



**MORNINGTON
PENINSULA**
Shire

MINUTES

PLANNING SERVICES COMMITTEE MEETING

MONDAY, 20 JUNE 2022

5.30PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL**WARDS AND COUNCILLORS**

Briars	Cr Steve Holland Cr Anthony Marsh Cr Despi O'Connor
Cerberus	Cr Lisa Dixon
Nepean	Cr Susan Bissinger Cr Sarah Race
Red Hill	Cr David Gill
Seawinds	Cr Antonella Celi Cr Kerri McCafferty Cr Debra Mar
Watson	Cr Paul Mercurio

SENIOR LEADERSHIP TEAM

Mr John Baker Ms Pauline Gordon Mr Nathan Kearsley Mr Mike McIntosh	Chief Executive Officer Director – Community Strengthening Acting Director – Corporate Strategy and Business Improvement Director – Planning and Infrastructure
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RECORDING

Please note this Council Meeting was livestreamed to the Mornington Peninsula Shire's YouTube channel and a recording of the meeting is available on the Shire's website.

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1 OPENING AND WELCOME

Meeting opened at 5.39pm

Appointed Chairperson – Cr Kerri McCafferty

1.1 Acknowledgement of Country

To be read by Cr Mar

Mornington Peninsula Shire acknowledges and pays respect to the elders, families and ancestors of the Bunurong/BoonWurrung people, who have been the custodians of this land for many thousands of years. We acknowledge that the land on which we meet is the place of age-old ceremonies, celebrations, initiation and renewal; and that the Bunurong/BoonWurrung peoples' living culture continues to have a unique role in the life of this region.

2 PROCEDURAL MATTERS

Present

Cr Kerri McCafferty (Chairperson)
Cr Susan Bissinger
Cr Antonella Celi
Deputy Mayor, Cr Lisa Dixon
Cr David Gill
Cr Steve Holland
Cr Debra Mar
Cr Paul Mercurio
Cr Despi O'Connor

2.1 Apologies

Cr Sarah Race (Apology)
Mayor, Cr Anthony Marsh (Apology)

2.2 Disclosure of Conflicts of Interest Pursuant to Sections 126 – 131 of the *Local Government Act 2020*

Nil.

2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Planning Services Committee held on 9 May 2022, be confirmed.

COMMITTEE DECISION

Moved: Cr Celi
Seconded: Cr Dixon

That the recommendation be adopted.

Carried Unanimously

Deputations

The following submitters spoke to - Planning Scheme Amendment C219morn Housing and Neighbourhood Character Strategy

- Leigh Eutace
- Fred Crump
- Ashley Jackson

The following submitters spoke to - Planning Scheme Amendment C270morn – Rezoning land located outside the Urban Growth from SUZ2 to GWZ – Post-exhibition report:

- Victor Sullivan
- Frank Mangan
- David Grace
- Justin Cleaver
- Michael O’Ryan
- Rosemary West
- Frank Hoogenraad
- Michael Thomas
- Leigh Eustace

The following submitters spoke to - P05/2646.06 – 143 Nepean Highway, Dromana – Extension of Time:

- David Gibb
- Rosemary West
- Geoff Underwood

The following submitters spoke to - P21/1949 – Planning Permit Application for a Residential Aged Care Facility and Retirement Village at 60-70 Kunyung Road, Mount Eliza:

- Frank Mangan
- Rosemary West
- Leigh Eustace

The following submitters spoke to - Ministerial Planning Application PA2201534 – 1 and 2 Long Island Drive and 35 Cemetery Road, Hastings – Use and development of an energy generation facility and vegetation removal

- Dale Stohr
- Julia Stockigt
- Sue King
- Jane Carnegie

The following submitter spoke to - Planning Scheme Amendment C219morn Housing and Neighbourhood Character Strategy

- Sean Farrell

ADJOURNMENT OF MEETING

Moved: Cr O'Connor

Seconded: Cr Mercurio

That the meeting be adjourned at 7.09pm for a short recess.

Carried Unanimously

RESUMPTION OF MEETING

Moved: Cr Bissinger

Seconded: Cr Dixon

That the meeting be resumed at 7.21pm.

Carried Unanimously

3 STRATEGIC PLANNING REPORTS

3.1 Mornington Peninsula Heritage Review - Management of Heritage Watchlist

Prepared By	Anne Grogan, Heritage and Strategy Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11226252
Briefing Note Number	BN1594 – 24 May 2022
Attachment(s)	1. Minister for Planning letter to Mayor about interim Heritage Overlays ↓

EXECUTIVE SUMMARY

The purpose of this report is to consider options for managing the Mornington Peninsula Shire's heritage watchlist until planned heritage reviews for properties across the Mornington Peninsula have been completed and implemented. The fourth stage of the Shire-wide Heritage Review, the *Mornington Peninsula Heritage Review Area 4* (Area 4 study) is currently being finalised.

It is timely to review the management of the Shire's heritage watchlist given progress made to date on the heritage reviews and identified issues for landowners and Council. The current practice of pursuing an interim Heritage Overlay (HO) for all places on the heritage watchlist, particularly for places where minimal assessment has been undertaken, is problematic as it causes distress to property owners and has significant implications for Shire resourcing and budgets.

With a need to balance fairness and natural justice for landowners with protecting heritage values on the Peninsula, officers have explored alternative options to managing the watchlist and recommend that Option 3 outlined in this report be pursued.

Option 3 proposes that Council:

- seeks to suspend demolition applications and request an interim HO only for places recommended in the draft *Mornington Peninsula Heritage Review Area 4* study (Area 4 study) as worthy of a HO once the study is endorsed by Council for consultation
- does not act on any demolition requests for properties within the Area 4 study until the study is endorsed for consultation by Council
- does not act on any demolition requests for any other properties remaining on the watchlist in Areas 1, 2 or 3 until the relevant draft study has been endorsed by Council for consultation, and
- retains the heritage watchlist as an internal document.

With respect to ongoing enquiries about places on the watchlist, the Shire's internal processes have been strengthened to ensure that responses to enquiries include the potential heritage value of a place on the watchlist. It is acknowledged that this information will only be provided if an owner/prospective purchaser does approach the Shire to enquire about a property.

3.1 (Cont.)

It is also noted that the report for the Area 4 study is likely to be brought to a Planning Services Committee (PSC) meeting later this year to proceed to consultation with affected landowners, interest groups and the general community. After the consultation period, a further report will be brought to the PSC to consider any submissions. At that time, it will be recommended that Council adopt the heritage study and seek interim HOs for all places recommended for a permanent HO.

RECOMMENDATION

That the Committee:

1. Endorses the process for managing the heritage watchlist as noted in Option 3 of this report, being that Council:
 - A. seeks to suspend demolition applications and request an interim Heritage Overlay only for places recommended in the draft Mornington Peninsula Heritage Review Area 4 study (Area 4 study) as worthy of a HO once the study is endorsed by Council for consultation
 - B. does not act on any demolition requests for properties on the watchlist in Area 4 until the draft Mornington Peninsula Heritage Review Area 4 study is endorsed for consultation by Council
 - C. does not act on any demolition requests for any other properties remaining on the watchlist in Area 1, 2 or 3 until the relevant draft study has been endorsed by Council for consultation
 - D. retains the heritage watchlist as an internal document.

COMMITTEE DECISION

Moved: Cr Gill

Seconded: Cr Mar

That Council adopts the process for managing the heritage watchlist as outlined in Option 2 of this report, but modified to include all other areas.

That Council:

1. **Seeks to suspend a demolition application and request an interim Heritage Overlay for places on the watchlist that are within the Stage 4 study area and are identified as having potentially high or medium heritage value.**
2. **Responds to all demolition requests for places on the watchlist in Areas 1, 2 and 3 by seeking an urgent heritage assessment and if the assessment recommends a Heritage Overlay should be applied, suspending the demolition request and pursuing a Heritage Overlay.**
3. **Does not act on any demolition requests for properties on the watchlist in Area 4 that are identified as having potentially low heritage value.**
4. **Retains the heritage watchlist as an internal document.**

3.1 (Cont.)**AMENDMENT****Moved: Cr Mercurio****Seconded: Cr Dixon**

- 4. Retains the heritage watchlist as an internal document available whenever a request or enquiry on a property is made by a member of the community**

Carried

The Amendment became part of the Substantive Motion

The Substantive Motion was then put and carried

COUNCIL & WELLBEING PLAN

Strategic Theme 1: A healthy natural environment and well-planned townships

Strategic objective 1.4.10: Protect built sites and features of cultural significance and history.

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION**Purpose**

The purpose of this report is to:

- provide a progress update on the stages of the *Mornington Peninsula Heritage Review* (heritage review), the number of places remaining on the Shire's heritage watchlist, and
- present options for managing the watchlist going forward, including responding to demolition applications for places on the watchlist until the final stage of the heritage review is completed (Area 4 study).

Background

A Shire-wide review of heritage properties on the Mornington Peninsula commenced in 2013. Broken up into four main geographical areas, the first three stages of the review have been completed to date with corresponding Mornington Peninsula Planning Scheme amendments undertaken to apply the HO to those places identified as having heritage significance by the review. The first three stages are described as follows:

- Area 1 (Mount Eliza, Mornington, and Mount Martha). The study was completed in 2014 and Amendment C174 (Part 1) was approved in 2015.
- Area 2 (Safety Beach to Rye). The study was completed in 2017 and Amendment C214 approved in 2019.
- Area 3 (Blairgowrie, Portsea, and Sorrento). The study was completed in 2019 and Amendment C262morn Part 1 was adopted December 2020 and approved by the Minister in November 2021. Amendment C262morn Part 2 was adopted June 2021 and approved by the Minister for Planning (the Minister) on 1 May 2022.

3.1 (Cont.)

The fourth and final stage is Area 4 which covers the Western Port townships and hinterland. The Area 4 study commenced in 2020 by RBA Architects & Conservation Consultants (RBA). To date, RBA has compiled lists of 'high' to 'low' priority places after consultation with local historical societies and are now completing the detailed citations. A full draft of the study is intended to be submitted to Council for review and subsequent public consultation in late 2022.

The staged heritage review has been a long process as each study generally takes 2-3 years to complete the necessary research, stakeholder engagement, community consultation and reporting to Council. The corresponding Planning Scheme amendment process may take a further 1-2 years to complete, depending on the number of places involved, the number of public submissions and the scope of an independent Planning Panel process (which has been required for each of the first three stages).

In the period before a study is adopted by Council and a Planning Scheme amendment is approved by the Minister, places on the Shire's internal heritage watchlist are at risk of demolition.

The heritage watchlist

The heritage watchlist is a layer within the Shire's GIS system that identifies places that have the potential for heritage significance but have not been fully researched or recommended for protection within the Planning Scheme under a HO. Places on the watchlist have usually been listed in previous heritage studies, or nominated by local historical societies or groups, or listed in other studies, e.g. a study of post-modern architecture.

The Shire's Statutory Planners and Building officers have access to the GIS watchlist. Under current procedures, planners or building officers will alert the heritage officer if there are any requests to demolish a place on the watchlist. The heritage officer must then act quickly to determine if an interim HO should be requested. The purpose of an interim HO is to prevent demolition from occurring until the place's heritage value can be determined through a Planning Scheme amendment process.

The Shire's planning officers also alert owners to the potential heritage value of a place on the watchlist if there is a general enquiry about development potential or a pre-application discussion. The transparency of the watchlist is further discussed later in this report.

Applications for demolition

Under Section 29A of the *Building Act 1993*, a request for demolition is sent to the Shire's Municipal Building Surveyor (MBS). The current practice is for officers to engage a consultant to do an urgent heritage assessment and, if recommended by the assessment, quickly prepare a report for Council to request the Minister to approve an interim HO for the place. A decision to suspend an application for demolition must be made by the MBS within 15 days of receipt.

Figure 1 summarises the existing process for places on the heritage watchlist.

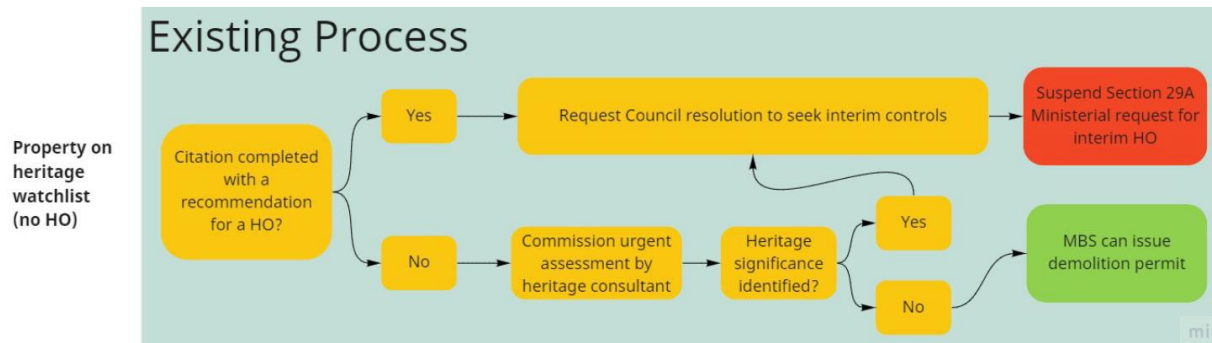


Figure 1: Existing process for properties on the Shire's heritage watchlist

The suspension inevitably causes much distress to the owner/applicant who is most likely unaware of the heritage watchlist, even if they have undertaken their due diligence prior to purchasing a property. Often, they only become aware that their property is on the watchlist when they have submitted development plans (in the form of a Building Permit or Planning Permit application) to Council.

Requests for interim Heritage Overlays

In the last five to six years, Council has requested, and the Minister has approved five interim HOs in response to individual applications for demolition. Significantly, in the last 12 months, the PSC has resolved on two separate occasions not to proceed with interim HOs for two further properties out of concerns for the fairness of the process for affected landowners.

The interim HO is usually applied for a period of 12 months to allow Council to undertake the full Planning Scheme amendment process to apply a permanent HO which includes public exhibition, consideration of submissions, referral of submissions to an independent planning panel, a panel hearing and report, Council review of the panel report, final Council adoption of the amendment (with or without changes recommended by the panel) and submission of the amendment to the Minister for approval and gazettal in the Planning Scheme.

If an interim HO is approved, a planning application can be made to alter or demolish a place, but heritage matters must be considered in the planning decision process.

Though not a specific requirement under the *Planning and Environment Act, 1987* (the Act), the Minister confirmed in a letter to then Mayor Cr David Gill (dated 4 September 2019) (Attachment 1) that: 'Imposing interim HOs is an extraordinary use of my Ministerial powers and may raise issues of fairness and natural justice. When councils seek the use of these powers, they must be able to provide a high degree of justification'. The Minister confirmed the following tests must be met for a blanket interim HO across an area (which, in practice are the same criteria applied to requests for interim HOs over individual properties):

1. The interim HO request must be supported by robust justification and strong evidence-based arguments to demonstrate heritage significance (officers note that, in practice, an expert heritage study and/or heritage citation satisfies this requirement).
2. Evidence to show that there is development pressure (again, in practice this is usually evidenced by a demolition application, but could also be illegal demolition works).
3. A request for an equivalent permanent HO is submitted along with details of the proposed timing of exhibition of the amendment so that the need for heritage protection can be balanced with the requirement to afford natural justice to the landowners of affected properties.

3.1 (Cont.)

Officers from the Department of Environment, Land, Water and Planning (DELWP) have more recently confirmed that interim HOs should be accompanied by a request for a permanent HO usually no more than 1-2 months apart.

Scope of the current heritage watchlist

The Shire's original heritage watchlist contained hundreds of places. Over the past decade, as each stage of the Shire-wide heritage review has been adopted and implemented via a Planning Scheme amendment, many places are now covered by a HO and others have been removed from the watchlist. However, some places on the watchlist have been flagged for future assessment as the relevant area study did not have sufficient budget to complete assessments for all sites on the watchlist, and/or other places were identified as a lower priority for assessment.

As the fourth and final stage of the review is now underway, it is timely to review the remaining places on the watchlist and decide how the watchlist should be managed into the future.

At the time of preparing this briefing report, there are currently approximately 116 places remaining on the watchlist (see Table 1). The heritage significance of these places is planned to be assessed as part of the following projects:

- 72 places in Area 4 have been identified on the watchlist as 'high' and 'medium-high' places and preparation of citations is now underway. A report on these properties will be brought to Council in late 2022.
- 20 places located in Areas 1, 2 and 3 remaining on the heritage watchlist will be assessed by an external expert heritage consultant in the latter half of 2022 under a separate contract. The brief for this project was released in early May 2022 with the consultant to be appointed by mid-2022. Shire officers anticipate that Council will be briefed on the consultant's draft findings in early in 2023, after which the report will be placed on public exhibition for community comment. This work effectively amounts to Stage 5 of the heritage review.
- 24 places in Areas 1, 2 and 4 that are not visible/accessible from a public place. There is a budget bid for the 2022/2023 financial year to assess these places, following a request to the owners to allow inspection. If the budget bid is approved, this work would amount to Stage 6 of the heritage review.

Table 1: Number of sites remaining on the heritage watchlist in each study area

Stage	Description	No. of places (approx.)	Draft study to Council
4	Contract for Heritage Review - Area 4	72	Late 2022
5	Contract for Heritage Review – remaining places on watchlist	20	Early 2023
6	Area 1 – not visible/accessible	2	Mid 2023 (depending on budget and access to places by landowners)
	Area 2 – not visible/accessible	1	
	Area 4 – not visible/accessible	21	
	TOTAL	116	

3.1 (Cont.)**Transparency of the watchlist**

As is commonplace for many councils, the Shire's heritage watchlist is not a publicly available document. (In this regard, it is not discoverable on documents such as Planning Certificates, Section 32 Contracts of Sale, or Certificates of Title).

The watchlist has been maintained as an internal document because:

- A. Not all sites on the watchlist have been properly assessed by a heritage expert and so their true heritage value is unknown. Publishing this information before proper heritage assessments have been completed would likely result in the unplanned loss of heritage assets on the Peninsula. That is, release of this information may 'trigger' landowners to pre-emptively demolish or modify their properties to prevent discovery of heritage values and subsequent application of heritage controls to their site (i.e., a HO) which could constrain the development potential of their land.
- B. Council does not have the funding or staff resources to assess the heritage value of all known sites across the Peninsula at once – requiring the staged approach to heritage assessment described above. Maintaining the watchlist as an internal document affords Council the ability to follow due process and assess properties as funding and resourcing becomes available whilst lessening the risk of losing potential heritage sites during the period between when a site is first identified by Council to the finalisation of an expert heritage assessment and approval of an interim and/or permanent HO for the place.

Whilst it is an internal document, it is important to note that planning staff have access to the system which flags if a place is on the heritage watchlist. Officers do provide this information to landowners and/or prospective purchasers when responding to general enquiries about the development potential of a site known to be on the watchlist.

Issues with the heritage watchlist

It is reasonable for a municipality to identify and maintain an internal watchlist of places to be assessed as and when appropriate funding becomes available.

Requests for interim HOs and suspension of demolitions are also warranted where there is adequate evidence of heritage significance, or where a new place of possible significance is revealed without the Shire having any prior knowledge of the site. The issue is whether every demolition request should result in an assessment of whether an interim HO is warranted and, if not, how the watchlist should be managed into the future, including whether it should be made public.

The current procedure in response to demolition applications is problematic both for landowners and the Shire for the following reasons:

- The affected property owner is usually unaware that the watchlist exists and that their property is listed, and only becomes aware of this potential constraint when their demolition or development plans are unexpectedly suspended due to potential heritage value.
- The property owner can then be burdened with unforeseen costs and time delays associated with either engaging their own heritage, legal or planning experts to challenge a citation prepared on Council's behalf, and/or having to suspend, delay, modify or abandon what may be already well-advanced planned works to their properties.
- The administrative, resource and financial implications for Council to pursue interim HO requests on a reactive and ad hoc basis are significant:

3.1 (Cont.)

- Commissioning an external heritage expert to prepare an urgent heritage assessment and corresponding citation, and officer time required to prepare urgent formal briefing and meeting reports for Council within the strict 15-day statutory timeframe to suspend a demolition request presents significant administrative, resourcing and budget challenges.
- Commissioning an external heritage expert to prepare an urgent heritage assessment and corresponding citation usually costs between \$3,000 - \$10,000 per property.
- Officer resources are required to prepare and lodge both the interim HO amendment request and subsequent permanent HO authorisation request with the Minister; the latter of which costs an additional \$4,000 per property in statutory fees.
- Shire officers must also liaise with affected landowners who are most often shocked by this news and require detailed explanations and regular engagement about the process involved.
- Responding to demolition requests as described above often requires the diversion of staffing and funds from other priority strategic work which can have significant flow-on effects to the timelines, budgets and resourcing of affected projects. Projects at risk of delay include:
 - The Stage 4 heritage study, and remaining heritage assessments which are designed to protect heritage places on the Peninsula and mitigate the need for a watchlist into the future.
 - Live Planning Scheme amendments (including Amendments C219 – Housing and Neighbourhood Character, C232 – Environmentally Sustainable Development, C239 – site-specific HOs, C270 – SUZ rezonings outside the Urban Growth Boundary, C271 – Westernport Bay Coastal Villages and Settlements Strategy, C282 – Crib Point Township Plan, C282 – Sorrento Built Form Controls, etc.).
 - Other planned priority amendments (such as C273 – Activity Centres Strategy and Industrial Areas Strategy Planning Policy Implementation, Amendment C248 – Briars Masterplan implementation, Amendment C240 – Environmental Audit Overlay for contaminated land, etc.).
 - Strategic projects (such as the Balcombe Estuary and Reserves Study and Planning Controls, Affordable Housing Local Planning Policy, Shire-wide Development Contributions Plan).
 - Advocacy on key planning issues or initiatives affecting the Shire (such as responding to the State Government's Planning Reforms Program, potential changes to the Act, ResCode reforms, refinements to bushfire planning provisions, coastal hazard planning tools, etc).
- The diversion of staff resources and funding is ultimately wasted when, as has occurred with the two most recent demolition suspensions (for 4295 Frankston-Flinders Road, Shoreham and 32 Skinner Street, Hastings), Council has resolved not to proceed with interim HOs out of concern for fairness to affected landowners despite evidence of heritage values. Similarly, landowners experience unnecessary distress, delays and costs as a result of the process.

3.1 (Cont.)

Options for consideration

Given the above issues, officers have identified options in Table 2 below to manage the watchlist going forward wherein demolition requests will only be suspended (and interim HOs sought) in certain circumstances.

