

IN PLANNING PANELS VICTORIA

**‘PART C’ SUBMISSION
ON BEHALF OF THE PLANNING AUTHORITY**

AMENDMENT C243MORN TO THE MORNINGTON PENINSULA PLANNING SCHEME

14 MAY 2025

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INTRODUCTION

1. This submission is made on behalf of Mornington Peninsula Shire Council (**Council**), the Planning Authority under s 8A of the *Planning and Environment Act 1987* (**Act**) for the Mornington Peninsula Planning Scheme (**Scheme**).
2. Council has prepared Amendment C243morn (**Amendment**) at the request of Procter Investments No 2 Pty Ltd (**Proponent**).
3. This 'Part C' submission represents Council's closing submissions to the Panel. It is to be read in conjunction with Council's 'Part A' submission that sets out relevant matters of background to the Amendment, as filed on 23 April 2025 and Council's 'Part B' submission that sets out Council's substantive response to matters raised by submitters, as filed on 8 May 2025.
4. This submission responds to matters that have arisen since Council lodged its 'Part B' submissions. More specifically, it:
 - 4.1. responds to questions asked by the Panel of Council throughout the hearing;
 - 4.2. responds to matters raised by submitters in their written submissions that have not previously been addressed; and
 - 4.3. details the further revisions made as part of Council's 'Day 2' version of Schedule 24 to the Development Plan Overlay.

RESPONSE TO QUESTIONS FROM THE PANEL

ORIGIN OF THE SETBACKS/LANDSCAPE BUFFERS

5. The Panel queried Council as to the origin of the following requirements for the 'Master Plan' that is to be a requirement of the development plan under Schedule 24 to the DPO (**DPO24**):

No development of the land within 30 metres of Lower Somerville Road. These areas are to be used and developed only for the purpose of a landscaped buffer area, or for open space.

A minimum building setback of 50 metres from the Bungower Road frontage, with the first 15 metres of the setback landscaped.
6. Specifically, the Panel queried how the 30 metre and 50 metre setback distances had been arrived at.
7. On Day 2 of the hearing, Council advised the Panel that the setbacks were influenced by the existing planning controls that apply to the surrounding area.
8. More specifically, Council advised that the 50 metre setback requirement from Bungower Road is designed to mimic the 'buildings and works' requirements set out at clause 2.0 of [Schedule 6](#) and [Schedule 7](#) to the Design and Development Overlay (**DDO**).

9. These controls apply within the area immediately east of the land that is the subject of the Amendment (**Subject Land** or **Land**), as depicted in the following extract from 'Map No 9DDO':

