



**MORNINGTON
PENINSULA**
Shire

MINUTES

PLANNING SERVICES COMMITTEE MEETING

MONDAY, 17 FEBRUARY 2020

7.00PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL

WARDS AND COUNCILLORS

Briars	Cr Rosie Clark Cr Bev Colomb Cr Sam Hearn
Cerberus	Cr Kate Roper
Nepean	Cr Hugh Fraser Cr Bryan Payne
Red Hill	Cr David Gill
Seawinds	Cr Simon Brooks Cr Antonella Celi Cr Frank Martin
Watson	Cr Julie Morris

SENIOR LEADERSHIP TEAM

Mr John Baker Ms Jenny Van Riel Mr Mark Brady Mr Niall McDonagh Mr David Bergin	Chief Executive Officer Director – Communities Director – Corporate Services Director – Place Director – Planning and Building
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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.

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	PROCEDURAL MATTERS.....	4
1.1	Apologies	4
1.2	Disclosure of Conflicts of Interest Pursuant to Section 79 of the <i>Local Government Act 1989</i>	4
1.3	Confirmation of Minutes	4
2	STRATEGIC PLANNING REPORTS.....	5
2.1	Feedback on Department of Environment, Land, Water and Planning's Proposed Draft Buffer Area Overlay.....	5
3	PLANNING SCHEME AMENDMENT REPORTS.....	11
3.1	Proposed Planning Scheme Amendment - Tyabb Airfield and Environs	11
3.2	Planning Scheme Amendment C270 Authorisation - Rezoning of Land Outside the Urban Growth Boundary from Special Use Zone - Schedule 2 to Green Wedge Zone - Schedule 3.....	19
4	STATUTORY PLANNING REPORTS	23
4.1	Planning Application P15/0774.03 - 474-475 Esplanade, Mount Martha	23
5	NOTICES OF MOTION	33
5.1	Notice of Motion 222 (Cr Gill)	33
5.3	Notice of Motion 229 (Cr Gill)	37
6	URGENT BUSINESS	40
7	CONFIDENTIAL ITEMS.....	40
8	MEETING CLOSE.....	41

1 PROCEDURAL MATTERS

Meeting opened at: 7.02pm.

Appointed Chairman: Cr Bryan Payne

Present

Cr Bryan Payne
Cr Simon Brooks
Cr Antonella Celi
Cr Bev Colomb
Cr Hugh Fraser
Cr David Gill
Mayor, Cr Sam Hearn
Cr Julie Morris
Deputy Mayor, Cr Kate Roper

1.1 Apologies

Cr Rosie Clark
Cr Frank Martin

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

Nil.

1.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of previous Planning Services Committee held on 16 December 2019, be confirmed.

COMMITTEE DECISION

Moved: Cr Roper
Seconded: Cr Colomb

That the recommendation be adopted.

Carried

2 STRATEGIC PLANNING REPORTS

2.1 Feedback on Department of Environment, Land, Water and Planning's Proposed Draft Buffer Area Overlay

Prepared By	Sandy Ribic, Strategic Planner
Authorised By	Director - Planning and Building
Document ID	A9547207
Attachment(s)	<ol style="list-style-type: none">1. Proposed draft Buffer Area Overlay2. Mornington Peninsula Shire's Submission to Major Hazard Facilities Advisory Committee3. Council Report 16 December 2019

PURPOSE

The purpose of this report is to seek endorsement of the Mornington Peninsula Shire's (the Shire's) submission to the proposed draft Buffer Area Overlay (draft BAO).

BACKGROUND

The Department of Environment, Land, Water and Planning (DELWP) is currently seeking feedback on a proposed draft BAO (Attachment 1). The proposed overlay has been developed as part of the Planning for Buffers and Separation Distances Project (the Project). The project responds to the recommendations provided by the Major Hazard Facilities Advisory Committee (the MHFAC).

In September 2015, the Minister for Planning established the MHFAC *to provide advice to the Minister for Planning about improvements to land use planning for areas surrounding major hazard facilities (MHFs), in order to better manage the interface areas between existing and new development and land use for MHFs*. The MHFAC undertook an extensive consultation process, which included the release of a Discussion Paper for public comment in late 2015-early 2016. The Discussion Paper was prepared based on preliminary consultation undertaken with key stakeholders and identified the need for an extensive review into the planning system relating to buffers and separation distances.

The Shire made a submission to the Discussion Paper on 9 February 2016 (Attachment 2). Two registered MHFs are located within the municipality of the Shire – United Petroleum and Esso Australia Pty Ltd.

The submission acknowledged the significant weaknesses in the current planning system and provided suggested improvements. Specifically, the submission suggested the following:

- A new Major Hazard Zone to be applied to MHFs and any surrounding land where it is deemed that population density ought to be restricted for safety reasons;
- All hazardous pipelines to have the option of the new Major Hazard Zone being applied where warranted (i.e. land is owned by relevant pipeline company or there is a need to prohibit sensitive land uses on particular land that is owned by others). For other pipelines, a Pipeline Hazard Overlay would be appropriate. If possible, it should include standard development requirements that avoid the need for referrals and provide greater certainty about acceptable development; and

2.1 (Cont.)

- A new Ministerial Direction for applying the Major Hazard Zone and the Major Hazard Zone schedules; Major Hazard Overlays and Public Acquisition Overlay (PAO) for Major Hazard purposes.

The MHFAC released the Final Report on 19 July 2016 which made 17 recommendations to the Minister for Planning recommending improvements to land use planning for areas surrounding MHFs.

The need for the draft overlay was flagged during recent public consultation on proposed updates to the Planning Policy Framework and *Clause 53.10 – Uses with adverse potential*. The proposed updates aim to strengthen policy for managing buffers, clarify how industries and other uses need to respond to the potential for off-site impacts and include up to date standards and guidelines.

The Shire made a submission to this review which was endorsed by the Planning Services Committee on 16 December 2019 (Attachment 3). The submission provided comments relating to greater consistency relating to planning policy for buffer and separation distances.

DISCUSSION

Currently, planning approaches to buffer and separation distances are complex and inconsistent. The proposed draft BAO aims to strengthen planning tools to better manage land use and development in areas potentially affected by a range of health and safety impacts from industry and other uses. The overlay will be introduced into the Victoria Planning Provisions as an available planning tool for ensuring land use compatibility. The draft BAO will include a schedule that can be applied to ensure that new use and development within the buffer area is compatible with potential off-site impacts. The overlay:

- Addresses encroachment of incompatible uses;
- Can be tailored to protect different industrial or other uses through schedules;
- Requires an evidence base; and
- Can only be used if the required criteria are met.

Prior to application of the proposed draft BAO, the following steps would need to be followed to ensure appropriate use and application of the tool.

1. Criteria for Use

It is proposed that the draft BAO can only be applied when an industry or other use meets the following criteria. The use must be compliant with relevant regulations and standards, such as those of the Environmental Protection Agency Victoria (EPA), Worksafe and other regulatory authorities. This could include:

- Licences issued under the *Environment Protection Act 2017*;
- Planning and building permits;
- State Environment Protection Policies;
- Siting, design, operation and rehabilitation of landfills; and
- Dangerous goods and occupational health and safety regulations.

2.1 (Cont.)

The proposed draft BAO is designed to only protect industries and other uses that meet relevant regulations and standards. The overlay is not an alternative to controlling impacts from uses at the source. The use must have potential for off-site impacts on safety or human health.

The current zoning must have the potential to provide for incompatible use and development to occur (either with or without a permit) within the defined buffer. The proposed draft BAO should only be applied where incompatible use and development is not already adequately controlled by current zoning. For example, if an incompatible use is listed as section 1 or section 2 under a zone, it may be appropriate to apply the draft BAO. This ensures the overlay is not only used to regulate where needed and is not applied simply to identify a use.

2. Information Required

When considering the application of the proposed draft BAO, the following information would be required to demonstrate the need for the overlay and justify the application of planning requirements:

- A statement of risk for the buffer area that identifies the potential off-site human health or safety impacts of the industry or other use;
- The spatial extent of relevant off-site impacts on human health or safety, such as blast, hazardous air pollutants, noise or odour (reflecting current or approved operations), i.e. the buffer area;
- Objectives to be achieved for the buffer area;
- How proposed land uses need to be managed or prohibited (if necessary);
- How proposed buildings and works need to be managed or prohibited (if necessary);
- How proposed subdivision needs to be managed or prohibited (if necessary);
- What information will need to be provided with permit applications, i.e. application requirements; and
- Whether the views of any agencies are required to inform decision-making.

A proponent would need to seek the advice of relevant expert agencies, such as the EPA, on the above information. It will be important for councils, industry operators and regulatory agencies to work together to develop and endorse the evidence base supporting application of the overlay.