Table 2: Options for managing the watchlist going forward

Option 1 – continue to respond to all demolition requests (<i>not recommended</i>)	
Description	<p>Continue with the current approach of:</p> <ul style="list-style-type: none"> responding to <u>all</u> demolition requests for properties on the watchlist by seeking urgent heritage assessments, and suspending the demolition request and pursuing interim HOs (and subsequent permanent HOs) if the assessment recommends a HO should be applied, and maintaining the watchlist as an internal document.
Benefits	<ul style="list-style-type: none"> Protection of potentially significant heritage sites on the Peninsula. Keeping the watchlist internal reduces the risk of pre-emptive demolition requests and associated loss of heritage assets.
Disbenefits / Challenges	<ul style="list-style-type: none"> Continued lack of full transparency for affected landowners and prospective purchasers. Continued potential for existing or prospective landowners to experience unplanned financial and emotional distress, and delays or prohibitive constraints to property development and/or sale plans. Continued risk of inefficient expenditure of Council resources (staff, time, and budget) on a reactive and ad hoc basis. Associated flow-on disruptions for other committed priority Planning Scheme amendments, strategic projects and advocacy initiatives. Waste of staff resources and funding if interim HOs are not supported by Council.
Option 2 – only respond to demolition requests for ‘high’ or ‘high-medium’ properties in the Area 4 study (<i>not recommended</i>)	
Description	<p>Option 2 is like Option 1 but involves:</p> <ul style="list-style-type: none"> <u>only</u> suspending a demolition request and seeking an interim HO for properties on the watchlist that are <u>within the Stage 4 study area</u> and are identified as having potentially ‘<u>high</u>’ or ‘<u>high-medium</u>’ heritage value, and <u>not</u> suspending any demolition requests for <u>any other lower ranked places</u> within the Area 4 study or other remaining places on the watchlist. <p>As with Option 1, the watchlist would be maintained as an <u>internal</u> document.</p>

3.1 (Cont.)

Benefits	<ul style="list-style-type: none"> • Protection of places on the Peninsula with potentially '<u>high</u>' or '<u>high-medium</u>' heritage value • Research into the heritage significance of these places is well progressed as part of the Stage 4 heritage study, reducing the staff resourcing required to seek protection for those places that are likely to have significant heritage value. • Keeping the watchlist internal reduces the risk of pre-emptive demolition requests and associated loss of heritage assets.
Disbenefits / Challenges	<p>Same as Option 1, plus:</p> <ul style="list-style-type: none"> • Loss of lower value places on the watchlist (i.e. those not identified as having potentially 'high' or 'high-medium' significance).
Option 3 – only respond to demolition requests once a draft of the Area 4 Study is released for community consultation (<i>recommended</i>)	
Description	<p>Unlike Options 1 or 2, this option involves:</p> <ul style="list-style-type: none"> • <u>only</u> suspending a demolition request and seeking an interim HO for properties recommended in the draft <u>Area 4 study</u> as worthy of protection by a HO (which are likely to be those places already earmarked as 'high' to 'high-medium') once the study is <u>endorsed by Council for consultation</u>, and • <u>not suspending any demolition requests for any other properties on the watchlist</u> until the relevant draft study (i.e. 'Stage 5' or 'Stage 6' study) has been <u>endorsed by Council for consultation</u>. <p>Under Option 3, when the Area 4 study is finalised and <u>adopted</u> by Council (in early-mid 2023), Council would seek a 'group' interim HO for all properties recommended for protection as well as a Planning Scheme amendment for a permanent HO for each property.</p> <p>As with Options 1 and 2, this option involves maintaining the watchlist as an <u>internal</u> document.</p>
Benefits	<ul style="list-style-type: none"> • Keeping the watchlist internal reduces the risk of pre-emptive demolition requests and associated loss of heritage assets. • Research into the heritage significance of these places is well progressed as part of the Stage 4 heritage study, reducing the staff resourcing required to seek protection for those places that are likely to have significant heritage value. • This option complies with DELWP preferred course of action whereby a request for interim HOs over several places in the Area 4 study is likely to be supported once the study is adopted by Council and a Planning Scheme amendment for permanent controls is also sought at the same time. • Assessments and corresponding amendments can be conducted in a more strategic, comprehensive, and efficient manner with significantly less resource and cost implications for Council. • Planned resources (staff, time, and budget) can remain committed to delivering the Area 4 heritage study and assessments of those properties left on the watchlist as well as other planned priority

3.1 (Cont.)

	<p>strategic work without undue disruption to project budgets, timelines, and staff resourcing.</p> <ul style="list-style-type: none"> Whilst there is the potential to lose some heritage places under this option, the risk will reduce markedly following completion and adoption of the Area 4 study and supplementary assessments identified in Table 1. (The risk of losing some heritage places should also be balanced against the benefits of finalising the Area 4 stage of the heritage review and completing reviews of the remaining places on the watchlist). Undertaking a more strategic and coordinated approach to assessing properties and seeking interim HO's may receive better community support (in the main).
Disbenefits / Challenges	<ul style="list-style-type: none"> Potential loss of properties on the watchlist in Area 4 if demolition requests for these properties are sought before Council endorses the Area 4 study for consultation. Possible loss of properties with potential heritage value in Areas 1, 2 and 3 remaining on the heritage watchlist. Once the draft Area 4 study is released for public comment, some owners may request demolition of their properties. As these applications would be suspended under this option, affected landowners may experience the same burdens identified for Options 1 and 2. Continued diversion of staff and resources to respond to ad-hoc demolition requests during the consultation period and finalisation of the Area 4 study.
Option 4 – publicise the watchlist and respond to all demolition requests (<i>not recommended</i>)	
Description	<p>Unlike options 1-3, Option 4 involves:</p> <ul style="list-style-type: none"> <u>publicising</u> the heritage watchlist now, <u>prior</u> to completion of the draft Stage 4 study and supplementary heritage watchlist assessments (identified in Table 1), responding to <u>all</u> demolition requests for properties on the watchlist by seeking urgent heritage assessments and suspending the demolition request and pursuing interim HO's (and subsequent permanent HO's) if the assessment recommends a HO should be applied. <p>It is noted that 'publicising' the watchlist would include sending letters to affected property owners / occupiers notifying them that their property is on the watchlist and posting the watchlist on the Shire's website.</p>
Benefits	<ul style="list-style-type: none"> Owners will be made aware of current potential heritage significance and can therefore make more informed decisions about any potential development plans, sale, or purchase of their property.
Disbenefits / challenges	<ul style="list-style-type: none"> Publishing the heritage watchlist does not mean it will become an easily discoverable document for all members of the community. Significantly, the watchlist will not be discoverable on a Section 32 Contract of Sale like a HO (or other planning control) would be. Risk therefore remains that anyone carrying out due diligence on a

3.1 (Cont.)

	<p>property for prospective purchase may still be unaware that the site is on the watchlist.</p> <ul style="list-style-type: none"> • There would be a significant risk of unplanned loss of heritage assets due to “pre-emptive” demolition requests (or property modification) from affected owners to prevent possible application of a HO. • Council does not have sufficient funding or resources to respond to what would likely be multiple demolition requests and initiate corresponding interim HO requests (either concurrently or within quick succession). • If 10% of owners from the 116 properties currently on the watchlist sought to demolish their property after they received Council’s notice of the watchlist, Council would need to facilitate approximately 12 potential interim HOs if it wanted to protect the heritage assets. (Twelve interim HOs is more than double what Council has experienced in the last 5 years). • Considering the 15-day statutory timeframe for Council to respond, the staffing requirements to facilitate multiple amendment requests, either simultaneously or in quick succession, would significantly exceed current resourcing capacity. • Similarly, the costs to Council to facilitate interim HOs for 10% of properties on the watchlist (i.e., 12) would include at least \$48,000 in statutory fees and \$36,000 - \$120,000 in expert heritage assessment costs. • Significantly, DELWP has indicated that, to assess multiple interim HO requests from Council, the Department would likely have to delay assessing or progressing other Planning Scheme amendment requests from Mornington Peninsula Shire. Affected amendments could include Amendment C219 (Housing for the Peninsula), C271 (Western Port Coastal Villages), C270 (SUZ rezonings outside the Urban Growth Boundary) and C232 (Local Environmentally Sustainable Development Local Policy). • Apart from cost and resource implications, other priority strategic projects (previously noted in this report) would be significantly delayed if Council were to attempt to respond to multiple demolition requests. • Given the significant cost and resource implications for Council, an additional staff resource (or external consultant contract) would be required to manage the anticipated influx of demolition requests and associated need to initiate HOs. No such labour resource has been foreshadowed in the Council Budget for the 2022-2023 Financial Year.
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3.1 (Cont.)**Ongoing need for a watchlist**

Theoretically, the Shire's watchlist will no longer be needed once all remaining stages of the Shire's heritage review (as outlined in Table 1) are completed. It is acknowledged, however, there may be rare instances of places with heritage significance that have not been identified to date (including through the staged heritage review) because they are not publicly visible. These sites may come to light in future, either by nomination from a member of the public or via a planning or building permit application process.

If such a site is not the subject of an immediate threat (i.e., demolition application), it would effectively need to remain on a watchlist unless or until there is sufficient budget available to properly assess its heritage value. Otherwise, if subject to a demolition request, officers recommend that an urgent assessment be completed, and interim HO sought given the predicted rarity of such sites and Council's current lack of knowledge of the potential heritage value of these places (which may be significant). That is, the administrative and cost burden to Council to address these likely small number of sites over time would be more manageable as compared with the current watchlist of approximately 116 properties.

ENGAGEMENT

The Area 4 study will be presented to a PSC Meeting later in 2022 to commence a program of consultation with affected landowners, interest groups and the general community

COMMUNICATIONS PLAN

Following a PSC resolution to commence a community consultation program for the Area 4 study, a Communications Plan will be approved and implemented to notify affected landowners directly and the general community and local historical interest groups.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987

SUSTAINABILITY CONSIDERATIONS

The various stages of the Mornington Peninsula Heritage Review seek to protect places of identified heritage significance for the benefit of all local communities.

FINANCIAL CONSIDERATIONS

This report has identified cost implications of continuing with a reactive and ad hoc response to all applications for demolition of places on the heritage watchlist and proposes to pursue an option (Option 3) which will focus costs and resources to those places of identified value and likely to be recommended for a HO. Option 3 is a more efficient and effective use of funds budgeted for the completion and implementation of the Shire's staged heritage review.

OFFICER DIRECT OR INDIRECT INTEREST

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

4 PLANNING SCHEME AMENDMENT REPORTS

4.1 Planning Scheme Amendment C270morn – Rezoning land located outside the Urban Growth Boundary from SUZ2 to GWZ – Post-exhibition Report

Prepared By	Christian Lynch, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11226222
Briefing Note Number	BN1593 – 24 May 2022
Attachment(s)	<ol style="list-style-type: none">1. Review of submissions and officer responses ↓2. Summary of issues, responses and recommendations3. Amendment C270morn updated Explanatory Report4. Amendment C270morn updated Planning Scheme Map 215. Submissions (separately circulated)6. Late submission

EXECUTIVE SUMMARY

Planning Scheme Amendment C270morn (the amendment) seeks to protect the Mornington Peninsula's Green Wedge from inappropriate development by rezoning land located outside of the Urban Growth Boundary (UGB) and correcting anomalies in the Mornington Peninsula Planning Scheme (MPPS). The amendment was publicly exhibited for six weeks commencing in February 2022 and a total of 563 submissions were received from a wide range of submitters.

Most submissions support the amendment, however a number of submissions object to the amendment or request changes and these submissions remain unresolved. This report recommends that the amendment and all submissions be referred to an independent Planning Panel for review and recommendations, and that the officer-recommended post-exhibition changes to the amendment be referred to the Panel for consideration as part of Council's submission to the Panel.

RECOMMENDATION

That the Committee:

1. Receives, notes and considers in accordance with section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C270morn contained in Attachment 5.
2. Notes and endorses the summary of submissions and Council officers' response to submissions in relation to Amendment C270morn at Attachment 1.
3. Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C270morn referred in accordance with section 23 of the *Planning and Environment Act 1987*.
4. Refers all submissions in relation to Amendment C270morn to the Planning Panel.

4.1 (Cont.)

5. Endorses the officer responses to submissions and recommended changes (Attachments 1-4) for the purpose of Council's advocacy position before the Planning Panel.
6. Delegates authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice, including negotiating proposed changes to the endorsed version of Amendment C270morn in order to resolve matters between Council and submitters.
7. Notes that the exhibition of Amendment C270morn incorporated changes in accordance with the conditions of authorisation provided by the Minister for Planning.
8. Writes to submitters to thank them for their submission to Amendment C270morn and advise of Council's decision.

UPDATED RECOMMENDATION

That the Committee:

1. Receives, notes and considers in accordance with section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C270morn contained in Attachment 5.
2. Receives, notes and considers in accordance with section 22 of the *Planning and Environment Act 1987*, the late submission received from the CFA as contained in Attachment 6.
3. Notes and endorses the summary of submissions and Council officers' response to submissions in relation to Amendment C270morn at Attachment 1.
4. Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C270morn referred in accordance with section 23 of the *Planning and Environment Act 1987*.
5. Refers all submissions in relation to Amendment C270morn, including the late submission received from the CFA to the Planning Panel.
6. Endorses the officer responses to submissions and recommended changes (Attachments 1-4) for the purpose of Council's advocacy position before the Planning Panel.
7. Delegates authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice, including negotiating proposed changes to the endorsed version of Amendment C270morn in order to resolve matters between Council and submitters.
8. Notes that the exhibition of Amendment C270morn incorporated changes in accordance with the conditions of authorisation provided by the Minister for Planning.
9. Writes to submitters to thank them for their submission to Amendment C270morn and advise of Council's decision.

4.1 (Cont.)

COMMITTEE DECISION**Moved: Cr Gill****Seconded: Cr Holland****That the Committee:**

1. **Receives, notes and considers in accordance with section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C270morn contained in Attachment 5.**
2. **Receives, notes and considers in accordance with section 22 of the *Planning and Environment Act 1987*, the late submission received from the CFA as contained in Attachment 6.**
3. **Notes and endorses the summary of submissions and Council officers' response to submissions in relation to Amendment C270morn at Attachment 1.**
4. **Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C270morn referred in accordance with section 23 of the *Planning and Environment Act 1987*.**
5. **Refers all submissions in relation to Amendment C270morn, including the late submission received from the CFA to the Planning Panel.**
6. **Endorses the officer responses to submissions and recommended changes (Attachments 1-4) for the purpose of Council's advocacy position before the Planning Panel.**
7. **Delegates authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice, including negotiating proposed changes to the endorsed version of Amendment C270morn in order to resolve matters between Council and submitters generally in accordance with the officers response at Attachment 1 and adopted Council policy.**
8. **Notes that the exhibition of Amendment C270morn incorporated changes in accordance with the conditions of authorisation provided by the Minister for Planning.**
9. **Writes to submitters to thank them for their submission to Amendment C270morn and advise of Council's decision.**

Carried Unanimously**COUNCIL & WELLBEING PLAN**

The amendment relates to the following themes and strategic objectives:

- Theme 1: A healthy natural environment and well-planned townships
- Strategic Objective 1.4: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.

4.1 (Cont.)**RELEVANT COUNCIL DECISIONS AND POLICIES**

- 17 December 2018 Planning Services Committee Meeting – The Council resolved to adopt the *Mornington Peninsula Green Wedge Management Plan* (MPS, 2018).
- 19 November 2018 Planning Services Committee Meeting – The Council resolved to write to the Minister for Planning to request an immediate Ministerial Amendment to rezone the land at 60 Kunyung Road, Mount Eliza from the Special Use Zone Schedule 2 to the Green Wedge Zone.
- 1 April 2019 Planning Services Committee Meeting – The Council resolved to note additional submissions and amend the *Mornington Peninsula Green Wedge Management Plan* (MPS, April 2019 version)
- 17 February 2020 Planning Services Committee Meeting – The Council resolved 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.

DISCUSSION**Purpose**

The purpose of this report is to provide the Planning Services Committee (the Committee) with an overview of submissions that were received during the exhibition of the amendment and recommend that the Committee resolves to refer the amendment and all submissions to an independent Planning Panel for review and recommendations.

Background

The amendment seeks to protect the Mornington Peninsula's Green Wedge from inappropriate development by rezoning eight parcels of land located outside of the Urban UGB. It also seeks to correct irregularities in the MPPS by removing four sites listed in the schedule to clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions.

The amendment affects a total of ten sites across Mornington, Mount Eliza, Mount Martha, Portsea, and Shoreham. These sites are listed below:

- Site 1: 60-70 Kunyung Road, Mount Eliza (Ryman Healthcare land - former Melbourne Business School, Mount Eliza Campus).
- Site 2: section of foreshore reserve adjacent to 60-70 Kunyung Road, Mount Eliza.
- Site 3: 50A McGregor Avenue, Mount Martha (South East Water easement).
- Site 4: 60 Hearn Road, Mount Martha (Scout Camp owned by Scouts Victoria).
- Site 5: 19 Tallis Drive, Mornington (Mornington Golf Course).
- Site 6: 46 London Bridge Road, Portsea (Portsea Golf Course).
- Site 7: 35 Sunnyside Road, Mount Eliza (Manyung Recreation Camp).
- Site 8: 3875 Point Nepean Road (Point Nepean National Park).
- Site 9: 74-76 Marine Parade, Shoreham (Mentone Grammar camp).
- Site 10: 62 Oakbank Road, Mornington (Padua College).

4.1 (Cont.)

Specifically, the amendment proposes the following changes:

- Rezone Site 1, 3, 4, 5 and 6 (listed above) from Special Use Zone – Schedule 2 (SUZ2) to the Green Wedge Zone - Schedule 3 (GWZ3).
- Rezone Site 7 from the Special Use Zone – Schedule 2 (SUZ2) to Public Park and Recreation Zone (PPRZ).
- Rezone Site 2 and 8 from the Special Use Zone – Schedule 2 (SUZ2) to Public Conservation and Resource Zone (PCRZ).
- Delete Site 1, 7, 9 and 10 from the Schedule to Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions). For sites 1 and 7 this is to ensure consistency with the surrounding GWZ3 and for sites 9 and 10 because they are located inside the Urban Growth Boundary.

The amendment implements the following key action from Council's adopted Green Wedge Management Plan (2019):

- Action 1.3 – Advocate to the State Government for a review of the schedule to clause 51.02 (Metropolitan Green Wedge Core Planning Provisions) and the associated Special Use Zone 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 Special Use Zone. Seek an interim amendment to suspend the use of the exemption schedule pending the completion of the review.

Authorisation and exhibition

Authorisation to prepare the amendment was granted by the Minister for Planning (the Minister) on 20 December 2021. Exhibition ran for six weeks, officially commencing on Thursday, 24 February 2022 and concluding on Friday, 8 April 2022.

Submissions

A total of 563 submissions were received during exhibition (Attachment 5). Stakeholders varied and included:

- The following landowners of sites directly affected by the amendment:
 - Ryman Healthcare (submission number 277)
 - Mornington Golf Club (submission number 375)
 - Scouts Victoria (submission number 243)
 - Portsea Golf Club (submission number 488)

(It is noted that no submissions were received from any other landowners).

- Owners and occupiers of land in the vicinity of amendment sites
- Other interested community members
- Community groups and associations.

4.1 (Cont.)

The Environmental Protection Authority (EPA) and the Department of Transport (DoT) also made submissions to the amendment (submission number 5 and 563), but only to confirm that they had no issue with the amendment.

Mornington Peninsula Shire officers have reviewed and responded to all submissions in detail, providing associated recommendations (Attachment 1). Below is an overview of the issues raised in submissions.

Submissions in Support

The majority of submissions – 521 in total (or 93%) – support the amendment either fully or in part. Submitters generally state that they either support the amendment to protect green wedge and open spaces or to protect the amendment sites from inappropriate or over-development. Key themes or issues raised in these submissions are summarised as follows:

- Concerns about the potential for increased and/or inappropriate development in green wedge areas negatively impacting biodiversity and flora and fauna, including contributing to deforestation, habitat loss for native wildlife and worsening climate change.
- Concerns about increased development in green wedge areas worsening existing traffic, infrastructure, and amenity issues.
- The need to maintain inter-urban breaks across the Mornington Peninsula.

Of these submissions, 155 (30%) either reference or object to the proposed Ryman Healthcare development on Site 1. It is noted that Site 1 is currently the subject of a Planning Permit Application (P21/19149) which seeks to use and develop the land for a Residential Aged Care Facility and Retirement Village, develop a Place of Worship, and demolish an existing building and construct buildings and works affected by the Heritage Overlay. This Planning Application is a separate matter to the proposed rezoning of the site.

Objecting Submissions

A total of 37 submissions (or 7%) object to the amendment either fully or in part. Most objecting submissions (i.e. 33) request that Site 1 (Ryman Healthcare land) be removed from the amendment and retain its existing SUZ2 zoning. Key themes or issues raised in objecting submissions are summarised as follows:

- Rezoning the site is inappropriate because it is already developed with many large buildings and internal roads located on the site.
- Rezoning the site will not turn the land into a public space for the community.
- Rezoning the site will consign the Moondah Mansion and other heritage buildings to long-term decay and deterioration.
- Questions of why the site was included in the amendment following a VCAT decision which supported the use of the land for a Residential aged care facility, subject to revisions.
- Concern that the amendment is impeding the development of residential aged care facilities.

4.1 (Cont.)

The 33 objecting submissions that referenced Site 1 also provide points of support to the Ryman Healthcare development proposal including that it will:

- Allow residents to remain in their community.
- Deliver aged care beds for a rapidly ageing population on the Mornington Peninsula.
- Provide jobs and economic opportunities, and
- Ensure the Moondah Mansion is restored and future proofed.

Two submissions (number 243 from Scouts Victoria and number 450 community member) object to the rezoning of Site 4 (Scout Camp) on the grounds that the rezoning will impact the existing and future use of the site for scouting activities. Submission 450 additionally requested that Site 4 be considered for heritage listing, however it is noted that the site is already covered by a Heritage Overlay (HO95 – Joseph Harris Scout Park).

Another submission (submission number 375 from Mornington Golf Club) objects to the rezoning of Site 5 (Mornington Golf Course) also on the grounds of concern for existing use rights, specifically regarding the right for the existing restaurant and function centre to retain its existing patron capacity. The submission also requests that the proposed planning controls be changed to allow the site to be used, developed and subdivided for 'general residential purposes'.

Other unresolved submissions

Three separate submissions request changes to the amendment that are either not supported by officers or are beyond the scope of the amendment as follows:

- Submission number 485 (from a landowner neighbouring the Portsea Golf Course) supports the rezoning of Site 6 (Portsea Golf Course) but also requests that additional design and built form controls be applied to the site.
- Submission number 313 (from the Peninsula Walking Club) requests that a pedestrian path be developed on the western side of Site 4 (Scout Camp).
- Submission number 488 (from Portsea Golf Club) requests that Council consider whether the amendment could rezone part of two roads to the north of the site that are within the UGB and zoned General Residential Zone 1 (GRZ1). (This submission also notes a minor zoning anomaly at the northern boundary of the site which is discussed later in this report).

Summary of responses and officer recommendations

Overall, the main issues raised in submissions can be summarised as follows:

- Protecting green wedge land from inappropriate uses and development.
- Protecting existing use rights of sites directly affected by the amendment (i.e., Site 4 – Scout Camp and Site 5 – Mornington Golf Course).
- The lack of strategic justification for the rezoning of Site 1 (Ryman Healthcare land) to GWZ.
- Support for the proposed redevelopment of Site 1 (Ryman Healthcare land) and use of the land for residential aged care uses.

4.1 (Cont.)

- Concern that the amendment will lead to the long-term decline of heritage assets on Site 1 (Ryman Healthcare land).
- Concern that the amendment is impeding the development of residential aged care facilities.
- Opposition to the proposed redevelopment of Site 1 (Ryman Healthcare land).
- Exempting specific sites from certain planning restrictions (i.e., Site 4 – Scout Camp and Site 5 – Mornington Golf Course).
- Applying additional built form and/or heritage controls to specific sites (i.e., heritage controls for Site 4 – Scout Camp, and built form controls to Site 6 – Portsea Golf Course).
- Correction of zoning mapping and UGB alignment anomalies (i.e., Site 6 – Portsea Golf Course).
- Other matters beyond the scope of the amendment.