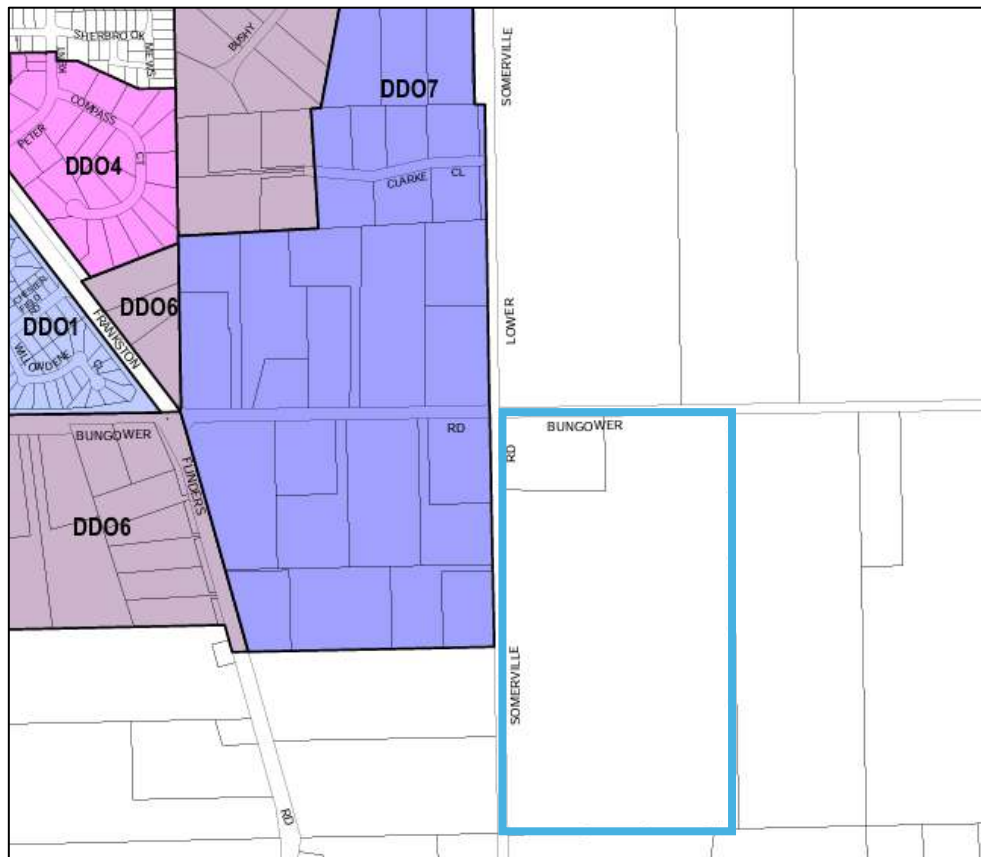


Figure 01 – Extract from Map No 9DDO with Subject Land highlighted in blue.

10. Both Schedule 6 and Schedule 7 to the DDO include the following as a 'general requirements' under clause 2.0:

Buildings and works, including tennis courts and dams must be setback at least:

- 50 metres from the south side of Bungower Road, Somerville;

...

11. The general requirements of these two schedules, including the above quoted requirement, serves as both 'permit triggers' and requirements that an *'application to construct a building or construct or carry out works should meet'*. They are not, however, mandatory requirements, meaning that permit can be granted for their variation.
12. As noted verbally by Council, the intention in replicating this setback under the DPO24 is to achieve a uniform building setback along the southern side of Bungower Road.
13. As it relates to the 30 metre setback to Lower Somerville Road, Council advised the Panel that the setback was determined to be the 'right' setback in order to achieve a built form transition and buffer to the land to the west of Lower Somerville Road that is within the Low Density Residential Zone and Green Wedge Zone.

14. In addition, following further investigations into the origin of this requirement, Council advises that the setback has been based on the setback requirements within [Schedule 1](#) to the Special Use Zone (**SUZ1**) that the Land currently falls within.
15. Clause 4.0 of SUZ1 includes the following as a 'buildings and works' requirement:¹

Setbacks for buildings and works related to specific uses

Buildings and works associated with the uses described in the Buffer Area Table below must be constructed or carried out in accordance with the Table and land within 50 metres of a Residential Zone or Low Density Residential Zone or abutting road must be planted with trees and shrubs to the satisfaction of the responsible authority.

Buffer Area Table

Column 1	Column 2	Column 3
Building & works related to a specific form of port related use	Minimum distance from Residential Zone	Minimum distance from Green Wedge Zone, Farming Zone or Low Density Residential Zone
Building & works related to the processing of chemical and petro-chemical products.	400 m	200 m
The bulk storage of flammable products.	400 m	200 m
The bulk storage of non-flammable products.	200 m	100 m
Buildings & works related to the processing of other products.	200 m	100 m
Other buildings & works	100 m	60 m
Car parks & internal access roads.	60 m	30 m

Figure 02 – Extract from SUZ1.

16. The setback requirement to Lower Somerville Road is intended to replicate the *minimum* setback requirement that is currently applicable to the Land as it relates to land within the Green Wedge Zone or Low Density Residential Zone from the above table (30 metres from 'car parks & internal access roads'. This is as a means of retaining a similar level of amenity and separation to that which adjacent residents currently get the benefit of under the current regime of controls that affect the Land.

COUNCIL'S POSITION ON THE SETBACK VARIATION REQUESTED BY THE PROPONENT

17. The Panel asked for Council's position in response to the request made by the Proponent to vary the 30 metre setback requirement to Lower Somerville Road that is proposed to be included under DPO24.

¹ Noting that the parent provision is clause 37.01-4 of the SUZ, which includes that: 'Any requirement in the schedule to this zone must be met'.