3. Prepare Overlay Schedule

The information required (as indicated above) would be needed to prepare a schedule to the proposed draft BAO.

Requirements for use and development identified by relevant expert agencies should be built into the schedule to the overlay where possible, rather than left for referral on a case by case basis. For example, rather than referring applications for land use proposals that will always be opposed by referral authorities, these land uses should be prohibited through the schedule to the overlay.

2.1 (Cont.)

Responding to change over time

The nature of industrial activities may change over time due to modified operations, improvements in technology and changing practices. Industries with potential off-site impacts may also close or relocate. BAOs would need to be reviewed regularly to ensure they still reflect the risk profiles of the land uses they are applied to. Review of BAOs could involve changes to mapping, ordinance or both. This could form part of regular planning scheme reviews conducted by councils. The draft BAO should be implemented to reflect the potential off-site impacts of current industry operations. Later proposals to expand industry operations will often need to respond to Clause 53.10 of the Victoria Planning Provisions.

ISSUES

DELWP has requested feedback from a range of stakeholders via email by 17 February 2020. This feedback will be used to further develop and inform future decisions with regard to the draft overlay. Council's recommended response is outlined below:

- **Are there other relevant regulations and standards that land uses should be compliant with to use the proposed overlays?**

It is considered appropriate for the draft BAO to apply only when an industry or other use meets the listed criteria. Any use that does not comply with the criteria should not be considered for application of the draft BAO.

Further clarification is required as to how the EPA's Recommended Separation Distances for Industrial Residual Air Emissions Guideline relates to the criteria and how it should be considered when considering application of the draft BAO (noted this document is a guideline only).

- **'Impacts on safety or human health' is a broad term. How would you interpret these impacts? Should the proposed overlay also cover significant amenity impacts? If so, how would you define significant amenity impacts?**

It is agreed that 'impacts on safety or human health' is a broad term and should be more clearly defined. This could be interpreted in a number of ways including any impact on amenity as a result of the use or development.

It would be considered useful for the overlay to also cover more specific significant amenity impacts such as dust, noise and odour. Guidance as to how this is measured/assessed and level of risk would also be required to be set by the EPA.

The definition of sensitive uses remains unclear. It would be considered useful to include a consistent definition in the Victoria Planning Provisions.

- **Do you agree that the proposed overlay should only be applied where current zoning within an identified buffer could allow incompatible uses to establish (either with or without a permit)? Should the proposed draft BAO apply in other instances, and if so, for what reason?**

After reading through the criteria, is it clear when the proposed overlay should be used?

It is agreed that the overlay should be applied where incompatible uses could be allowed, with or without a permit. Further clarification is required as to how these incompatible uses are determined.

2.1 (Cont.)

Following review of the overlay, it is unclear where the overlay should be used or applied. Further clarity is required with regards to the following:

- Does the overlay apply to the facility itself or the buffer area only;
- Can the overlay apply to high pressure gas pipeline hazard areas; and
- How will sensitive interfaces be treated – for example, can the overlay be applied to existing sensitive uses such as land in a Residential Zone and if so, will restrictions be placed on use and development.

- **Is the information required to prepare a schedule to the proposed overlay appropriate? Is there anything missing?**

It is considered imperative for the views of relevant expert agencies, such as the EPA and Worksafe, to be sought and considered through the process. This should be clearly stated in the information required criteria.

A Statement of Risk is proposed to be required to justify the application of the proposed draft BAO. Further clarification is required as to who will prepare this statement (i.e. Is Council required to source a statement of risk from a relevant environmental/risk professional).

- **Does the structure of the proposed overlay and schedule make sense?**

It is considered that the structure of the proposed overlay and schedule makes sense and that full notice and review requirements should be applied, without any exemptions.

The overlay requires that an application must be accompanied by any information specified in a schedule. Council may be limited in resources to review and assess the technical information. It may be useful for the EPA and/or Worksafe to review the information and provide their technical advice to Council. This will also ensure consistency in advice across all Councils within the state that meet the criteria to introduce the proposed draft BAO.

Further clarification is required about the overlay's relationship with *Clause 53.10 – Uses with Adverse Amenity Potential* and how the two provisions will work together.

- **Has the Environmental Significance Overlay (ESO) been an effective tool to manage buffers? Do you see the proposed draft BAO as an effective replacement control for the ESO to identify and control land within buffers?**

Currently, Mornington Peninsula Planning Scheme does not utilise the ESO for buffer areas.

Design Development Overlay – Schedule 8 (DDO8) (Pipeline Policy Area) applies to buffer distances from Oil and Gas Pipeline within the Mornington Peninsula municipality. Although it is now considered that the existing provisions of the schedule are outdated and have no effect on decision making due to the Major Hazard Facilities Advisory Committee report and *Pipelines Act 1967* affording protection to the pipelines.

OFFICER DIRECT OR INDIRECT INTEREST

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

2.1 (Cont.)

CONCLUSION

Currently, planning policy for managing land use between industries and sensitive uses is complex and inconsistent. The draft BAO is considered an appropriate and effective tool to identify buffer areas and reduce land use conflict between existing industry and proposed sensitive uses. Further clarification is sought and comments made with regard to the application of the overlay and how it will be used.

RECOMMENDATION

That the Planning Services Committee endorses the submission to the Department of Environment, Water, Land and Planning regarding the proposed draft Buffer Area Overlay, as outlined in this report.

COMMITTEE DECISION

Moved: Cr Colomb

Seconded: Cr Celi

That the Planning Services Committee endorses the submission and forward to the Department of Environment, Water, Land and Planning regarding the proposed draft Buffer Area Overlay, as outlined in this report.

Carried Unanimously

3 PLANNING SCHEME AMENDMENT REPORTS

3.1 Proposed Planning Scheme Amendment - Tyabb Airfield and Environs

Prepared By	Allan Cowley, Manager – Strategic Projects
Authorised By	Director - Planning and Building
Document ID	A9569411
Attachment(s)	<ol style="list-style-type: none">1. Draft Special Use Zone 3 Provisions2. Draft Design Development Overlay 29 Provisions3. Draft Explanatory Report

PURPOSE

The purpose of this report is to outline a number of issues relating to Special Use Zone – Schedule 3 (SUZ3) – Airfield Development within the Mornington Peninsula Planning Scheme and related matters. It is also proposed to implement a number of recommendations from the adopted Tyabb Airfield Precinct Plan, which are to provide greater protection for the airfield and ensure a balanced long term planning approach is put in place for both the airfield and the community.

The report notes that there are a number of anomalies in the zone provisions which could prevent the consideration of applications to consolidate and improve the existing permits for the site.

Equally, the existing SUZ lacks clear requirements for an Airfield Master Plan and there are further opportunities to update the zone provisions to provide greater clarity and certainty for both the airfield operators and the community.

Finally, the current planning provisions do not address the need for development controls on land in the vicinity of the airfield, having regard to noise exposure, the need to avoid the construction of buildings or other structures that may create obstacles and to minimise risks in the event of accidents during take-off and landing.

The report concludes with a recommendation to seek authorisation to exhibit a Planning Scheme Amendment replacing the existing SUZ3 schedule with a new schedule (refer Attachment 1) and introducing a new Design and Development Overlay (refer Attachment 2) over land potentially affected by higher noise levels and which will also address the issue of height limits in proximity to the airfield and the creation of Public Safety Areas, as recommended in the Tyabb Airfield Precinct Plan.

BACKGROUND

The Tyabb Airfield Precinct Plan (TAPP), adopted by Council in December 2017, frames the challenge in relation to the Tyabb Airfield as achieving ‘sustainable co-existence’ between the airfield and the Tyabb township/residential areas. This includes providing greater clarity and certainty for both residents and the operators of airfield.

Council’s most recent actions have also sought to resolve some of the long standing uncertainties regarding the range of use conducted at the airfield and the interpretation of the conditions contained in previous planning permits.

In this context, Council has advised the owners and operators of the airfield, the Peninsula Aero Club (PAC), that the current approvals only allow the use of the site as an authorised

3.1 (Cont.)

landing ground and not as an airport, airfield, flying school, transport terminal (which includes a heliport) or place of assembly/major sports and recreational facility. There is also no existing approval for the east/west landing strip.

Subsequently, there have been discussions with the PAC in regard to the Club making applications for a number of the currently unauthorised uses, and at the same time clarifying and modernising the conditions under which the airfield operates.

As part of this process, the current planning scheme controls have been reviewed to establish whether there are any barriers to the consideration of an updated and consolidated planning permit.