Attachment 2 provides a summary of the above issues and associated Shire officer responses and recommendations. Overall, only one requested change to the amendment is supported, which seeks to correct a zoning anomaly in relation to Site 6 (Portsea Golf Course) on Planning Scheme Map 21. (The recommended updated version of Map 21 is included in Attachment 3). No further changes are recommended to the amendment in response to submissions.

Other Matters***Clerical error***

In the exhibited Explanatory Report under the heading ‘Why is the Amendment required’, it states that Site 1 (former Melbourne Business School, Mount Eliza Campus) is located *...inside the Urban Growth Boundary*. This reference is incorrect as the site sits outside of the UGB. It is recommended that a request to rectify this be made during the Panel Hearing stage. That is, that Council’s submission to the Panel identify this clerical error and recommend it be amended to confirm the site’s location outside the UGB. The recommended updates to the Explanatory Report are contained in Attachment 4.

Options for consideration

Under section 23(1) of the *Planning and Environment Act 1987*, after considering submissions, Council must:

- (a) *change the amendment in the manner requested; or*
- (b) *refer submissions to a panel appointed by the Minister; or*
- (c) *abandon the amendment or part of the amendment.*

Given the nature of submissions and requested changes to the amendment, officers recommend that Council refers the amendment and all submissions to an independent Planning Panel appointed by the Minister. Officers further recommend that Council endorses the officer responses to submissions, including one supported change to the amendment in response to submissions and the correction of a clerical error in the Explanatory Report, as part of Council’s advocacy position before the Planning Panel.

4.1 (Cont.)**Next steps**

The following dates have been pre-set for the Panel hearing:

- Directions Hearing: Week beginning 25 July 2022
- Panel Hearing: Week beginning 5 September 2022.

If Council resolves to proceed to the Panel stage, all submitters will be notified and have the opportunity to address the Panel at the hearing if they wish (with or without third party representation).

Following the Panel Hearing, the Panel will prepare a report with recommendations for Council to consider before Council decides whether to adopt the amendment (with or without changes). The Panel's report will be presented to Council for a decision at a later Committee meeting.

If Council decides to adopt the amendment (with or without changes), it must submit the amendment to the Minister for approval and notify all submitters of its decision. If Council decides to abandon the amendment, it must notify the Minister and all submitters.

ENGAGEMENT

As previously noted, the amendment was placed on public exhibition for six weeks, from Thursday, 24 February 2022 until Friday, 8 April 2022. Notification of exhibition was provided to the community via a mailout to all landowners and occupiers directly affected by the amendment, as well as owners and occupiers of land in the vicinity of each amendment site who may be materially affected by the amendment. Prescribed Ministers, Local Members, Public Authorities and several community groups and associations were also given notice of the amendment. Notice was also included in the Victorian Government gazette, in local newspapers and on the Shire's website.

During exhibition, members of the community could contact Shire officers or make an enquiry about the amendment via the online enquiry function on the Shire's Amendment Webpage, direct phone call, and writing to, or emailing the Shire's Strategic Planning Team. In this regard, Shire officers responded to multiple phone calls and email enquiries, including discussing the amendment in further detail with representatives of the Mornington Golf Club and Scouts Victoria (both of whom are directly affected by the amendment).

Following the Committee's decision on whether to refer the amendment and submissions to an independent Planning Panel, notification of the Committee's decision and pre-set Panel dates will be sent to all submitters. The Shire's website will also be updated with the Committee's decision.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987.

SUSTAINABILITY CONSIDERATIONS

Principles of sustainability underpin the purpose of the amendment to protect and preserve the Mornington Peninsula's highly valued natural environment and assets.

4.1 (Cont.)**FINANCIAL CONSIDERATIONS**

If the Committee decides to refer the amendment and submissions to a Planning Panel, the following costs will be incurred:

- Panel appointment costs (approximately \$10,000)
- Legal and/or expert representation at the Planning Panel (approximately \$35,000).

The above costs can be accommodated within existing budgets.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.2 Planning Scheme Amendment C219morn Housing and Neighbourhood Character Strategy - Post-exhibition Report

Prepared By	Martin Chin, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11265172
Briefing Note Number	BN1583 – 10 May 2022
Attachment(s)	Nil

***Addendum – Report withdrawn
Circulated Wednesday 15 June 2022***

This report has been withdrawn and will be relisted for the Planning Services Committee Meeting on 18 July 2022.

4.3 Proposed Planning Scheme Amendment C243 - 79 and 83 Bungower Road, Somerville - Mornington Peninsula (Somerville) Technology, Industry and Business Park.

Prepared By	Allan Cowley, Strategic Projects Planning Manager
Authorised By	Director - Planning and Infrastructure
Document ID	A11237126
Briefing Note Number	BN1582 – 10 May 2022
Attachment(s)	<ol style="list-style-type: none">1. C243 Draft Development Plan Overlay 24 ↓2. C243 Draft Local Policy 17.03 - 2L ↓3. C243 Zoning Map ↓4. C243 DPO Map ↓5. C243 Draft Explanatory Report ↓6. C243 Instruction Sheet ↓7. C243 Town Planning Report - MacroPlan ↓8. C243 Traffic Impact Assessment - Stantec Australia Pty Ltd ↓9. C243 Extract from Ecological Condition Report - Ecology and Heritage Partners ↓

EXECUTIVE SUMMARY

The purpose of this report is to outline a current proponent led planning scheme amendment proposal for the rezoning of land at 79 and 83 Bungower Road, Somerville from the Special Use Zone 1 – Port Related Uses Zone (SUZ1) to the Industrial 3 Zone (IN3Z). The amendment also proposes the introduction of a site-specific Development Plan Overlay and local policy.

The report identifies a range of critical factors, including the choice of the IN3Z, controlling the range of uses and form of development provisions to ensure a supply of larger lots for strategic industries, traffic impact implications, infrastructure provision, open space provision, the protection of biodiversity and environmentally sustainable design.

The proposed rezoning is considered to have a strong strategic justification and is consistent with Council's previously adopted Industrial Land Strategy (2018) and Industrial Land and Infrastructure Assessment and Rezoning Strategy (2020). While the concept plan for the site will need to be significantly revised to address all the critical factors noted above, it is considered that the Development Plan Overlay and local policy provide a clear framework for appropriate use and development of the site. The proposed amendment documents are included in Attachments 1 to 6 to this report.

It is recommended that Council seek authorisation from the Minister for Planning to formally prepare and exhibit the amendment, enabling community submissions to be made in relation to the proposal prior to further consideration by Council.

RECOMMENDATION

That the Committee:

1. Resolves to seek authorisation from the Minister for Planning pursuant to Section 8A of the *Planning and Environment Act 1987* to prepare and exhibit Amendment C243morn

4.3 (Cont.)

to the Mornington Peninsula Planning Scheme generally in accordance with Attachments 1 to 6 of this report.

2. Authorises the Director of Planning and Infrastructure to make editorial and administrative changes to Attachment 1 to 6 to this report and any changes required by the Minister as conditions of authorisation prior to exhibition.
3. Resolves to undertake exhibition of Amendment C243morn to the Mornington Peninsula Planning Scheme in accordance with Section 19 of the *Planning and Environment Act 1987* following receipt of authorisation from the Minister for Planning.

COMMITTEE DECISION

Moved: Cr Mercurio

Seconded: Cr Dixon

That the recommendation be adopted.

Carried Unanimously

COUNCIL & WELLBEING PLAN

The proposed amendment is significant in terms of all three strategic themes of the Council and Wellbeing Plan.

Increasing industrial land supply is important to achieving:

- a robust, innovative and diverse economy
- well-planned townships with opportunities for jobs closer to home, and
- providing for employment and economic opportunity as part of a flourishing community.

The amendment is most directly related to Strategic Objective 2.4 which aims to achieve a diverse economy, with green and renewable opportunities, encouraging entrepreneurship, investment and innovation. Actions included under this Objective include:

- 2.4.3: Using our industrial and commercial land to aid business growth and attract new and emerging industries to help diversify our economy.
- 2.4.4: Collaborating with the community about the future role of the Port of Hastings and the surrounding port-related land.

RELEVANT COUNCIL DECISIONS AND POLICIES

As outlined below there are a number of Council and State Government policies, strategies and plans that form the strategic basis for the current amendment proposal.

The key Council decisions in this regard have been:

- The adoption of the Mornington Peninsula Shire's Industrial Areas Strategy (April 2018) which highlighted a projected shortfall in the availability of industrially zoned land in the Shire, and
- The Industrial Land and Infrastructure Assessment and Rezoning Strategy, adopted by Council in September 2020, which, while recommending a large area to the north

4.3 (Cont.)

of the Hastings township as the preferred location for a major new industrial precinct, also supported a complementary industrial area to the east of Somerville, anchored by the approved Sealite factory development.

DISCUSSION**Purpose**

The purpose of this report is to outline a current proponent led amendment proposal for the rezoning of land at 79 and 83 Bungower Road, Somerville from the SUZ1 – Port Related Uses Zone to the IN3Z. The amendment also proposes the introduction of a site-specific Development Plan Overlay and local policy.

Background**The subject site**

The subject site consists of two properties, as shown in Map 1 below, being:

- No. 83 Bungower Road, on the south east corner of Bungower Road and Lower Somerville Road. This land contains the old Thomas Brunnings farm homestead and has an area of 2.97 hectares. The land has a frontage to Bungower Road of approximately 205 metres and a side road abuttal to Lower Somerville Road of approximately 141 metres. The whole of this site is subject to a heritage overlay (HO 269), which will remain in place.
- No. 79 Bungower Road, owned by Procter Investments, the proponents for the amendment. This land has an area of 33.87 hectares, with a frontage to Bungower Road of approximately 245 metres and a side road abuttal to Lower Somerville Road of approximately 675 metres. The land was previously used for horse agistment and contains a number of associated buildings located on the south west section of property with access from Lower Somerville Road. The site contains a number of farm dams, and a drainage line dissects the site, running from west to east. Large parts of the site have been seeded with introduced pasture grasses.
- The total area of the land included in the amendment is 36.82 hectares.

In addition, it may be noted:

- Bungower Road is a local arterial road and is included in Transport 3 Zone (TR3Z). Council is the responsible road authority for Bungower Road, i.e., it is not a declared VicRoads/Department of Transport arterial road. Lower Somerville Road is an unconstructed local road and is not included in any road zoning.
- A major pipeline easement, 15 metres in width and containing both oil and high-pressure gas pipelines, runs through the north west section of the site crossing both properties (as shown in Map 1 below).
- As shown in Map 2 below, an area of approximately 2.5 hectares in the north eastern corner of 79 Bungower Road is the site of the approved Sealite factory development. The original approval (in 2014) was limited to marine industry, however Amendment C283 (approved 11 November 2021) allows the general industrial use of this site. The Sealite development is still to commence.
- As shown in Maps 3 and 4 below:
 - The land to the west of the site across Lower Somerville Road, is partially within the Low-Density Residential Zone (LDRZ) and partially within the Green

4.3 (Cont.)

Wedge Zone (GWZ2) and is generally used for low density residential and rural living purposes but includes nurseries on land in the GWZ to the south west.

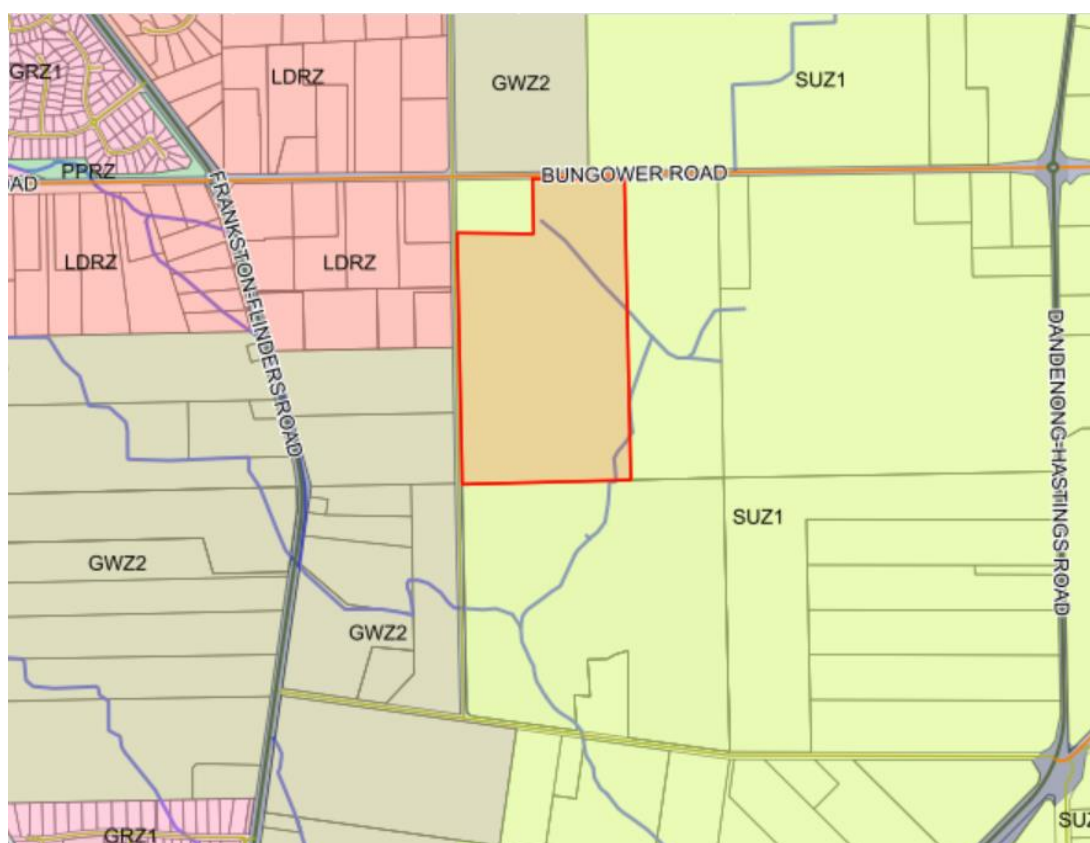
- Land to the north, across Bungower Road, is within the GWZ2 and SUZ1 – Port Related Uses and is currently used primarily for market gardening and nurseries.
- Land to the east and south of the site is within SUZ1, with market gardening and nurseries as significant land uses. There is a significant area of native vegetation on the land immediately to the south.

Map 1: Site Aerial



Map 2: Approved Sealite development site

Map 3: Surrounding zoning pattern



4.3 (Cont.)

Map 4: Adjoining land uses

**The amendment proposal**

The proponents have submitted an amendment request seeking to rezone the site from SUZ1 – Port Related Uses) to IN3Z with the introduction of the Development Plan Overlay (Schedule 24 - Mornington Peninsula Technology, Industry & Business Park) which will facilitate the future use and development of the site for the Mornington Peninsula (Somerville) Technology, Industry & Business Park. A copy of the Town Planning Report submitted in support of the amendment request is included as Attachment 7.

Under the current SUZ1 zoning industry is a permissible use but is limited to industries that are “dependent on or gain significant economic advantage from proximity to deep water

4.3 (Cont.)

port facilities, be directly associated with such a use or be a marine service industry". This requirement would prevent consideration of the full range of uses intended for the Technology, Industry and Business Park, hence the need for rezoning.

It is important to recognise that the amendment proposal is based on a specific vision for the future use and development of the land, and that the planning scheme provisions are intended to deliver this intended outcome. The vision included in the applicant's submission (p.14 -15) reads as follows:

The vision for the precinct is for it to become a primary focus of technology related industry and business through the development of a high amenity technology, industry and business park. The precinct will become a destination that supports the co-location and clustering of technology firms, promotes innovation and generates a high level of employment opportunities that allows for high value knowledge sharing opportunities.

Planning decisions should be guided by ensuring long-term opportunities for the establishment of strategic industries, manufacturing, and research & development. To support these objectives a range of larger lots will be provided (generally in a range between 3000sqm and 3 hectares) in accordance with the development concept plan. Opportunities will also be provided for the establishment of smaller start-up's and small to medium enterprises within specific sub-precincts.

These sub-precincts will allow for office-based companies, local service industries and for smaller scale operations on lots generally no smaller than 2,000 sqm in area. Uses that should be more appropriately located in commercial centres within the municipality such as supermarkets, shops and retail premises (except as specified in a local policy for the precinct) should be discouraged from this area. The Mornington Peninsula Technology, Industry and Business Park is not to be developed as a retail area or homemaker centre. However, there will be some scope for a limited number of sites to be used for bulky goods retailing that relate to technology industries.

Industrial uses which may conflict with the primary focus of the precinct, such as bitumen/concrete batching plant, shipping container storage, transfer station and vehicle recycling or disposal will also be discouraged from this area. Similarly, only a limited proportion of the site may be used for storage type uses, as the aim is for businesses with a higher employment potential to be located within this area. Special consideration will be given to the use of the Brunnings homestead heritage site to support the ongoing protection of heritage values.

A high level of amenity will be created within the precinct through the provision of open space which will contain facilities such as a sporting oval with walking and cycling tracks that will enhance the experience of workers and local residents. The Brunnings homestead heritage site will be incorporated into the open space area, which will ensure the protection of the homestead and the significant trees located on the site. The open space area may also provide a focus for the potential establishment of a local food and produce centre of excellence, including a limited number of sites for cafes, restaurants, cellar door, or a micro-brewery aiming to serve a mix of those employed in the area, local residents and the general public.

The design of the precinct will ensure safe and efficient access for heavier vehicles, safe traffic, pedestrian and cyclist movement and appropriate levels of parking, matched to the range of uses on site and all designed to provide flexibility for changes in use over time without the risk of congestion and traffic conflicts. Access to the area will only be provided via Bungower Road with no

4.3 (Cont.)

access provided via Lower Somerville Road. Appropriate provision will be made for future public transport connectivity, including allowance for a bus stop at the front of the site and a dedicated connections and pathways to surrounding cycling pathways.

The Mornington Peninsula Technology, Industry and Business Park will be accessible and well-integrated with the surrounding area, providing well-designed landscaped buffers where required. The landscape buffers will ensure that an adequate transition between the precinct and surrounding land zones occur. The use and development of the land will support a range of environmentally sustainable practices and initiatives, such as renewable energy production, sustainable building attributes and best practice water and waste management.

While this vision is generally supported, it is important to note that the concept plan included in the proponent's submission is not the approved development plan and significant changes will be required to address the issues and requirements of the Development Plan Overlay, as outlined in later sections of this report.

Strategic justification for the amendment

The strategic justification for the proposed amendment is based on a number of factors, including:

- The Mornington Peninsula Shire's 2018 Industrial Areas Strategy highlighted the need to identify additional land for future industrial development in order to support economic growth and local employment opportunities. In this regard, the possible rezoning of some of the land included in the SUZ1 zone was noted as a potential option. This report highlighted the particular need for a supply of larger industrial sites, as the existing industrial areas increasingly accommodate smaller scale and more service-oriented businesses.
- The Port of Hastings Development Authority, through the 2018 Port Development Strategy, supported the investigation of this area for rezoning, in part as a way to provide a transition/buffer area between areas zoned for potential port related industrial use to the east and existing township/residential areas.
- The State Government's 2020 Metropolitan Industrial and Commercial Land Use Plan (MICLUP) confirms the need for additional industrial land supply and supported investigation of the fringe areas of the SUZ1 for potential rezoning. MICLUP also indicates the possible 'regional displacement of demand' as industrial land supplies in Dandenong, Carrum and Frankston decreases, and the need to provide sites for 'strategic industries'.
- The current site, along with another larger precinct to the north of Hastings, was identified as a potential location for rezoning under the Industrial Land and Infrastructure Assessment and Rezoning Strategy adopted by Council in September 2020.
- As outlined in the draft explanatory report (Attachment 6), the amendment is also consistent with a range of general local and State Government policy directions relating to industrial land supply and supporting employment growth.
- Finally, although the State Government (Department of Environment, Land, Water and Planning [DELWP]) rejected an earlier 'fast track' proposal and has indicated that any amendment will need to go through the 'standard' amendment preparation and review process, it has not indicated any opposition to the rezoning in principle based on State policy directions.

4.3 (Cont.)**ISSUES****Form of the proposed amendment – Industrial 3 Zone, Development Plan Overlay and local policy**

In 2020, based on the ILARS report, Council proposed a site-specific Special Use Zone for the land as being the best way to achieve the intended use and development of this site as a high standard industrial, technology and business park.

It was considered that a SUZ would enable stronger control over future land use and development proposals, regardless of changes in land ownership. However, DELWP did not support this approach and instead indicated that the IN3Z, one of the zones within the State-wide Victoria Planning Provisions, should be considered.

The IN3Z is intended to be used as a transition zone between residential areas and 'heavier' industrial zones, and in this regard is considered appropriate to the location of this land which is on the edge of the Somerville township.

However, the IN3Z also permits (as of right) a number of commercial uses, such as small-scale supermarkets (with a floor area of less than 1,800 square metres and abutting or within 30 metres of a road in Transport Zone 2 or 3) and also allows for consideration of warehouse-based restricted retailing. These uses have the potential to reduce the availability of land available for industrial use, contrary to the purpose of the proposed rezoning, and to create out of centre retail development, to the detriment of town centres.

In this context, the proponent and Council officers have worked towards the use of the IN3Z in conjunction with a Development Plan Overlay and local policy to provide as much direction as possible on future land use within the statutory framework preferred by DELWP.

Mix of Land Uses and draft Development Plan.

As noted above, it is proposed that the amendment will include a Development Plan Overlay (DPO24). The draft DPO document is included in Attachment 1.

While most Overlays are only able to set requirements in relation to development, the DPO is also able to include requirements in relation to land use provided these are not in conflict with the underlying zone i.e. a DPO cannot be used to prohibit a use that is permissible under the zone.

As noted, the proponent has prepared a preliminary concept plan to enable various investigations and assessments to be produced e.g., in relation to traffic impact, vegetation removal, potentially contaminated land and other factors affecting the amendment.

However, the concept plan is not intended to be the final development plan, nor is it intended to form part of the amendment documentation, as further changes and refinements will be necessary.

Once a development plan that meets the requirements of the DPO is approved, any proposal which is consistent with the approved plan is exempt from the need for further public notification and third-party appeals. Accordingly, it is important for the DPO itself to clearly spell out the requirements that Council will wish to see in any future development to provide certainty for both the proponent and the community, including nearby residents.

In this context, the draft DPO includes a requirement to encourage the establishment of technology-based industries, manufacturing, strategic industries and research and to exclude a range of heavier industrial uses, such as concrete batching plants and waste disposal, as well as retail premises, including supermarkets and other restricted retailing

4.3 (Cont.)

uses that are inconsistent with the technology-based industries and advanced manufacturing.

While this is not a prohibition per se, it does provide a basis for a reasonable level of control. This is intended to be reinforced by the proposed local policy. The draft local policy is included as Attachment 2.

The provisions of the DPO also aim to ensure that each stage of development includes some sites for larger scale industry as well as provision for local service-based industries and professional businesses to meet demands associated with local population growth.