18. Specifically, the Proponent requests the following modification:²

“No development of the land within 30 metres of Lower Somerville Road **adjacent the Low Density Residential Zone with a reduced setback 15m to the land adjacent the Green Wedge Zone.** These areas are to be used and developed only for the purpose of a landscaped buffer area, or for open space.”

19. As submitted on Day 2 of the hearing, Council opposes this change on the basis that:
- 19.1. the setback is required to ensure an appropriate transition and buffer is created to the western side of Lower Somerville Road;
 - 19.2. the achievement of this transition and buffer is equally as important (if not more important) to the Green Wedge Zone land given the development and uses anticipated under this zone; and
 - 19.3. the setback requirement formed part of the exhibited material and residents on the western side of Lower Somerville Road may have elected not to make a submission or participate in the Panel process on the basis of this requirement being included.
20. Council further adds to these submissions that it is a reasonable replication of the existing restriction that applies to the Land and it is a reasonable expectation of residents on the western side of Lower Somerville Road that it be retained for future development.

SCOPE OF THE ECOLOGICAL REPORT

21. The Panel noted that the submission received from the Department of Energy, Environment and Climate Action (**DEECA**) (**Submitter 44**) suggested that the ecological report prepared by the Proponent only considered part of the Land and queried whether a further report had been provided.
22. The Panel's query relates to the following comment within Submission 44:
- c) The EANVMP must include a field assessment of 83 Bungower Road, which was not conducted when preparing the EECR.
23. In response, Council advises that the ecological report produced by the Proponent did not include field work for 83 Bungower Road, as advised within the report:³
- The property in the north west corner of the study area comprises the parcel 1/LP200254 at 83 Bungower Road. The property was not accessible at the time of the field survey, and any data collected was estimated by observing from the adjacent property.
24. However, the report does otherwise include the entirety of the Subject Land within its study area, relying on external observations as it relates to 83 Bungower Road.
25. Council is of the view that the level of fieldwork that informed the ecological report is sufficient for the preliminary stage that this report was prepared for, noting that a further report is required as a provision of the DPO24.

² Submission on Behalf of the Proponent, 9 May 2025, 64.

³ *Existing Ecological Conditions Report for proposed Mornington Peninsula Technology, Industry & Business Park*, Ecology and Heritage Partners, April 2022, 5.

CONSIDERATION OF IMPACTS TO FAUNA

26. The Panel asked for Council's position with respect to impacts to fauna, being a matter raised by a number of submitters to the Amendment.
27. Council directs the Panel's attention to its officer's response to submissions, as included within the agenda of the Council meeting held on 25 February 2025, that includes the following under the response to submission theme '5.4 *Negative impacts of tree removal on habitat for local species*':⁴

Some submitters have observed wedge tailed eagles in the area and are concerned with the impact on their habitat.

Under the *Wildlife Act 1975*, all wildlife (generally defined as native fauna) is protected from being hunted, taken, or destroyed, and other similar offences in Part VII of the Act. The penalties for offences are increased for wildlife that is threatened (listed in the Threatened List under section 10(1) of the *Flora and Fauna Guarantee Act 1988*).

Wedge tailed eagles are not a threatened species listed under the *Flora and Fauna Guarantee Act 1988*, and the conservation status of this species is assessed as being of 'least concern' by the International Union for the Conservation of Nature Red List of Threatened Species.

Further, the Wildlife Act does not make provisions for the management or protection of land that is not declared (under the Act) as a wildlife sanctuary, prohibited area, a state wildlife reserve, nature reserve, or the like. Therefore, the Wildlife Act does not apply to the management or protection of the subject site.

The DPO24 also requires a S 173 agreement for the:

Provision for the ongoing protection of vegetation with high biodiversity value in accordance with the recommendations of the approved Native Vegetation Management Plan.

28. Further, Council notes that the ecological report produced by the Proponent addresses the existing conditions of the Subject Land and surrounds as it relates to fauna.
29. The report concludes that whilst '*[c]ommon native mammal and bird species are considered likely [to use the trees on the Subject Land] for refuge and foraging purposes*',⁵ 'significant fauna species' and either have a 'low' likelihood or are 'unlikely' to be found within 10 kilometres of the Subject Land.⁶
30. In addition to the above mentioned requirement for the agreement, DPO24 also includes the following requirements as part of the 'Ecological Assessment and Native Vegetation Management Plan' that is to form part of the development plan:

The identification and assessment of the ecological value of flora, fauna and habitat areas on the land.

