item R1156;

- Submission 90 – Comments from Mount Eliza Association for Environmental Care to Mayor, Cr. Bev Colomb on C184 Part 2; and

- Submission 91 – Comments from Mornington Peninsula Human Rights Group to Mayor, Cr. Bev Colomb on C184 Part 2.
COUNCIL DECISION

Moved: Cr. Dixon  
Seconded: Cr. Shaw

1. That Council, in its role as Planning Authority under the Planning and Environment Act 1987 (the Act), split Mornington Peninsula Planning Scheme Amendment C184 (Part 2) into two parts being:
   
   A. Mornington Peninsula Planning Scheme Amendment C184 (Part 2A) containing all matters pertaining to item R1156; and
   
   B. Mornington Peninsula Planning Scheme Amendment C184 (Part 2B) containing all matters pertaining to item R1084.

2. That under Section 29(1) of the Act, Council, in its role as Planning Authority, having complied with Divisions 1 and 2 of the Act and having considered:

   A. All submissions made to Mornington Peninsula Planning Scheme Amendment C184 in accordance with Section 22(1) of the Act; and
   
   B. The Independent Panel’s report under Section 27(1) of the Act;

     adopts Mornington Peninsula Planning Scheme Amendment C184 (Part 2A) as shown in Attachment 3.

3. That Council submits the adopted Amendment C184 (Part 2A) to the Minister for Planning for approval.

4. That Council invites South East Water to consider and positively respond to the matters below, including by way of an amended Section 173 Agreement if it is so inclined, before Council makes a final decision on whether or not it should abandon or adopt Mornington Peninsula Planning Scheme Amendment C184 Part 2B with or without changes:

   A. Amending the preamble of the Section 173 Agreement to the satisfaction of both South East Water and the Shire’s Manager – Strategic Planning.
   
   B. Amending Clause 5.1(a) of the Section 173 Agreement to require the Phase 1 Environmental Assessment to be carried out by ‘a suitably qualified environmental professional’;
   
   C. Amending the Section 173 Agreement to include provision for a minimum of 10% public open space contribution with a land component of at least 2,000 square metres; and
   
   D. Providing an alternative social housing contribution to the exhibited site specific housing provision.
3.6 Mornington Peninsula Planning Scheme Amendment C184 (Part 2) – General Amendment Including Former Mount Eliza Reservoir (Cont.)

5. That Council requests the Premier of Victoria, the Minister for Planning and the Minister for Housing, Disability and Ageing, as appropriate, to consider the social housing issues raised by Mornington Peninsula Planning Scheme Amendment C184 (Part 2B) and advise:

A. Whether the case could be selected for the State's anticipated pilot project regarding the inclusion of a social housing contribution in the disposal of government land process;

B. Whether there is likely to be any new Victoria Planning Provisions to support the securing of social housing contributions, and if so, when they are likely to be introduced; and

C. Whether the State proposes to make any additional contribution to the stock of social housing on the Mornington Peninsula to meet the needs of Mornington Peninsula residents who are at risk of homelessness.

6. That Council resolves that Attachments 5 and 6 to this report be retained as confidential items pursuant to Section 77(2)(a) and (b) of the Local Government Act 1989 and be placed in a separate minute book for confidential items as they contain information which the Council considers would prejudice Council or any other person.

Part B

In adopting the Mornington item, it should be noted that Council seeks to avoid any future encumbrance or restriction on the use of the railway reserve.

Carried

Cr. Gibb asked that his vote against this decision be officially recorded in the minutes.

VIEW ATTACHMENT 1

VIEW ATTACHMENT 2

VIEW ATTACHMENT 3

VIEW ATTACHMENT 4

ATTACHMENTS 5 AND 6 – CONFIDENTIAL

These attachments contain personal submitter details and are therefore not available for public viewing.

VIEW ATTACHMENT 7

VIEW ATTACHMENT 8
3.6 Mornington Peninsula Planning Scheme Amendment C184 (Part 2) – General Amendment Including Former Mount Eliza Reservoir (Cont.)

VIEW ATTACHMENT 9
3.7 Mornington Peninsula Planning Scheme Amendment GC33 – Peninsula Link

Prepared By Rosalyn Franklin, Team Leader – Scheme and Systems Review
Authorised By Manager – Strategic Planning
Document ID A6011319
Attachment(s) YES (3)

PURPOSE

The purpose of this report is to have Council consider and respond to a request from VicRoads for comment on a proposed Planning Scheme Amendment GC33 to the Frankston and Mornington Peninsula Planning Schemes that is intended to update those Planning Schemes to take account of the construction of Peninsula Link. In summary, the report recommends that Council support the Amendment subject to:

- Significant changes to include a Restructure Overlay and Section 52.03 site specific provisions, as appropriate, with associated incorporated documents that would prohibit or restrict development on any additional lot of less than 40 hectares that have been created in the Green Wedge Zone; and
- Minor technical changes to correct and simplify the proposal.

BACKGROUND

Proposal

VicRoads is proposing that the Minister for Planning would prepare, adopt and approve Amendment GC33 without any formal exhibition under the provisions of Section 20(4) of the Planning and Environment Act 1987.

Amendment GC33 (Attachment 1) is proposed as a technical updating of the Planning Scheme to:

- Remove redundant Public Acquisition Overlays (these allowed the purchase of the land for the construction of Peninsula Link);
- To apply a Road Zone 1 over the land that is now occupied by Peninsula Link; and
- Retract the Heritage Overlay (HO300) from Peninsula Link land so that it only affects the substantive heritage place on the adjoining private land at 71 Loders Road, Moorooduc.

An underlying issue is whether following the completion of construction there is now any surplus land and how its future use and development should be regulated: are any Planning Scheme changes needed?
Past Council Consideration

At the Council Meeting on 26 November, 2012 (Item 2.7), Council established its position in relation to likely surplus land from Peninsula Link (Attachment 2). This strengthened the position that had been previously outlined to the Linking Melbourne Authority in a letter from the Shire’s former Director – Sustainable Environment dated 23 February, 2012.

In summary, Council was keen to protect the Green Wedge by preventing the creation of any additional lots.

In relation to land at the south corner of Peninsula Link and Loders Road (adjacent to Moorooduc Saddle Club and Devilbend Golf Club), it considered that there would be a community benefit in retaining public ownership for such time as may be needed to conduct future feasibility studies for the provision of an all-weather athletics track, mountain bike track and regional equestrian facility, but only if, in the event that the land were the preferred site for any of these facilities, it could be eventually acquired or made available at no cost or peppercorn value. In relation to other likely surplus land, Council did not indicate any interest in acquiring it for community purposes.

CONSULTATION

The Shire’s Team Leader – Infrastructure Planning and Policy has considered this report and supports the recommendation.

DISCUSSION

The changes proposed in Amendment GC33 include the following:

Exemption from the Land Subject to Inundation Overlay (LSIO)

The LSIO applies over a small area of Peninsula Link near Lavender Lane, Baxter. It is proposed to insert an entry in the LSIO Schedule to effectively exempt roadworks from the LSIO permit requirement. This intent is considered reasonable given that Peninsula Link is already constructed, however the proposed wording should be simplified to just apply to Peninsula Link (e.g. roadworks required for Peninsula Link.). Melbourne Water, as the relevant drainage authority, has advised it supports this re-wording.

Application of the Road Zone 1

The proposed zoning is considered to be appropriate to provide for Peninsula Link.

Deletion of the Public Acquisition Overlay (PAO)

The proposed deletion of the PAO which affects Schedules 1, 6 and 7 is considered appropriate subject to correction to also include the following parcels abutting 48-54 Baxter-Tooradin Road, Baxter (see Figure 1 area outlined in black) and abutting Mornington-Tyabb Road (see Figure 2 area outlined in black).
3.7 Mornington Peninsula Planning Scheme Amendment GC33 – Peninsula Link (Cont.)

Figure 1 – Area of PAO1 that should also be deleted

Figure 2 – Area of PAO6 that should also be deleted.

Figure 2 – Area of PAO6 that should also be deleted.
Partial Deletion of Heritage Overlay (HO300)

HO300 has heritage values pertaining to the land, mature trees (Monterey Cypress rows, a nut tree and a mature flowering gum) and buildings, with emphasis on the fabric from or near the main early development phase, the 1920s. The Shire’s Strategic Planner – Heritage is of the view that these values would still have appropriate protection with the partial deletion of HO300 as shown in Figure 3 (area outlined in black) and has therefore expressed no objection to the proposal.

Figure 3 – Area of HO300

ISSUES

Surplus Land

It is understood that VicRoads is responsible for disposing of any land that is surplus to Peninsula Link. Council, along with other Government departments and agencies, would be given notification of any declared surplus land with the right to enter into negotiation for acquisition prior to the land being placed on the open market. However, there is no formal consultation process regarding the decision about whether or not the land should be retained for an alternative public purpose, nor whether any conditions should be placed upon its disposal.
VicRoads has provided information that indicates that the land shown in Table 1 (for relevant plans refer to Attachment 3) will be declared as surplus, similar to what was expected in 2012. It is considered that there has been no change in circumstances to warrant any change from Council’s 2012 position as set out in Table 1.

From a strategic planning perspective, Amendment GC33 would not need to include any rezoning of surplus land as the land is already appropriately zoned (see Table 1).

However, in terms of achieving State and Local Planning Policy, including the Mornington Peninsula Localised Planning Statement, it is important that any disposal of land in the Green Wedge does not increase the number of lots that would have existed prior to the provision for Peninsula Link. The Planning Statement, Integrated Planning, Strategy 8 states: “The development of old and inappropriate subdivisions will be prevented and a resolution sought for these areas consistent with current planning objectives, including consideration of restructuring to facilitate appropriate forms of development in some areas.”