This review has revealed that there are a number of anomalies in the zone provisions that would prevent the consideration of future applications. There are also further opportunities to update the zone provisions to provide greater clarity and certainty for both the airfield operators and the general community, particularly through establishing clear requirements for an Airfield Master Plan (as recommended in the TAPP).

While this report does not seek to pre-empt any possible legal actions by either the PAC or Council, it is considered that agreement with the PAC to proceed through a planning application and/or planning permit variation process, with an opportunity for public consultation, submissions and review by the Victorian Civil and Administrative Tribunal (VCAT) (if required), would be a more constructive approach. It is therefore important that the anomalies in the current planning controls are addressed.

SPECIAL USE ZONE 3 – AIRFIELD DEVELOPMENT – CURRENT ANOMOLIES

The current anomalies in the SUZ3 Zone provisions appear to have resulted from a number of changes that have occurred over time. The key points in this history may be summarised as follows:

- The initial approval for use of the Tyabb site (permit no. 2) was granted by the Minister for Local Government in 1965 under the provisions of the Shire of Hastings Interim Development Order (IDO). The IDO was a blanket control, requiring approval for all use and development;
- Permit no. 2 approved the use and development of the site as an authorised landing ground, however this use was not defined. The permit included only four conditions including a weight limit on aircraft taking off and landing of 4,500 pounds (2,041 kilograms);
- Permit no. 72 was issued in November 1972 under the Hastings IDO (at the direction of VCAT) allowing no more than 10 movements per day by aircraft with an all up weight no greater than 12,500 pounds (5,670 kilograms). This permit also refers to the use of the site as an authorised landing ground;
- The original SUZ for the site was introduced in 1981 as part of the Hastings Port Industrial Area Planning Scheme (the Port Plan) prepared by the Western Port Regional Planning Authority;
- Under the original SUZ an Airport was listed as a use requiring a planning permit and was defined as: *any aircraft landing ground and ancillary ground facilities and buildings, whether or not authorised or licensed by the Department of Transport, which are used for the landing and take-off of aircraft for commercial purposes, pilot training or aero club purposes;*

3.1 (Cont.)

- Despite this provision, the PAC never applied for a new use permit (for an Airport) and so continues to effectively operate under the permits granted for an authorised landing ground;
- The fact that the planning scheme definition of Airport in 1981 referred to an aircraft landing ground and included a further range of uses did not automatically extend approval of these additional uses to the Tyabb site;
- Equally, the fact that no application has been made for the use of the land as an Airport also means that there has been no comprehensive review of the conditions under which the Tyabb site operates since 1965;
- Permit No. P91/7308 issued in 1991 for extension of the runway and continues to refer to the use of the site as an authorised landing ground;
- Subsequent changes to the planning scheme through the period of local government amalgamation (1995) and the introduction of State wide planning provisions (the VPP) in 1999, has resulted in there no longer being any separate definition of Airport (or airfield) in the current Planning Scheme;
- Airport is instead included under the definition of Transport terminal. In turn, Transport Terminal is defined as: *Land used to assemble and distribute goods or passengers. It includes facilities to park and manoeuvre vehicles. It does not include a Tramway;*
- Unfortunately, this definition does not appear to address the way in which the site at Tyabb is actually being used, which is primarily as a recreational airfield, with a significant pilot training school (more than 90% of aircraft movements are associated with pilot training) and a number of aviation related businesses, but with no regular passenger service or substantial freight facilities;
- Accordingly, the use of land for a recreational airfield, with pilot training facilities, is considered to be an unspecified use, otherwise known in the planning system as an 'innominate use';
- In some zones, such as the Commercial 1 and Industrial 3 Zone, there is provision for consideration of innominate uses, however this has never been the case in SUZ3, where innominate uses have always been prohibited;
- As a further complication, the current provisions of the SUZ indicate *that any use not in column 1 (permitted) or 3 (prohibited) are prohibited*, which arguably prohibits all of the uses included in column 2, which are intended to be permissible; and
- Due to the lack of a relevant use definition and the prohibition on innominate uses it is considered that Council could not currently consider an application to increase the level of use at Tyabb from an authorised landing ground to an airfield with a pilot training school as a core element.

DISCUSSION

Both the lack of airfield as a permissible use in the SUZ3 – Airfield Development Zone and the current wording of the innominate uses clause are considered to be unintended errors.

Unfortunately, the correction of these errors is not straightforward, due mainly to the way in which Airport is now effectively defined in the VPPs as a form of Transport terminal.

3.1 (Cont.)

The most direct approach would be for the Department of Environment, Land, Water and Planning to introduce a new land use term, Aviation Facility into the VPPs to cover aviation related uses which are not focussed on the movement of passengers and goods. This would be similar to the way in which marine based uses are addressed in the VPPs, with a range of use definitions for facilities with different functions and intensities of use.

However, amendments seeking changes to the VPPs are likely to face significant delays as they must be considered in a State wide context.

Accordingly, the best alternative at this stage appears to be to include the use Airport as a permissible use in the SUZ but to effectively define the use through specific zone conditions and requirements.

This approach appears to be used in the Golden Plains Planning Scheme, where a Special Use Zone for Lethbridge Airport was introduced following a Panel Report in 2011.

In the case of Lethbridge, the land use Airport is included as a permissible use, subject to a mandatory condition requiring an approved operational plan (amongst other requirements).

Lethbridge Airport appears to be comparable to Tyabb in terms of scale and type of operation. In fact, it has substantially fewer aircraft movements and does not operate a regular passenger transport service, however, the use of the term Airport for this facility has been accepted by the Panel and the State Government.

It is also proposed to redraft the innominate use provision to make it clear that an airfield and pilot training school are permissible (although undefined) uses. All other innominate uses would remain prohibited.

Having regard to the options available, it is recommended that Council seek authorisation to prepare an amendment which:

- A. Includes Airport as a permissible use in the SUZ, subject to a mandatory requirement that any (future) use must be subject to a condition requiring approval of an Airfield Master Plan.
- B. Amends the innominate use Clause to refer to any other use not in section 1 or 3, and to include this term in column 2 (permissible uses) of the revised zone schedule, subject to the condition: *must only be an airfield and/or pilot training school used in accordance with an approved Airfield Master Plan.*

The inclusion of these overlapping provisions is intended to ensure there is at least an opportunity to consider an application for Airfield use in the event that the term Airport is interpreted strictly as applying only to facilities primarily for transporting goods and passengers. The amendment exhibition and review process should resolve the most appropriate classification of the airfield use and it may then be possible to remove unnecessary duplication.

REVISED ZONE PROVISIONS FOR THE USE AND DEVELOPMENT OF THE AIRFIELD, INCLUDING REQUIREMENT FOR AIRFIELD MASTER PLAN

In addition to addressing the current anomalies, it is also considered appropriate to ensure that the zone provisions reflect current standards and good practice, rather than simply replicating provisions that were introduced nearly 40 years ago.

Detailed background to the key provisions included in the proposed new zone are outlined in the draft Explanatory Report (Attachment 3). It may be noted that the proposed zone provisions provide considerable detail regarding the required content of an Airfield Master

3.1 (Cont.)

Plan and Aircraft Noise Management Plan so that these matters can be fully addressed through the amendment process.

In summary, the major new proposed provisions are:

1. New zone objectives, supporting the safe and efficient use and development of the airfield and the protection of residential amenity.
2. A requirement for an Airfield Master Plan to be submitted and approved prior to the commencement of any new aviation related use, with provision for review of the Plan every five years (as is the case for Airfield Master Plans approved for Commonwealth airports).
3. Definitions of key terms and the use of maximum take-off weight rather than all up weight at take-off as a standard.
4. Noise Management Provisions which would form the basis for an Aircraft Noise Management Plan, including:
 - A general duty to avoid disturbance and nuisance to residents in the area;
 - Noise management standards/design objectives, which have regard to standards included in the National Airport Safeguarding Framework, the Australian Standard AS 2021-2015, EPA Noise Guidelines, and provisions of the *Environment Protection Amendment Act 2018*, including draft regulations;
 - Limits on the hours of operation, with very reduced movements after 6.00pm and a curfew from 8.00pm to 7.00am (8.30am on Sundays and holidays); and
 - Limits on the number of aircraft movements per year and the number of training circuits per hour.

The proposed requirements will require greater attention to noise management by pilots and the operators of the airfield, including consideration of the types of aircraft that use the airfield at different times. However, these are not considered unreasonable or unrealistic provisions, given that the existing conditions of use already require management in relation to aircraft weights and hours of operation.

All of the new requirements regarding noise management exclude aircraft movements necessary to maintain safety and aircraft being used by various agencies in emergencies. There is also provision for the responsible authority to approve variations to the proposed standards, subject to consideration of the impact on the amenity of the area and how these may be mitigated.