To ensure an ongoing supply of larger lots, it is important for the DPO to explicitly outline the intended range of lot sizes and to indicate the proportion of the amendment site that should be allocated to each size category. Given the possibility of large sites being further developed as factoryettes it is also considered necessary to indicate the intended range of building floor areas within each precinct.

There are few examples or guidelines on the framing of provisions to achieve this kind of development mix. In this context, the draft DPO provisions include requirements for at least half the developable land to be used for lots with an area of 5,000 square metres or greater, in line with the strategic justification for the amendment, which is, in part, to address the severe lack of larger industrial sites and premises.

Further provisions are intended to limit the number of the larger lots that are created as factoryette sites i.e., the majority of the larger lots created must be retained as larger lots and not further subdivided or developed for small scale premises with a floor area of less than 500 square metres.

It recognised that smaller sized lots, smaller industrial units/factoryettes and small storage 'warehouses' are more readily sold to smaller scale investors however, it is considered necessary to 'reserve' a proportion of the site for larger scale use and development, although Council will still retain discretion on this matter.

Transport and traffic impact implications

One of the key issues raised by residents in earlier consultations has been the effect of the proposed development on traffic movement and the impact of traffic on the surrounding area.

In this regard, the original ILARS report was based on a potential precinct with an area of approx. 198-hectares, while the current proposal involves less than 20% of that area.

The limitation on the area of the current amendment has, in part, been due to concerns regarding the impact of additional traffic generation prior to further strategic land use and transport planning by the State Government. This land forms part of a State and regionally significant industrial precinct and Council has strongly advocated that such planning is necessary to support the future development of the area.

In terms of the current proposal, a traffic impact assessment prepared by the applicant's consultants (Stantec) indicates that current traffic volumes along the section of Bungower Road to the west of the site, where there is adjoining low density and rural residential development, is in the order of 5,000 to 6,500 vehicle movements per day (vpd), with approximately 6% of this volume consisting of heavy vehicle movements (300 to 390 vpd).

Stantec estimate that when the current 37-hectare site is fully developed, traffic movements generated to and from the west of the proposed precinct (e.g., to and from Peninsula Link) will increase by approximately 2,000 vpd (a 40% increase), with 25% of this volume comprised of heavy vehicle movements (an additional 500 vpd).

4.3 (Cont.)

Although this increase in traffic is significant, the traffic assessment indicates that it is within the existing capacity of Bungower Road. A copy of the traffic impact assessment is included as Attachment 8. It should be noted that the DPO will exclude direct vehicular access to Lower Somerville Road, except in emergencies.

On balance, having regard to the current road classifications, the assessment of capacity, the road reserve widths and the setback requirements along Bungower Road the current proposal is considered to be manageable in terms of traffic impact, without major public investment in road infrastructure.

However, the Stantec report again highlights the need for the State Government and Department of Transport to engage seriously in planning for the designated future industrial areas, including the need to review the classification and design of roads to accommodate large increases in vehicle movement.

In this regard, the assessment report notes that Frankston-Flinders Road is currently carrying in the order of 10,000 to 17,000 vpd which is approaching the theoretical threshold at which upgrades may be required, even though only a relatively small increase in traffic is predicted (135 vpd) as a result of the current rezoning proposal.

The traffic impact assessment also includes some commentary on parking requirements associated with the development, arguing that the standard (State-wide) requirements of the planning scheme are excessive based on parking surveys undertaken by the consultants of completed industrial developments.

While this may be the case, the actual parking requirements will need to be determined in the context of future use and development applications, since if there are proposals that involve a higher level of customer traffic (noting that breweries, child care centres, gyms etc are all permissible uses in the IN3Z) these will require a higher rate of on-site parking provision. This will need to be addressed at the planning permit application stage.

Finally, the *Transport Integration Act 1983* strongly emphasises the need for land use decisions to be made having regard for the current and future development and operation of the transport system.

There is also a strong focus in State Government and Council policies on facilitating active transport. In this context, it is considered that the current proposal generates a need to provide for active transport alternatives, as well as provision for future public transport (bus stop) facilities. Therefore, in addition to pedestrian and cycling paths and facilities within the development itself, the draft DPO includes a requirement for provision of a cycle path connection from Frankston-Flinders Road to the site, which will, in combination with Council's existing and proposed cycle paths enable potential access by bicycle from Hastings, Tyabb and Somerville.

Open Space proposals

One of the main features of previous plans for this site (when the proponent originally put forward a proposal for the rezoning of approximately 66 hectares) was a large area of open space with associated recreation facilities. These were intended primarily to provide high levels of amenity for those working in or visiting the precinct and formed part of the Technology Park concept which seeks to attract high value, high technology based and advanced manufacturing companies.

With the reduction in the size of the precinct to 37 hectares, the area of open space has also been reduced. Excluding landscaped buffer strips, the pipeline easement and road frontage landscaping, which are not generally accepted as public open space, the total area of open space shown in the preliminary plans amounts to approximately 0.8 hectares (2% of the site).

4.3 (Cont.)

In addition, the area to the west of the pipeline is considered to be unsuitable as a public open space, given it is located a significant distance from the residential areas of Somerville, is constrained by the location the pipeline, lacks access from Lower Somerville Road and is not easily accessibility from within the precinct itself. Given these factors, the ongoing maintenance costs to Council in accepting this land as public open space may well be greater than the public benefit would warrant.

An area of approximately 500 square metres, more centrally located as a passive open space area for the people working in the precinct, and with facilities to support the proposed bike paths, would be more effective. The area to the west of the pipeline may then be retained in private/common ownership, and possibly linked to the use of the heritage site and/or landscaped for informal use.

It is considered appropriate for Council to indicate in the draft DPO that the larger open space areas should remain as part of the development itself rather than being transferred to Council and that Council will require a 5% cash in lieu contribution as provided for under the Subdivision Act to provide open space and recreational facilities in the area.

Infrastructure provision

Unlike the proposed Hastings industrial precinct, the current proposal has the advantage of being primarily in one ownership, and therefore the requirements for infrastructure provision can be more directly included in future planning permit conditions rather than requiring a Development Contribution Plan overlay.

Preliminary advice from servicing authorities has indicated that there are no major barriers to effective servicing, although actual costs are still to be determined. In regard to the high-pressure gas pipeline, it appears there are no significant issues provided there are no structures or vehicle crossing provided on or across the easement.

On the issue of site access, the traffic impact assessment highlights that with the increase in traffic volumes it may be necessary to consider a roundabout or traffic signals at the new entry point to the precinct. Such facilities can involve a significant upfront cost and the draft DPO requires the road works at the new entry to be compatible with future signalisation but allows for the signals to be installed subject to an assessment before the approval of the final stage of development or after three years, whichever occurs sooner, and subject to the discretion of Council.

Protection of native vegetation and biodiversity values

Although an initial assessment included in the ILARS report did not indicate any particular development constraints in relation to the extent of native vegetation on this land, a more detailed ecological conditions report, submitted by the proponent and prepared by Ecology and Heritage Partners (EHP), has identified that some areas of the site contain significant native vegetation.

In addition to patches of grassy woodland and damp sands wood land (particularly associated with the drainage lines), there are some 60 scattered trees. Many of these are large mature trees, providing an array of small hollows, bark fissures and crevices, which are important from a habitat point of view. In response to the findings of the vegetation survey the EHP report concludes (p.20):

The large old trees located throughout the study area (primarily in the north-east and south-east corners) present the highest ecological significance and should be a key focus for retention. It is recommended that the masterplan be amended to include these large old trees within passive open space, pocket parks and recreation areas.

4.3 (Cont.)

For example, the public open space proposed for the north-west corner of the study area could be moved to the south-west corner to facilitate additional retention of native vegetation.

These measures demonstrate the avoidance and minimise steps that may been undertaken as part of the application for a planning scheme amendment for the proposed development, which satisfies the requirements outlined in the Guidelines (DELWP 2017) and Clause 12.01-2S of the Mornington Peninsula Planning Scheme (DELWP 2022f).

In the context of the local and regional scale, the proposed removal of vegetation is not considered significant given the small, fragmented and relatively disturbed condition of vegetation on site.

A copy of the Mitigation Statement from the EHP report, including a plan showing the areas containing significant vegetation is included as Attachment 9.

Comments from Council's Natural Systems team emphasize that the removal of the majority of the vegetation from the site would represent an unacceptable loss of biodiversity and that the development footprint should be significantly reduced and measures put in place to ensure that biodiversity values are further protected in the long term (i.e., through a 173 agreement or similar, and/or fencing protected portions to separate them from the development).

While the protection of the large mature trees is certainly important (as highlighted in the EHP report), the other areas of grassy woodland and damp sands woodland may also form part of a more site responsive drainage strategy for the land, and a comprehensive approach to the design of the development will need to be undertaken. This requirement is incorporated into the draft DPO provisions.

The EHP report also recommends further targeted surveys, assessments and investigations regarding the presence of (and potential impacts to) threatened flora, fauna and vegetation communities listed under the EPBC Act during the appropriate flowering season, to ensure that Council is fully informed about the significant biodiversity values present at the site and potential impacts to these from the proposal (and the further regulatory approvals that might be required under the EPBC Act), before making any decisions about the proposal.

In this regard, it is considered that exhibition of the amendment can still proceed on the basis of the current findings, but that the further investigations should be undertaken prior to approval of any development plan or development application. It would be advisable for this additional work to be undertaken in the next appropriate season (August 2022).

Environmentally Sustainable Development (ESD) and other design requirements

The draft DPO provisions require a comprehensive Environmentally Sustainable Development Strategy for the overall precinct and Development design guidelines to be applied in assessment of specific development proposals.

These provisions require consideration and response to all of the aspects of ESD identified in Council's current draft ESD policy and the CASBE elevated ESD targets, although the standards which will be relevant to this precinct will need to be determined at the time, depending on the future of the other ESD amendments and State Government policies.

The design of the development will also be affected by other provisions of the DPO, including those relating to the required Stormwater Management Plan and Open Space Plan and plans for the treatment of the eastern boundary of the site, where it adjoins market gardening land that is within the SUZ1 Zone.

4.3 (Cont.)**Options for consideration**

At this stage of a proponent led amendment Council may determine not to seek authorisation if it considers the proposal lacks sufficient strategic merit to proceed. Council may also determine to defer consideration if it is considered that there is a need for further investigations or further work to develop the details of the proposed amendment, for example, if Council considers that a different zone or other statutory provisions would be more appropriate.

A refusal to seek authorisation, which is effectively a refusal of an amendment request, is not open to appeal by a proponent, although in some cases a proponent may request the Minister to take on the role of planning authority.

In this case, although there is still considerable work to be done in producing a final development plan for the site, it is considered that the proposed amendment will provide a clear and effective framework for such a plan and that it is now appropriate to seek public comment through the exhibition process.

ENGAGEMENT

As noted, the current amendment proposal follows from the previous consideration and adoption by Council of the 2020 ILARS report. Preparation of the ILARS report involved extensive community consultation by Council with direct notice to over 3000 properties and the consideration of more than 200 submissions. While the majority of submissions did support the proposed Hastings precinct, there was also considerable support for a precinct in Somerville, particularly on the basis that it would be anchored by the approved Sealite factory development. There were also submissions that argued against any further industrial development in the Shire or raised concern about a precinct on the edge of the Somerville township, and these issues were considered by Council in adopting the ILARS report.

Earlier in the process of developing the current amendment process there was an intention to engage in further community consultation prior to seeking authorisation. However, due primarily to uncertainty created by the COVID lockdowns, this 'pre-exhibition' consultation has not been undertaken other than through discussions between the proponent and adjoining land owners and by advising all previous submitters of the information available on the Council website.

At this stage it is considered that seeking authorisation to exhibit an actual amendment proposal will be the most effective means to enable community consultation and the consideration of submissions. This will ensure a clear time frame and process, including, if necessary, an independent review of submissions by an planning panel appointed by the Minister.

In addition, there has been preliminary engagement by the proponent with a range of servicing authorities and agencies, including the relevant owners of the pipelines with the pipeline easement. Advice was also sought from the EPA in relation to potentially contaminated land, as required under Ministerial Direction 19. The EPA have indicated agreement with the consultant report provided by the proponent on this issue and the relevant recommendations have been incorporated into the draft DPO.

4.3 (Cont.)**COMMUNICATIONS PLAN**

Section 19 of the *Planning and Environment Act 1987* provides clear requirements for the giving of notice to all owners and occupiers of land that may be materially affected by a proposed planning scheme amendment.

In this case, notice will also be provided to all those who made submissions in relation to the original ILARS report. A general notice will also be published in a locally circulating newspaper and information will be made available on the Council website.

LEGAL AND REGULATORY FRAMEWORK

The proposed amendment documents (Attachments 1 - 6) have been prepared in accordance with the relevant Ministerial Directions.

Under Section 8 of the *Planning and Environment Act 1987* Council is required to seek authorisation from the Minister for Planning prior to formally preparing and exhibiting a Planning Scheme Amendment. The Minister may refuse to authorise the amendment, grant authorisation or grant authorisation subject to certain conditions.

SUSTAINABILITY CONSIDERATIONS

As outlined above, at the local level the proposed amendment has significant economic, social and environmental implications. In brief:

- The proposed amendment will partially address the projected shortage of industrially zoned land identified in the Shire's Industrial Land Strategy and the Melbourne Industrial and Commercial Land Use Plan, providing greater opportunities for economic growth and local employment in line with projected population growth. Consultants for the proponent estimate that the development of this site has the potential to create up to 1,110 jobs and will generate at least \$807.9 million in economic value for the Mornington Peninsula region and Victorian economy.
- In addition to the significant social benefit associated with increased local employment opportunities, the proposed development will also enable the establishment of new businesses providing services to the community and other local businesses. The concept of a technology, industry and business park also includes greater public access to some of the precinct and facilities, including areas of open space and facilities such as walking and cycling tracks, which will provide a high level of amenity for workers and customer/ visitors to the precinct.

The potential negative impact of increased traffic movement is recognised, and a Traffic Impact Assessment has been prepared by Stantec Australia Pty Ltd. The projected increase in traffic movements on Bungower Road is significant, however, the level of traffic movement is considered to be within the reasonable capacity of the road without excessive impact on adjoining properties given the likely traffic distribution, with the majority of traffic utilising the Western Port Highway, the classification of Bungower Road as a local arterial road, the road capacity assessment, the larger setbacks provided along this road and the exclusion of access from Lower Somerville Road.

- In terms of environment impact, an ecological assessment indicates that the site contains areas of significant vegetation, including a number of large mature trees which provide moderate to high quality habitat for native fauna. The proposed Development Plan Overlay (DPO) requires the proponent to address these findings and to design the future subdivision and development of the land to ensure that the significant biodiversity values of the site are protected while providing offsets for any unavoidable removal.

4.3 (Cont.)

Equally, the DPO includes requirements to ensure the layout of the site reflects best practice Environmentally Sustainable Development standards and the preparation of site development guidelines to ensure that the future development of each individual site also has regard to these principles. Finally, the requirements for future bus stops and pedestrian and cycling paths, both within the proposed development and providing a connection to the Council path along Frankston Flinders Road, are intended to facilitate the use of active transport and public transport as an alternative to car dependency.

FINANCIAL CONSIDERATIONS

As a proponent led amendment there are no significant financial implications for Council resulting from the amendment process itself, and the proponent will be required to bear the costs of any future Panel process and the various fees required by DELWP at different stages.

The rezoning will in effect support the future development of the site, and there will be an associated additional workload associated with consideration of a future development plan and planning permit applications.

However, these costs will be absorbed within the general planning services budget and are considered acceptable in terms of the net community benefit likely to arise from the amendment.

As noted in the report, the amendment and subsequent development of the site will also require the provision of significant additional infrastructure relating to the connection of various services to the site, road works, bike paths, open space etc. However, the proposed development plan and future planning permits will ensure these costs are borne by the proponent and future developers of the land.

The potential costs associated with future major road works at a regional level cannot be attributed to the current proposal but will need to be addressed by the State Government in planning for the state significant industrial precinct.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 STATUTORY PLANNING REPORTS

5.1 P18/2058.03 - 10 Seawinds Road, Balnarring Beach

Prepared By	Hugh Pierce, Team Leader - Planning Services
Authorised By	Director - Planning and Infrastructure
Document ID	A11256124
Attachment(s)	<ol style="list-style-type: none"> 1. Aerial Map ↓ 2. Zone Map ↓ 3. Plans ↓ 4. Submission (confidential) ↓ 5. Current Permit ↓ 6. Current Endorsed Plans ↓
Application No.	P18/2058
Proposal	To amend the plans previously endorsed pursuant to section 72 of the <i>Planning and Environment Act 1987</i> .
Melway Reference	193B11
Zoning	General Residential Zone – Schedule 1
Applicant	Urban Edge Consultants Pty Ltd
Date of Application	6 December 2021
Item Called in?	Yes – Cr Gill

EXECUTIVE SUMMARY

This application seeks to make several amendments pursuant to section 72 of the *Planning and Environment Act 1987* (the Act) specific to an existing Planning Permit P18/2058 (the Permit) for dwelling additions and alterations.

Many of the amendments to the development sought have already been undertaken without planning permission. As a result of this, there is also an ongoing planning compliance case brought by an adjoining landowner to the Victorian Civil and Administrative Tribunal (VCAT). That VCAT proceeding is related to, but independent of this application for an amendment. It is subject to a Compulsory Conference that all parties must attend. There has already been one Compulsory Conference that has failed to reach agreement between parties. If agreement can be reached at the next Compulsory Conference at VCAT, VCAT could make an order that requires parties to expedite this matter, however, given that this process has so far failed to reach agreement Council will proceed with making a decision on the currently proposed amendment application. This is primarily because the applicant has submitted amended plans as a result of the last Compulsory Conference, which attempt to resolve the matter and appease the objector's concerns.

Council officers are satisfied that the amended plans represent a fair and balanced compromise and meet the relevant provisions of the Mornington Peninsula Planning Scheme. The objector remains of the view that they will not withdraw their objection or VCAT appeal until the amendment is decided. In order to expedite the matters, a recommendation is being brought before Council due to the 'call in' by the Ward Councillor.

The application is considered acceptable having regard to the relevant policy and permit. It is therefore recommended that the Committee resolves to support the application and issue an

5.1 (Cont.)

amended Planning Permit in accordance with the amended plans submitted by the applicant on 26 May 2022 and attached to this report.

RECOMMENDATION

That That the Planning Services Committee resolves to issue a Notice of Decision for Planning Application P18/2058.03 at 10 Seawinds Road, Balnarring Beach to:

1. Amend the plans endorsed under the permit by the following:
 - A. Increasing the building height from 6.4 metres above natural ground level to 6.468 metres above natural ground level.
 - B. Increasing the first-floor finished floor level from 3.2 metres above natural ground level to 3.268 metres above natural ground level.
 - C. The addition of a retaining wall setback 1.83 metres from the south-west boundary.
 - D. The addition of a water tank and concrete slab.
 - E. Replacing screen planting along the south-west boundary.
 - F. Deleting the existing bedroom 5 ensuite window to south-west elevation.
 - G. The addition of a new bedroom 5 ensuite window to north-west elevation.
 - H. Replacing the existing windows to bedrooms 4 and 5.
 - I. Deleting of existing decks and nib wall adjacent to bedrooms 4 and 5.
 - J. Deleting of existing bore and hot water service to south-west elevation.
 - K. New deck to north-west of dwelling.
 - L. New paling fence marginally over 2 metres high to north boundary (at western end).
 - M. The addition of solar panels to roof.
 - N. Replacing the metal cladding installed to retained south-west elevation of Bed 5.
2. Amend the conditions of the permit by way of the following:
 - 1A. Within 60 days of the issue of the relevant amended permit, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - A. The decking on the north-west elevation.
 - B. A notation on the plan that the rainwater tank's capacity does not exceed 10,000 litres.

5.1 (Cont.)

3. Amend the description of what the permit authorises to the following:

“THE DEVELOPMENT OF ALTERATION AND ADDITIONS TO THE EXISTING DWELLING, A FENCE AND ASSOCIATED WORKS IN ACCORDANCE WITH THE ENDORSED PLANS.”

Part B

1. That the Committee resolves that Attachment 4 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COMMITTEE DECISION

Moved: Cr Gill

Seconded: Cr Mercurio

That the recommendation be adopted.

Carried Unanimously

PURPOSE

This application seeks to make several amendments pursuant to section 72 of the *Planning and Environment Act 1987* (the Act) specific to an existing Planning Permit P18/2058 (the Permit) for dwelling additions and alterations.

Proposal	The applicant is seeking to amend the endorsed plans associated with Planning Permit P18/2058 – Development of alterations and Additions to the existing dwelling and associated works
Zoning and Overlays	<ul style="list-style-type: none"> • General Residential Zone – Schedule 1 • Design and Development Overlay – Schedule 3 • Significant Landscape Overlay – Schedule 4 • Vegetation Protection Overlay – Schedule 1
Permit Triggers	<ul style="list-style-type: none"> • Design and Development Overlay – Schedule 3 (DDO3) • Significant Landscape Overlay – Schedule 4 (SLO4) • Vegetation Protection Overlay – Schedule 1 (VPO1)
Advertising	<p>Yes, the amendment application made under section 72 of the Act was advertised by way of notification letters to adjoining land.</p> <p>An amendment to those plans was submitted by the applicant on 26 May 2022 under section 57A of the Act (after notice of the amendment application was given). The amended plans are intended to address the concerns raised by the one objector who has received a copy of the amended plans. The amended plans have been considered by officers and as they relate to changes that would seek to appease the objector and lessen any potential material detriment, officers do not consider that as a result of the amendments made to the application, the grant of the permit would cause material detriment to any person. As such, the latest plans submitted by the applicant were not re-advertised in accordance with section 57B (2) of the Act.</p>

5.1 (Cont.)

Submissions	One
Consultation	Not applicable, given the mandatory Compulsory Conferences associated with the separate but related VCAT enforcement proceeding.
Key Issues	<ul style="list-style-type: none"> • Variation from previously approved plans. • Impact on adjoining land.
Recommendation	That a Notice of Decision be issued.

BACKGROUND

The Permit was originally issued on 3 July 2019 for “Development of alterations and additions to the existing dwelling and associated works in accordance with the endorsed plans”. These alterations and additions comprised of the construction of a first-floor bedroom, ensuite, study and deck and a ground level laundry, carport and window alteration to the lounge room.

On 15 June 2020, the Permit was amended to allow for the following:

- Amending the plans required to be endorsed under the permit generally involving:
 - Removal of the projected dining room.
 - Realignment of proposed carport to be parallel with the dwelling.
 - Removal of the laundry.
 - Conversion of the first-floor deck to a sunroom.
 - Ground floor eastern wall of the dwelling reconstructed generally in line with its current location. The maximum building height of the ground floor increased by 0.3 metres.
 - A new flat roof reconstructed over the existing living areas.
- Amending the conditions of the permit by:
 - Removing the words ‘and less than 40% reflectivity’ from the Condition 1. a) requirement for ‘a schedule of materials and colours (which must be of muted tones) to the satisfaction of the Responsible Authority.’

The above amendment enabled the use of Colorbond ‘Dune’ which has a reflectivity value of 42%.