Although it has occurred through an unusual process, the development of Peninsula Link, with surplus land, has arguably created an ‘inappropriate subdivision’.

There are three parcels of surplus land (Parcel 444, Parcel 443/460 and Parcel 472) that if separately disposed of would create a total of two ‘additional’ lots in the Green Wedge. The best means of achieving the desired policy outcome to prevent this, consistent with Council’s position outlined in Table 1, would be:

- For the land locked Parcel 472 to be retained, unless it could be sold and consolidated with a neighbouring lot as a condition on the contract of sale. There is no Planning Scheme mechanism that could be reasonably applied to achieve this and it would rely upon the goodwill of VicRoads in the disposal process; and

- For Parcel 444 and Parcels 443/460 to be consolidated into one lot of 28.5 hectares having two parts, one each side of Peninsula Link. The application of a Restructure Overlay and associated Restructure Plan to Parcel 444 and Parcels 443/460 requiring them to be so restructured before any dwelling application could be considered would be appropriate. An arguably better alternative could be for neighbouring landowners to acquire the parcels for consolidation with their land as a condition on the contract of sale; however this outcome cannot be assured.

Table 1

<table>
<thead>
<tr>
<th>Surplus Land ( Likely Parcels To Be Consolidated)</th>
<th>Previously Known As</th>
<th>Zone</th>
<th>Size</th>
<th>Summary Of Council’s Previous Position From 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel 327 Lavender Lane, Baxter</td>
<td>Parcel 8</td>
<td>General Residential Zone</td>
<td>1.65 hectares</td>
<td>Disposal as a single parcel is supported in principle subject to appropriate land being retained for landscape buffer and noise attenuation purposes. Potential for residential development</td>
</tr>
<tr>
<td>Parcel Number</td>
<td>Parcel Number</td>
<td>Zoning Description</td>
<td>Area / Land Retention Status</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>-----------------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| Parcel 295            | Parcel 740A           | General Residential Zone 1,030 square metres                                      | Consolidate with an adjoining title subject to appropriate land being retained for landscape buffer and noise attenuation purposes.  
| Frankston-Flinders Road, Baxter |                      |                                                                                    | Potential for residential development                                                      |
| Parcel 444            | Parcel 163            | Green Wedge Zone Schedule 3 and Public Use Zone 1, 18.6 hectares                  | Consolidate with an adjoining title subject to appropriate land being retained for the amelioration of visual and acoustic impacts. Alternatively, the land should be either retained or consolidated with old Parcel 164 (on the opposite side of Peninsula Link) for disposal as a single title in order that no additional lot is created. |
| Mornington-Tyabb Rd, Moorooduc | (assumes new access is provided through to Mornington-Tyabb Road) |                                                                                    |                                                                                             |
| Parcels 443 and 460   | Parcel 164            | Green Wedge Zone Schedule 3 and Public Use Zone 1, 9.915 hectares (Comprises Parcel 443 of 9.892 hectares and the smaller Parcel 460) | Consolidate with an adjoining title subject to appropriate land being retained for the amelioration of visual and acoustic impacts. Alternatively, the land should be either retained or consolidated with old Parcel 163 (on the opposite side of Peninsula Link) for disposal as a single title in order that no additional lot is created. |
| Mornington-Tyabb Road, Moorooduc | |                                                                                    |                                                                                             |
| Parcel 462            |                      | 1,643 square metres                                                               | No position – this land was not known to be surplus at the time of Council’s 2012 decisions. |
| Mornington-Tyabb Road, Moorooduc | |                                                                                    |                                                                                             |
| Land locked north of Peninsula Link and Loders Road, Moorooduc | Parcel 889 | Green Wedge Zone Schedule 3, 1.8 hectares                                           | Consolidate with an adjoining title or alternatively retain the land.                        |
| Parcel 472            | |                                                                                    |                                                                                             |
| East corner Peninsula Link and Loders Road, Moorooduc | Parcel 891 | Green Wedge Zone Schedule 2, 10.62 hectares                                          | Consolidation with an adjoining lot is preferred but alternatively, disposal as a single parcel is acceptable. |
| Parcel 473            | |                                                                                    |                                                                                             |
### OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

### CONCLUSION

There is a need for Amendment GC33 to update the Planning Scheme following the construction of Peninsula Link, but it is important for reasons of policy that it should also include changes that will prevent inappropriate subdivision and development in the Green Wedge.

### RECOMMENDATION

That the Mornington Peninsula Shire Council advises VicRoads and the Minister for Planning that Mornington Peninsula Planning Scheme Amendment GC33 is supported subject to the following:

1. Assurance being given by VicRoads that the following parcels of land will not be disposed of, except to a neighbouring landowner and subject to a contract of sale requiring the land to be consolidated with an adjacent parcel to enable suitable vehicular access to be provided:
   
   A. Parcel 472 shown on Plan SP22612 (land locked north of Peninsula Link and Loders Road, Moorooduc); and
   
   B. Parcel 462 shown on Plan SP22611 (adjoining Melbourne Water land at Mornington-Tyabb Road, Moorooduc).
2. If the assurance sought in 1 is not provided, then Amendment GC33 being changed to include the application of a site specific provision under Clause 52.03 together with an associated incorporated document to prohibit any accommodation e.g the construction of a dwelling on the land (i.e. Parcel 472 shown on Plan SP22612 and Parcel 462 shown on Plan SP22611).

3. Assurance being given by VicRoads that all of the following consolidations will occur prior to the disposal of the land:
   A. Parcels 498, 499, 500 and 502 shown on Plan SP226114C (south corner of Peninsula Link and Loders Road, Moorooduc) being consolidated into a single lot/Crown Grant; and
   B. Parcels 497 and 501 shown on Plan SP226114C (west corner of Peninsula Link and Loders Road, Moorooduc) being consolidated into a single lot/Crown Grant.

4. If the assurance sought in 3 is not provided, then Amendment GC33 being changed to include the application of a Restructure Overlay together with an incorporated document Restructure Plan to provide for two restructure lots according to the consolidations that are proposed in 3.

5. Amendment GC33 being changed to include the application of a Restructure Overlay together with an incorporated document Restructure Plan to provide for the restructure of all of the following parcels into a single restructure lot:
   A. Parcels 443 and 444 shown on Plan SP22610;  
   B. Parcel 460 shown on Plan SP22611; and
   C. Parcels 1 and 2 shown on Plan SP22878.

6. Amendment GC33 being changed to include the deletion of the Public Acquisition Overlay from land abutting 48-54 Baxter-Tooradin Road, Baxter and abutting Mornington-Tyabb Road, Moorooduc as shown in Figures 1 and 2 of this report concerning Amendment GC33.

7. Amendment GC33 being changed so that the Schedule to the Land Subject to Inundation Overlay is only amended by the addition of the following new dot point to Clause 1.0:
   - Roadworks required for Peninsula Link.

**COUNCIL DECISION**

Moved: Cr. Rodgers  
Seconded: Cr. Gibb  

That the recommendation be adopted.  

Carried

**VIEW ATTACHMENT 1**

**VIEW ATTACHMENT 2**
3.7 Mornington Peninsula Planning Scheme Amendment GC33 – Peninsula Link (Cont.)

VIEW ATTACHMENT 3
3.8 Update of Rosebud Coastal Management Plan, Rosebud Activity Centre Structure Plan and Rosebud Activity Centre Urban Design Framework

Prepared By Frank Mangan, Team Leader – Strategic Projects and Planning
Authorised By Interim Director – Environment
Document ID A6030451
Attachment(s) YES (3)

PURPOSE

This report recommends the adoption of adjusted versions of the Rosebud Coastal Management Plan, Rosebud Activity Centre Structure Plan and Rosebud Activity Centre Urban Design Framework documents to reflect Council’s decision to not locate the previously proposed Southern Peninsula Aquatic Centre (SPA) on the Rosebud foreshore.

The updated versions of these documents are ‘policy-neutral’, in that they do not change policy, but simply delete references to the previously proposed SPA to avoid any uncertainty on this matter.

BACKGROUND

The Rosebud Coastal Management Plan (RCMP) was adopted by Council on 14 November, 2011 and approved, with some adjustments, by the then Minister for Environment and Climate Change on 9 May, 2012. The Minister also gave Coastal Management Act 1995 consent to use a foreshore location shown in the RCMP for the proposed SPA.

On 14 October, 2014 the Minister revoked this consent at Council’s request and recommended that the RCMP be updated to reflect this change.

The Rosebud Activity Centre Structure Plan (RSP) and the Rosebud Activity Centre Urban Design Framework (RUDF) were adopted by Council on 24 September, 2012. Both documents include the foreshore as part of the overall activity centre and refer to the proposed foreshore location of the SPA shown in the RCMP. Hence these documents also need to be updated.

Both the RSP and the RUDF acknowledge that the RCMP is the principal policy document in relation to the foreshore.

Whilst the RCMP update is to be the primary action, it is desirable to adjust all three documents in a coordinated manner.

The desired outcome is to provide updated policy documents reflecting Council’s current position that can be acted on in terms of (renewing) the approval of the RCMP under the Coastal Management Act 1995, and thereby strengthening advocacy for State funding, and linking the RSP to the Planning Scheme through an amendment process.
DISCUSSION

Rosebud Coastal Management Plan Update

From the perspective of the RCMP, Council’s decision to not proceed with the SPA site on the foreshore can be recognised by removing the text relating to SPA and by removing reference to the SPA site on the Concept Plan for the Central Activity Node (the area including the carnival site, Hall, Village Green and Bowls Club).

It is suggested that the Concept Plan should generally reflect the current use of this area, i.e. the combined site for the Memorial Hall and carnival, for community purposes. This will provide Council with a level of flexibility to determine at a later stage any decisions it wishes to make regarding changes to the use of and/or buildings on this site.