Recommendations for the retention, conservation and management of native vegetation.

⁴ Agenda, Attachment Book 1, 306-307.

⁵ *Existing Ecological Conditions Report for proposed Mornington Peninsula Technology, Industry & Business Park*, Ecology and Heritage Partners, April 2022, 20.

⁶ Ibid 32-40.

31. Council submits that the preliminary assessment included within the ecological report suggests that there are no fauna-based reasons that the Amendment should not proceed and that the Amendment has, at any rate, built in appropriate mechanisms to address any potential impacts to fauna.
32. It is relevant to again observe at this stage that the Amendment does not necessarily facilitate anything more than what can currently be done on the Land as it relates to development and uses that *may* impact on fauna. This is a relevant matter to note when considering potential impacts to fauna.

CONSIDERATION OF THE DANDENONG INDUSTRIAL PRECINCT

33. The Panel queried Council's position on potential impacts to the Dandenong Industrial Area and whether Council had notified Greater Dandenong City Council about the Amendment.
34. Council advises that Greater Dandenong City Council was not notified of the Amendment, with notification to other municipalities limited to immediately adjoining municipalities only.⁷
35. As it relates to impacts to industrial land within Dandenong, Council relies on:
 - 35.1. the *Melbourne Industrial and Commercial Land Use Plan* as indicating that the 'Southern Region' (which includes both Greater Dandenong City Council and Mornington Peninsula Shire Council) will experience shortfalls of industrial land in the near future;⁸ and
 - 35.2. the evidence of Mr Haratsis, as adduced by the Proponent, that suggests there will be no detrimental impacts to this land from the Amendment.

PRIORITISATION OF LOT SIZES

36. The Panel flagged that some of the further investigations required by the DPO24 might result in a reduced development yield and queried whether Council had a view as to which lot sizes should be prioritised and whether there was a mechanism in place to ensure that any prioritisation is realised.
37. Council advises that the intention is to prioritise larger lots and submits that there are appropriate mechanisms in place throughout the proposed policy at clause 17.03-2L and through DPO24 to ensure that this occurs.
38. Under the proposed clause 17.03-2L, this includes the following objective:

To avoid use and development that would limit the availability of land for larger scale industrial uses, or which would be more appropriately located in an activity centre.

and the following strategies:

Ensure subdivision and development provides larger lots and premises that can accommodate larger scale technology-based industries, manufacturing, research and development.

⁷ Frankston City Council (**Submitter 104**) and Casey City Council (**Submitter 109**).

⁸ Department of Environment, Land, Water and Planning, 2020, 88-89.

Discourage uses that would be incompatible with or limit the opportunities available for larger scale technology-based industries, manufacturing, research and development.

Discourage the creation of vacant lots with an area of less than 2,000 square metres which may limit the availability of land for larger scale uses

39. DPO24 requires a 'Subdivision and Development Plan' as a component of the 'Master Plan' that will form part of the development plan. The 'Subdivision and Development Plan' seeks to facilitate a 'diverse range of lots' between 2,000 square metres and 10,000 square metres and above, includes the following as it relates to encouragement for larger lot sizes:⁹

Provision of at least half the developable land for the creation of lots with an area of 5,000 square metres or greater.

...

Limited provision of smaller premises and associated subdivision into smaller lots may be considered as part of the overall Master Plan.

No lots with an area of less than 2000 square metres located adjacent to Bungower Road or on the main internal roads serving the precinct.

Provisions to ensure that the majority of lots created with an area of more than 5000 square metres will be retained as larger lots suitable for larger premises and not further subdivided or developed for buildings with a floor area of less than 500 square metres.

CFA'S POSITION ON AMENDMENT

40. The Panel queried whether the updated fire risk report produced by the Proponent had been provided to the CFA and whether the CFA had provided an updated submission in response. It was particularly queried with relation to the 'perimeter road' previously required by the CFA.
41. Council submitted verbally at the hearing that the CFA has advised that it considers its submission to be 'resolved'. The following provides further explanation to this submission.
42. The initial submission received from the CFA (**Submitter 112**), including the following requirement:

The provision of a perimeter road within the subject land along the eastern and southern boundaries between the grassland hazard to the east and the scrub to the south.