**PROPOSED DESIGN AND DEVELOPMENT OVERLAY SCHEDULE 29 – TYABB
AIRFIELD ENVIRONS – DEVELOPMENT CONTROLS OVER LAND IN THE VICINITY OF
THE TYABB AIRFIELD**

While the Special Use Zone focusses on the provisions that directly apply to the airfield itself, it is also relevant to note the further recommendations of the Tyabb Airfield Precinct Plan 2017 which recommend introduction of development controls on land adjacent to the airfield site in order to avoid future conflicts.

Such conflicts may arise, for example, from the construction of taller buildings and structures, or other potential obstructions reducing the safety of airfield operation, or the introduction of noise sensitive uses in areas likely to be exposed to higher levels of noise.

3.1 (Cont.)

The Planning Policy Framework Clause 18.04-1S emphasises the need to plan for areas around all airfields such that:

- Any new use or development that could prejudice the safety or efficiency of an airfield is precluded;
- The detrimental effects of aircraft operations (such as noise) are taken into account in regulating and restricting the use and development of affected land; and
- Any new use or development that could prejudice future extensions to an existing airfield or aeronautical operations in accordance with an approved strategy or master plan for that airfield is precluded.

Having regard to the aims of the TAPP, it is considered appropriate to address these issues by the introduction of a new Design and Development Overlay (DDO) requiring planning approval for buildings and works in the areas that may be affected by higher noise levels or which are within the recommended obstacle exclusion areas and public safety areas recommended in the TAPP.

The area proposed for inclusion in the DDO on the basis of noise exposure includes all of the land that falls within the 15 Australian Noise Exposure (ANE) contour and within the area projected to be exposed to more than 20 N70 movements (20 movements resulting in noise above 70 decibels) over the same period. These areas have been defined, as forecast to 2038, in preliminary advice from Council's noise consultants, Marshall Day Pty Ltd.

It may be noted that 20 ANE contour is the threshold for building site acceptability specified in the Australian Standard AS2021-2015, however, having regard to the limitations of the ANE contours in assessing noise impacts from smaller aviation facilities, the use of 15 ANE provides for consideration of sites on the margin.

While other areas may be affected by noise, the Australian Noise Exposure (ANE) and N70 standards are currently recognised in the existing planning scheme provisions and therefore provide the best basis for the proposed DDO at this time.

In regard to the control over potential obstacles, it is recognised that the definition of obstacle exclusion areas is not formally required for uncertified and unregistered facilities such as Tyabb. However, the principles of maintaining safety and reducing potential conflict between uses are considered relevant at all scales of operation, and are consistent with the Planning Policy Framework.

The areas proposed for inclusion in the DDO in relation to obstacle limitation are based on the recommendations of the TAPP (pages 36-40) which in turn reflect exclusion areas defined in Civil Aviation Advisory Publication (CAAP) 92-1 (1).

Finally, the TAPP also recommends (page 40) that requirements for Public Safety Areas (PSAs), as required by the Queensland Government, should be reflected in the planning scheme. PSA provisions seek to limit the number of people at risk in the event of an accident at take-off and landing, generally by limiting development at either ends of runways.

PSAs are applied primarily to selected airport runways which reach a certain threshold of passenger jet services. While the Tyabb Airfield is a very different type of aviation facility and there is no statutory requirement to designate a PSA, the TAPP recommends the inclusion of such a provision as part of a precautionary approach to safety. Accordingly, the proposed DDO also includes the recommended PSA area.

The form of the proposed DDO provisions is primarily based on the Airport and Environs Overlay but modified to reflect the different circumstances which apply to the airfield and

3.1 (Cont.)

surrounding areas. While there may be arguments for different standards (or no new control at all) the exhibition of this proposal will provide an opportunity for further consideration.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

While there are many elements involved in the resolution of issues relating to the Tyabb Airfield, it is important to ensure that the provisions of the planning scheme do not act as a barrier to consideration of possible solutions going forward.

The above report has indicated a number of anomalies in the current SUZ3 provisions and it is appropriate for Council to address and correct these matters.

The proposed provisions (included in Attachment 1) seek to ensure that Council has clear statutory authority to consider applications that would enable the Tyabb Airfield to achieve compliance with the planning scheme. In addition, they provide for updated use and development controls, including requirements for the approval of an Airfield Master Plan and Aircraft Noise Management Plan, as well as implementing other recommendations of Council's adopted Tyabb Airfield Precinct Plan 2019.

The proposed changes, if approved, would not automatically apply to the use of the site as an authorised landing ground, that is, they are not retrospective. However, the requirements would come into effect with any new application and would have weight in the consideration of any proposed the variation of the existing approvals.

In this way the proposed amendment is seen as an important step in establishing a fair and reasonable framework for the use and development of the Tyabb Airfield into the future.

RECOMMENDATION

1. That the Committee requests that the Minister for Planning authorises amendment to the Mornington Peninsula Planning Scheme under section 8A of the *Planning and Environment Act 1987* to update the Special Use Zone – Schedule 3 (Airfield Development) and apply a Design and Development Overlay – Schedule 29 (Tyabb Airfield Environs) to properties identified in the proposed Design and Development Overlay, generally in accordance with Attachments 1-3 (inclusive).
2. That the Committee, in accordance with section 19 of the *Planning and Environment Act 1987* undertakes exhibition following authorisation of the amendment.
3. That the Committee authorises the Director of Building and Planning to make editorial changes to Attachments 1-3 as required before submitting to the Minister for Planning.

COMMITTEE DECISION

Moved: Cr Morris
Seconded: Cr Brooks

1. That the Committee requests that the Minister for Planning authorises **Amendment C223MORN** to the Mornington Peninsula Planning Scheme under section 8A of the *Planning and Environment Act 1987* to update the Special Use Zone – Schedule 3 (Airfield Development) and apply a Design and Development

3.1 (Cont.)

- Overlay – Schedule 29 (Tyabb Airfield Environs) to properties identified in the proposed Design and Development Overlay, generally in accordance with Attachments 1-3 (inclusive).
2. That the Committee, in accordance with section 19 of the *Planning and Environment Act 1987* undertakes exhibition following authorisation of the Amendment.
 3. That the Committee authorises the Director of Building and Planning to make editorial changes to Attachments 1-3 as required before submitting to the Minister for Planning.

Carried Unanimously

3.2 Planning Scheme Amendment C270 Authorisation - Rezoning of Land Outside the Urban Growth Boundary from Special Use Zone - Schedule 2 to Green Wedge Zone - Schedule 3

Prepared By	Leigh Northwood, Senior Planner
Authorised By	Director - Planning and Building
Document ID	A9536573
Attachment(s)	1. C270 Explanatory Report 2. Amendment Maps

PURPOSE

The purpose of this report is to seek Council approval to seek authorisation from the Minister for Planning to prepare Amendment C270 to the Mornington Peninsula Planning Scheme. Amendment C270 seeks to rezone land that is located outside the Urban Growth Boundary (UGB) from Special Use Zone – Schedule 2 (SUZ2), to Green Wedge Zone – Schedule 3 (GWZ3) and remove a number of land parcels from the Schedule to Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions (Attachment 1).

BACKGROUND

The purpose of the Special Use Zone is to provide for the use and development of land for specific purposes as identified in a schedule to the zone. The purpose identified in Schedule 2 to the Special Use Zone is *to recognise strategic sites that contain recreational, religious, health or educational facilities that performs a significant community function.*

There are 11 sites that are zoned SUZ2 inside the UGB:

- Sorrento Golf Club – 18 Langford Road, Sorrento (owned by Sorrento Golf Club Pty Ltd);
- Mentone Grammar Camp – 74-76 Marine Parade, Shoreham (owned by Mentone Grammar School);
- St Marks Uniting Church Carpark – 50-54 Barkly Street, Mornington (owned by Uniting Church in Australia Prop Trust (Vic));
- Mornington and Mount Martha Anglican Church – 3 Queen Street, Mornington (owned by Church of England Trust Corporation);
- Kankama Day Centre – 311 Racecourse Road, Mornington (owned by Mornington Peninsula Shire (the Shire) and Kankama Association Inc);
- Mornington Church of Christ – 84 Wilsons Road, Mornington (owned by The Properties Corporation of The Churches of Christ);
- Small sliver of Kunyung Primary School – 50 Kunyung Road, Mount Eliza (owned by the Department of Education and Training);
- Flinders Golf Course – 1 Bass Street, Flinders (owned by Flinders Golf Club);
- Fitness Studio – 295 Point Nepean Road, Dromana (Stambanis Investments Pty Ltd);
- 6 Drake Street, Mornington (owned by Roman Catholic Trusts Corporation); and

3.2 (Cont.)