However, importantly the Concept Plan will continue to indicate that this area of the foreshore remains dedicated to community uses, as part of the wider Central Activity Node.

In these terms, the adjustment (deletion of the SPA site) is ‘policy-neutral’, in that it does not change any policy for the affected area. Accordingly, it is considered the RCMP update can be adopted without further community consultation, with a recommendation to submit the updated CMP to the Minister for Environment, Climate Change and Water for approval.

It may be noted that one of the actions already included in the RCMP is to prepare a Master Plan for the Central Activity Node, also known as the Rosebud Heart Precinct. The preparation of that Master Plan will provide an opportunity to consider in detail the desired future development of the area in consultation with the community. Funding for this Master Plan is included in the budget for this financial year.

An updated version of the Rosebud Coastal Management Plan – May 2015 is shown in Attachment 1.

Rosebud Activity Centre Structure Plan Update

The RSP only includes a number of references to SPA in the text and shows the SPA foreshore location on a range of plans. These plans note that this is based on the approved RCMP.

It is proposed to update the RSP text and plans in accordance with the decision on changes to the CMP, as discussed above.

It is suggested that there is no need for the updated RSP to address the SPA siting i.e. to consider alternative locations at this time.

The RSP is a high level plan that indicates planning policy directions for land use and development in the activity centre as a whole. It provides support for development opportunities that will support the role of Rosebud as the major activity centre for the southern Peninsula and will encourage development proposals, whether for private or public facilities, consistent with this role. Any future proposal for an aquatic centre, in whatever form or location Council determines to be appropriate, can be advanced by Council in its role as a provider of community facilities.
For example, the RSP already nominates Wannaeue Place as an area for future development as part of the ‘Rosebud Heart Precinct’, with the south side of Wannaeue Place potentially having a building height exceeding four storeys. The RSP also already notes that the Rosebud Heart Precinct is the preferred location for community facilities. The inclusion of an aquatic facility in this area would therefore be consistent with the RSP, but is not a requirement of the RSP.

The RSP also already includes a Contextual Framework Plan, which shows the Rosebud Activity Centre in the context of the wider Rosebud area. This Plan includes the ‘Boneo Node’ (the area generally including the Shire offices, emergency services, Olympic Park and Rosebud Secondary College) as the focus for civic and community facilities. Whereas this area is not part of the activity centre, the RSP recognises that this ‘Boneo Node’ includes a range of activities that support the overall role of Rosebud for the southern Peninsula.

Accordingly, the role of the RSP is not to determine any location for a potential aquatic centre, but rather to encourage such a location to be in a strategic position within Rosebud, with both Wannaeue Place and the Boneo Node being options.

Accordingly, only minor adjustments are needed to update the RSP, again on a ‘policy-neutral’ basis, and it is considered that this can be undertaken without further community consultation.

An updated version of the Rosebud Activity Centre Structure Plan – May 2015 is shown in Attachment 2.

Rosebud Activity Centre Urban Design Framework Update

Like the RSP, the RUDF is guided by the RCMP in terms of the SPA foreshore location.

The RUDF seeks to “consolidate a strong heart” for Rosebud, is aimed at “revitalising Wannaeue Place” and “creating a public presence on the foreshore”.

The RUDF already identifies that the Memorial Hall can be enhanced by complementary additional community facilities, and that the related building upgrades (and complementary upgrades to the Rosebud Sound Shell and the adjacent areas) have the potential to provide a landmark site.

Only minor adjustments would be needed to update the RUDF, again on a ‘policy-neutral’ basis, and it is considered this could be undertaken without further community consultation and within current budget allocations.

An updated version of the Rosebud Activity Centre Urban Design Framework – May 2015 is shown in Attachment 3.

Planning Scheme Amendment for Rosebud Activity Centre Structure Plan

Once the Rosebud CMP, RSP and RUDF have been updated, a report can be presented to Council recommending the exhibition of a Planning Scheme Amendment that would implement the significant statutory and strategic planning elements of the Structure Plan.

Such amendment would include changes to height restrictions that would facilitate further development opportunities and associated economic and employment growth.
The proposed changes, if approved, would also avoid the need for site specific Planning Scheme Amendments for individual development projects, e.g. as was necessary in relation to the proposed development at No.1 Jetty Road.

ISSUES

On 22 September, 2014 Council sought a report on a range of matters relating to the provision and development of facilities in and about Rosebud.

These matters are being addressed in a variety of reports.

One of the resolutions specified was:

- The relocation from the Rosebud Crown Land Foreshore of non-coastal dependent buildings and infrastructure.

It is noted that the updated Rosebud Coastal Management Plan could be adopted in the context of that resolution. The RCMP already indicates the potential removal of some non-coastal related buildings. Should a report regarding the above resolution lead to a conclusion that would affect existing buildings and infrastructure, then the RCMP could be further modified in due course.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

Council’s decision to not locate the previously proposed SPA on the Rosebud foreshore needs to be reflected in the adopted versions of the Rosebud Coastal Management Plan, Rosebud Activity Centre Structure Plan and Rosebud Activity Centre Urban Design Framework.

It is therefore recommended that Council adopt updated versions of these documents that no longer include reference to SPA being located on the Rosebud foreshore.

RECOMMENDATION


2. That Council adopts the *Rosebud Activity Centre Structure Plan – May 2015*, as shown in Attachment 2, to supersede the *Rosebud Activity Centre Structure Plan – September 2012*.

BACKGROUND

The report explains that the purpose of the updated plans is to reflect Council’s decision regarding not having the previously proposed Southern Peninsula Aquatic Centre located on the foreshore, i.e. to bring these plans in line with current policy.

One other aspect of the plans, the creation of a new public space (the Civic Square) in the area currently occupied by the Rosebud Bowls Club, remains part of the policy documents.

However, concerns have been raised on this matter and in consultation with the Ward Councillors it is now recommended to add a Part B to the original recommendation.

AMENDED RECOMMENDATION

1. That Council adopts the Rosebud Coastal Management Plan – May 2015, as shown in Attachment 1, to supersede the Rosebud Coastal Management Plan – January 2012, and resolves to submit the Rosebud Coastal Management Plan – May 2015 for approval to the Minister for Environment, Climate Change and Water.

2. That Council adopts the Rosebud Activity Centre Structure Plan – May 2015, as shown in Attachment 2, to supersede the Rosebud Activity Centre Structure Plan – September 2012.


Part B

That officers commence a consultation process with the Rosebud Bowls Club and other stakeholders to investigate, for Council’s consideration, options to enable the Civic Square project envisaged in the Rosebud Coastal Management Plan to be advanced. The consultation process is to include the formation of a Working Group with representatives from the Rosebud Bowls Club and other stakeholders, relevant officers and Seawinds Ward Councillors.
COUNCIL DECISION

Moved: Cr. Gibb
Seconded: Cr. Pittock

That the amended recommendation be adopted.

Vote by Division  (Requested by Cr. Celi)

For the Motion: Cr. Dixon, Cr. Garnock, Cr. Wood, Cr. Rodgers, Cr. Fraser, Cr. Gibb, Cr. Pittock and Cr. Colomb

Against the Motion: Cr. Shaw and Cr. Celi

Carried
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment)

Prepared By Ana Borovic, Strategic Planner; and Rosalyn Franklin, Team Leader – Scheme and Systems Review

Authorised By Manager – Strategic Planning

File ID A5591716

Attachment(s) YES (13)

PURPOSE

The purpose of this report is to present seven amendment proposals for Council’s consideration as part of a general Planning Scheme Amendment (Mornington Peninsula Planning Scheme Amendment C189). The proposals include:

- Changes to the site specific provisions affecting 475 Moorooduc Highway, Moorooduc (Moorooduc Coolstores) to provide for more flexibility for a select range of uses including their establishment without the need for further advertising or review;
- Site specific changes to facilitate increased subdivision at 470-474 Browns Road, Rye;
- Site specific changes to facilitate increased subdivision 11-13 Mountain View Road, Mount Eliza (which is not supported at this time);
- Changes to protect neighbourhood character with development restrictions in precincts around Beleura Hill, Mornington and Birdrock Avenue, Mount Martha; and
- Changes to rectify two zoning anomalies concerning 316 Wallaces Road, Dromana and 50 Spray Street, Rosebud.

The report recommends that authorisation be sought from the Minister for Planning for the preparation and exhibition of Amendment C189 (as shown in Attachment 1) for all proposals except the one affecting 11-13 Mountain View Road, Mount Eliza.

BACKGROUND

Previous Council Consideration

Council has previously considered reports pertaining to three matters that are the subject of this report.

Item R715 – Moorooduc Coolstores – refer to the minutes of the Development Assessments Committee Meeting held on 22 April, 2015 (Attachment 2). Council resolved:

“That Council includes relevant amendment proposals for the Moorooduc Coolstores in the next general amendment, generally as outlined in Attachment 3 subject to refinement of the provision to better meet the underlying intent and restrict the location of any new buildings to a mapped northern precinct of the land.”

Since that assessment by Council a refinement of the provision has been carried out in conjunction with the applicant that features the following agreed changes:
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

- Replacement of the ‘Master Plan’ mechanism for the approval of use and development with a more conventional permit application system, but one where a sub-set of applications are exempt from third party advertising and review rights;
- Strengthening of the provisions for protection of the heritage values of the site (the level of protection now recommended by officers is somewhat stronger than offered by the applicant – see later discussion);
- Strengthening of the provisions tying all uses, except car parking, to the developed northern precinct on the land (contrary to officer advice, the applicant is also seeking that in addition to car parking, an indoor recreation centre also be allowed in the southern precinct); and
- Ensuring that health and wellbeing uses are not unreasonably restricted by floor area restrictions applying to shops.