Since the last amendment, some buildings and works were carried out on site that do not accord with the endorsed plans. This has led to an adjoining owner submitting their own application to VCAT for an enforcement order against the landholder.

Council officers were in the process of liaising with the landowner to seek an appropriate avenue to rectify the non-compliance. Council officers did not bring compliance action against the landowner as there are reasonable means of securing compliance without seeking VCAT enforcement orders and in certain circumstances such as this, it was considered reasonable to allow the landowner the opportunity to bring it back into

5.1 (Cont.)

compliance or seek to amend the endorsed plans. These are typically accepted solutions for such matters, irrespective of the retrospective nature of the works and permission sought.

Existing Conditions

The subject site is a residential allotment measuring approximately 945 square metres. Due to the retrospective nature of the application, most amendments sought within this application are present on the subject site including the moderate increase in building height to the previously approved plans.

Surrounding Land

The land surrounding the subject site comprises of the following:

North-east	Seawinds Road 9 and 11 Seawinds Road – Two residential allotments comparable in size to the subject site containing dwellings.
North-west	8 Seawinds Road – Residential allotment comparable in size to the subject site containing a dwelling.
South-east	Balnarring Beach Foreshore
South-west	1 Bass Court – Residential allotment comparable in size to the subject site containing a dwelling.

PROPOSAL

The Permit applicant is seeking planning approval to make the following amendments:

- Increasing the building height from 6.4 metres above natural ground level to 6.468 metres above natural ground level.
- Increasing the first-floor finished floor level from 3.2 metres above natural ground level to 3.268 metres above natural ground level.
- The addition of a retaining wall setback 1.83 metres from the south-west boundary.
- The addition of a water tank and concrete slab.
- Replacing screen planting along the south-west boundary.
- Deleting the existing bedroom 5 ensuite window to south-west elevation.
- The addition of a new bedroom 5 ensuite window to north-west elevation.
- Replacing the existing windows to bedrooms 4 and 5.
- Deleting of existing decks and nib wall adjacent to bedrooms 4 and 5.
- Deleting of existing bore and hot water service to south-west elevation.
- New deck to north-west of dwelling.
- New paling fence marginally over 2 metres high to north boundary (at western end).

5.1 (Cont.)

- Solar panels to roof.
- Replacement metal cladding installed to retained south-west elevation of bedroom 5.

NOTIFICATION AND CONSULTATION**Notification**

The amendment application was advertised by way of sending letters to adjoining properties in accordance with section 52 of the Act.

An amendment to the plans was submitted by the applicant on 26 May 2022 under section 57A of the Act (after notice of the amendment application was given). The amended plans are intended to address the concerns raised by the objector, who has received a copy of the amended plans. The amended plans have been considered by officers and as they relate to changes that would seek to appease the objector and lessen any potential material detriment, officers do not consider that as a result of the amendments made to the application, the grant of the permit would cause material detriment to any person. As such, the latest plans submitted by the applicant were not re-notified in accordance with section 57B (2) of the Act.

Submissions

One objection was made from the adjoining owner. The concerns raised within this objection are as follows:

- Rainwater tank and retaining wall adversely affects amenity.
- Drainage issues associated with retaining wall.
- Infestation of Lilly Pilly trees.
- Retrospective nature of the proposal.

As discussed above, the applicant has submitted amended plans under section 57A of the Act after the original notice. These plans were prepared to appease the concerns raised in the objection. No other party expressed any concerns or made any submissions in relation to the original amendment application. The amendments made are considered minor and not to cause material detriment to any other person. The objector has been provided a copy of the plans in order to provide any additional comments, withdraw the objection (if satisfied) or re-confirm their objection. However, this is not considered to require formal re-notification of the application under section 57B of the Act, as explained above. If the objector does not withdraw their objection, or submit any other response, Council must accept their original objection under section 57A (7)(b) of the Act and that party maintains their VCAT appeal rights.

Despite assertions from the objector, that other parties should be re-notified under section 57B, the changes made relate to issues only they have raised. The changes proposed relate to the retaining wall, which is moving further from the objector's boundary into the subject site, amending the landscaping to reflect plants more suitable to the objector and moving the water tank, in a location that will largely not be visible to any other person (noting that a 10,000 litres water tank is exempt from permission under the Planning Scheme). Therefore, it is not considered necessary to re-notify the application under section 57B to any other party.

5.1 (Cont.)**Consultation**

No formal consultation has been undertaken through Council's processes given the mandatory Compulsory Conferences associated with the associated VCAT enforcement proceeding. However, as discussed above, following the notification period the application was amended to relocate the rainwater tank, move the retaining wall, increase the garden bed area and change the species to be planted within the garden bed in response to the concerns raised by the objector. These plans have been provided to the objector and the process has been clearly explained.

REFERRALS**External Referrals**

Department of Environment, Land, Water and Planning – no objection.

Internal Referrals

No internal referrals were required.

PLANNING SCHEME PROVISIONS

Municipal Planning Strategy
Clause 02 Municipal Planning Strategy
Clause 02.02 Vision
Clause 02.03-1 Settlement
Clause 02.03-2 Environmental and landscape values
Clause 02.03-3 Environmental risks and amenity
Clause 02.03-5 Built environment and heritage
Planning Policy Framework (PPF)
Clause 11.03-5S Distinctive areas and landscapes Mornington Peninsula Localised Planning Statement (Victorian Government, 2014)
Clause 11.03-4S Coastal Settlement
Clause 12 Environmental and Landscape Values
Clause 12.02 Coastal Areas
Clause 12.02-3S Protection of coastal areas.
Clause 13.01-2S Coastal Inundation and erosion.
Clause 15 Built Environment and Heritage
Particular Provisions
Clause 54 One dwelling on a lot
General Provisions
Clause 65 Decision Guidelines

5.1 (Cont.)**CONSIDERATION**

It is considered that the amended development is consistent with the objectives of DDO3, SLO4, Environmental Significance Overlay – Schedule 20 and the above policies and provisions on the following basis:

The change in building height sought for approval represents an increase of 68 millimetres from 6.4 metres above natural ground level to 6.468 metres above ground level. This minor change in height maintains compliance with DDO3's mandatory height limitation and is considered to be an appropriate scale in the context of the site and surrounding landscape, noting the presence of two storey buildings in the surrounding area and the existing approval. Applications to amend a proposal must be considered in the context of the existing permission already granted and what is proposed, not from a 'no permit' scenario. It is further acknowledged that the majority of the building footprint is limited to the ground floor, with only the master bedroom, associated walk in robe, ensuite, study and sunroom located on the first-floor level where the height increase is apparent. This amendment is minor in nature and is not considered to detrimentally impact adjoining properties' amenity as a result.

A new deck has been proposed to the north-west ground floor of the dwelling. As the deck is at ground level it will be screened from the surrounding land by the dwelling and boundary fencing. Whilst included on the site and floor plans the deck has not been reflected on the submitted elevation plans and will therefore be requested via conditions of approval.

A paling fence has been proposed to the north-western boundary with a maximum height exceeding 2 metres for a minor extent of its length. The assessed plans note this paling fence to be existing, however, it is noted that this detail was not shown on the previously endorsed plans and therefore must be considered as part of this amendment application. Due to the sloping nature of the land towards the rear of the site, the side fence is noted to be 2.1 metres high at the western end. This represents an encroachment above the 2 metre high DDO3 permit threshold which, due to its minor extent, is considered reasonable to approve. As the fence has triggered the need for a permit, pursuant to the DDO3, it is also considered necessary to amend the 'permit allows' statement to include a fence.

Replacement metal cladding has been proposed to the single storey wall outside bedroom 5 on the south-western elevation. The Colourbond 'Monument' finish was a previously approved colour and is muted in tone, reflectivity value of 8%.

A proposed garden bed retained by a maximum 500 millimetres high retaining wall, running parallel with the south-west common boundary has been sought within 1.83 metres of this boundary. The garden bed is proposed to feature a combination of Drooping She-oak, Boobiala Insulare and Coastal Tea-tree which will eventually screen views of the subject site from the adjacent property to the south-west. The limited height of the retaining wall falls well below the 1 metre threshold to trigger a permit under the DDO3 and more broadly could be considered to satisfy the 'gardening' exemption of Clause 62.02-1. It is noted that the original section 72 amendment application sought to retain the existing circumstances on the subject site, which feature the retaining wall within 500 millimetres of the south-west common boundary and the garden bed planted out with Lilly Pilly. The application was subsequently amended under section 57A as previously discussed, partly in order to increase the size of the garden bed and setback to the associated retaining wall and provide more appropriate species for the character of the area.

The rainwater tank to the south-west end of the north-west common boundary is a minor inclusion predominantly screened by way of the boundary fence, as previously discussed. Pursuant to Clause 62.-02-1, a rainwater tank with a capacity of not more than 10,000 litres is exempt from requiring a planning permit. Whilst the specific capacity of this rainwater tank has not been provided on the submitted plans, advice has been provided that the specific tank would have a capacity less than 10,000 litres and the exemption. It is recommended that a condition of approval would require a notation to be included on any plans for

5.1 (Cont.)

endorsement. It is noted that the original section 72 amendment application sought to retain a rainwater tank approximately 5 metres from the south-west common boundary. The application was subsequently amended under section 57A as previously discussed, partly in order to appease the objection from the adjoining property and increase the setback to 14 metres from the south-west common boundary.

The several window changes proposed under this amendment application do not result in any further overlooking potential. These window changes only occur on the ground floor and largely comprise of the addition of a new ensuite window to the north-west elevation and replacing the windows to the south-east elevation with equal dimensions.

The other works proposed are removal of the decking adjacent to bedrooms 4 and 5, and the hot water service on the south-west elevation. These are minor, inconsequential changes that will not adversely impact the amenity of the surrounding area.

Response to Submissions

As previously discussed, one objection was made from an adjoining allotment. The concerns raised within this objection are as follows:

- Rainwater tank and retaining wall adversely affects amenity.
- Drainage issues associated with retaining wall.
- Infestation of Lilly Pilly trees.
- Retrospective nature of the proposal.

A response to the above concerns is provided below:

- *Rainwater tank and retaining wall adversely affects amenity.*

As previously discussed, the increased setback and extent of planting proposed will significantly limit any potential amenity impacts on the objector's property. Furthermore, it is noted that the common boundary fence between two allotments is only 1.6 metres high. Therefore, views of and into the dwelling on the objector's property are currently widely accessible from the rear open space of the subject site.

Whilst noise associated with the rainwater tank pump has been raised as a concern by the objector, any noise generated by a standard rainwater tank would not be expected to be inconsistent with the general noise associated with residential uses and is a common feature of many single and multi-dwelling sites in order to meet Environmentally Sustainable Design principles and/or water sensitive urban design. Prohibiting a rainwater tank on the subject site would therefore not be reasonable. Any noise associated with domestic pumps, etc associated with a single dwelling can be controlled via other legislation and the planning permit does not need to 'double up' on such provisions.

- *Drainage issues associated with retaining wall.*

The minor height of the retaining wall along with the 1.83 metre width of the garden bed and its permeable surface should minimise any potential adverse drainage implications. It is not considered a relevant ground on which to refuse the application and as discussed above would be exempt under the planning scheme.

- *Infestation of Lilly Pilly trees.*

The section 57A amendment of the application has removed reference to Lilly Pilly trees and replaced them with vegetation that is considered more appropriate and acceptable as

5.1 (Cont.)

discussed above, in order to appease the objector. At the time of writing this report, the objector did not clarify whether the amended plantings were acceptable to them or not.

- *Retrospective nature of the proposal.*

As previously acknowledged, most of the buildings and works associated with this amendment have already been undertaken. The purpose of this application is to consider the suitability of these retrospective developments regarding the relevant planning provisions. The determination of this application could dictate any necessary planning compliance actions, but this cannot be decided until the merits of the proposal are considered. Whilst not ideal, the retrospective nature of the proposal is not an impediment to considering the planning permit amendment. This has been discussed previously and it is a reasonably common matter that has been dealt with by VCAT. VCAT's generally accepted principle is that any existing works are neither considered to benefit a proponent, nor hinder them, when a responsible authority is required to decide the application. However, VCAT has commented numerous times that, ironically, the ability to inspect retrospective works and assess their potential impacts is somewhat easier than having to visualise buildings or works that have not yet occurred. As such, it is sometimes easier to form a decision as to the appropriateness of a retrospective proposal.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

The amended proposal is an appropriate form of development for the subject site and will achieve compliance with all relevant provisions. The proposed changes sought within this amendment are deemed to be modest in scale that will not detrimentally impact the amenity of the surrounding area. It is therefore recommended that the Planning Services Committee support the proposal and determine that a Notice of Decision to amend a planning permit for Planning Permit Application P18/2058.03, subject to the conditions shown in the Recommendation.

5.2 P05/2642.06 - 143 Nepean Highway, Dromana - Extension of Time

Prepared By	Annam Iqbal, Senior Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11212925
Briefing Note Number	Not applicable
Attachment(s)	1. Application documents ↓

PURPOSE

The purpose of this report is to seek a decision from the Planning Services Committee on an Extension of Time (EOT) application to Planning Permit P05/2642 at 143 Nepean Highway, Dromana. The application has been 'called in' to the Planning Services Committee Meeting by Cr Gill.

Pursuant to section 69 of the *Planning and Environment Act 1987* (the Act), the applicant seeks approval to extend the expiry for the planting of the proposed vineyard by one (1) year. If approved, the latest date for completion of the planting of the vineyard will be 1 November 2023.

The assessment of this application accords with the well-established and generally accepted principles identified in numerous relevant Victorian Civil and Administrative Tribunal (VCAT) decisions. Amongst these, the report identifies intervening circumstances, and the substantial development already undertaken in association with the permit as providing reasonable justification for the EOT request.

It is therefore recommended that the Planning Services Committee resolves to issue an approval for the Extension of Time to Planning Permit P05/2642.

RECOMMENDATION

That the Planning Services Committee, being the Responsible Authority under the *Planning and Environment Act 1987*, having considered the application to extend the time to complete the development under section 69 of the *Planning and Environment Act 1987* hereby resolves to extend Planning Permit Application P05/2642.06, at 143 Nepean Highway, Dromana in accordance with the applicant's request to allow the planting of the vineyard referred to in condition 4(o) and 27 of the permit to complete by 1 November 2023.

Moved: Cr Celi
Seconded: Cr Holland

Vote by Division (Requested by Cr Holland)

For: Cr Holland, Cr Mercurio and Cr Celi

Against: Cr Gill, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Mar and Cr McCafferty

Lost

5.2 (Cont.)

COMMITTEE DECISION

Moved: Cr Gill

Seconded: Cr O'Connor

That the Planning Services Committee, being the Responsible Authority under the *Planning and Environment Act 1987*, having considered the application to extend the time to complete the development under section 69 of the *Planning and Environment Act 1987*, hereby resolves to refuse the applicant's request to allow the planting of the vineyard referred to in condition 4(o) and 27 of the permit to complete by 1 November 2023, for the reasons set out below:

1. The time limits imposed to commence and complete each stage of the development through previous extensions of time are adequate. The applicant has not advanced sufficient justification to warrant another extension.
2. The considerable length of time which has elapsed since the granting of original planning permit (and subsequent extensions) warrants a re-evaluation of the merits of the proposed use and development against the current provisions of the Planning Scheme.

Vote by Division (Requested by Cr Holland)

For: Cr Gill, Cr Holland, Cr O'Connor, Cr Dixon, Cr Bissinger, Cr Mar and Cr McCafferty

Against: Cr Mercurio and Cr Celi

Carried

BACKGROUND**Existing conditions**

The subject site is located at 143 Nepean Highway, Dromana. The land is an irregular shaped lot of approximately 48.4 hectares.

Dunns Creek and Bald Hill Creek intersect in the middle of the site where Dunns Creek continues on to the north-west in the direction of Port Phillip Bay.



Figure 1: Aerial photograph of the subject site and the surrounds from April 2021

Permit History

The existing Planning Permit P05/2642 was issued on 03 January 2007 and allows:

The development and use of the land for a holiday resort incorporating a winery, a function centre, a restaurant, an 80 room residential hotel, a 472 site caravan and camping park and a golf driving range (including, the removal of vegetation, access to a road zone, the sale and consumption of liquor and the car parking requirement for the restaurant and function centre) generally in accordance with the endorsed plans.

Condition 46 of the planning permit contains the relevant expiry condition:

46 This permit will expire if one of the following applies:

- (a) Development and/or use is not started within two years of the date of this permit.
- (b) The development is not completed within six years of the date of this permit.

The Responsible Authority may extend the above periods if a request is made in writing before the permit expires or within the following three months.

The permit application has been previously broken down into four (4) stages via endorsement of a staging plan (Attached to the reasons of M Liston's order of 6 July 2011 (Application P738/2011) and referred to as Plan BP 6/2011). However, somewhat unusually, the expiry condition has never been amended to include logical expiry provisions in accordance with the staging of a quite large and complex proposal and planning permit.

There have been four (4) previous Extension of Time (EOT) applications approved. Two (2) EOT applications were refused by Council but appealed and approved at the VCAT. The last of the EOT decisions by VCAT directed Council to extend the time to start and complete the permit by order dated 23 December 2013.

5.2 (Cont.)

Since the above VCAT order, works have started (commenced) and as such the applicant has satisfied condition 46.(a) and the subsequent extensions of time to start the development that have been granted previously.

The relevant consideration now relates to the extension of time to complete the development under condition 46.(b) and the last relevant extension of time under that component of the permit. The last extension of time was granted on 20 July 2021 and is now set to expire if:

- a) *The planting of the proposed vineyard referred to in condition 4(o) and 27 is not completed by 1 November 2022.*
- b) *The development is not completed within 9 years of the date the extension of time is issued.*

For clarity, part b) would result in the permit expiring on 20 July 2030 if not completed. It should also be noted that the permit has not yet expired and that the current extension of time has been submitted within the relevant timeframes under section 69 of the Act.

For procedural clarity, it is noted that during the time of considering the EOT application at the Development Assessments Committee Meeting held on 11 June 2013, a notice of motion was put to amend the officer recommendation. Part B of the amendment notice of motion stated [emphasis added]:

That should any future application be received to amend the Planning Permit, that the matter be referred to a future Development Assessments Committee Meeting for consideration.

This notice of motion was lost and Councillors instead voted to refuse the EOT application. It should be noted that the proposed motion did not relate to extensions of time, as distinct to amendments as emphasised. Nevertheless, there is no prior Council decision requiring this EOT application (or amendments) to come before Council because that motion was lost.

This application has been 'called in' by the relevant Ward Councillor under the Planning Services Committee Terms of Reference.

PROPOSAL

The application is a request for an EOT pursuant to section 69 of the Act, which seeks to extend expiry for the planting of the proposed vineyard by one (1) year. If approved, the date for completion of the vineyard planting would be 1 November 2023.

No buildings and works, or other changes to the approved use and development are proposed as part of this application. This application solely relates to extending the expiry of the vineyard planting to be completed, but not to the completion date of the rest of the development.

NOTIFICATION AND CONSULTATION**Notification**

Section 69 of the Act does not provide for public notice of an Extension of Time (EOT) request or consideration of submissions in determining such applications.

Despite the Act not requiring public notice, Council has received two (2) submissions to the proposed EOT, both of which expressed opposition to the granting of the EOT broadly for the following reasons:

- Vines for planting are available and not difficult to obtain.

5.2 (Cont.)

- An identical application under current planning policy provisions would not be supported.
- The length of time which has elapsed since the granting of the permit.

Notwithstanding that the EOT application is not subject to public notice or consideration of any submissions, these are addressed briefly here and through detailed consideration under each relevant principle discussed further in the report.

The first point is considered to be of limited relevance to a decision on this matter. Whether vines are available or not, or difficult to obtain, is not directly relevant to the consideration because there may be various reasons as to why certain types of vines are chosen for a particular site or vineyard. Even if they are available, that matter in and of itself is not determinative of whether it is reasonable to plant the vines. Seasonal variability/climatic conditions, preparation of the land and financing are just some factors that may affect the ability to complete the planting. Whilst those factors may also not favour the applicant in their request, it is not considered to weigh against the request for an extension of time as it is not considered reasonable to in effect force an applicant into a situation where they plant any type of vine that is available at a particular point in time, simply to avoid the planning permit expiring, but at the risk of the crop failing and not being able to fulfill the other conditions of the planning permit. This matter was previously touched on by VCAT when handing down its decision on 23 December 2013.

CONSIDERATION

Pursuant to section 69 (1A) of the Act, the owner or occupier of land to which a permit applies, or another person with the written consent of the owner, may ask the Responsible Authority, in this instance Council, for an extension of time to complete the development if:

- (a) the request for an extension of time is made within 12 months after the permit expires; and
- (b) the development or stage started lawfully before the permit expired.

With respect to this specific extension of time request, the permit has not yet expired. The request has therefore been made in accordance with the Act and is suitable for consideration.

There is no legislation or relevant planning policy which has established what should and should not be considered in determining the appropriateness of a request to extend the expiry of a permit. However, the VCAT decision for *Kantor v Murrindindi Shire Council 18 AATR 285 (1997) (Kantor)*, sets out principles that have been generally adopted and applied as guidelines when exercising discretion on EOT applications. The *Kantor* case was a particularly complex and lengthy decision, that involved amongst other considerations, whether five extensions to a permit granted by the Murrindindi Shire Council were reasonable and based on relevant or irrelevant considerations. The *Kantor* principles have been the leading decision consistently relied upon by applicants, councils and VCAT for consideration of such applications. The principles are summarised as follows:

- *Whether there has been a change of planning policy.*
- *Whether the landowner is seeking to warehouse the permit.*
- *Any intervening circumstances which bear upon the grant or refusal of the extension request.*
- *The lapse of time between the permit and the request.*

5.2 (Cont.)

- *Whether the time limit imposed was adequate.*
- *The economic burden imposed on the landowner by the permit.*
- *The probability of a permit issuing should a new application be made.*

Critically, whilst *Kantor* does establish principles for assessment, these are not mandatory requirements and do not preclude an extension request from being granted, regardless of how such request responds to the above. These principles are also not limiting in scope and other factors may be considered, where relevant.

Furthermore, decisions of VCAT in *Juric v Banyule CC* [2002] VCAT 396 and *Hotel Windsor Holdings Pty Ltd v Minister for Planning* (Red Dot) [2016] VCAT 351 (9 March 2016) establish that a distinction should be drawn between an extension of time for commencement of development and extension of time for completion of development, as there are different purposes of such limitations on time. The current case relates to the completion of development, not commencement.

The decision in *Juric* (and reinforced by multiple others including *Hotel Windsor*) sets out that some of the *Kantor* principles are much less relevant in an extension of time for completion case. In particular, the overall time since the grant of the permit is less relevant than the time elapsed since commencement of development.

The proposal is assessed against the relevant *Kantor* principles below, noting that some are less relevant due the findings in *Juric* that place less weight on certain principles:

- *Whether there has been a change of planning policy*

Since the issue date of the original permit, the only changes to the Zoning and Overlays that have occurred are the Significant Landscape Overlay – Schedule 3 (SLO3) and Transport Zone 2 (TRZ2) encroaching into the northern part of the site. These controls were originally abutting the site.

Several changes have been made to the State and Local planning provisions, however no new provisions have been introduced which would materially change the broad policy position with respect to the principle of the approved use/development or the details of the project.