- Padua College – 62 Oakbank Road, Mornington (owned by Roman Catholic Trusts Corporation).

In addition, there are seven sites zoned SUZ2 outside the UGB:

- 50A McGregor Avenue, Mount Martha (South East Water);
- Small parcel of Point Nepean National Park abutting Portsea Golf Club – 3875 Point Nepean Road, Portsea (owned by Department of Environment Land Water and Planning (DELWP));
- 60 Hearn Road, Mount Martha (owned by Area Comm Scout Assoc);
- Mornington Golf Course – 19 Tallis Drive, Mornington (owned by Trustee Mornington Country Golf Club);
- 60-70 Kunyung Road, Mount Eliza (owned by Ryman Health);
- Manyung Recreation Camp – 35 Sunnyside Road, Mount Eliza (owned by the Department of Environment, Land, Water and Planning); and
- Portsea Golf Club – 46 London Bridge Road, Portsea (owned by Portsea Golf Course).

For the above land that is outside the UGB, Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions apply unless the land is identified in the schedule to this clause. 60-70 Kunyung Road, Mount Eliza and Manyung Recreation Camp, Mount Eliza, are all identified in the Schedule to Clause 51.02, meaning that Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions do not apply to these sites.

In addition, SUZ2, Mentone Grammar School, Marine Parade and Nelson Street, Shoreham and Padua College, Oakbank Road, Mornington are listed in the Schedule to Clause 51.02, however, these sites are inside the UGB, meaning Clause 51.02 does not apply anyway.

The purpose of Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions amongst other things is *To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.*

Since the introduction of the SUZ2, there have been a number of State wide planning changes to establish and protect the Green Wedges including:

- Establishment of an UGB under the *Planning and Environment Act 1987*, restricting urban related development to within the UGB;
- New Green Wedge Zones to replace the previous rural zones over Green Wedge land;
- Introduction of a core planning provision for Green Wedges (Clause 51.02) to tighten the subdivision controls and the range of uses allowed on Green Wedge land; and
- A requirement that some land uses (related primarily to tourism based development) must meet minimum lot size requirements, are subject to restrictions on scale and capacity and may only be established in conjunction with agriculture, winery, rural industry or conservation of natural systems.

To support the key purposes and retain the rural character of the Green Wedge, recommendation 1.3 of the Mornington Peninsula Green Wedge Management Plan, page 31

3.2 (Cont.)

is to Advocate to the State government for a review of the Schedule to Clause 51.02 (Metropolitan Green Wedge Core Planning Provisions) and the associated SUZ provisions, to ensure that any exemption from the Core Planning Provisions applies only to the specific special use that forms the basis for the inclusion of that site in the SUZ. Seek an interim amendment to suspend the use of the exemption schedule pending the completion of the review.

In progressing this action, a review of the SUZ2 provisions (where they apply to land outside the UGB), has been undertaken. This review has identified that a number of uses are allowed under the SUZ2 that are not compatible with the rural and coastal landscape in which these sites are located. For example, under the SUZ2, a medical centre, office (under 500 square metres), residential aged care, retirement village and residential building (which includes residential hotel, rooming house, community care accommodation and motel) are all allowed land uses, subject to planning permit approval.

DISCUSSION

The original application of the SUZ2 was to facilitate an intended limited use and built form outcome and in some respects allow continuation of an existing use. This was applied prior to the introduction of the GWZ and is in effect a 'legacy' zoning.

The current 'legacy' zoning of these sites now allows for use and development which could result in an intensity and/or form of development which would be described as de facto urbanisation of this rural and coastal landscape which would have never been considered in application of the SUZ many years ago.

Given that the GWZ now exists, it is proposed to rezone those parcels of land outside the UGB from SUZ2 to GWZ3 to better reflect their intended use and that they are outside the UGB and are metropolitan Green Wedge land (Attachment 2).

It is also proposed to remove 60-70 Kuning Road, Mount Eliza, Manyung Recreation Camp, Mount Eliza, Padua College, Oakbank Road, Mornington and Mentone Grammar School, Marine Parade and Nelson Street, Shoreham from the Schedule to Clause 51.02.

This will result in a change to the planning controls that currently apply. For example, for SUZ2 land, there is no minimum subdivision control, whilst the GWZ3 has a 40 hectare minimum subdivision size. It will also change what uses are permitted on the land. For example, under the SUZ2, a dwelling is prohibited, however, under the GWZ3, a dwelling is a permit required use, but must be the only dwelling on a lot. Under the SUZ2, Residential Aged Care is a permit required use, under the GWZ3, it is prohibited.

Existing uses will be able to continue, either because they are permitted under the GW3 Zone, for example golf courses or because they have existing use rights (for example Camp Manyung). Clause 63.05 of the Planning Scheme 'section 2 and 3 Uses' enables prohibited uses to also seek additional building and works approvals should they wish to expand in the future. However, this clause establishes that amenity must not be damaged by a change in the activities beyond the limited purpose of the use so it is more restrictive than the current SUZ2.

OFFICER DIRECT OR INDIRECT INTEREST

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

3.2 (Cont.)

CONCLUSION

The original application of the SUZ2 was to facilitate an intended limited use and built form outcome. It was applied prior to the introduction of GWZ into the Victoria Planning Provisions. Given that the GWZ now exists, it is proposed to rezone those parcels of land outside the UGB from SUZ2 to GWZ3 to better reflect their intended use, that they are outside the UGB and are metropolitan Green Wedge land. It is also proposed to remove 60-70 Kunyung Road, Mount Eliza, Manyung Recreation Camp, Mount Eliza, Padua College, Oakbank Road, Mornington and Mentone Grammar School, Marine Parade and Nelson Street, Shoreham from the Schedule to Clause 51.02. This Amendment will implement a key objective of the adopted Mornington Peninsula Green Wedge Management Plan and ensure that objectives of State and Local Planning Policy in relation to Green Wedge land are achieved.

RECOMMENDATION

That the Planning Services Committee resolves to request the Minister for Planning under section 8A of the *Planning and Environment Act 1987* to authorise the preparation and exhibition of Planning Scheme Amendment C270 to the Mornington Peninsula Planning Scheme generally in accordance with the attached Explanatory Report (Attachment 1).

Deputations

- Mr Nevan Wadeson, from Tract Consultants.
- Mr Paul Cannon, from Portsea Golf Club.

COMMITTEE DECISION

Moved: Cr Colomb
Seconded: Cr Roper

That the recommendation be adopted.

Carried Unanimously

4 STATUTORY PLANNING REPORTS

4.1 Planning Application P15/0774.03 - 474-475 Esplanade, Mount Martha

Prepared By	Katrina Barnes, Planner
Authorised By	Director - Planning and Building
Document ID	A9538007
Attachment(s)	<ol style="list-style-type: none"> 1. Council Report Locality Plan 2. Plans Assessed 3. Applicant's Heritage Advice 4. Referral Response from Heritage Planner 5. Site Photos Pre-demolition 6. Submissions (confidential) 7. Document tabled by Mr Hofer of WKH Architects
Application No.	P15/0774.03
Proposal	Amending the Endorsed Plans of Planning Permit P15/0774 involving removal of the colonnaded verandah with balcony above to the north-east of dwelling and removal of entry canopy on the south-west elevation
Melway Reference	144 J12
Zoning	General Residential Zone Schedule 1, Road Zone 1
Applicant	Mount Family Investments Pty Ltd
Date of Application	19 September 2019

PURPOSE

The purpose of this report is to seek the Planning Services Committee's (the Committee) decision regarding Planning Permit Application P15/0774.03 at 474-475 Esplanade, Mount Martha (the Application). This item is an Amendment Application pursuant to section 72 of the *Planning and Environment Act 1987* (the Act), which seeks to amend the endorsed plans of Planning Permit P15/0774 which approved:

Partial demolition, additions and alterations to the existing dwelling, vegetation removal and associated works in accordance with the endorsed plans.

The changes sought include the following alterations to the dwelling (Attachment 2):

- Removal of the colonnaded verandah with balcony above to the north-east of dwelling; and
- Removal of entry canopy on the south-west elevation.

Within the scope of this amendment, no vegetation removal is proposed.

In assessing this application, a detailed review of the Mornington Peninsula Planning Scheme has been undertaken, having regard to the relevant objectives and strategies of the Planning Policy Framework.

4.1 (Cont.)