In addition to these matters, the applicant has also sought the following additional changes to the proposal that was previously considered by Council and these will be discussed later in this report:

- Adding ‘education’ and ‘the heritage values of the site’ to the list of land use themes for the site;
- Adding a clause that allows the responsible authority (RA) to waive the requirement that uses demonstrate a connection with the agreed land use themes for the site if the RA is satisfied that the use is compatible with, and complementary to, the other land uses permitted on the site, and will not adversely affect the amenity of the area;
- Adding Child Care Centre to the list of discretionary uses (owing to the interest for this use and its ability to support the existing Endota use);
- Increasing the floor area for bottle shop from 200 square metres to 500 square metres, but with the proviso that at least 50% of floor stock must be primarily sourced from the Mornington Peninsula (to reflect the existing Incorporated Document which has no floor area limit on the sale of wine produced on the Mornington Peninsula and a 100 square metre limit for a bottle shop);
- Making it clear that the proposed 500 square metre total leasable floor area limit for shop use does not include the bottle shop or any use primarily associated with health and wellbeing;
- Enabling indoor recreation centres on any part of the land; and
- Also making applications to construct a building or construct or carry out works, for car parking, or to erect advertising signage exempt from advertising and third party input (noting this may have been the outcome anyway under the proposed ‘Site Master Plan’ and ‘Advertising Sign Master Plan’ system).

Investigation areas (Items R1183 and R1192) – in the report to Council on 24 February, 2014 (Item 3.4 dealing with Mornington Peninsula Planning Scheme Amendment C179 and the conversion of the former residential zones to the new standard residential zones), Council made the following Part B resolution that referred to the investigation areas shown in Attachment 3:

“In referring zone conversion proposals to the Standing Advisory Committee that Council advise the Committee that a number of investigation areas are being reviewed.”

The investigation areas were identified as areas where Council was intending to undertake further investigation of neighbourhood character. Those investigations for the Beleura Hill area and the Birdrock Avenue precinct are now complete and the findings are now proposed to be implemented through this proposed Amendment C189.
In response to a further report to the Council Meeting held on 14 July, 2014 about the Beleura Hill investigation area, Council resolved “That the recommendation of the report be adopted”. The reports recommendation provided for Council to undertake a community consultation process for the Draft Beleura Hill Neighbourhood Character Study, Draft Beleura Hill Design Guidelines and Draft Beleura Hill Schedules to the Neighbourhood Residential Zone.

Council considered the outcome of that exhibition at a further Council meeting on 8 December, 2014 when it resolved to adopt the recommendation of the officer’s report which was:

1. That Council adopts the Beleura Hill Design Guidelines – November 2014, shown in Attachment 1 to this report.
2. That a report be presented to Council on the commencement of a Planning Scheme Amendment that would apply the Neighbourhood Residential Zone to the area of the Beleura Hill Design Guidelines – November 2014 and that would implement the key requirements of these Guidelines in the Mornington Peninsula Planning Scheme.
3. That the above report includes a draft letter to be sent to all owners and occupiers of affected properties as part of the formal exhibition process, clearly specifying the details of the proposed changes to planning controls and hence to property development restrictions.

Item R1047 – 470 to 474 Browns Road, Rye – this item was considered at a Council meeting held on 26 May, 2014 (Attachment 4) for inclusion in a previous general Planning Scheme Amendment C184 and Council resolved as follows:

“That Council defers consideration of R1047 – 470 to 474 Browns Road, Rye, until further discussion about the amenity and increased density of housing in the neighbourhood and appropriateness of subdivision of the property.”

The applicant had originally requested a change to the Planning Scheme to facilitate a four lot subdivision and as a public benefit, was proposing a park including the costs of developing a playground.

Since that time the matter has been further investigated and discussed with the applicant, leading the applicant to submit an amended proposal (Attachment 5) involving a three lot subdivision with no provision for a playground, but support for an alternative cash in lieu open space contribution of 10% of the site value of the land.

Proposals

A summary of the amendment proposals is provided in Table 1 and supplemented by the maps shown in Attachment 6.

Items R715, R1047 and R1174 have been requested by, or on behalf of the relevant land owner, with Item R715 still to be confirmed.
<table>
<thead>
<tr>
<th>Request No.</th>
<th>Land</th>
<th>Proposal</th>
<th>Why is it required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>R715</td>
<td>475 Moorooduc Highway, Moorooduc – Moorooduc Coolstores</td>
<td>Amends the Schedule to Clause 52.03 – (Specific Sites and Exclusions) and the Schedule to Clause 81.01 by replacing the entry &quot;Moorooduc Coolstores Development, August 2006&quot; to refer to a new Incorporated Document: Moorooduc Coolstores, August 2015.</td>
<td>To allow use and development options for the land that would otherwise be prohibited by the Green Wedge Zone to facilitate protection of the heritage buildings on the land and recognise its location as a rural gateway location for visitors to the Mornington Peninsula.</td>
</tr>
<tr>
<td>R1047</td>
<td>470-474 Browns Road, Rye</td>
<td>Inserts and applies a Development Plan Overlay Schedule 20. Inserts a new Clause 52.01 Schedule entry to apply a cash in lieu provision for a 10% open space contribution.</td>
<td>To facilitate an increased subdivision density from one lot to three lots. See the applicant’s request in Attachment 5 noting that it amends and supplements the information supporting his original request as shown in Attachment 4.</td>
</tr>
<tr>
<td>R1174</td>
<td>11-13 Mountain View Road, Mount Eliza</td>
<td>Inserts and applies a new Development Plan Overlay Schedule to facilitate a two lot subdivision of the land.</td>
<td>To enable the land to be subdivided into two lots with a lot size that would ‘fit’ the size of dwellings in the immediate neighbourhood (some of these have been developed over two narrow lots whilst the subject land is a prior consolidation of four such narrow lots) and that would be similar, albeit a little smaller than the predominant lot size in the neighbourhood east of the intersection of Mountain View Road and Autumn Crescent. See the applicant’s request in Attachment 7.</td>
</tr>
<tr>
<td>R1183</td>
<td>Beleura Hill Neighbourhood Character Study Area, Mornington.</td>
<td>Inserts Beleura Hill Design Guidelines, April 2015 as a new reference document in Clause 21.12.</td>
<td>To protect the neighbourhood character of the Beleura Hill area generally in accordance with the findings of the Beleura Hill Design Guidelines, April 2015 (see Attachment 8).</td>
</tr>
</tbody>
</table>
Inserts a new Design and Development Overlay, Schedule 24 – (Beleura Hill, Mornington) and applies it to the Beleura Hill area in Mornington to replace the Design and Development Overlay, Schedule 1 (DDO1) and better aligns the adjoining DDO3 to property boundaries.

To protect the neighbourhood character of the area in accordance with the recommendations of the Mornington Peninsula Investigation Areas Study Mount Martha Discussion Paper, March 2015 (see Attachment 9).

Replaces the Design and Development Overlay, Schedule 1 (DDO1) with the Design and Development Overlay, Schedule 2 (DDO2).


To rectify a zoning anomaly as the land parcel is in private ownership; but in a public zone.

Rezones the land from Public Conservation and Resource Zone (PCRZ) to Green Wedge Zone, Schedule 2 (GWZ2).

To rectify a zoning anomaly as the land parcel is in private ownership; but in a public zone.

Rezones the land from Public Use Zone, Schedule 3 (PUZ3) to General Residential Zone, Schedule 1 (GRZ1).

Table 1: Summary of Proposals

<table>
<thead>
<tr>
<th>Ref</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1205</td>
<td>Rezones the land from Public Conservation and Resource Zone (PCRZ) to Green Wedge Zone, Schedule 2 (GWZ2).</td>
</tr>
<tr>
<td>R1207</td>
<td>Rezones the land from Public Use Zone, Schedule 3 (PUZ3) to General Residential Zone, Schedule 1 (GRZ1).</td>
</tr>
</tbody>
</table>

**PROCESS**

In assessing the proposals put forward in this report and deciding whether to include them in a proposed Planning Scheme Amendment, Council must have regard to particular matters under the *Planning and Environment Act 1987* and the *Transport Integration Act 2010*. These are set out in Attachment 10 and the items recommended for inclusion in Amendment C189 have been particularly considered in the Explanatory Report shown in Attachment 1.

If Council seeks and receives authorisation from the Minister for Planning to prepare Amendment C189 to include any or all of the items being assessed for inclusion in this report, then Amendment C189 would be exhibited for at least one month in accordance with the *Planning and Environment Act 1987*. Notice would be sent to affected owners, occupiers and other parties including relevant agencies, and published in a local newspaper with the amendment being available for viewing on the websites of the Department of Environment, Land, Water and Planning and the Shire, and at Council offices.
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

Any submissions received must then be considered and where appropriate, submitters given an opportunity to be heard by an Independent Panel. Council may abandon an amendment at any time, but prior to making a final decision to adopt an amendment for the Minister’s approval, with or without changes, must first consider all submissions and any Independent Panel report.

CONSULTATION

The Beleura Hill and Birdrock Avenue items are designed to effectively respond to community concerns about risks to neighbourhood character in those areas and have already been subject to substantial community input as detailed later in this report.

Limited external consultation has been carried out on other items at this stage noting that any items included in Amendment C189 would be subject to future exhibition processes.

There has been positive feedback from consultation with the Shire’s Statutory Planning team, particularly on the drafting of the Beleura Hill Design and Development Overlay Schedule 24 and with the Shire’s Team Leader – Planning Compliance on the drafting of the Moorooduc Coolstores Incorporated Document.

R715 – Moorooduc Coolstores

The exhibition of Amendment C88 in 2007 that introduced the original Incorporated Document for the Moorooduc Coolstores land attracted 16 submissions, none of which raised objections that required consideration by an Independent Panel.