Overall, Officers are satisfied that there has not been any change to the intent of the planning policy provisions which relate to the subject land and approved use/development that would materially affect the outcome of the proposal. Whilst this tends in favour of supporting an application for an EOT application, it is also noted that any changes to planning policy should be afforded significantly less weight in the consideration of an EOT to complete development, as opposed to commencement.

It should be noted that the submissions mentioned above express a contrary opinion about whether an application under current policy would be supported and argues that it would not be. The submission does not contain any relevant facts that lead to such a conclusion, noting that Council previously refused one extension of time on the basis of Planning Scheme Amendment C133, which had the intent of introducing local policy regarding caravans and camping parks in the Green Wedge Zone (GWZ) that would have potentially had some effect on a decision. However, this amendment was abandoned by Council as it was criticised by the Planning Panel and was not submitted to the Minister for approval.

Member Potts stated the following, which is still considered relevant today in relation to C133 and planning policy as it applies to the land today [emphasis added]:

5.2 (Cont.)

- 19 Amongst those flaws identified by the Panel was the prescriptive requirement for any caravan and camping ground to be at least 2km from the urban growth boundary. This requirement was said by the Council to be necessary to prevent incremental incursion of urban development beyond town boundaries.
- 20 This was a ground that was ventilated by the Council before the Tribunal in 2006 and appears to continue to be a major reason for Council's lack of support for this proposal. However in planning policy terms, nothing has substantively changed since 2006 and there remains no reason why this site could not be contemplated for a camping and caravan park/resort development. Indeed, the C133 Panel was particularly pointed in indicating that a prescriptive distance from the urban growth boundary was 'flawed', appeared 'arbitrary' and considered that there was likely to be good reasons for such developments to be located on the edge of urban growth boundaries.
- 21 In terms of the Kantor test of whether a permit would issue for the same development if an application were made, C133 would carry little if any determinative weight. Council's underlying reasons that rely on C133 either rely on flawed planning policy under that amendment or do not introduce new policy aspects, such as landscape or environmental impacts, that are not adequately covered by existing policy. Indeed such policy remains as it was in the original grant of the permit in 2007.

- *Whether the landowner is seeking to warehouse the permit*

The development has commenced, and substantial cost has been incurred by the development carried out to date. It does not therefore appear that the landowner is seeking to warehouse the permit.

It is noted that the requested EOT relates solely to an additional one-year period for the planting of vines to be completed, which is a necessary precursor to other stages of the development commencing in Stages 2, 3 and 4.

It should again be noted that VCAT previously set out in detail the history of the permit, including its complexity in forming the view that the applicant was not warehousing the permit. Whilst it is acknowledged that a significant period of additional time has elapsed since that decision, so too has the applicant progressed toward completing the development, albeit slowly. However, VCAT has previously held that slow progression should also not count against an applicant, in and of itself.

- *Any intervening circumstances which bear upon the grant or refusal of the extension request*

The applicant has submitted that there have been broad-scale intervening circumstances that have affected the ability or viability of progressing the development such as the Global Financial Crisis in the late 2000's and the recent COVID-19 pandemic. This has resulted in ongoing difficulty to secure financing. It is noted again, for clarity, that the current EOT only seeks permission to allow another one year for the planting of vines.

In addition to the above, and in what is considered the key component of this assessment, the applicant submits that recent changes to grafting vine stock is another intervening circumstance. Grafted vine stock creates strong pest and disease-free plants, however it is a process that is relatively new, labour intensive and costly. Being the industry best-practice approach, orders for grafted vine stock are sought close to May so that nurseries can cut stock in June/July, graft the plant for 9-12 months before selling to clients. Given the process and timeframe for the orders, the next order for the grafted vines would be taken in May 2022 and stock released in October 2023 for

planting in November 2023. As such, due to the timing of the issuing of the most recent EOT, more time is required to receive and plant the stock.

In support of the above claim, the applicant has included the following documents with their extension request:

- a) A statutory declaration from the landowner outlining the efforts that have been undertaken in an attempt to secure vine stock;
- b) A letter from Peninsula Vine Care corroborating the abovementioned statutory declaration, confirming the *genus* of vine stock required, number of plants required (25,000) and the necessary pre-planting requirements; and
- c) A forward estimate of the work required to facilitate the delivery of the vineyard.

Officers are satisfied that the evidence provided, which is substantially more than would ordinarily be provided in a matter such as this, provides a clear, reasonable and adequate explanation for the current request.

It is noted that one of the submissions received in opposition to this application has called the above claims into question, submitting that they are not “plausible or convincing” as there are in fact readily available, large quantities of root stock available for purchase. This submission includes a list of surplus root stock from ‘KC Vines’.

In response to this particular submission, the applicant provided a further statement from ‘Peninsula Vinecare’, which clarifies the type of stock required and explains the distinction between that which is available and that which is required. It includes the following statement:

I am of the view that the KC List is misleading in the circumstances and I re-confirm my above statement that, to date, I have not been able to locate any, appropriate, excess stock that would provide a single full planting for this project.

PVC remains committed to the project and has commenced ground works on the PPH land which will include a cover crop this winter that will be ploughed back into the soil to improve the quality of the soil in readiness for vine planting.

Officers are satisfied with the explanation provided by the Applicant.

- *The lapse of time between the permit and the request (noting Juric establishes this is much less relevant in an application to complete development)*

It is acknowledged that a substantial amount of time has passed since the original approval on 3 January 2007. However, there have been several circumstances over the life of the permit which has resulted in the need for additional time to complete. This includes but is not limited to the delays incurred through change of ownership and subsequent amendments, appeal of two EOT applications to the Tribunal, entering into a section 173 agreement and endorsement of plans.

Furthermore, the overall scale of the project is considerable given the size of the approved development and the associated costs in financing such a project.

Such a substantial elapse of time would weigh against a proposal to commence development, however, in this instance it is considered of less weight in the circumstances. In *Juric*, Senior Member Byard relevantly states:

...without deciding that those matters are necessarily irrelevant, they are at least of much less significance in a completion case. The fact that there has been substantial

5.2 (Cont.)

commencement and significant commitment, and that significant amounts of work and money have been committed is a relevant consideration, indeed an important consideration, in relation to a completion case.

The requested EOT relates solely to an additional year for the planting of vines. In this context, the time elapsed since the granting of the permit is considered to hold little weight.

It is also noted that the submissions received against the proposal place emphasis on this principle. For the above reasons, little weight is placed on those submissions as they are not considered in line with the overwhelming direction of many VCAT cases in this regard.

- *Whether the time limit imposed was adequate*

Given the original permit provided six (6) years to complete the development and two (2) years to commence the development and/or use it is arguable that insufficient time was provided in the first instance for such a large-scale project or that the expiry condition did not adequately get amended at some stage to reflect the staging of the proposal. The additional extensions of time provided since the original permit was granted are considered reasonable except for the time provided for the planting of the vineyard. Approximately one year and four months were provided for the vineyard planting to be completed. Considering the timeframes for ordering, grafting, releasing stock and planting, this timeframe was inadequate.

The Applicant is not requesting further time to complete the overall development, the current request relates solely to additional time required for the planting of vines.

- *The economic burden imposed on the landowner by the permit*

The extensive amount of work undertaken associated with the approved development would result in a significant economic impact on the landowner if they are unable to complete the approved vineyard planting, for which preparations have been made.

Whilst the remaining economic burden to complete the proposal has not been quantified by the applicant, nor the financial disadvantage of not being able to complete, it is considered that this would be considerable. This factor tends to weigh in favour of granting an extension of time.

- *The probability of a permit issuing should a new application be made*

As discussed above, there have been no changes to the Planning Scheme that are considered material in deciding such an application differently. It is therefore considered reasonably probable that a permit may be issued for an identical proposal, having regard to the current planning policy and controls.

This factor tends to weigh in favour of granting an extension of time.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

On balance of considering the relevant principles established in both *Kantor* and *Juric*, and the relevant facts of the specific case, the request for an EOT to complete the vineyard planting for this use/development is considered to be reasonable. Therefore, officers recommend the granting of an extension of time as requested by the applicant.

5.3 P21/1949 - Planning Permit Application for a Residential Aged Care Facility and Retirement Village at 60-70 Kunyung Road, Mount Eliza

Prepared By	Emine Gurleyen, Principal Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11214662
Attachment(s)	<ol style="list-style-type: none"> 1. Mapping ↓ 2. Plans 3. Town Planning Report 4. Traffic Engineering Assessment 5. Bushfire Development Report 6. Arborist Report and Tree Schedule 7. Biodiversity Report 8. Waste Management Plan 9. ESD Report 10. Acoustic Report 11. Geotechnical Investigation 12. Landscape and Visual Impact Assessment 13. Viewpoints 14. Stormwater Management Report 15. Place of Worship Operational Management Plan 16. Approved CHMP 17. Repeat Appeals Principles 18. Summary of Policy 19. Previous VCAT Decision 20. Objections (confidential) (separately circulated)
Application No.	P21/1949
Proposal	The use and development of a residential aged care facility and retirement village, development of a place of worship, demolition of a building and construction of buildings and works in a heritage overlay, erection of two business identification signs, removal of vegetation and associated works.
Melway Reference	105C3
Zoning	Special Use Zone – Schedule 2
Applicant	Ryman Healthcare
Date of Application	9 August 2021
Item Called in?	No

EXECUTIVE SUMMARY

The purpose of this item is to seek a position regarding Planning Application P21/1949 – 60-70 Kunyung Road, Mount Eliza, which is currently under appeal at the Victorian Civil and Administrative Tribunal (VCAT) pursuant to section 79 of the *Planning and Environment Act 1987* (Applications for review of failures to grant permits). The application proposes to use and develop the land for a Residential Aged Care Facility and Retirement Village, develop a Place of Worship (POW), demolish existing buildings, erect two business identification signs, remove vegetation and associated works.

On 1 July 2021, the Tribunal constituted by Members Cook and Cameron, in *Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC (corrected)* [2021] VCAT 711, affirmed Council's decision and directed that no permit be granted for a Residential aged

5.3 (Cont.)

care facility and Retirement village in association with a POW. The assessment of the current permit application has been undertaken afresh, taking into consideration the relevant 'repeat appeals' principles established by VCAT and the previous decision.

It is considered that the proposal places disproportionate reliance to the zone controls without sufficient recognition and respect for the location of the land outside the Urban Growth Boundary (UGB) and outside a designated township, as was highlighted by VCAT previously. Further, it has not been designed (or redesigned) with an integrated approach to demonstrate an acceptable built form, design and scale. It is not an outcome that responds to its setting and preserves what is unique about the site. The site is not identified as a preferred location for aged care. On balance, it is considered the proposal fails to provide a net community benefit.

It is therefore recommended that the committee resolves to refuse the application. As a section 79 appeal is underway, Council cannot issue a notice of refusal, but the resolution will form the basis for Council's position at the VCAT hearing.

RECOMMENDATION**Part A**

That the Planning Services Committee resolves to refuse Planning Application P21/1949 – 60-70 Kunyung Road, Mount Eliza on the following grounds:

1. The Proposal fails to demonstrate compliance with Clause 02.02 Vision, Clause 02.03 Strategic Directions, Clause 02.04 Strategic Framework Plan, Clause 11.03-5S (Distinctive areas and landscapes), Clause 15.01-1S (Urban Design), Clause 15.01-2S (Building Design), and Clause 15.01-5S (Neighbourhood Character) as the design and scale is an inappropriate response inconsistent with the context of the site, its interfaces and the character of the surrounding area.
2. The Proposal represents an overdevelopment of the subject site that will detrimentally impact the coastal character and visual and scenic qualities of the coastline from Port Phillip Bay in a manner contrary to Clause 12.02-1S (Protection of the Marine and Coastal Environment), Clause 12.03 (Water Bodies and Wetlands) and Clause 12.05 (Significant Environments and Landscapes).
3. The scale, form and materiality of the Proposal fails to adequately respond to the Decision Guidelines of Clause 37.01 (Schedule 2 to Special Use Zone).
4. The Proposal fails to adequately conserve and enhance the significance of the heritage place and ensure that development does not adversely impact this significance in accordance with Clause 02.03-5 (Built Environment and Heritage), Clause 15.03-1S (Heritage Conservation) and Clause 15.03-1L-01 (Heritage Conservation – Mornington Peninsula).
5. The Proposal fails to provide the appropriate number of car parking spaces having regard to the demand expected to be generated in accordance with Clause 52.06 (Car Parking).
6. The Proposal fails to provide for an adequate internal pedestrian network that enables efficient, convenient and accessible movement in accordance with Clause 15.01-2S (Building design) and Clause 18.02-1S (Walking).
7. It is considered that the proposed development, having regard to the context of the site and surrounding area would be an inappropriate planning outcome contrary to Clause 65 (Decision Guidelines).

5.3 (Cont.)**Part B**

That the Committee resolves that Attachment 20 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COMMITTEE DECISION

Moved: Cr Gill
Seconded: Cr Holland

Part A

That the Planning Services Committee resolves to refuse Planning Application P21/1949 – 60-70 Kunyung Road, Mount Eliza on the following grounds:

- 1. The Proposal fails to demonstrate compliance with Clause 02.02 Vision, Clause 02.03 Strategic Directions, Clause 02.04 Strategic Framework Plan, Clause 11.01-1R (Settlement – Metropolitan Melbourne), Clause 11.01-R (Green wedges – Metropolitan Melbourne), Clause 11.01-1L-01 (Settlement – Mornington Peninsula), Clause 11.03-5S (Distinctive areas and landscapes), Clause 15.01-1S (Urban Design), Clause 15.01-2S (Building Design), and Clause 15.01-5S (Neighbourhood Character) and Clause 16.01-5S (Residential aged care facilities) as the design and scale is an inappropriate response inconsistent with the context of the site, its interfaces and the character of the surrounding area.**
- 2. The Proposal represents an overdevelopment of the subject site that will detrimentally impact the coastal character and visual and scenic qualities of the coastline from Port Phillip Bay in a manner contrary to Clause 11.03-4S (Coastal settlement), Clause 12.02-1S (Protection of the Marine and Coastal Environment), Clause 12.03 (Water Bodies and Wetlands) and Clause 12.05 (Significant Environments and Landscapes).**
- 3. The scale, form and materiality of the Proposal fails to adequately respond to the Decision Guidelines of Clause 37.01 (Schedule 2 to Special Use Zone).**
- 4. The proposed use fails to adequately respond to the Purpose of Clause 37.01 (Schedule 2 to Special Use Zone).**
- 5. The Proposal fails to adequately conserve and enhance the significance of the heritage place and ensure that development does not adversely impact this significance in accordance with Clause 02.03-5 (Built Environment and Heritage), Clause 15.03-1S (Heritage Conservation) and Clause 15.03-1L-01 (Heritage Conservation – Mornington Peninsula).**
- 6. The Proposal fails to provide the appropriate number of car parking spaces having regard to the demand expected to be generated in accordance with Clause 52.06 (Car Parking).**
- 7. The Proposal fails to provide for an adequate internal pedestrian network that enables efficient, convenient and accessible movement in accordance with Clause 15.01-2S (Building design) and Clause 18.02-1S (Walking).**
- 8. It is considered that the proposed development, having regard to the context of the site and surrounding area would be an inappropriate planning outcome contrary to Clause 65 (Decision Guidelines).**

5.3 (Cont.)

9. The proposed use is inappropriate, having regard to Section 60(1A)(h) of the *Planning and Environment Act 1987*, on the basis that it is inconsistent with Planning Scheme Amendment C270morn.

Part B

That the Committee resolves to request the Minister for Planning to call in Planning Permit Application P21/1949 – 60-70 Kunyung Road, Mount Eliza and consider it concurrently with Planning Scheme Amendment C270morn.

Part C

That the Committee resolves that Attachment 20 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

Carried Unanimously

PURPOSE

The purpose of this item is to seek a position regarding Planning Application P21/1949 – 60-70 Kunyung Road, Mount Eliza, which is currently under appeal at VCAT pursuant to section 79 of the *Planning and Environment Act 1987* (Applications for review of failures to grant permits). The application proposes to use and develop the land for a Residential Aged Care Facility and Retirement Village, develop a POW, demolish existing buildings, erect two business identification signs, remove vegetation and associated works.

Proposal	Use and develop the land for a Residential Aged Care Facility and Retirement Village, develop a Place of Worship, demolish existing buildings, erect two business identification signs, remove vegetation and associated works.
Zoning and Overlays	<ul style="list-style-type: none"> • Special Use Zone – Schedule 2 (SUZ2) • Heritage Overlay – Schedule 110 (HO110).
Permit Triggers	<ul style="list-style-type: none"> • A Planning Permit is required to use the land for a Residential aged care facility and Retirement village pursuant to clause 37.01-1 (SUZ). • A Planning Permit is required to construct a building or construct or carry out works pursuant to clause 37.01-4 (SUZ). • A Planning Permit is required to construct a building or construct or carry out works pursuant to clause 43.01 (HO). • A Planning Permit is required to demolish a building pursuant to clause 43.01 (HO). • A Planning Permit is required to remove, destroy or lop a tree pursuant to clause 43.01 (HO). • A Planning Permit is required to construct or put up for display a business identification sign pursuant to clause 52.05 'Signs'.

5.3 (Cont.)

	<ul style="list-style-type: none"> A Planning Permit is required to remove vegetation native to Victoria clause 52.17 'Native Vegetation'.
Advertising	The application was advertised to surrounding properties via the distribution of notification letters, the erection of two signs on the subject site's front boundary facing Kunyung Road and the placement of a notification within The Age newspaper.
Submissions	At the time of this report's preparation, 476 submissions have been received.
Consultation	Nil.
Key Issues	<ul style="list-style-type: none"> Whether planning permission can be granted for the proposed uses. Whether the proposed use and development is consistent with key policy directions. Whether the proposal responds appropriately to the heritage values of the site. Whether built form been appropriately configured and designed to respond to site features including its interfaces and landscape values. Whether the proposal respects the ecological values of the site. Whether infrastructure, including parking and traffic impacts, can be managed suitably. How net community benefit should be evaluated in this case.
Recommendation	Refusal.

BACKGROUND**Planning Scheme Amendment C270morn**

On 17 February 2020, the Planning Services Committee (the Committee) adopted the recommendation to request that the Minister for Planning authorise the preparation and exhibition of Planning Scheme Amendment C270morn.

This Planning Scheme Amendment includes rezoning the subject site by removing it from the schedule to Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions. The removal of this site from the schedule would result in the proposed land use becoming prohibited.

Authorisation to prepare the Amendment was granted by the Minister for Planning (the Minister) on 20 December 2021. Exhibition ran for six weeks, officially commencing on Thursday, 24 February 2022 and concluding on Friday, 8 April 2022. A substantial number of submissions were made and are currently being reviewed by officers.

Dates have been pre-set for the Directions Hearing to be on 25 July 2022 and Panel Hearing to commence in the week beginning 5 September 2022. Please note these are indicative at the time of writing this briefing and that the Strategic Planning Team may confirm or update these dates in consultation with the Department of Environment Land Water and Planning (DELWP).

5.3 (Cont.)**Previous Permits**

Recent planning decisions relevant to the subject site include the following:

Application No.	Proposal	Determination
P96/5281	Convert verandah to meeting room	27 November 1997
P07/0272	Installation of two water tanks	26 February 2007
P08/1785	Relocatable office	25 August 2008
P19/2453	Use and develop the land for a Residential Aged Care Facility and Retirement Village, develop a POW, demolish existing buildings, erect two business identification signs, remove vegetation, reduce car parking requirements and associated works generally in accordance with the submitted plans.	Refused

RELEVANT COUNCIL DECISIONS

At the Planning Services Committee Meeting held on 20 July 2020, the committee resolved to refuse Planning Application P19/2453 – 60-70 Kunyung Road, Mount Eliza on the following grounds:

1. The Proposal fails to demonstrate compliance with Clause 11.03-5S (Distinctive areas and landscapes), Clause 15.01-1S (Urban Design), Clause 15.01-1S (Urban Design), Clause 15.01-2S (Building Design), Clause 15.01-5S (Neighbourhood Character), Clause 16.01-7S (Residential Aged Care Facilities) and Clause 21.07 (Guiding Future Township Development) as the design, scale and vegetation loss is an inappropriate response inconsistent with the context of the site, its interfaces and the character of the surrounding area.
2. The Proposal represents an overdevelopment of the subject site that will detrimentally impact the coastal character and visual and scenic qualities of the coastline from Port Phillip Bay in a manner contrary to Clause 12.02-1S (Protection of Coastal Areas), Clause 12.-2-3S (Bays) and Clause 21.08 (Foreshores and Coastal Areas).
3. The excessive vegetation removal required to accommodate the Proposal will result in the loss of habitat value inconsistent with Clause 11.03-5S (Distinctive Areas and Landscapes) and Clause 12.01-1S (Protection of Biodiversity).
4. The scale, form and materiality of the Proposal fails to adequately respond to the Decision Guidelines of Clause 37.01 (Schedule 2 to Special Use Zone).
5. The Proposal fails to adequately conserve and enhance the significance of the heritage place and ensure that development does not adversely impact this significance in accordance with Clause 15.03-1S (Heritage Conservation), Clause 22.04 (Heritage Places and Abutting Land) and Clause 43.01 (Heritage Overlay).
6. The Proposal fails to provide the appropriate number of car parking spaces having regard to the demand expected to be generated in accordance with Clause 52.06 (Car Parking).

5.3 (Cont.)

7. Insufficient information has been provided to enable a comprehensive assessment of the Proposal's impact on the surrounding road network, including the intersection of Kunyung Road and Nepean Highway.
8. Insufficient information has been provided to enable a comprehensive assessment of view line loss from surrounding land as a consequence of the development.
9. The Proposal fails to provide for an adequate internal pedestrian network that enables efficient, convenient and accessible movement in accordance with Clause 15.01-2S (Building design) and Clause 18.02-1S (Sustainable Personal Transport).
10. Pursuant to section 60 (f) of the *Planning and Environment Act 1987* the Proposal will result in significant social effects.
11. It is considered that the proposed development, having regard to the context of the site and surrounding area would be an inappropriate planning outcome contrary to Clause 65 (Decision Guidelines).

DISCUSSION**Existing Conditions**

There have been no significant changes to the subject site as described within the Council Report dated 20 July 2020, which described the site as follows:

The subject site is an irregular shaped allotment measuring 8.943 hectares. The land features multiple buildings including the Moondah Mansion and Gatehouse, both of which are recognised for their heritage significance. The two-storey Italian Renaissance Revival Mansion located centrally within the subject site, and the castellated Gatehouse, sited in the south-east corner, were erected in 1888 for the purpose of a private residence. A Coach House, east of the Mansion, is also understood to have been constructed in 1889-90.

Several additional buildings have been added over the years due in part to the changing use of the subject site. From 1947 the land operated as a holiday resort under the name 'Hotel Manyung' until 1957 when it transitioned to a business school.

From a landscape perspective, the subject site features a variety of vegetation. Most notable are the row of cypress trees along the driveway, a Norfolk Island Pine near the front of the Gatehouse and several Sugar Gums located within the front half of the land.

Topographically, the land slopes downwards in an easterly direction approximately 70 metres from its frontage with Kunyung Road.

Surrounding Land

There have been no significant changes to the surrounding land as described within the Council Report dated 20 July 2020, which described the surrounding areas follows:

The subject site is surrounded by a diverse variety of landforms and uses.