43. The submission from the CFA was informed by the 'Clause 13.02-1S Assessment' produced by the Proponent.¹⁰
44. In response, the Proponent prepared an updated fire risk assessment – Review of CFA Submission to Amendment.¹¹ Following further discussions, the Proponent also produced the following plan (utilising a concept design as a base) that showed an alternative to a 'perimeter road', effectively consisting of access tracks between and around buildings along the southern and eastern boundaries to provide access for emergency vehicles to these boundaries:

⁹ Including changes made in Council's 'Day 2' version of DPO24.

¹⁰ Fire Risk Consultants, February 2022.

¹¹ Fire Risk Consultants, 16 August 2024.



Figure 03 – Concept ‘Internal Continuous Accessway’ Plan prepared by Proponent.

45. The above plan was provided to the CFA on 1 November 2024 by the Proponent.
46. In response to this plan and further requirements to be included within DPO24 proposed by Council in response to the CFA’s submission, as picked up in the ‘Council resolution’ version of DPO24 and including requirements to give effect to the concept plan produced by the Proponent, the CFA advised on 20 November 2024 that it considered it’s submission to be ‘resolved’.

CONSULTATION WITH PIPELINE AUTHORITIES

47. The Panel queried whether, in response to the three submissions received from the pipeline operators and regulators, Council had undertaken further consultation with these submitters or how it had otherwise reconciled the contents the three submissions.
48. The submissions received from pipeline operators/regulators were:
 - 48.1. Viva Energy Australia (**Submitter 61**);
 - 48.2. Esso Australia (**Submitter 96**); and
 - 48.3. Energy Safe Victoria (**Submitter 110**).
49. In response to these submissions, Council effectively adopted the recommendations of Energy Safe Victoria and included ‘Major Pipeline Infrastructure’ requirements as part of the

development plan under DPO24,¹² though made some modifications to the drafting of these requirements.

50. Importantly, this provision builds in some of the requirements also requested by Viva and Esso and include performance based measures for sensitive uses that are allowable under the Industrial 3 Zone.
51. Insofar as further consultation, Council advises that:
 - 51.1. Energy Safe Victoria advised on 31 January 2025 that it was comfortable with the requirements included in the 'Council resolution' version of DPO24 in response to its submission;
 - 51.2. Viva and Esso were sent correspondence regarding the 25 February 2025 Council meeting including reference to the proposed changes made through the 'Council resolution' version of DPO24 and opted not to respond.

AMENITY IMPACTS FROM BUILT FORM

52. The Panel asked what Council's view was with regard to amenity impacts from future proposed built form.
53. In response, Council verbally submitted that amenity impacts from future built form would be:
 - 53.1. managed by the requirement for a 'Development Design Guidelines' to form part of the development plan under DPO24; and
 - 53.2. appropriately mitigated by a number of features built into DPO24, including via the aforementioned building buffers from Bungower Road and Lower Somerville Road.

RELATIONSHIP BETWEEN THE DPO24 AND SCO10

54. The Panel queried whether there are any inconsistencies between DPO24 and the existing Special Control Overlay, Schedule 10 (**SCO10**), being the control that facilitates the 'Sealite Development'.¹³
55. In response, Council submits that there is no inconsistency between the two controls. Instead, these controls are envisioned to work hand-in-hand to facilitate the future development of the Land.
56. Importantly, DPO24 is not intended to replace SCO10, with SCO10 remaining as the relevant development approval for the Sealie Development, noting that:
 - 56.1. Planning Permit P14/1846, issued by Council on 9 July 2015 to facilitate the Sealite Development, expired on 9 July 2022 as development under the permit did not commence; and
 - 56.2. the control included within SCO10 has recently been approved for extension by Council and will now expire if development has not commenced by 11 March 2028.

¹² Reconfigured to a 'Major Pipeline Infrastructure Plan' in Council's Day 2 version of DPO24.

¹³ As outlined at [33], [42]-[45] and [92]-[96] of Council's Part A submission.