There has been no specific public consultation on the current request however it is noted that since the 2007 approval, there has been a number of approaches to Council by the owner or others for varied proposals that would be prohibited by the Planning Scheme despite them sometimes being sympathetic to the objective of retaining and protecting the heritage values of the land, whilst respecting other planning policy objectives for the Peninsula.

R1047 – Browns Road, Rye

The proponents have confirmed with South East Water (SEW) that the site will be connected to the reticulated sewerage system in October 2015.

The Country Fire Authority’s (CFA) views are currently being sought but are not expected to preclude the increase in density. Any particular concerns could be addressed during any exhibition process.

R1183 – Beleura Hill Neighbourhood Character Study Area

In response to local community concerns regarding Beleura Hill, Council undertook a Neighbourhood Character Study, and on that basis, commissioned Tract Landscape Architects to develop the Draft Beleura Hill Design Guidelines. These were exhibited in August to October 2014 and were well received. Subsequently, Council adopted the Beleura Hill Design Guidelines – November 2014 on 8 December, 2014.

The public exhibition involved:
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

- Hard copies for inspection at the Council office in Mornington;
- A special page on Council’s website, including a web-based feedback opportunity;
- Public notice in the local newspaper;
- Letters of notification to all owners and occupiers of the 840 properties in the Beleura Hill study area;
- A drop-in information session held at the Council office in Mornington; and
- Three walking tours facilitated by a community engagement consultant. The walking tours included a short walk around some of the precincts of the study area, followed by a workshop.

Council received 111 submissions, with 98 in support of the proposed draft Design Guidelines, nine objections, and four submissions expressing no objections.

This indicates a relatively low number of objections (8%), with a large proportion of submitters expressing general to strong support for the draft Guidelines. There was only a very low level of objection in any particular precinct.

R1192 – Birdrock/Clarkes Avenues Precinct

Consultation in relation to the preparation of the Mount Martha/Birdrock Avenue Investigation Area report has been limited to date, with discussions primarily with residents concerned about the impact of multi-unit development in this area.

The investigation area report, produced by Hansen Partnership (Attachment 9), provides the primary justification for this amendment proposal and as was the case with the Bittern amendment (C188), it is intended that the exhibition of the amendment itself will enable informed submissions on the proposal, which involves the inclusion of the Birdrock/Clarkes Avenue precinct within DDO2 (rather than DDO1).

DISCUSSION

Items Recommended for Inclusion in Amendment C189

The items in Table 1 have been strategically assessed and it is considered six of the seven are generally in accordance with the State and Local Planning Policy Frameworks including the Mornington Peninsula Localised Planning Statement. More detail about these matters, including the strategic justification for their inclusion in Amendment C189, is contained in the Explanatory Report contained in Attachment 1.

Item R1174 – 11-13 Mountain View Road, Mount Eliza

The existing lot has been consolidated from what were four narrow lots in the original plan of subdivision. The whole part of Mountain View Road between the Wooralla Drive roundabout and Autumn Crescent appears to have been originally subdivided into narrow, 8 metre wide lots, possibly originally planned for commercial premises.
Many of the lots on both sides of the street are still approximately 8 metres wide, but they have generally been grouped into properties with a minimum of two parcels (there are examples of up to five parcels in one property).

There is no opposition in principle to the proposed DPO in terms of immediate amenity impact in this section of Mountain View Road. The two lot subdivision would result in lots in accordance with the surrounding area. Any new dwelling would be supported with the existing infrastructure, in an area suitable and highly sought for housing infill. While the existing garage at 11-13 Mountain View Road, Mount Eliza will now be located on the newly created lot, there is an existing carport and additional sufficient space on the lot with the existing dwelling to accommodate parking. Neighbourhood character and amenity could additionally be addressed through the proposed DPO.

The difficulty with this proposal is that in the wider neighbourhood also covered by the same DDO, there is also quite a number of other larger lots whose owners might also be desirous of similar subdivision opportunity. It would arguably be inequitable to deal with such requests in a piecemeal manner, the Planning and Environment Act 1987 encourages Councils to undertake coordinated planning. It is considered that the development and exhibition of a precinct plan based DPO for this area would be more appropriate than consideration of site specific amendments.

The proponent argues in their submission that the precedent has already been set by Amendment C48 which was approved in 2004 when a similar DPO was applied to a lot in Mason Street, just a few streets away. However, while C48 did enable the re-subdivision of a previously consolidated lot, there were/are no comparable properties in that area, in contrast to the area surrounding 11-13 Mountain View Road. Similarly, the proposed amendment for 470-474 Browns Road, Rye involves a ‘unique’ property, rather than a situation where a comprehensive assessment of surrounding land would be of benefit.

Accordingly, the Mountain View Road item is not recommended for inclusion in Amendment C189, however the applicant may be advised that this matter will be further considered in the context of a possible precinct based amendment.

Item R715 – Moorooduc Coolstores

This proposal was previously reported to Council at the Development Assessments Committee meeting on 22 April, 2015 (referred to as the previous decision for the purpose of this discussion).

While Council resolved to support exhibition of an amendment, in the discussions with the proponent which have aimed to refine the provisions to better meet the underlying intent, a number of additional matters have been raised which it is considered warrant consideration by Council. These additional matters, with an accompanying comment, may be summarised as follows:

**Adding ‘education’ and ‘the heritage values of the site’ to the list of land use themes.**

A heritage theme is consistent with the underlying intention. An education theme is not necessary for a permit for education centre to be issued under the previous decision but it would allow an education business to be established without a primary linkage to one of the themes and this could be of assistance to its viability.
Adding a clause that allows the Responsible Authority (RA) to waive the requirement that uses demonstrate a connection with the agreed land use themes for the site if the RA is satisfied that the use is compatible with, and complementary to, the other land uses permitted on the site, and will not adversely affect the amenity of the area.

This provision would effectively nullify the concept of having land use themes to guide decisions so that the site is used and developed in an integrated way that protects its heritage values and responds to its role as a rural gateway to the Mornington Peninsula for tourists. It is recommended that this addition not be supported. In considering this matter it became apparent that the purpose of the Incorporated Document should be strengthened to support the themes and so it is also recommended that it include objectives drawn from the Table in the report relating to the previous decision. See tracked changes in the Incorporated Document shown in Attachment 1 that relate to the inclusion of the following objectives:

- To protect and enhance the heritage values of the land;
- To realise the rural recreational values of the land and its ‘gateway’ location;
- To protect the rural landscape values and the interface of the urban and rural area;
- To protect the existing settlement pattern including preventing accommodation on the land;
- To protect the vitality of existing activity centres at other locations and avoid the establishment of a new activity centre;
- To protect the function of Moorooduc Highway and Eramosa Road West by confining all vehicular access to Eramosa Road West and having all land use coordinated so that all parking and loading is contained on the land; and
- To protect the agricultural values of the Mornington Peninsula.

Adding Child Care Centre to the list of discretionary uses (owing to the interest for this use and its ability to support the existing Endota use).

This provision is supported in principal however it is noted that best practice planning for large child care centres is that they be located close to primary schools and so a condition limiting the number of children to 60 or less would be appropriate.

Increasing the floor area for bottle shop from 200 square metres to 500 square metres, but with the proviso that at least 50% of floor stock must be primarily sourced from the Mornington Peninsula (to reflect the existing Incorporated Document which has no floor area limit on the sale of wine produced on the Mornington Peninsula and a 100 square metre limit for a bottle shop).

This provision is not supported as it is considered that the previous decision raised the floor limit from 100 square metres to 200 square metres to take account of the sales of Mornington Peninsula wines and that this is appropriate.

A bottleshop of 500 square metres is essentially of such a large scale that it is more fitting in a town centre location. It is also noted that a clear floor area is much easier to enforce than a notional 50% of floor stock measure that is much more difficult to measure and monitor over time and is possibly subject to argument about whether the stock should be measured by shelf space, value, volume or items.

A better provision would be to condition any bottleshop so that any floor area in excess of 100 square metres is only used for liquor that is primarily produced from produce, 80% or more of which is grown on the Mornington Peninsula.
Making it clear that the proposed 500 square metre total leasable floor area limit for shop use does not include the bottleshop or any use primarily associated with health and wellbeing.

This provision is considered to be consistent with the purpose of the Incorporated Document.

Enabling indoor recreation centres on any part of the land.

This is not supported as an urban-type use that is prohibited in the Green Wedge Zone. It should be subject to the same restriction as the other such uses that the Incorporated Document would facilitate: that being it should be restricted to the northern precinct of the land to maintain the open rural landscape of the southern part of the land.

Making applications to construct a building or construct or carry out works, for car parking, or to erect advertising signage exempt from advertising and third party input (noting this may have been the outcome anyway under the proposed ‘Site Master Plan’ and ‘Advertising Sign Master Plan’ system).

Whilst the previous decision provided for a Master Plan option, it is noted that the existing uses on the site which operate under permits, make it somewhat unlikely that this Master Plan option would have been taken up.

Furthermore, in accepting the permit option for uses, it is noted that the applicant has voluntarily restricted the use of these exemptions to only a select range of the permissible uses (see Table 2 of the Incorporated Document shown in Attachment 1).

In view of this, it is considered that a like select usage of the exemptions in relation to applications for buildings and works, as shown below, would be appropriate. This is especially the case considering the very close proximity of the nearest dwelling and that the Incorporated Document contains no parameters for setbacks or heights of any new buildings or other measures for the protection of the neighbour’s amenity.