Immediately to the north covering approximately 2.8 hectares at 50 Kunyung Road is Kunyung Primary School. The land encompasses several buildings comprising classrooms, open play areas and limited car parking.

The remaining land to the north and that to the east of the subject site is comprised of residential development. The allotments vary between approximately 1,000 to 1,500 square metres and contain a single dwelling, occasional outbuilding and other common domestic

5.3 (Cont.)

features such as swimming pools. The dwellings are a mixture of single and double storey forms, some of which have views of Port Phillip Bay directly over the subject site.

Open, rural land sits adjacent to the subject site along its south boundary. This land is zoned Green Wedge and made up of large land parcels such as the approximately 22.8 hectares at 90 Kunyung Road. The land features limited built form and is mostly cleared of vegetation.

To the west, the subject site directly abuts the coastal foreshore reserve of Port Phillip Bay.



Aerial photograph of the subject site and surrounding land.

PROPOSAL

The Applicant seeks planning permission for the use and development of a residential aged care facility and retirement village, demolition of buildings, development a POW, erection of two business identification signs, removal of vegetation and associated works.

The demolition of buildings comprises the majority of buildings, excluding the Mansion and Gatehouse. A total of 6 new buildings are proposed along with substantial additions to the Mansion. 5 of the new buildings will be associated with the Retirement Village/Residential Aged Care Facility whilst the additional building will be a single storey POW central to the subject site.

Buildings range from 1-4 storeys, all with basements. The existing Moondah Mansion with extensions will comprise 35 Assisted Living Suites, 82 Residential Aged Care Rooms and 12 Independent Living Units. The 5 new buildings will comprise 92 Independent Living Units (total of 104 Independent Living Units). A total of 246 car parking spaces and 13 bicycle parking spaces will be provided. The Applicant is seeking to remove approximately 156 trees from the site to facilitate the proposed development.

Three illuminated business identification signs are to be located on the fence adjacent to the northern access point and centrally located pedestrian access point.

A full set of development plans can be found at Attachment 2.

A table of comparison between the former proposal (as amended at VCAT) that was refused by VCAT, and the current proposal is below:

5.3 (Cont.)

Building numbers from the VCAT amended proposal	VCAT amended proposal	Current proposal
Building 1 ILU building facing Kunyung Road	3-4 storey building.	2-3 storey building. Length reduced parallel to Kunyung Road from 67 metres to 50.32metres.
Building 2 ILU building west of building 1	3-4 storey building.	No substantial changes.
Building 3 ILU building south of POW	3-4 storey building.	Deleted.
Building 4 ALS, RACF and ILU additions to the Moondah Mansion	3-4 storey building predominantly.	No substantial changes.
Building 5 ILU building facing the bay	3-4 storey building.	2-3 storey building. Chamfered side removed adjacent to the shared boundary with the green wedge zoned property to the south, building depth increased.
Building 6 ILU building to the north of the site, west of Building 7	3-4 storey building.	2-3 storey building. Chamfered side removed adjacent to the shared boundary with the primary school, building depth increased.
Building 7 ILU building at the north-east of the site	3-4 storey building.	No substantial changes.
Place of Worship Central to the site	1 storey building with basement.	Length and width reduced by 2-3 metres. No substantial changes.
Bowling Green South of the Moondah Mansion		The RL has been amended from 39.14m to 44.25m however it appears that the original plan contained an error which resulted in the level being shown as lower than the ground in this location. The proposed bowling green will but cut into the land and will not protrude above the existing natural ground level.

5.3 (Cont.)

Works within the area adjacent to the foreshore	None proposed.	Reconstruction of the landing with compacted crushed rock. Provision of beach access steps and ramp for residents. Reconstruction of the dilapidated stormwater drop pit. Reconstruction of the existing asphalt road with new kerbs.
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ABORIGINAL CULTURAL HERITAGE

The subject site is located within an area of cultural sensitivity. The Applicant prepared a Cultural Heritage Management Plan (CHMP) in relation to the previous iteration of the proposal, which was approved by the Registered Aboriginal Party. This CHMP is being relied on by the applicant for the revised proposal (see Attachment 16).

The CHMP has included the entire site within the activity area, however, no pits have been excavated within the area adjacent to the foreshore reserve. The approved CHMP stated the following:

The western section of the activity area, past the high wire fence at the narrow section, comprises a steeply sloped, heavily treed area leading down to the beach. No works will be undertaken in this section as part of the activity and the treed slope is considered to be of low archaeological potential. The low sand dunes abutting the base of the slope are considered to be of higher potential to contain Aboriginal cultural material subsurface, however the beach section will also not be impacted as part of the development. In light of this no subsurface testing will be undertaken in the western section of the activity area past the high wire fence.

The previous VCAT decision states the following (at para 248):

We confirm that the activity area in the CHMP is identified as the entire site (approximately 8.9 hectares) including the foreshore. However, if the applicant proposes to extend the activity area or to alter the works comprising the approved activities, this would likely require a further approval process under the Aboriginal Heritage Act 2006 as a precondition to such works being undertaken.

A further footnote states:

The mapping in the CHMP indicates that almost all the activity area will be impacted except the far western section.

In the new application, the Stormwater Management Plan, planning submission and development plans indicate that stormwater related works, and potentially footpath upgrading works, will be undertaken within the western portion of the site. A separate Notice of Intent to Prepare a CHMP has been submitted to Council by the applicant's cultural heritage consultant, which would appear to indicate that the approved CHMP does not adequately cover these works.

In accordance with section 52 of the *Aboriginal Heritage Act 2006*, if the decision maker (the responsible authority) is required to decide whether to grant a statutory authorisation (in this

5.3 (Cont.)

case the planning permit) within a certain period, that period is deemed not to commence until the decision maker receives a copy of the approved CHMP.

On this basis, if the approved CHMP does not adequately cover the extent of the proposed activity, there is a possibility that the current appeal (which is reliant on the time period for a decision not having been met) may not be valid. However, this is a procedural matter that is unrelated to the merits of the application, and it will likely be dealt with through the initial proceedings at VCAT.

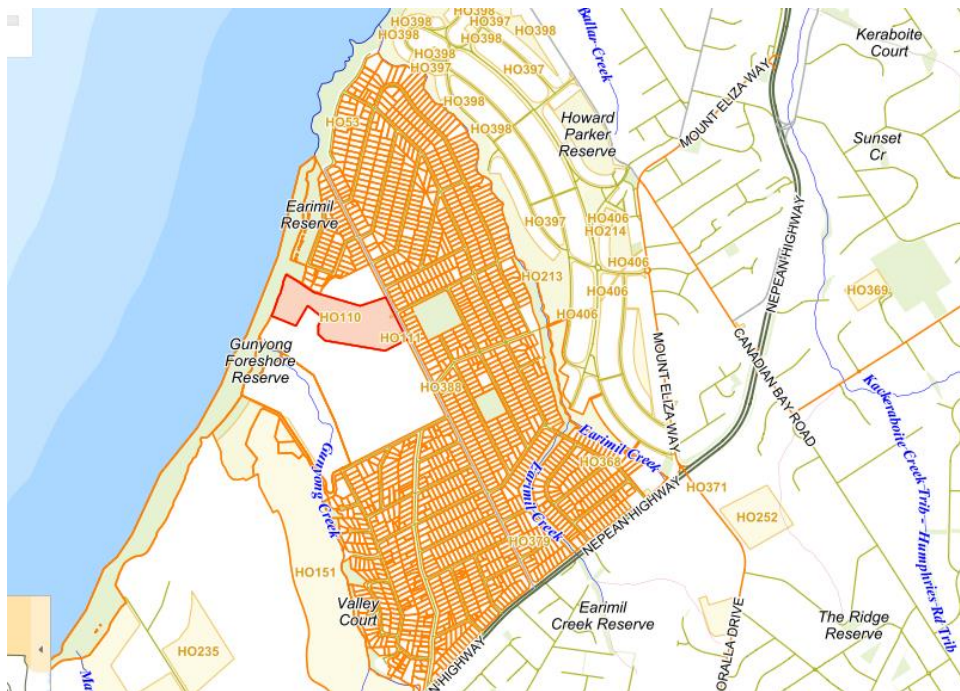
The recommendations made as a result of this item are based on the appeal being valid and the need for Council to adopt a position on the application.

NOTIFICATION AND CONSULTATION

Notification

The application was advertised in a manner consistent with the previous application; via notices to surrounding properties (see Figure 1 below for the extent of advertising by post), two signs along the road frontage and notice in The Age.

Figure 1: Extent of advertising by post



Submissions

At the time of this report's preparation, 476 submissions have been lodged.

The concerns raised within the objections are generally summarised as follows:

- Overdevelopment of the subject site
- Inappropriate land use
- Loss of vegetation
- Increased traffic on the surrounding road network
- Impact on fauna

5.3 (Cont.)

- Adverse emissions
- Bushfire risk
- Coastal degradation;
- Construction impact
- Loss of Bay views
- Insufficient stormwater response.
- Amendment C270morn and its implications for the proposal.

A copy of the objections can be found at Attachment 20.

Consultation

Formal consultation in the form of a Planning Application Conference has not been undertaken, given the substantial number of objections, the history of the application and the current appeal at VCAT.

REFERRALS**External Referrals*****Department of Environment, Land, Water and Planning (Section 52)***

DELWP is an adjoining landowner with the subject site (Moondah Beach) which is unreserved Crown land directly managed by DELWP. DELWP has no objection to the planning permit application, however a number of conditions are recommended relating to vegetation protection for retained vegetation and construction management. Comments have also been provided in support of the submitted Stormwater Management Plan.

Head, Transport for Victoria (Section 55)

The Head, Transport for Victoria has not objected to the application and has not recommended any conditions.

Country Fire Authority (Section 52)

The CFA has not objected to the application subject to conditions relating to the construction of roads. Additional comments have been provided in relation to the bushfire attack level (BAL) of the buildings, which must be to a minimum of BAL 12.5 except for Building B04 which must be to a minimum of BAL 19. Vegetation management in line with the requirements of Table 6, Clause 53.02 of the BMO was also recommended. These are as follows:

- Grass must be short cropped and maintained during the declared fire danger period.
- All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
- Within 10 metres of a building, flammable objects must not be located close to the vulnerable parts of the building.
- Plants greater than 10 centimetres in height must not be placed within 3 metres of a window or glass feature of the building.

5.3 (Cont.)

- Shrubs must not be located under the canopy of trees.
- Individual and clumps of shrubs must not exceed 5 square metres in area and must be separated by at least 5 metres.
- Trees must not overhang or touch any elements of the building.
- The canopy of trees must be separated by at least 5 metres.
- There must be a clearance of at least 2 metres between the lowest tree branches and ground level.

Peninsula Advisory Committee for Elders (PACE) (Section 52)

Objection received, concerns relate to the number of similar facilities in the surrounding area, the lack of public transport and hospitals nearby, traffic issues in Volitans Way as a result of road users avoiding the T-intersection at Kunyung Road and Nepean Highway, danger to school children from traffic and the lack of sheltered seating along pathways and accessible bathrooms not being provided in all accommodation.

Other than concerns raised by PACE, no external referral authority has objected to the application.

Internal Referrals***Development Engineering***

The proposal will need to provide for all areas of the development being drained by means of an underground drainage system to retain a post-development 1 in 10-year storm event for the critical storm duration. Discharge from the site must be limited to an equivalent pre-development flow based on a 1 in 2-year storm event for the critical storm duration and be connected to the existing outlet to Moondah Beach.

It is recommended that stormwater detention is proposed for the site to minimise the impact on the outlet to limit discharge flows and erosional impacts. Adequate treatment should be provided to the stormwater before discharge.

The outlet pipe rock lining and headwall will need to be upgraded to cater for the increase in capacity in accordance with Melbourne Water Standard. Rock lining of the swale or the existing flow path from the existing outlet pipe to the foreshore may be required depending on what exists. Any existing scouring due to discharge from the site should be rectified.

The reasoning behind the point of discharge being connected to the existing outlet to Moondah Beach is due to the site grading towards the beach front, limited Council underground drainage infrastructure in proximity and practicality issues involved in pumping stormwater from a large catchment area against the grade towards Council infrastructure.

Council's flood mapping indicates that external stormwater flows/flooding issues near the interface of Kunyung Road to the East will need to be managed by the development works. These overland flows/flooding issues should be addressed by the provision of overland flow paths so that flooding waters can bypass the dwellings and be managed in roads, open space or pathways.

5.3 (Cont.)***Traffic and Transport***

Issues have been raised regarding parking provision, traffic considerations, site access, the internal road network, pedestrian accessibility within the site, waste collection, facilities for cyclists and other matters. These will be discussed in greater detail in the assessment section of this report.

Natural Systems

No concerns have been raised. It was acknowledged that questions in relation to koalas were resolved within the previous VCAT decision and the submitted Biodiversity Assessment is adequate. It was suggested that low key specialised ongoing restoration and management of the foreshore vegetation Coastal Headland Scrub (Ecological Vegetation Class [EVC] 161), Coastal Dune Grassland (EVC 879) and Grassy Woodland (EVC 175) combined with some changes to the landscape plan to incorporate more locally indigenous species in the gardens would be a good outcome for flora and fauna if the development is permitted.

Attention to minimising light pollution from external lighting closer to the foreshore area would assist with maintaining viability of local fauna species (for example roosting seabirds).

It is also noted that keeping dogs-off-leash (and cats) away from the foreshore area would also be of benefit to fauna.

Senior Vegetation Officer

The site is subject to the Heritage Overlay and Clause 52.17. The majority of the vegetation proposed to be removed is not naturally occurring indigenous vegetation or strongly linked to the heritage values of the site. The current proposal is a significant improvement on the original application which proposed removal of a far greater number of trees. There are outstanding concerns relating to the removal of vegetation within the front setback to facilitate a path in the northern corner of the site, and it is recommended that this corner of the site be maintained for tree planting. It is also recommended that the applicant submit a weed management plan for the escarpment which will improve the quality of native vegetation within this area and facilitate improved erosion control.

Environmental Health

No concerns have been raised with respect to the submitted noise assessment report and officers are satisfied that operational noise can be sufficiently reduced so as not to exceed limits contained within relevant standards, policies and guidelines.

From an environmental health perspective, concerns were raised about the broader implications of this type and magnitude of development within the green wedge.

Conditions relating to noise, food, light and general amenity have been provided to be included on a permit, if issued.

Heritage Planner

Comments have been provided in relation to external paint colours, partial demolition and construction of new wings, and landscape impacts. The heritage referral response states that the revised plans are in keeping with the position of the previous VCAT decision, subject to some minor changes which could be achieved through permit conditions if a permit was to be issued.

5.3 (Cont.)**Urban Design**

Concerns have been raised regarding the proposed built form. Specifically, concerns regarding Building 04 include the massing, unbroken built form, visual prominence from the bay and the proposed materials and colours. As a consequence, there are concerns that the building competes with the Moondah Manor.

In addition, Buildings 1, 2, 6 and 5 represent a possible loss to the inter urban break. Concerns were also raised with relation to the fence, and it was recommended to set it back in line with the existing gatehouse (if vegetation impacts can be avoided) or to reduce its height to 1.5 metres.

PLANNING SCHEME PROVISIONS**Permit Triggers**

- A planning permit is required to use the land for a Residential aged care facility and Retirement village pursuant to Clause 37.01-1 (SUZ).
- A planning permit is required to construct a building or construct or carry out works pursuant to Clause 37.01-4 (SUZ).
- A planning permit is required to construct a building or construct or carry out works pursuant to Clause 43.01 (HO).
- A planning permit is required to demolish a building pursuant to Clause 43.01 (HO).
- A planning permit is required to remove, destroy or lop a tree pursuant to Clause 43.01 (HO).
- A planning permit is required to construct or put up for display a business identification sign (Clause 52.05 – Signs).
- A planning permit is required to reduce the number of car parking spaces required under Clause 52.06-5.
- A planning permit is required to remove vegetation native to Victoria (Clause 52.17 – Native Vegetation).

Municipal Planning Strategy
Clause 02.01 Context
Clause 02.02 Vision
Clause 02.03 Strategic Directions
Clause 02.04 Strategic Framework Plan
Planning Policy Framework
Clause 11 – Settlement
Clause 12 – Environmental and Landscape Values
Clause 13 – Environmental Risk and Amenity
Clause 15 – Built Environment and Heritage
Clause 16 – Housing
Clause 17 – Economic Development

5.3 (Cont.)

Clause 18 – Transport
Clause 19 – Infrastructure
Other
Clause 52.05 – Signs
Clause 52.06 – Car Parking
Clause 52.17 – Native Vegetation
Clause 52.34 – Bicycle Facilities
Clause 53.02 – Bushfire Planning
Clause 53.18 – Stormwater Management in Urban Areas
Clause 65 – Decision Guidelines

CONSIDERATION**Previous VCAT decision**

In reviewing this planning permit application, officers have considered the current permit application on its merits, as well as the commentary in the previous VCAT decision.

It is noted that there are a series of well-established principles which guide VCAT in hearing 'repeat appeals', where it is required to review an application similar to a proposal which has been the subject of a previous VCAT decision. A summary of these principles is set out in Attachment 17 for information. A copy of the decision can be found at Attachment 19.

State and Local Planning Policy

The Minister for Planning approved amendment C279morn (PPF Translation) and the amendment was gazetted on Thursday, 22 July 2021. Relevantly, the effect of the amendment was to replace the Local Planning Policy Framework with a new Municipal Planning Strategy and local policies within the Planning Policy Framework. It is noted that the PPF translation would not result in a different position on the application.

Attachment 18 provides a summary of the relevant planning policies.

Zone***Clause 37.01 – Special Use Zone***

Private Sportsgrounds, Religious, Health and Educational Establishments

The purpose of SUZ2 is as follows:

- To recognise strategic sites that contain recreational, religious, health or educational facilities that perform a significant community function.

Overlays***Clause 43.01 – Heritage Overlay***

The purpose of the HO is as follows:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve and enhance heritage places of natural or cultural significance.

5.3 (Cont.)

- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Land Use

The Proposal encompasses three separate land uses, Retirement Village, Residential Aged Care Facility and POW. Of these three uses only Retirement Village and Residential Aged Care Facility require a planning permit (Section 2 – permit required) pursuant to the SUZ2 with POW being as of right (Section 1 – permit not required).

A permit is required to construct buildings and works associated with all three land uses.

Key Issues***Whether planning permission can be granted for the proposed uses.***

The subject site is located within the Special Use Zone – Schedule 2 (SUZ2) and sits outside the UGB. The purpose of the schedule is:

To recognise strategic sites that contain recreational, religious, health or educational facilities that performs a significant community function.

The three uses being applied for are as follows:

- POW – Section 1 (permit not required) use in the SUZ2.
- Residential aged care facility – Section 2 (permit required) use in the SUZ2, subject to the condition that it must be used in association with an Education centre, Minor sports and recreation facility or POW.
- Retirement Village – Section 2 (permit required) use in the SUZ2, subject to the condition that it must be used in association with a POW.

If the conditions which Section 2 uses are subject to are not met, those uses are prohibited.

The previous VCAT Decision concluded that the proposed uses are lawful as the use of land for both the residential aged care facility and retirement village would be in association with the proposed POW, meeting the requirements of Schedule 2 to the Special Use Zone (SUZ2). The reasoning behind this conclusion and the facts relevant to it have not changed with the amended proposal; accordingly, officers consider the proposed uses are lawful. The following is a summary of the previous VCAT decision in relation to this matter:

The term 'in association with' is not defined in the planning scheme. Therefore, it must be given its ordinary meaning in line with accepted principles of statutory interpretation. The Macquarie Dictionary online provides a relevant meaning for the term 'association' as 'connection or combination'. The Oxford dictionary online includes a relevant meaning as 'the action of conjoining or uniting one person or thing with another'.

It is also highly relevant that an integrated facility is proposed encompassing all uses. Considering the application material as a whole, there would be multiple types of association

5.3 (Cont.)

between the use of the land for a POW and the proposed uses of residential aged care and retirement village. Key associations include:

- *the principal function of the POW would be to serve the religious needs of residents of the facility and their guests;*
- *operational relationships would be created between the POW and the aged care uses, including pastoral and spiritual care; and*
- *there would be a clear physical integration between the uses, with the POW uniquely designed and centrally located on the site proximate to key communal facilities.*

Accordingly, the use of land for residential aged care and a retirement village would be lawful in association with the proposed POW.

Whether the proposed use and development is consistent with key policy directions.

This matter was of key importance in the previous VCAT decision, and extensive submissions were made by parties. In the eventual decision, emphasis was placed on the necessary balancing of the site-specific controls which contemplate the proposed uses and exempt the subject site from Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions) of the Planning Scheme; and the competing interest of protecting the site's unique characteristics and its important location within green wedge land and the inter-urban break. Ultimately it was decided that the proposal did not achieve an appropriate balance in this respect.

The following is a summary of the previous VCAT decision in relation to this matter:

Irrespective of the land's Special Use zoning, it has the status of 'green wedge land' for the purpose of Part 3AA of the Planning and Environment Act 1987. Settlement policies in Clause 11 of the planning scheme are particularly pertinent to this land. A key strategy in Clause 11.01-1S is "to maintain a permanent UGB around Melbourne to create a more consolidated, sustainable city and protect the values of non-urban land". Clause 11.01-1R seeks to "protect green wedge land from inappropriate development".

Other key policy themes relating to this application relate to:

- *a desire to protect and enhance environmental values including coastal landscapes (including in Clause 21.08). One strategy to protect and enhance natural ecosystems and landscapes is to contain development in coastal locations to existing settlements, specifically avoiding further linear development along the coast;*
- *a strong emphasis on preserving neighbourhood character, noting that the municipality forms part of a distinctive area of state significance as recognised in Clause 11.05-2;*
- *the need to protect, maintain and reasonably adapt heritage assets;*
- *providing housing and specialised facilities for a growing and ageing population; and*
- *addressing infrastructure demands of new development in a sustainable way.*

Within the Municipal Strategic Statement, a central policy issue is the critical role to be played by inter-urban breaks between townships. Clause 21.02 states that "[the] settlement pattern and the relationship between the townships, the coast and the rural landscape contribute to the Peninsula's distinctive "sense of place". This statement also summarises what is most distinctive and valued about this particular estate in its physical context.

5.3 (Cont.)

Clause 21.04 provides a Strategic Framework Plan for the municipality and identifies major strategic directions which include reinforcing the hierarchy of towns and villages and defining township growth boundaries as a means of focusing future development in the major towns. It also seeks to recognise and protect strategic landscape areas between and around townships, due to their strong influence on the Peninsula's sense of place.

Clause 21.06 seeks to carefully manage demand for housing, to be integrated with the achievement of other major planning objectives including conservation and recreation. It identifies that:

It is necessary to distribute future population growth in support of major township development, rather than allowing ad hoc expansion or dispersed population growth throughout the Peninsula's rural area. This requires clear definition of growth areas and township boundaries, including the "green break" between the Peninsula and metropolitan Melbourne.