Proposal	Amending the plans endorsed under the permit generally involving: <ul style="list-style-type: none"> • Removal of the colonnaded verandah with balcony above to the north-east of dwelling; and • Removal of entry canopy on the south-west elevation.
Zoning and Overlays	General Residential Zone – Schedule 1 (GRZ1); Road Zone 1 (RDZ1); Design and Development Overlay – Schedule 3 (DDO3); Heritage Overlay – Schedule 50 (HO50); and Vegetation Protection Overlay – Schedule 1 (VPO1).
Permit Triggers	Permit triggers for original proposal: Clause 43.01 – HO50: <ul style="list-style-type: none"> • A permit is required to demolish or remove a building and construct or carry out works. Clause 42.02 – VPO1: <ul style="list-style-type: none"> • A permit is required to remove, destroy or lop vegetation.
Advertising	Advertising was undertaken by way of mail to surrounding land owners and occupiers and the erection of two signs on site, located on the Esplanade frontage and on Dominion Road frontage. The advertising period concluded on 20 December 2019.
Submissions	Three objections have been received to date.
Consultation	No formal consultation has been undertaken.
Key Issues	The key issues arising from this application are: <ul style="list-style-type: none"> • Application context and background; • Whether the permit has expired; • Whether the development responds to the relevant planning policies; and • Consideration of objections.
Recommendation	Refusal.

BACKGROUND

The Permit to which an Amendment is sought, was granted on 10 September 2015 for:

Partial demolition, additions and alterations to the existing dwelling, vegetation removal and associated works in accordance with the endorsed plans.

4.1 (Cont.)

The plans endorsed under the permit were amended on 4 March 2016 by way of secondary consent generally involving:

- Addition to rear of house;
- Changes to the interior layout of the dwelling;
- Replacing all existing leadlight windows and exterior doors;
- Alteration of the roof material used; and
- Infill small window on southwest elevation.

The plans were then further amended on 28 November 2016 by way of secondary consent generally involving:

- Filling the exterior doorway to the south-west elevation; and
- Increasing the height of the wall shown on the south-west elevation to screen plant equipment.

This amendment was applied for as a result of an investigation by the Mornington Peninsula Shire's (the Shire's) Planning Compliance team as some development had occurred, but the development as authorised by the relevant planning permit had not been completed. Notably, the balcony has been removed and a new balcony, required as per the endorsed plans, has not been constructed.

Previous Permits

In addition to the permit relevant to this application, Council records indicate that the following planning decisions have been determined for the subject site:

- P15/0851 – Planning Permit was issued on 4 March 2016 and authorises to subdivide the land into two allotments retaining the existing dwelling on an allotment with an area of approximately 1,600 square metres in accordance with the endorsed plans;
- P16/0447 – Planning Permit was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 7 March 2017 and authorises the construction of an outbuilding/garage and associated works in accordance with the endorsed plans; and
- P16/0448 – Planning Permit was issued at the direction of VCAT on 7 March 2017 and authorises development of a double storey dwelling (on future lot 2 on PS 739442V), swimming pool, tennis court, vegetation removal and associated works in accordance with the endorsed plans.

Existing Conditions

The subject site is located on the corner of Esplanade and Dominion Road, Mount Martha. The land has a gradually fall from the south (Dominion Road) down to the North (Esplanade) of approximately six metres (Attachment 1).

The land has been developed with a second dwelling in accordance with the endorsed plans for planning permit P16/0448. The site contains the heritage 'Green Gables' building to the south-west and a double story dwelling to the north-east on future Lot 2 currently under construction. To the rear of the new dwelling is a tennis court with landscaping works underway.

4.1 (Cont.)

The site is fenced by a 2.2 metre high fence along the two road frontages. The front fence is solid for the extent of future lot 2, with render brick pier with metal slat infill in front of the Green Gables building.

The site is not yet subdivided.

Surrounding Land

A review of the general locality reveals varying lot sizes in the area. The area to the north-east to south-east of the subject site is residential zoned land with lots containing single dwellings and associated outbuildings. To the north -west adjacent to the Esplanade runs the foreshore of Mount Martha Beach South, which is zoned Public Park and Recreation Zone.



	Subject site
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An aerial photo of the subject site and surrounds is included above, showing the pattern of development in the immediate vicinity of the application site.

The properties immediately adjacent to the site include:

North	Mount Martha Foreshore
South	7 Dominion Road. Land measuring 1,528 square metres in area. Developed with a single dwelling which is sited towards the front of the land and surrounded by scattered vegetation.
East	476 Esplanade. Land measuring 1,451 square metres in area which is heritage listed and contains an historic dwelling believed to have been built in approximately 1881.
West	Mount Martha Community House – in ownership of the Shire.

4.1 (Cont.)**PROPOSAL**

Amending the plans endorsed under the permit generally involving:

- Removal of the colonnaded verandah with balcony above to north-east of dwelling; and
- Removal of entry canopy on south-west elevation

NOTIFICATION AND CONSULTATION**Notification**

Advertising was undertaken by way of mail to surrounding land owners and occupiers and the erection of two signs on site, located on the Esplanade frontage and on Dominion Road frontage. The advertising period concluded on 20 December 2019.

Submissions

The Shire received four objections to the proposed development from residences of the following properties:

- 476 Esplanade, Mount Martha;
- 42 Dominion Road, Mount Martha; and
- 5 Glenisla Drive, Mount Martha.

The fourth objection does not disclose an exact address but refers to land next to the subject site.

The concerns raised within these objections are summarised as follows:

- Destroyed the high level of external integrity of Green Gables;
- Unsympathetic design of second dwelling;
- Intent of applicant; and
- Undermining of planning permit process.

REFERRALS**Internal Referrals*****Heritage***

The application was referred to the Shire's Heritage officers, being within the HO50. A heritage consultant was engaged on behalf of the Shire who objected to the proposal and whose comments are discussed further in the consideration section of this report.

PLANNING SCHEME PROVISIONS**Permit Triggers**

A Planning Permit was required for the original use and development proposal pursuant to the following Clauses of the Mornington Peninsula Planning Scheme:

4.1 (Cont.)

Heritage Overlay – Schedule 50

- Demolish or remove a building; and
- Construct or carry out works.

Vegetation Protection Overlay – Schedule 1

- Remove, destroy or lop vegetation.

State Planning Policy Framework
Clause 11.03-5S Distinctive areas and landscapes Mornington Peninsula Localised Planning Statement (Victorian Government, 2014).
Clause 15 Built Environment and Heritage.
Clause 15.03 Heritage.
Clause 15.03-1S Heritage Conservation.
Local Planning Policy Framework
Clause 22.04 Heritage Places and Abutting Land.

Other

The Burra Charter: The Australia International Council on Monuments and Sites (ICOMOS) Charter for Places of Cultural Significance, 2013.

CONSIDERATION

As the Application solely relates to the permanent removal of the colonnaded verandah with balcony above and entry canopy, this assessment will be confined to consideration of that matter alone.

Within the original application, the premise of the proposal was presented as an effort to restore the existing house. The proposed demolition of the verandah/balcony was only ever contemplated on the basis that it be suitably replaced in order to maintain the heritage aesthetic of the Green Gables dwelling. At the time of the original application’s assessment Council’s Heritage Advisor initially raised concerns with the demolition of the verandah/balcony and following a minor amendment and additional assessment was supported on the basis that the replacement would ensure the high integrity exterior would remain intact.

In the context of multiple amendments, the proposal has slowly transformed and concerns raised in the original application that had been addressed have now been undermined by way of an incremental departure from the original endorsed plans. This amendment application has the capability to undermine the planning permit process whereby agreed outcomes should be enforced and complied with.

Compliance and Permit Expiry

The Permit expiry condition states:

This permit will expire if the development is not completed within 2 years of the date of this permit.

4.1 (Cont.)

As the Permit was issued on 10 September 2015, the last date that the applicant was authorised to complete the development has passed and if the proposed amendment is not granted, the permit holder will be required, to construct that balcony.

Therefore, if the proposed amendment is not granted the Shire will commence enforcement proceedings in VCAT seeking an order that the balcony be constructed in accordance with the endorsed plans. If granted by VCAT, that order would overcome the fact that the construction of the verandah/balcony requires a permit in circumstances where (as a result of the expiry) one does not exist.

Insufficient Justification

The information supplied with the application has not provided adequate justification to support the Application. No heritage impact assessment has been submitted to fully ascertain the impact that the permanent removal of the verandah/ balcony and entry canopy will have on the significance of the heritage place.

The only justification supplied is that the applicant (Attachment 3) contends that the design of the verandah/balcony would not comply with the Building Code of Australia and as such the design and appearance would need to be altered to comply. However, there are many options often used by heritage architects to upgrade heritage balustrades to accommodate for changing building code requirements that would allow for the balustrade to be reconstructed accurately as confirmed by the Shire's Building Surveyor.

Heritage Consideration

The site is affected by HO50 applying to the limestone house and mature garden specimens including coastal banksia and hydrangeas along the fence.