It is therefore proposed that only the following types of development be exempt:

- An application to construct a building or construct or carry out works under this document, but only if it is for the purpose of protecting the heritage values of the existing buildings or otherwise does not extend the floor area of an existing building;
- An application for car parking under Clause 52.06; and
- An application to erect an advertising sign that is below 6 metres in height and associated with a use listed in Table 2 of this Incorporated Document.

Strengthening of the provisions for protection of the heritage values.

As noted in the background section of this report, the applicant is agreeable to some strengthening of the heritage protection provisions. This includes:

- Inserting a heritage theme to guide future uses;
- Inserting the following new provisions regarding operation of the site;
“The use and development on the land shall at all times be maintained and operated to the satisfaction of the Responsible Authority, ensuring an overall high standard of maintenance in respect to the external appearance of buildings, the structural integrity of the buildings, the provision and maintenance of car parking areas (including line marking) and the planting and maintenance of landscaping.

If requested by the Responsible Authority, a conditions report by a suitably qualified person shall be submitted within 2 months of being requested and approved to the satisfaction of the Responsible Authority demonstrating that the condition of the heritage buildings and infrastructure on the site is structurally sound and has been maintained in good order.”

- Inserting the following new decision guideline for the responsible authority deciding whether the expiry date of the control should be extended.

“In deciding whether to grant an extension, the Responsible Authority may consider whether the heritage buildings and infrastructure on the site are structurally sound and have been maintained in good order.”

It is considered that the heritage protection provisions (the basic rationale for allowing departure from the underlying Green Wedge Zone provisions) should be strengthened by the following alternative expiry provision:

“This document expires 20 years from the approval date of Mornington Peninsula Planning Scheme Amendment C189 or at such time as the buildings of heritage significance on the land as described in the relevant reference document under the Mornington Peninsula Planning Scheme are demolished, whichever is the sooner.

The Responsible Authority may extend this period if a request is made in writing before the expiry date or within six months afterwards but only if the buildings of heritage significance on the land as described in the relevant reference document under the Mornington Peninsula Planning Scheme remain structurally sound and maintained in good order all to the satisfaction of the responsible authority.”

While these may appear unduly onerous requirements (and are not supported by the proponent), in fact they are intended to reflect the same principle as applies under the Heritage Overlay i.e. that uses which would normally be prohibited can be considered, having regard to the net community benefit of retaining/supporting heritage buildings. However, if the building is removed, or allowed to substantially deteriorate (and subsequently the site is no longer subject to a Heritage Overlay), then the ability to consider otherwise prohibited uses is also removed.

In this case the proposed level of exemption from the ‘normal’ Green Wedge Zone provisions is quite significant and although the amendment is supported both on heritage grounds and in recognition of the particular role of the Moorooduc Coolstores in this location, it is also considered appropriate to highlight consistency with the Heritage Overlay principles. In reality, it is fully expected that the applicant will continue to maintain the buildings in good order, and the work that has been undertaken to date is also recognised. In this context, the proposed provisions will have very limited practical impact.

Other minor technical modifications have also been proposed to improve the operation of the Incorporated Document including its operation in relation to the remainder of the Planning Scheme.
ISSUES

Are All Items Suitable for a General Amendment?

There are significant cost savings and administrative efficiencies to be gained by including multiple items in a single ‘general amendment’, even if that is later split into parts to facilitate a streamlined process for items that do not attract objections.

Deviation from Council's Resolution of 8 December, 2014 for Beleura Hill

Amendment C189 proposes to give statutory effect to the Beleura Hill Design Guidelines by replacing the current Design and Development Overlay – Schedule 1, with a specific Design and Development Overlay – Schedule 24 (DDO24). This new DDO24 ‘translates’ the provisions of the Guidelines into planning scheme requirements that would be used in the assessment of planning applications for new residential development.

Council adopted the Design Guidelines on 8 December, 2014 and resolved to commence a Planning Scheme Amendment for their implementation. At the time, the resolution was to use the format of Neighbourhood Residential Zone for this purpose.

Since that time, officers have made a further assessment of the best available format for the Beleura Hill planning controls. It has been concluded that a DDO specifically tailored for the Design Guidelines provides the best possible ‘fit’ in the context of the structure of the Mornington Peninsula Planning Scheme.

The Scheme already includes a range of DDOs, with the more recent ones being specific to certain areas, e.g. Crib Point. The introduction of a Neighbourhood Residential Zone for Beleura Hill would at this stage not sit as well within the structure of the Scheme compared to a DDO, and there is also ongoing uncertainty under the new State Government, regarding the future form and use of the NRZ. The proposed DDO enables a more detailed translation of the provisions of the guidelines into the Planning Scheme, and an opportunity to incorporate the controls of the DDO1 that is being replaced.

The opportunity has also been taken to slightly update the Beleura Hill Design Guidelines to better match the proposed DDO24. The DDO24 refers to this updated version Beleura Hill Design Guidelines April 2015 rather than the adopted November 2014 version. It would therefore be appropriate for Council to rescind its previous resolution of 8 December, 2014, that called for a now redundant Neighbourhood Residential Zone proposal and adopted the November 2014 version of the guidelines, and freshly adopt the Beleura Hill Design Guidelines April 2015 version.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

The items for inclusion in this proposed amendment have been assessed and six of the seven are considered to be strategically justified. It is therefore recommended that Council proceed to seek authorisation from the Minister for Planning for the preparation of Mornington Peninsula Planning Scheme Amendment C189 to enable the amendment to proceed to the exhibition stage.
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

RECOMMENDATION

1. That Council applies to the Minister for Planning under Section 8A of the Planning and Environment Act 1987 to obtain authorisation to prepare Amendment C189 to the Mornington Peninsula Planning Scheme, to amend the Planning Scheme as shown in Attachment 1 to this report.


4. That if the Minister for Planning authorises Council to prepare Mornington Peninsula Planning Scheme Amendment C189, then individual notices sent to the Beleura Hill owners and occupiers in association with the anticipated exhibition, have a cover letter generally as shown in Attachment 11.

5. That Council advises the applicant for item R1174 concerning 11-13 Mountain View Road, Mount Eliza that it has decided to defer consideration of the matter in the interests of its obligations under the Planning and Environment Act 1987 to “provide sound, strategic and co-ordinated planning of the use and development of land”, but would be prepared to reassess the matter at a future time with regard to the implications for the coordinated planning of other land in the vicinity.

Addendum – Supplementary Report, Amended Recommendation and Additional Attachments 12 and 13
Circulated Monday, 24 August, 2015

SUMMARY

This addendum addresses two matters.

Item R1174 11-13 Mountain View Road, Mount Eliza

The proponent for Planning Scheme amendment request R1174, affecting 11-13 Mountain View Road, Mount Eliza, has asked for this item to be removed from consideration at this Council meeting. The proponent's request is shown in Attachment 12.

This request is considered reasonable and warrants a change to Recommendation 5.

Item R715 Moorooduc Coolstore

This requested change involves revision of the Moorooduc Coolstore Incorporated Document August 2015 in response to concerns raised by the applicant after the release of the agenda papers.

It is considered that minor changes can reasonably address those concerns without prejudicing the intended policy outcome. In summary, the changes relate to the purpose, additional discretion applying the themes, increasing the childcare centre cap from 60 to 65 places and allowing additional floor
space (250 square metres for the sale of Mornington Peninsula wines, in addition to the 100 square metres for a general bottle shop) and exemption provisions relating to advertising signs. The changed provisions are highlighted in yellow in Attachment 13.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

In conclusion it is considered that the withdrawal of item R1174 from consideration at this meeting is appropriate and that a revised version of the Moorooduc Coolstore Incorporated Document August 2015 will still achieve intended policy outcomes. Please note that the Recommendation below supersedes the original recommendation with a modified Recommendation 1 and a substituted Recommendation 5.

AMENDED RECOMMENDATION

1. That Council applies to the Minister for Planning under Section 8A of the Planning and Environment Act 1987 to obtain authorisation to prepare Amendment C189 to the Mornington Peninsula Planning Scheme, to amend the Planning Scheme, generally as shown in Attachment 1 to this report, except with a substitute version of the Moorooduc Coolstore Incorporated Document August 2015 as shown in Attachment 13 to this addendum report.

2. That Council adopts the Beleura Hill Design Guidelines, April 2015 as shown in Attachment 8 to supercede the Beleura Hill Design Guidelines, November 2014.


4. That if the Minister for Planning authorises Council to prepare Mornington Peninsula Planning Scheme Amendment C189 then the individual notices sent to the Beleura Hill owners and occupiers in association with the anticipated exhibition have a cover letter generally as shown in Attachment 11.

5. That Council accepts the proponent's request for withdrawal of item R1174 concerning 11-13 Mountain View Road, Mount Eliza from consideration at this Council Meeting of 24 August, 2015 and is prepared to reassess the matter at a future meeting following the receipt of further information from the applicant.
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

COUNCIL DECISION

Moved: Cr. Pittock
Seconded: Cr. Gibb

1. That Council applies to the Minister for Planning under Section 8A of the Planning and Environment Act 1987 to obtain authorisation to prepare Amendment C189 to the Mornington Peninsula Planning Scheme, to amend the Planning Scheme, generally as shown in Attachment 1 and as modified by Attachment 13 to this report, but with a revision to the Moorooduc Coolstore Incorporated Document August 2015 to effect the following changes:
   - Requiring a planning permit for any sign higher than 4 metres;
   - Prohibiting a sign with an excessive width; and
   - Prohibiting all shops except a bottleshop of no more than 200 square metres.

2. That Council adopts the Beleura Hill Design Guidelines, April 2015 as shown in Attachment 8 to supercede the Beleura Hill Design Guidelines, November 2014.


4. That if the Minister for Planning authorises Council to prepare Mornington Peninsula Planning Scheme Amendment C189 then the individual notices sent to the Beleura Hill owners and occupiers in association with the anticipated exhibition have a cover letter generally as shown in Attachment 11.