57. DPO24 has been designed to facilitate the 'anchor' tenant in the location of the Sealite Development and, with the exception of some minor matters that can be readily addressed via amendments to the plans under SCO10,¹⁴ otherwise includes no requirements that conflict with the development facilitated under SCO10.
58. The manner in which the DPO24 accounts for SCO10 is reflected in the 'Staging Plan' required as part of the development plan, which includes the following requirement:

That, except with the approval of the responsible authority, the development of 79 Bungower Road (part lot 2, LP200254), as approved under Special Control Overlay 10 (SCO10), must be included in the first stage of the development, and must be commenced, with a commitment to completion to the satisfaction of the responsible authority, before the issue of any statement of compliance for further subdivision of the land within the precinct.

RESPONSE TO SUBMITTERS

SUBMITTER 92

59. The written submission received by Submitter 92, dated 9 May 2022, raises a number of matters that it is necessary for Council to respond to.
60. First, it suggests that Council was incorrect to characterise Submitter 92 as being 'in support' of the Amendment. Council notes that the initial submission received from Submitter 92, dated 12 May 2023, states twice throughout the submissions that *'we are completely in favour of the proposal'*.
61. Second, it suggests that the Amendment should not proceed on the basis that interest from potential industrial tenants for the Land has not been secured or demonstrated.
62. Council submits in response that this proposition is hypothetical and, at any rate, largely immaterial to the manner in which the Amendment is to be considered.
63. The questions of need or of the strategic basis for an Amendment are not to be informed by whether there is demonstrated interest in particular land for such purposes.
64. Strategic planning operates at a wider level. It is to be informed by whether there is a sufficient strategic basis, including by whether there is a need for more of a particular type of land.
65. Council relies on the wealth of strategic material set out within its 'Part A' submission, along with the evidence of Mr Haratsis, that demonstrates that there is a serious need for more industrial land, both within Melbourne more broadly and within the Peninsula more specifically. This is what establishes the strategic basis for the Amendment (in part).
66. Any suggestion that there is a need to demonstrate specific interest in this land from industrial tenants would be akin to suggesting that a residential re-zoning should not proceed unless specific residents can actually be secured prior to the re-zoning occurring. It goes beyond what is required to be considered, and what can reasonably be considered, in assessment of an amendment.

¹⁴ Noting that condition 6.5 under the relevant incorporated document allows amendment to plans via 'secondary consent'

67. Further, as noted within Council's 'Part B' submissions, industrial land is a valuable commodity for the State and should be supported where the opportunity arises, even if a need is not necessary demonstrated at that given time (which is not the case here).
68. More generally, Council queries whether this submission should be attributed to Submitter 92 (as opposed to being treated as a late submission), noting that the original Submission 92 was filed on behalf of the 'Somerville Business Group Inc.' and the written submission for the hearing now appears to be filed in a personal capacity.

'DAY 2' REVISIONS TO DPO24

69. As flagged throughout the hearing, Council has sought to make further revisions to DPO24. Circulated alongside these submissions is a 'Day 2' version of DPO24 that includes further changes over those previously shown in Council's 'Day 1' version of this control.
70. Those changes are generally explained as follows:
 - 70.1. revisions to respond to the Ministerial Direction VC281¹⁵ and Planning Practice Note PN23¹⁶, including:
 - 70.1.1 simplifying the objectives at clause 1.0;
 - 70.1.2 removing additional parameters and superfluous requirements that were to apply to the grant of a permit prior to approval of a development plan at clause 2.0;
 - 70.1.3 converting the bushfire related matters from conditions to requirements (given they lacked the requisite certainty for conditions); and
 - 70.1.4 drafting modifications, including full stops at the end of each point and spelling out of units of measurement;
 - 70.2. revisions to ensure that requirements 'follow from' the provision that they sit beneath;
 - 70.3. revisions to remove redundant language; and
 - 70.4. revisions to ensure consistency in language.
71. Further comments have been included in the 'Day 2' DPO24 to denote the above changes as 'Day 2' changes.

CONCLUSION

72. Council thanks the Panel for consideration of these matters and the Amendment more broadly and looks forward to the Panel's recommendations with relation to these matters.

¹⁵ The Form and Content of Planning Schemes.

¹⁶ Applying the Incorporated Plan and Development Plan Overlays.

73. This concludes Council's submissions to the Panel.

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JACKSON LANE LEGAL

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on behalf of the Planning Authority

14 May 2025