The heritage citation describes the house design as follows:

The two storey gabled, Marseilles tiled house appears to have been built from local stone masonry similar to 457 Esplanade which is sited on the next hill south. Like 22 Bath Street, the house design is consciously picturesque, with hooded off-centre oriels and single-storey gabled and verandah with an open terrace above and a balustrade of hit and miss brickwork. Windows are the casement type with diamond-pane leaded glazing. Notable mature garden specimens (coastal banksia) are reported to be among the largest in the area. The 'Hydrangea sp' along the fence are also tall.

Green Gables is significant with the Mornington Peninsula for its long connection with the noted Alston family and its high external integrity to the period. Its high, prominent siting highlights the relatively unusual construction material and its architecturally interesting design. Garden elements are also mature and some specimens individually notable for their size.

Heritage considerations fall under Clause 15.03-1S (*Heritage conservation*), Clause 22.04 (*Heritage places and abutting land*), and Clause 43.01 (*Heritage Overlay*). In the wider considerations, policy strategies encourage appropriate development that respects places with identified heritage values and supports the restoration or reconstruction of contributory elements. As stated in the heritage citation the verandah with an open terrace above and a balustrade of hit and miss brickwork contributes to the significance of the heritage place. Green Gables is noted to be 'consciously picturesque' with 'off-centre' elements such as the oriel window and the permanent removal of the proposed elements will adversely impact the heritage value.

The applicant contends in a letter dated 22 August 2019 from heritage consultant Peter Barrett, that as none of the original fabric was retained a rebuilt porch will be of little or no heritage value. However, this statement is not supported by the Australia ICOMOS Burra Charter (rev. 2013) and there is still an opportunity for reconstruction of this element of the

4.1 (Cont.)

original design. Comments provided on behalf of the Shire's Heritage Planner (Attachment 3) state:

The Burra Charter defines reconstruction as 'returning a place to a known earlier state ... by the introduction of new materials' (Art. 1.7). This is one of the means that is recognised and endorsed to conserve the heritage significance of a place (Art. 14).

The Burra Charter also notes that reconstruction of a removed element may form part of the interpretation of a place. Interpretation is defined as 'all the ways of presenting the cultural significance of a place' (Art. 1.17). Again, this is an action that is supported by the Burra Charter.

The circumstances in which reconstruction is appropriate are defined as 'only where a place is incomplete through damage or alteration, and only where there is sufficient evidence to reproduce an earlier state of the fabric' (Art. 20.1). The reconstruction of the Green Gables verandah satisfies both of these requirements, as there are measured drawings of it and pre-demolition photos (Attachment 5) that are sufficient evidence of its original form.

In conclusion, while it appears that the applicant has disposed of the original materials of the verandah (columns and limestone blocks), thus necessitating its reconstruction (with new materials), The Burra Charter supports this as one of the ways to conserve and interpret the heritage value of a place that has been altered and is thus 'incomplete'. Green Gables has lost its original verandah and is now incomplete. Its original form and the design intention of its architect can be made whole again with reconstruction.

As demonstrated above, the removal of the verandah/balcony has not been suitably justified and should be suitably replaced. Furthermore, it is considered that the failure to replace these elements would result in a poor outcome for the appearance of the heritage place.

Consideration of Objections

The following concerns were raised within objections to the planning application (Confidential Attachment 6):

- Destroyed the high level of external integrity of Green Gables;
- Unsympathetic design of second dwelling;
- Intent of applicant; and
- Undermining of planning permit process.

Responses to each point of concern are provided below:

- Destroyed the high level of external integrity of Green Gables.

As discussed above the demolition of the verandah has had a substantial impact on the architectural value of Green Gables and it is appropriate, in keeping with the Burra Charter, to reconstruct it accurately using new materials or any original materials that may have been salvaged.

- Unsympathetic design of second dwelling.

The second dwelling on the land is subject to a separate planning permit and assessment.

- Intent of applicant.

4.1 (Cont.)

This application has been assessed on the merits of the current proposal and future intent of the owner cannot be considered.

- Undermining of planning permit process.

Through multiple amendments to the endorsed plans there has been a transformation to the proposal from the original approval which represents an inappropriate outcome.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

The Application represents a response that will unnecessarily remove and detrimentally affect the high integrity form and detail of the heritage place. Whilst the removal of these elements was originally supported, this was critically only on the conditions that they be appropriately replaced. The proposal presented within this application is in direct contrast to the intentions provided for within the original application in which the restoration of the dwelling was presented as the impetus. Given this departure would compromise Council's original decision on the application and result in a poor outcome in relation to the appearance and heritage value of the building, it is recommended that the application be refused based on the following grounds.

RECOMMENDATION

1. That the Committee resolves to refuse Planning Amendment Application P15/0774.03 at 474-475 Esplanade, Mount Martha on the following grounds:
 - The proposal fails to comply with the objectives, strategies and decision guidelines of Clause 15.03-1S (Heritage conservation), Clause 22.01 (Heritage Places and Abutting Land) and Clause 43.01 (Heritage Overlay) as it would have a detrimental impact on the significance and appearance of the heritage place.
2. That the Committee resolves that Attachment 6 to this report be retained as a confidential item pursuant to section 77(2)(a) and (b) of the *Local Government Act 1989* as it contains personal submitter details.

Deputations

- Mr Steve Hofer, from WHK Architects.

EXTENSION OF SPEAKING TIME

Moved: Cr Gill
Seconded: Cr Roper

That a two minute extension to the speaking time be granted to Mr Hofer, in relation to the above matter.

Carried

- Mr Vince Giuliano.

4.1 (Cont.)

COMMITTEE DECISION

Moved: Cr Colomb

Seconded: Cr Hearn

That the recommendation be adopted.

Vote by Division (Requested by Cr Colomb).

For: Cr Gill, Cr Colomb, Cr Hearn, Cr Morris, Cr Roper, Cr Fraser, Cr Celi and Cr Payne.

Against: Cr Brooks.

Carried

Attendance

Cr Gill left the Chamber at 8.21pm.

Cr Gill returned to the Chamber at 8.22pm.

5 NOTICES OF MOTION

Notices of Motion must be received five clear business days prior to a meeting.

5.1 Notice of Motion 222 (Cr Gill)

Councillor David Gill has given notice of his intention to move the following motion at the meeting.

1. *That Council undertakes an investigation into the background and implications of any current or known future permit applications affecting the area that provides a buffer zone between Mount Eliza and Mornington urban development.*
2. *That the Planning Minister be immediately asked to intervene and protect the intrinsic value of this land from any insensitive development that urbanises this area, which has a long history as Green Wedge, between what could otherwise be contiguous residential and related development.*
3. *That an officer report on the investigation be brought to the March 2020 Statutory Planning Committee Meeting and include an advocacy plan and also to inform our community about the Planning Minister's response and asking for public support in protecting this area from inappropriate development.*
4. *That all Peninsula Members of Parliament be asked to assist in this advocacy and to make their position on this issue known to Council.*

OFFICER IMMEDIATE COMMENT

There are four current planning applications in this location:

- 60 Kunyung Road, Mount Eliza – P19/2453 – Development of an Aged Care Facility and Retirement Village;
- Sunnyside beach, off Sunnyside Road, Mount Eliza – P20/0035 – Building additions or Structure (not dwelling);
- 62 Oakbank Road, Mornington (Padua College) – P19/1889 – Develop a building associated with a secondary school, remove vegetation and associated works generally in accordance with the submitted plans; and
- 90 Baldock Road, Mornington – P19/2311 – Development of a single dwelling.

It is impossible for Mornington Peninsula Shire (Shire) officers to predict any future planning permit applications or 'known future' application. Even after pre-application meetings, there is no guarantee that a land owner will lodge an application.

All of the above sites, apart from 60 Kunyung Road, Mount Eliza are zoned Green Wedge Zone – Schedule 3 (GWZ2) which has as its purpose *to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.*

60 Kunyung Road, Mount Eliza is zoned Special Use Zone – Schedule 2 (SUZ2), which has as its purpose *to recognise strategic sites that contain recreational, religious, health or educational facilities that performs a significant community function.* The SUZ2 allows a

number of uses that are not compatible with the rural and coastal landscape in which this site is located. For example, under the SUZ2, a medical centre, office (under 500 square metres), residential aged care, retirement village and residential building (which includes residential hotel, rooming house, community care accommodation and motel) are all permit required uses.

There are a number of sites throughout the Mornington Peninsula, in addition to 60 Kunyung Road, Mount Eliza, that are outside the Urban Growth Boundary (UGB) and zoned SUZ2. This zone was applied prior to the introduction of the GWZ and is in effect a 'legacy' zoning. The current 'legacy' zoning of these sites now allows for use and development which could result in an intensity and/or form of development which would be described as defacto urbanisation of this rural and coastal landscape which would have never been considered in application of the Special Use Zone many years ago.