5. That Council accepts the proponent’s request for withdrawal of item R1174 concerning 11-13 Mountain View Road, Mount Eliza from consideration at this Council Meeting of 24 August, 2015 and is prepared to reassess the matter at a future meeting following the receipt of further information from the applicant.

Carried

VIEW ATTACHMENT 1

VIEW ATTACHMENT 2

VIEW ATTACHMENT 3

VIEW ATTACHMENT 4

VIEW ATTACHMENT 5

VIEW ATTACHMENT 6
3.9 Mornington Peninsula Planning Scheme Amendment C189 (General Amendment) (Cont.)

VIEW ATTACHMENT 7

VIEW ATTACHMENT 8

VIEW ATTACHMENT 9

VIEW ATTACHMENT 10

VIEW ATTACHMENT 11

VIEW ATTACHMENT 12

VIEW ATTACHMENT 13
3.10  **Contract 2042 – Pier Forecourt Redevelopment Works, Mornington Harbour, Mornington**

Prepared By  David Fice, Civil Design Engineer – Project Delivery; and Derek Rotter, Manager – Project Delivery

Authorised By  Director – Sustainable Infrastructure

Document ID  A6034324

Attachment(s)  YES (1)

**PURPOSE**

This contract is for the Mornington Pier Forecourt Re-Development and Traffic Management Works in Mornington.

These works will complement the newly refurbished Pier by Parks Victoria, with traffic management works designed to greatly improve the traffic flow for cars and boat trailers accessing the boat ramp whilst improving pedestrian safety.

An open tender was called to seek submissions for this project. A comprehensive tender assessment and evaluation has been undertaken in accordance with the published criteria.

A tender submission has been recommended for acceptance.

**BACKGROUND**

In November 2014, Council adopted the Mornington Harbour Precinct Plan which was developed to address a number of issues relating to boating safety, access and the increasing demands of a wide range of user groups, within the harbour itself and the adjacent foreshore areas.

The plan provided recommendations for the Harbour Precinct (with works currently being undertaken by Parks Victoria) and the Mornington Pier Forecourt Area.

Following a high level of community support for the Forecourt Area plan, the Shire undertook detailed design to deliver an efficient and cost effective solution for the proposed works.

The proposed works are expected to deliver significant benefits to the community as outlined below:

- An integrated, ‘seamless’, well-designed and innovative ‘landscape treatment’ for the whole area between the end of Schnapper Point Drive and the ‘inner section’ of the pier;
- Safe and convenient pedestrian access to the pier from both the waterfront link and the Flinders monument link;
- More usable public space at the forecourt and inner section of the pier for recreation activities and events;
- Safe and convenient access for cars to access the parking;
- Safe and convenient access for cars with boat trailers to access the boat trailer parking area/boat ramp, and the same for buses that access that area (mostly for groups to access Mother’s Beach);
Optimal provision of and access to car parking; and
Retention and improvement of waterside/harbour activity area to maintain a ‘working harbour’.

It is anticipated the proposed construction works will take 10 weeks and the works to be completed by December, 2015.

TENDER INVITATION

Tenders were invited by notice in The Age on Saturday, 4 July, 2015. Tenders closed at 3:00 p.m. on Wednesday, 22 July, 2015.

A Tender Information Clarification (TIC 1) was issued on Friday, 31 July, 2015, closing Monday, 3 August, 2015.

TENDERS RECEIVED

Submissions were received from the following firms.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maw Civil Pty Ltd</td>
<td>Dromana</td>
</tr>
</tbody>
</table>

Tender Information Clarifications (TIC 1) were sought from the following firms.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maw Civil Pty Ltd</td>
<td>Dromana</td>
</tr>
</tbody>
</table>

TENDER EVALUATION

Submissions were assessed according to the following criteria.

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Weighting (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price submitted for the supply of the services</td>
<td>60</td>
</tr>
<tr>
<td>Demonstrated capacity of the tender to supply the services</td>
<td>20</td>
</tr>
<tr>
<td>Quality Assurance</td>
<td>10</td>
</tr>
<tr>
<td>Reports from referees</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

To be selected as the recommended tender, a firm must rate highly in relation to its tender price, demonstrated capacity, construction methodology, quality systems and referee reports. The result of the tender evaluation process is summarised in Confidential Attachment 1.
3.10 Contract 2042 – Pier Forecourt Redevelopment Works, Mornington Harbour, Mornington (Cont.)

EVALUATION PANEL

The Evaluation Panel for the assessment of quotes consisted of the following officers:

- Mr. Derek Rotter, Manager – Project Delivery;
- Mr. Davey Smith, Manager – Infrastructure Strategy;
- Mr. Bryan Stone, Senior Design Engineer – Project Delivery; and
- Mr. David Fice, Civil Design Engineer – Project Delivery.

LUMP SUM CONTRACT

A lump sum contract has been adopted as both the quantity and quality of the works has been specified. It is the simplest form of contract to administer as actual quantities do not have to be measured in the field for payment purposes. It further limits exposure for construction cost overruns. A schedule is included for the purpose of calculating any variations, should any be required.

TERM OF CONTRACT

The term of contract expires in 10 weeks from possession of the site with a 12 month maintenance period following completion of the works.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

RECOMMENDATION

1. That Council, having considered all tenders received for Contract 2042 – Pier Forecourt Redevelopment Works, Mornington Harbour, Mornington, hereby accepts the tender submitted by Maw Civil Pty Ltd for a lump sum price of $702,777.50 (excluding GST).

2. That the Common Seal of the Mornington Peninsula Shire Council be affixed where necessary and relevant documents be signed by the authorised officers.

3. That Council resolves that the attachment to this report be retained as a confidential item pursuant to Section 77(2)(a) and (b) of the Local Government Act 1989 and be placed in a separate minute book for confidential items as it contains information of a contractual nature.

COUNCIL DECISION

Moved: Cr. Shaw
Seconded: Cr. Dixon

That the recommendation be adopted.
3.10 Contract 2042 – Pier Forecourt Redevelopment Works, Mornington Harbour, Mornington (Cont.)

ATTACHMENT 1 – CONFIDENTIAL

This attachment relates to a contractual matter and is therefore not available for public viewing.
3.11 Update of Delegations from Council to Officers

Prepared By: Jackie Thorne, Compliance Liaison Officer
Authorised By: Manager – Governance
Document ID: A6062024
Attachment(s): YES (1)

Addendum – Late Report and Attachment
Circulated Friday, 21 August, 2015

PURPOSE

This report aims to update the attached Instrument of Delegation from Council to Officers where legislation does not provide for sub-delegation from the Chief Executive Officer.

Amendments to the (attached) Instrument of Delegation reflect legislative and administrative amendments.

Legislative amendments have been highlighted as follows:

- Deletions are shown in strikeout text; and
- Additions and amendments are shown in bold and underline font.

On the coming into force of this Instrument of Delegation, previous delegations from Council to officers (27 April, 2015) are revoked.

BACKGROUND

The Instrument of Delegation from Council to Officers was last adopted on 27 April, 2015.

The Shire’s Governance Unit subscribes to a delegations and authorisations service provided by Maddocks (Lawyers) who provide updated documentation at least twice a year based on legislative changes and specific issues raised by Councils.

The amended instrument (Attachment 1) reflects recent advice received from Maddocks.

DISCUSSION

As a common feature of legislation, not all details of delegations are set out in the empowering Local Government Act 1989, some are set out in the Interpretation of Legislation Act 1984. In particular, the following should be noted:

- The decision, once made, is for all legal purposes, a decision of Council;
3.11 Update of Delegations from Council to Officers (Cont.)

- The ‘delegate’ is in much the same position as the Council in terms of making decisions. For example, where the decision requires that opinion be formed, the delegate’s opinion can be the basis for the decision; and
- The fact that a delegation is being made does not affect the Council’s powers in relation to the issue concerned. This is subject of course, to the rule that the delegate’s decision is taken to be the decision of Council. Council is therefore bound by a decision, which it may not have made. For this reason, it is important to understand the nature of delegation and have in place appropriate policies and guidelines under which delegations should be exercised.

The Instrument provides that the delegations are subject to any conditions or limitations set out in the Schedule and must be exercised in accordance with any guidelines or policies adopted by Council from time to time.

In addition, the delegate must not act if the matter has previously been designated as an issue which must be the subject of a Council resolution or the decision is likely to be inconsistent with a policy or strategy adopted by Council.

There are two forms of delegation which occur in Victorian Local Government, they are:

- Delegation to Special Committees; and
- Delegation to an Officer of the Council.

This report does not include delegations to Special Committees or the Chief Executive Officer as these have previously been presented directly to Council. Rather, this report relates specifically to direct delegations from Council to Officers.

These delegations are generally of an administrative nature and in diverse, complex organisations such as the Shire, delegations are essential to ensure that the day to day operations of the Council can proceed. This allows Council the opportunity to set policy and the strategic direction of the organisation and allows the Officers to carry out those decisions on behalf of Council.

There are some limitations under certain Acts that whilst they contain specific powers of delegation, they do not contain an express power of sub-delegation. Therefore, it must be assumed that the power of delegation in these instances must come directly from Council to officers rather than by the CEO through sub-delegation.

ISSUES

Delegation of powers is generally considered essential to ensure the day to day operations of the Council can proceed, allowing the elected Council to set policy and the strategic direction of the organisation and Officers to carry out those decisions on behalf of Council. Without substantial and significant delegation processes, Council would not be able to effectively or efficiently manage its workload.