A report is going to the current Planning Services Committee meeting (17 February 2020) recommending that Council seek authorisation from the Minister for Planning to undertake Amendment C270 to rezone all SUZ2 land outside the Urban Growth Boundary, including 60 Kunyung Road, Mount Eliza to GWZ3. This will better reflect their intended use and that they are outside the UGB and are metropolitan Green Wedge land.

Budget and Resourcing

The estimated cost of actioning this Notice of Motion, excluding the Planning Scheme Amendment which is already budgeted for, which is \$15,000. This includes direct mail to all owners and occupiers in Mount Eliza, advertising in the local newspaper, social media and notices on our website.

Suggested Rewording

1. That the Planning Minister be asked to expediently authorise Council to undertake Amendment C270 as it will protect the intrinsic value of this land from any inappropriate development that urbanises the Green Wedge.
2. That advocacy is undertaken to inform our community about the proposed amendment, the Planning Minister's response and asking for public support in protecting the Green Wedge from inappropriate development.
3. That all Mornington Peninsula Members of Parliament be asked to assist in this advocacy and to make their position on this issue known to Council.

COMMITTEE DECISION

Moved: Cr Gill
Seconded: Cr Colomb

1. **That the Planning Minister be immediately asked to expediently authorise Council to undertake Amendment C270 as it will protect the intrinsic value of this land from any inappropriate development that urbanises the Green Wedge.**
2. **That advocacy is undertaken to inform our community about the proposed amendment, the Planning Minister's response and asking for public support in protecting the Green Wedge from inappropriate development.**
3. **That all Mornington Peninsula Members of Parliament be asked to assist in this advocacy and to make their position on this issue known to Council.**

Carried Unanimously

5.2 Notice of Motion 223 (Cr Gill)

Councillor David Gill has given notice of his intention to move the following motion at the meeting.

1. *That a report be prepared by officers detailing the environmental effects of any Container Port development at Hastings.*
2. *That the report also explain the business case used by Council in its past supporting a Hastings Container Port.*
3. *That this report be brought to a Council briefing in April 2020.*

OFFICER IMMEDIATE COMMENT

In the 1960s, land around Hastings and Crib Point was set aside for port related purposes so that the State's options with regard to any future port development at Western Port could be preserved. In May 2017, Infrastructure Victoria provided advice to the Victorian Government on when to invest in container port capacity and whether a second container port should be located at the existing Port of Hastings or a new Bay West location. Infrastructure Victoria recommended that Bay West is the preferred location for a second major container port. In coming to this advice, the environmental issues of a container port development at Hastings were identified. This included:

- Loss of seagrass meadows;
- Impact on saltmarsh;
- Impact on mangroves;
- Potential loss of habitat for shorebirds;
- Impact on the Orange Bellied Parrot potential saltmarsh habitat;
- Impact on fish diversity through habitat loss and water turbidity during construction; and
- Impact on blue carbon as a result of loss of saltmarsh, mangrove and seagrass.

This report is publicly available at <https://www.infrastructurevictoria.com.au/project/securing-victorias-ports-capacity/>

Council made a submission to Infrastructure Victoria in 2017, supporting a 'green' port, showcasing 'green' technologies and international best practice in marine and terrestrial environmental management and community involvement.

Mornington Peninsula Shire Council Plan, 2017-2021, includes as one of its initiatives 'support policy in relation to the Port of Hastings'.

Budget and Resourcing

The estimated cost of actioning this Notice of Motion is \$4,000 based on officer time to undertake a literature review of all relevant documentation and synthesise the information into a Council report.

Suggested Rewording

1. That a report be prepared by Shire officers detailing the process of an environmental effects statement of any container port development at Hastings.
2. That the report also summarise, from existing available information, the environmental, social and economic impacts of a container port development at Hastings.
3. That this report be brought to a Council briefing in May 2020.

COMMITTEE DECISION

**Moved: Cr Gill
Seconded: Cr Roper**

1. **That a report be prepared by officers detailing the environmental effects of any Container Port or any other Port development at Hastings.**
2. **That the report also explain the business case used by Council in its past supporting a Hastings Container Port.**
3. **That this report be brought to a Council briefing in April 2020.**

Carried Unanimously

5.3 Notice of Motion 229 (Cr Gill)

***Addendum – Notice of Motion
Circulated Thursday, 13 February 2020***

Councillor David Gill has given notice of his intention to move the following motion at the meeting.

1. *That a complete list of reported or otherwise known breaches of the farm gate regulations including any related permit conditions not complied with during the last three years be brought to a Planning Services Committee briefing or Council briefing as soon as possible.*
2. *That a plan to enforce breaches of farm gate provisions be provided to Council.*
3. *That all farm gate entities be made aware of their legal responsibilities in relation to selling produce.*

OFFICER IMMEDIATE COMMENT

Mornington Peninsula Shire Council (Shire) officers advise caution in tabling of this information. It is not now, nor has it in the past been the position of this Council to 'name and shame' members of its public and/or business community. The Shire deals with some thousands of breaches of various Acts, Local Laws and Regulations each year. It is suggested that unless Council resolves through its forthcoming 'enforcement strategy' that this is the desired approach amongst each compliance department, then this Notice of Motion (NOM) is not serving fairness or good purpose for the broader community.

If the NOM is to proceed, it is suggested that an expressed percentage or total number of cases be tabled, not particular to any property or business.

Shire officers also advise caution in any current or future NOMs, where it is the case or where the perception may be that the intent of the NOM is to influence the making of enforcement decisions or actions.

The Planning Compliance Unit makes all current and future decisions in-line with its enforcement framework. The response to this NOM would be an explanation of that framework and some further discussion as to how it would be applied to decision making in relation to 'farm gate' non-compliance.

The Shire's Agri-business Officer has made contact with each farm gate operator within their knowledge, advising each operator of their obligations under the Mornington Peninsula Planning Scheme. The Shire's pro-active Planning Compliance Officer has conducted an audit of all known farm gates within the municipality and has commenced reasonable actions proportionate to any non-compliance observed.

MOTION

Moved: Cr Gill
Seconded: Cr Roper

1. **That a complete list of reported or otherwise known breaches of the farm gate regulations including any related permit conditions not complied with during the**

5.3 (Cont.)

- last three years be brought to a Planning Services Committee briefing or Council briefing as soon as possible.
2. The Planning Compliance Unit provides a briefing to Council explaining its current enforcement framework and discuss with Councillors how it would be applied to decision making in relation to 'farm gate' non-compliance.
 3. That all farm gate entities be reminded of their legal responsibilities in relation to selling produce.
 4. The briefing is also to include a broad review detailing percentage or total number of cases relating to non-compliance.

AMENDMENT

Moved: Cr Celi

1. The Planning Compliance Unit provides a briefing to Council explaining its current enforcement framework and discuss with Councillors how it would be applied to decision making in relation to 'farm gate' non-compliance.
2. That all farm gate entities be reminded of their legal responsibilities in relation to selling produce.
3. The briefing is also to include a broad review detailing percentage or total number of cases relating to non-compliance.

Amendment Lapsed, no Seconder

AMENDMENT

Moved: Cr Brooks

Seconded: Cr Morris

1. That without identification a complete list of reported or otherwise known breaches of the farm gate regulations including any related permit conditions not complied with during the last three years be brought to a Planning Services Committee briefing or Council briefing as soon as possible.

Amendment Carried Unanimously

COUNCIL DECISION

Moved: Cr Gill

Seconded: Cr Roper

1. That without identification a complete list of reported or otherwise known breaches of the farm gate regulations including any related permit conditions not complied with during the last three years be brought to a Planning Services Committee briefing or Council briefing as soon as possible.
2. The Planning Compliance Unit provides a briefing to Council explaining its current enforcement framework and discuss with Councillors how it would be applied to decision making in relation to 'farm gate' non-compliance.

5.3 (Cont.)

3. That all farm gate entities be reminded of their legal responsibilities in relation to selling produce.
4. The briefing is also to include a broad review detailing percentage or total number of cases relating to non-compliance.

Carried Unanimously

Attendance

Cr Colomb left the Chamber at 8.57pm.
Cr Colomb returned to the Chamber at 8.59pm.

Cr Hearn left the Chamber at 8.59pm.
Cr Hearn returned to the Chamber at 9.05pm.

6 URGENT BUSINESS

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

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

Nil.

7 CONFIDENTIAL ITEMS

Nil.

8 MEETING CLOSE

As there was no further business, the meeting closed at 9.13pm.

Confirmed this 16th day of March 2020

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Cr Bryan Payne, Chairman – Planning Services Committee