OFFICER DIRECT OR INDIRECT INTEREST

Whilst it is highlighted for transparency that Officers compiling and authorising this report are in some instances the recipients of recommended delegations, these Officers do not have a direct or indirect interest requiring disclosure in accordance with the conflict of interest provisions of the Local Government Act 1989.
CONCLUSION

Suggested changes to the (attached) Instrument of Delegation from Council to Officers reflect legislative and administrative amendments.

RECOMMENDATION

In the exercise of the powers conferred by Section 98(1) of the Local Government Act 1989 and the other legislation referred to in the attached Instrument of Delegation, the Mornington Peninsula Shire Council (Council) resolves that:

1. There be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the attached Instrument of Delegation to Officers, the powers, duties and functions set out in that Instrument, subject to the conditions and limitations specified in that Instrument.

2. The Instrument comes into force immediately the Common Seal of Council is affixed to the Instrument.

3. On the coming into force of the Instrument all previous delegations (27 April, 2015) to members of Council staff, other than the Chief Executive Officer, are revoked.

4. The duties and functions set out in the Instrument must be performed, and the powers set out in the Instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.

5. That the Common Seal of the Mornington Peninsula Shire Council be affixed to the Instrument of Delegation to Officers.

COUNCIL DECISION

Moved: Cr. Fraser
Seconded: Cr. Wood

That the recommendation be adopted.

Carried

VIEW ATTACHMENT 1
4 STATUTORY PLANNING REPORTS

Nil.
5 COUNCILLORS AND DELEGATES REPORTS

At each Council Meeting, all Councillors will have the opportunity to provide an overview of any meetings attended as an appointed representative of Council.

If a Councillor chooses to provide details, the name of the conference/event and the Councillor attending will be noted in the Minutes for that meeting. If a Councillor requires additional information on the conference/event to be included in the Minutes, the Councillor must submit it in writing to Governance by 12:00 p.m. (noon) the day following the meeting.

<table>
<thead>
<tr>
<th>Association/Committee</th>
<th>Representative/s</th>
<th>Substitute Representative/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arts and Culture Advisory Panel</td>
<td>Cr. Antonella Celi</td>
<td>Cr. Lynn Bowden</td>
</tr>
<tr>
<td>Association of Bayside Municipalities</td>
<td>Cr. Bev Colomb</td>
<td>Cr. Anne Shaw</td>
</tr>
<tr>
<td>Audit Committee</td>
<td>Cr. Graham Pittock</td>
<td>Cr. David Gibb</td>
</tr>
<tr>
<td></td>
<td>Cr. Hugh Fraser</td>
<td></td>
</tr>
<tr>
<td>Australia Day Committee</td>
<td>Cr. Anne Shaw</td>
<td>Cr. Bev Colomb</td>
</tr>
<tr>
<td>Bass Park Trust</td>
<td>Cr. Tim Wood</td>
<td>N/A</td>
</tr>
<tr>
<td>Blue Scope Steel Consultative Committee</td>
<td>Cr. David Garnock</td>
<td>Cr. Lynn Bowden</td>
</tr>
<tr>
<td>Community Consultative Committee on Gaming</td>
<td>Cr. Andrew Dixon</td>
<td>Cr. Tim Wood</td>
</tr>
<tr>
<td>Communities That Care (CTC)</td>
<td>Cr. Antonella Celi</td>
<td>N/A</td>
</tr>
<tr>
<td>Friends of Lospalos Community Committee</td>
<td>Cr. Tim Rodgers</td>
<td>Cr. Graham Pittock</td>
</tr>
<tr>
<td>Hastings Community Alliance</td>
<td>Cr. David Garnock</td>
<td>Cr. Lynn Bowden</td>
</tr>
<tr>
<td>Health and Wellbeing Committee</td>
<td>Cr. Antonella Celi</td>
<td>Cr. Bev Colomb</td>
</tr>
<tr>
<td>Inter Council Aboriginal Consultative Committee</td>
<td>Cr. Graham Pittock</td>
<td>Cr. Tim Rodgers</td>
</tr>
<tr>
<td>Interface Councils</td>
<td>Mayor</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Cr. David Gibb</td>
<td></td>
</tr>
<tr>
<td>Literacy Advisory Committee</td>
<td>Cr. Antonella Celi</td>
<td>N/A</td>
</tr>
<tr>
<td>Metropolitan Waste and Resource Recovery Forum</td>
<td>Cr. Graham Pittock</td>
<td>Cr. Andrew Dixon</td>
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</tbody>
</table>
### 5 COUNCILLORS AND DELEGATES REPORTS (Cont.)

<table>
<thead>
<tr>
<th>Association/Committee</th>
<th>Representative/s</th>
<th>Substitute Representative/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mornington Liquor Industry Accord</td>
<td>Cr. Andrew Dixon</td>
<td>Cr. Anne Shaw</td>
</tr>
<tr>
<td>Mornington Peninsula and Western Port Biosphere Reserve Foundation Ltd</td>
<td>Cr. David Garnock</td>
<td>N/A</td>
</tr>
<tr>
<td>Mornington Peninsula Cemetery Trust</td>
<td>Cr. Antonella Celi, Cr. Graham Pittock, Cr. Anne Shaw</td>
<td>N/A</td>
</tr>
<tr>
<td>Mornington Peninsula Regional Tourism Board</td>
<td>Cr. Antonella Celi, Cr. Tim Wood</td>
<td>Cr. Anne Shaw, Cr. David Garnock</td>
</tr>
<tr>
<td>Mornington Railway Preservation Society – Advisory Board</td>
<td>Cr. Andrew Dixon</td>
<td>Cr. Anne Shaw</td>
</tr>
<tr>
<td>Municipal Association of Victoria (MAV)</td>
<td>Cr. Hugh Fraser</td>
<td>Cr. Tim Rodgers</td>
</tr>
<tr>
<td>Municipal Emergency Management Planning Committee</td>
<td>Cr. David Garnock</td>
<td>Cr. Tim Wood</td>
</tr>
<tr>
<td>Peninsula Advisory Committee for Elders (PACE)</td>
<td>Cr. Antonella Celi</td>
<td>Cr. David Garnock</td>
</tr>
<tr>
<td>Peninsula Pet Expo</td>
<td>Cr. Tim Wood</td>
<td>Cr. Antonella Celi, Cr. Anne Shaw</td>
</tr>
<tr>
<td>PORTicipate (Port of Hastings Development Authority) – Stakeholder Engagement Network</td>
<td>Cr. David Garnock</td>
<td>Cr. Lynn Bowden</td>
</tr>
<tr>
<td>South East Metro (SEM)</td>
<td>Mayor</td>
<td>N/A</td>
</tr>
<tr>
<td>South East Water Sewerage Treatment and Environment Protection Community Liaison Committee</td>
<td>Cr. Andrew Dixon</td>
<td>N/A</td>
</tr>
<tr>
<td>Sustainable Communities – Tidy Towns and Clean Beaches Awards</td>
<td>Cr. Bev Colomb, Cr. David Gibb</td>
<td>Cr. Antonella Celi, Cr. David Garnock</td>
</tr>
<tr>
<td>Triple A Housing Committee</td>
<td>Cr. Antonella Celi</td>
<td>Cr. Andrew Dixon</td>
</tr>
<tr>
<td>Victorian Local Governance Association (VLGA)</td>
<td>Cr. Tim Rodgers</td>
<td>Cr. Graham Pittock</td>
</tr>
</tbody>
</table>
Nil.
6 NOTICES OF MOTION

Notices of Motion must be received three (3) clear business days prior to a Meeting.

Nil.
7  URGENT BUSINESS

Under Council's Meeting Procedure and Common Seal Local Law, no business may be admitted as urgent business unless it:

1. Relates to a matter which has arisen since distribution of the Agenda.
2. Cannot because of its urgency, be reasonably listed in the Agenda of the next Council Meeting.
3. Councillors by a majority vote, vote in favour of a matter being dealt with as urgent business.

Nil.
8 CONFIDENTIAL ITEMS

Items following are considered to be confidential.

8.1 Confidential Report
8.2 Leave of Absence – Cr. David Gibb

Prepared By: Joe Spiteri, Manager – Governance
Authorised By: Manager – Governance
Document ID: A6046765
Attachment(s): NO

Officers Present for Item 8.2:

That in accordance with Section 89(2) of the Local Government Act 1989 the Council should resolve to go into camera and close the meeting to the public for the duration of this item as the matter to be discussed relates to a matter which the Council considers may prejudice Council or any other person [Section 89(2)(h)].

MEETING CLOSED TO THE PUBLIC

Moved: Cr. Rodgers
Seconded: Cr. Gibb

That in accordance with Section 89(2) of the Local Government Act 1989, Council resolved to go into camera and close the meeting to the public for the duration of this item as the matter to be discussed relates to a matter which the Council considers may prejudice Council or any other person [Section 89(2)(h)].

Carried

RECOMMENDATION


2. That Council resolves that the report (excluding Council decision) passed in camera be retained as a confidential item pursuant to Section 77(2)(a) and (b) of the Local Government Act 1989 and be placed in a separate minute book for confidential items as it contains information which may prejudice Council or any other person.

3. That Council resolves that the Council decision is not confidential pursuant to Section 77(2)(a) and (b) of the Local Government Act 1989.

Attendance

Cr. Gibb, having declared a Conflict of Interest in relation to this report, left the Chamber prior to consideration and voting on this item and returned after voting on this item was concluded.
8.2 Leave of Absence – Cr. David Gibb (Cont.)

COUNCIL DECISION

Moved: Cr. Wood
Seconded: Cr. Shaw

That the recommendation be adopted.

Carried
8.3 Confidential Report
9 MEETING CLOSE

As there was no further business, the meeting closed at 9:05 p.m.

CONFIRMED THIS 14TH DAY OF SEPTEMBER 2015

..............................................................
MAYOR, CR. BEV COLOMB - CHAIRPERSON