A relevant objective is to establish an integrated land use pattern recognising the regional role and character of the Peninsula and to ensure urban development does not prejudice environmental, recreational or agricultural values. Strategies in Clause 21.06 include:

- *Define clear and stable township boundaries which:*
 - *Maintain a clear separation or "green break" between metropolitan Melbourne and the Peninsula.*
 - *Reinforce the clear separation between Mt Eliza and Mornington.*
 - *Recognise the character and 'sense of place' of individual towns, including the relationship between towns, coastal areas and the rural hinterland.*
 - *Avoid the extension of urban development into areas of high agricultural and landscape value.*
 - *Protect areas of conservation, environmental and recreational value.*
 - *Recognise the constraints on development in areas that...may be subject to environmental threats (such as flooding or bush fire risk).*
- *Maintain the existing transition area of lower density residential development in Mt Eliza and the inter-urban break with Mornington, having regard to its particular environmental, landscape, township character and heritage values.*

Other key policies that were discussed include Plan Melbourne 2017-2050, the Marine and Coastal Policy, March 2020, the Siting and design guidelines for structures on the Victorian Coast, May 2020, the Mornington Peninsula Localised Planning Statement, Victorian Government, 2014 and the Mornington Peninsula Green Wedge Management Plan, April 2019.

The central significance of the zone provisions and the exemption from Clause 51.02 is that the use of land for residential aged care and retirement village is permissible (subject to conditions). This can be contrasted directly with land use constraints on other land outside the UGB including the Green Wedge Zone, where such land uses would be prohibited (within the land use category Accommodation). The zone contemplates mainly institutional land uses including education, recreation and health facilities, with a focus on those performing a community function. This is consistent with the identification of the land as a strategic site in the purpose to the schedule.

5.3 (Cont.)

The Tribunal supported the use of the land for residential aged care and a retirement village as consistent with both the schedule to the zone and having regard to the long-term historic use of the land for both residential and institutional use. The Tribunal also considered the proposal has the potential to deliver a significant community function.

In order to achieve other equally important policy objectives, the Tribunal considered that the proposed buildings and works must also be appropriately sited and scaled to maintain the natural, open and scenic qualities of this land which are integral to the site's strategic role. There is no direction in the zone controls as to what scale or configuration of institutional building forms would be acceptable for this site.

Relevant policy provisions and the site context are key to evaluating the acceptability of the resultant development. The location of this land outside the UGB informs an acceptable scale and intensity of urban design and built form. Another important consideration informing the appropriateness of site layout and building form is the existing open landscaped character of the estate, hosting the mansion building as a coastal landmark. While the site has a strategic role to achieve the purpose of the SUZ2, this was not delivered in a way that also satisfied the higher level strategic role of being outside the UGB.

Clause 71.02-3 of the planning scheme provides that planning policies should be applied in an integrated way and competing objectives should be balanced in favour of net community benefit and sustainable development.

The land presently serves an important role in establishing the commencement of both the inter-urban break between Mt Eliza and Mornington, and in marking the commencement of the UGB. There are numerous characteristics of the site that present as part of the inter-urban break, even though its current development has some peri urban characteristics. These include generally low scale development with limited visibility from public vantage points. The heritage mansion is the paramount building on the site. In its proposed form, the development would be inconsistent with other more site specific policy directions since it would introduce substantial built form into the inter-urban break in a form contributing to linear development between townships, which is expressly discouraged. It would also detract from the scenic values of the green wedge to the extent it would add a series of new, sizeable buildings in parts of the site that retain a strong landscape and scenic character.

Competing policy objectives seek to retain and enhance heritage and landscape values and the development needed to be tempered further to achieve an acceptable outcome. This would require a revised approach to the siting and design of buildings, most likely with a diminished site capacity. The building scale may need to be revisited to achieve acceptable outcomes.

Whilst the Planning Scheme has been amended to the extent that some of the strategic direction has been re-located and rationalised within it, officers consider that the conclusions of the Tribunal remain relevant to the current proposal. The subject site is not a preferred location for aged care or a retirement village, as it is located outside the UGB, not within a residential area or activity centre, and not close to services or public transport.

In the interest of clarity, some of the revised Planning Scheme provisions which contain key policy directions in relation to this site are listed below:

- Clause 02.03 – Strategic Directions
- Clause 11.01-1R – Settlement – Metropolitan Melbourne
- Clause 11.01-1R – Green wedges – Metropolitan Melbourne
- Clause 12.02 – Marine and Coastal Environment

5.3 (Cont.)

- Clause 12.05 – Significant Environments and Landscapes
- Clause 15.01 – Built Environment
- Clause 16.01-1S – Housing supply
- Clause 16.01-5S – Residential aged care facilities.

The Zoning controls, site-specific exemption from Clause 51.02 and the numerous other key policies listed which sit outside the Planning Scheme remain substantially unaltered.

It remains officers' view that, while the proposed use can be contemplated on this site, this must be weighed against the policy objectives relating to the unique characteristics of the land and its context outside the UGB. The amendments made to built form have not resolved the issues surrounding the inter-urban break and the commencement of the UGB, the key policy requirements relating to coastal and rural character and the impact upon the heritage place. In particular, Buildings 1 and 4 will impose within the landscape setting and would require substantial alteration or removal in order to achieve an outcome that respects the context of this site. It is therefore considered that an appropriate balance has not been achieved between the suitability of the proposed use and the built form response.

Whether the proposal responds appropriately to the heritage values of the site.

The presence of a Heritage Overlay (HO) over the subject site emphasises it as a place of heritage significance. Schedules 110 and 111 of the HO relate to the main Moondah building (referenced as '*Moondah, later Manyung Hotel*') and the gatehouse respectively. A planning permit is required pursuant to Clause 43.01 of the Planning Scheme for the demolition of buildings, construction and carrying out of new buildings and works, external painting of buildings and the removal of trees.

Both the Municipal Planning Strategy (Clause 02.03-5) and Planning Policy Framework (Clause 15.03), along with the HO, recognise the importance of conserving and enhancing heritage places. This includes ensuring that any proposed development respects the context and setting of the heritage elements.

The significance of the mansion and gatehouse are outlined in various documents, including the Victorian Heritage Register, the '*Shire of Mornington Heritage Study*' (G Butler & Associates, 1994) and the '*Mornington Peninsula Shire Heritage Review – Area 1*' (MPSC, 2012). The key aspects of the site's significance, having regard to these documents, relate to its purpose (early example of large seaside holiday mansion estates, its setting (set upon landscaped cliff tops, within spacious grounds) and its architectural significance (particularly the porte-cochere and the bay-facing front façade). Any proposal on the subject site must have appropriate regard for the values and key aspects of the heritage place.

With respect to the previous proposal, whilst it was recognised that there are aspects of the proposal that would have a positive impact on the heritage significance of the place (including the adaptive reuse of the mansion), Council's position was that the proposal as a whole would be detrimental to the heritage values of the place.

A summary of commentary from the VCAT Decision relevant to this matter is contained below:

A key purpose of the Heritage Overlay is to conserve and enhance places of cultural significance. Policy at Clause 22.04-3 (Note: Heritage conservation – Mornington Peninsula is now at Clause 15.03-1L-01) includes to:

- *Support the conservation of heritage places...*

5.3 (Cont.)

- *Encourage the removal of non-significant alterations or additions, particularly where this would assist in revealing the significance of the place.*
- *Support the restoration or reconstruction of fabric of heritage significance where opportunities arise.*

The key way to achieve this on the subject land is to provide for the adaptive reuse of primary heritage buildings and to facilitate new built form that is suitably respectful of the heritage values of the site. These are important components of policy in Clause 15.03-1S and the decision guidelines at Clause 22.04-4 (Note: Heritage conservation – Mornington Peninsula is now at Clause 15.03-1L-01) relating to whether the proposed buildings and works would assist in the conservation of a heritage place by:

- *Supporting the continued original use of a building by enabling it to be upgraded to meet present day requirements and standards; or,*
- *Allowing an alternative use when the original use is no longer viable.*

The reuse of this property for a proposed aged care facility and retirement village would reinvigorate the Moondah mansion as the hub of the new facility in a way that would meet contemporary needs for accommodation, care and recreation. Positive aspects of the proposal include the works to the Moondah Mansion including:

- *Removal of the Copland room to reveal the original arcade façade;*
- *Reinstatement of the detailing above the mansion parapet and comparable external finishes; and*
- *Removal of the Jubilee Wing from the north west corner of the mansion adjacent to the Bachelors Wing.*

Demolition of the Residential Wing and the Coach House were considered to be appropriate, as were the additions around the mansion and the replacement infill of the Jubilee Wing.

With regard to the heritage landscape setting, the Tribunal recognised that an important part of the heritage significance of the place is the open landscaped coastal setting. This is reflected in the statements of significance recognising the land as a 'country park' style seaside estate for the wealthy in the 1880's Boom period. The Tribunal did not share Council's concerns relating to the continuation of the loop road past the mansion on the basis that it would be well separated and at grade such that it would not detract from the structure as a landmark. However, it was considered desirable to maintain the open presentation of the southern lawn in any redevelopment, with a sensitive design of any recreational structures.

It was acknowledged that the Conservation Management Plan identified opportunities and parameters for new built form including:

New built form should be designed and sited to minimise impacts on the key approaches to Mansion along Essington-Lewis Drive. New built form should not compete in terms of scale or character with the design of Moondah and should be situated to avoid impacts on its key southern and western elevations.

Where new buildings are required, these are most appropriately situated in the north-eastern sections of the site...Buildings in this area could be accessed by way of an alternative point of entry to the north of the existing gatehouse.

Some limited opportunities exist for new development in the vicinity of the existing tennis courts and vineyard although greater sensitivities exist in this section of the site than in areas to their north. New development in this area should be of a modest height and footprint adopting pavilion forms in a landscaped setting. New buildings in this area should not obscure or dominate Moondah.

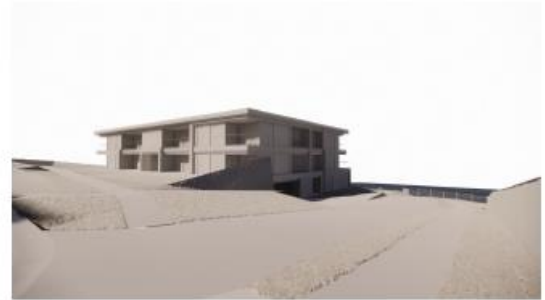
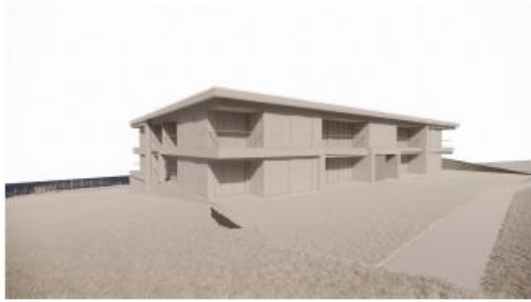
5.3 (Cont.)

With respect to viewlines to the mansion, the Tribunal commented that the combination of siting and topography grounds the mansion in its setting, and another important element is the choreographed entry sequence which includes openness of the grounds on the immediate approach.

Outstanding concerns from a heritage perspective included the Bowling Green, which was sited in front of the mansion with covered seating areas and balustrading or hedging; as it would unacceptably obscure part of the lower level of the mansion when viewed from the south-east; and Building 05 (now replaced by Building 04). The Tribunal regarded the openness of this part of the site in its interface with the coast as a key characteristic of the inter-urban break, being an important feature that distinguishes this site from the more closely settled built form of the land further to the north, within the UGB. By comparison (to the Jubilee Wing currently visible), the new building would be far more substantial in scale, sitting forward on the site and parts of the upper levels would be likely to project above the prevailing tree line when seen in distance views.

The officer is of the view that the current permit application plans satisfactorily resolve the outstanding issues with respect to the Bowling Green, subject to appropriate conditions. The Bowling Green is now proposed to be cut into the site so as to lower its elevation and the rooftop platform as a continuation of the natural ground level.

However, Building 04 (replacing Building 05 forward of the mansion toward the bay) will still interrupt the visual spacing and perception of openness surrounding the mansion, which will be detrimental to its heritage landmark qualities. As seen in the submitted 3-D Renders (shown below), this building presents as a three-storey built form with sheer walls that create a boxy appearance with minimal integration into the contours of the land. In the render to the top right below, B03 can be seen in the background. Given that B03 has a ridge height of 53.15 AHD and the Moondah Manor has a height of 55.957 AHD, and B04 protrudes well above B03 from this angle, it is likely that B04 will protrude above the highest point of Moondah when viewed from various surrounding vantage points. This would present as unacceptably obtrusive and dominant when compared with the heritage mansion. This is inconsistent with Clause 15.03-1S which seeks to retain elements that contribute to the importance of the heritage place and ensure an appropriate setting and context for heritage places is maintained or enhanced, and the purposes of the HO which include to ensure that development does not adversely affect the significance of heritage places. In this instance, the open landscape setting will be impeded by the proposed B04, and this building will protrude forward and above the heritage building from some of the surrounding public vantage points.



Whether built form been appropriately configured and designed to respond to site features including its interfaces and landscape values

The Municipal Planning Strategy and Planning Policy Framework set out strategic direction, objectives and strategies which seek to ensure development will be responsive to its surrounding context, character and landscape. This is considered to be the key aspect of the assessment of the current proposal, having regard to its interfaces with the coast, rural land and residential land, alongside the heritage significance of the place.

This aspect of the previous proposal was not supported by Council, with the first two refusal grounds setting out clearly that the response to the character of the area and its interfaces, by virtue of the scale and design of the development, was considered unacceptable.

In affirming Council's decision, VCAT agreed that the built form response was not sufficiently responsive to its context, particularly Buildings 01, 03, 05 and 06.

A more detailed summary of the VCAT decision's commentary on this matter can be summarised as follows:

Both the visibility of development from the public and private realm were considered as significant; however, greater weight is afforded to views from the public realm given the sensitivities of the site. Nevertheless, the site has a strategic role to play and will be frequented by non-residents of the site, therefore the layout and presentation of the entire site is a highly relevant consideration in this policy context which emphasises the concept of an inter-urban break.

It was acknowledged that B01 would present as a 2-3 storey building and individual units had been designed with articulated facades at all levels. However, there were concerns that the built form was insufficiently setback and orientated towards Kunyung Road in a way that would notably exceed the scale of buildings within the township and residential area, which is a concern for land outside the UGB in principle in addition to the policy context which seeks to maintain the inter-urban break and landscape presentation of the site.

5.3 (Cont.)

Meanwhile concerns were not raised about B02 given its depth into the site and that it is set into the land as it slopes toward the coast.

The interface of B06 (replaced by B05 in the current proposal) with the school to the north was considered and it was concluded that generous spacing between buildings to allow views through and wide, landscaped circulation areas were crucial to an acceptable presentation of the site outside the UGB. The decision provides specific direction for the redesign of this building:

“We consider that a building with a narrower face to the school, orientated more north-south could be supported in this location, generally adopting the location and scale of the 4 storey component of Building 06 to the south east. If this was undertaken, the proposed building including Building 07 and Building 02 would adopt a similar north-south orientation to school buildings, responding more suitably to site topography.”

B07 (replaced by B06 in the current proposal) was not considered to be of concern and this building has not been substantially modified in the new proposal.

The interface with the green wedge land to the south and its relationship with B05 (replaced by B04) was discussed in detail. Despite the established vegetation on the subject land, the 10 metre setback of a 3-4 storey building was not considered to be consistent with expectations for this interface and the building would appear as unsympathetic to land within the Green Wedge that is protected for its scenic values. It would also detract from the values of the inter-urban break when viewed from the coast. In a separate comment, the Tribunal stated that properties on Osprey Avenue would benefit from a more open outlook across the landscapes areas of the subject land “if Building 05 was removed in line with our findings” (para 299).

The decision further stated, at para 307:

“However, given heritage, interface and UGB concerns, we remain unable to support:

- a substantial building in the location of Building 05 even if the setback to the Green Wedge zoned land was increased to a minimum 16.8 metres;*
- Building 01 having regard to its siting and scale; and*
- Building 03 as sited and designed, given its impacts on viewlines to Moondah mansion and its effect on the open landscape values of the site.”*

Further comments stated that the numerous sizeable new buildings of a similar typology creates an impression of campus like buildings, the impact of which is magnified within the currently open landscaped character.

Officers acknowledge the deletion of B03 and the amendments to B06 (now replaced by B05) have responded to the directions of the Tribunal.

However, officers remain concerned with the design, built form and scale of B01 and B04.

The Tribunal provided specific commentary on B01 which stated that there may be scope for a *far more confined, low slung pavilion building form in this general location* to better respond to policy which seeks to maintain the inter-urban break and the landscape presentation of the site. The proposed 2-3 storey building has a height of 11.68 metres on the western side (internal to the site) and 7.8m on the eastern side (facing Kunyung Road). The building has a ridge height of 70.42 AHD, while the road height is approximately 68 AHD directly east of the siting of the building. While the building's length has reduced from 67.4m to 50.32m facing towards Kunyung Road, B01 remains large in scale, and it will not present as low-slung nor pavilion-like. It does not suitably respond to the existing bluestone Principal's residence

5.3 (Cont.)

which is already a feature of the current streetscape that would be dominated by the introduction of this far larger building.

As discussed within the response to heritage values above, officers view the amendments to B05 (replaced by B04 in the current proposal) as being insufficient to respond to the interface with the bay and the landscape values of this site within its policy context. The commentary throughout the previous VCAT decision appears to indicate that this building should be removed entirely; even with modifications that were similar to the new proposal tabled during the hearing, B05 (replaced by B04 in the current proposal) was still considered to be a substantial building in an inappropriate location.

Overall, officers regard the changes as not having responded adequately to the directions within the previous VCAT decision and consider that the proposed buildings do not suitably respond to the site's strategic context within the inter urban break, outside the UGB, and in the context of the heritage place.

Whether the proposal respects the ecological values of the site.

The Municipal Planning Strategy and Planning Policy Framework set out strategic direction, objectives and strategies which require developments to protect and conserve environmental values.

A substantial amount of commentary was provided in the previous VCAT decision with regard to the ecological values of the site, with the overall conclusion being that the buildings have been sited to avoid and minimise the loss of high-quality native vegetation, and offsets are available where native vegetation will be removed, destroyed or lopped. Similarly, it was accepted that it is unlikely that significant flora species occur on the part of the land identified for development given its modified nature. It was also considered unlikely that the native vegetation proximate to the foreshore would provide habitat for significant fauna species given the high levels of weed infestation, erosion and general disturbance.

The amended proposal has reduced the extent of vegetation to be removed. Council's Senior Vegetation Officer has advised that the key objective in their initial advice was to retain as many of the sugar gums in the front setback as possible, as these trees play an important role in supporting biodiversity and local landscape values where the site interfaces with Kunyung Road and Kunyung Primary School; and this objective has largely been achieved. The referral also confirms that vegetation interfacing with the coastal reserve is not significantly impacted and the row of Cypress trees along the drive, which contribute to the heritage values of the site, are largely retained.

The referral response recommends modification or deletion of parts of the paths within the northern corner of the site so that three trees within this area can be retained, being Trees 387, 393 and 394.

The previous VCAT decision and the vegetation referral response highlight the importance of weed management within the escarpment. These works would improve the quality of the native vegetation and over time facilitate improved erosion control. If the proposal was to be supported, a weed management plan would be required by permit condition.

Both the previous VCAT decision and the vegetation referral response also highlight some suggested amendments to the landscape plan, including a native (primarily indigenous) planting scheme where possible and respectful of the heritage setting which would provide a greater opportunity to enhance the ecological, coastal and landscape values of the site consistent with broader planning policies for the inter-urban break.

5.3 (Cont.)Bushfire Mitigation

The subject site is located within a designed bushfire prone area. Clause 13.02-S 'Bushfire planning' outlines that decision makers must complete whether the Proposal will prioritise the protection of human life, ensure that safe access is provided to protect human life against the threat of bushfires and minimise the exposure to unnecessary risk. Clause 13.02-1S Bushfire Planning also seeks to mitigate the risks of bushfire to life, property and the environment but ensuring that proposals do not increase the level of fire risk.

The Applicant has submitted a Bushfire Development Report advising that the site presents a relatively low bushfire risk landscape due to its location adjacent to an established suburban area, with hazardous vegetation confined to a narrow strip of coastal scrub to the east and currently grazed grassland to the south of the site.

The application, along with the Applicant's Bushfire Development Report, was referred to the Country Fire Authority for comment on the Proposal's suitability with regards to Clause 13.02-S. No objection was provided, subject to conditions.

The Proposal is therefore not considered to present an adverse risk in relation to the threat of bushfire.

Having considered the repeat appeals principles VCAT are likely to apply and the planning provisions, officers consider that the proposal could acceptably respond to the ecological values of the site, subject to conditions.

Whether infrastructure, including parking and traffic impacts, can be managed suitably

An assessment of the proposal against Clause 52.06 - Car Parking and the strategic objectives of the Planning Scheme relating to transport and access has been undertaken, and Officers have concerns that the proposed car parking is insufficient and the response to access and accessibility is unsatisfactory.

The previous VCAT decision provides commentary on how site access should be managed, the interface with the school, whether the car parking is suitable, the impacts on the local road network and the intersection with Nepean Highway, and construction management. The following is a summary of the conclusions (paragraphs 354-361):

Historically, the site used two access points - the southern access through the state heritage listed gatehouse, and a secondary northern access. The gatehouse has fixed dimensions which both limit its use by oversized vehicles and constrain its capacity for two way vehicle movements depending on projected usage rates. VCAT accepted that this single width access point requires intervention to enable safe operation to service projected peak hour vehicle use. Council's preference was for a one-way only ingress point (as opposed to a stop-go light system) and VCAT agreed that this would be the preferred approach, and it was also stated that the northern access would have sufficient and safe capacity for all exiting vehicle movements subject to appropriate design and management.

VCAT further stated that, if a fresh permit application was made in line with their suggested approach to site planning, it is likely to result in a reduction of units (with coincidental reduced vehicle movements) to the point that the southern accessway could be used for two way traffic in line with recommended standards without any specific interventions.

With regard to the interface with the school, VCAT found that traffic and safety could be managed acceptably through existing road rules, acceptable sight lines for both accessways in line with Australian standards, differing peak periods for the school and the aged care facility, signage and traffic supervisors during school pick up and drop off periods.

5.3 (Cont.)

While detailed commentary was not undertaken within the previous VCAT decision, it is stated that:

“We are not required to resolve this issue conclusively since the adequacy of parking would need to be revisited in any fresh proposal in any event. However, we are not necessarily persuaded by Council that the overall number of parking spaces offered to residents by category of occupancy is deficient in the current proposal.” (paragraph 368)

And further that:

“In principle, we would support the reduction of parking proposed for the POW given its close integration with the facility and expected day to day use by residents and their visitors.

There is also capacity through active parking management as well as physical capacity for overflow short term parking on the internal road network within the site (as depicted in plan form) to provide suitable arrangements for special events. These arrangements could operate in conjunction with a management plan for the POW limiting overall patron numbers to 120 at any one time.” (paragraphs 373-374)

Traffic generated by the proposed land uses was also considered to be acceptable; while there would be notable traffic increases along Kunyung Road, this was not considered to present an unreasonable noise disturbance for residences nearby. Kunyung Road is an identified collector road and the additional traffic was considered to be within the engineering and environmental capacity of this roadway.

The intersection of Kunyung Road with Nepean Highway was discussed and it was generally agreed that a Traffic Impact Assessment (TIA) should be required via permit condition if the proposal was to be approved; however this would be undertaken after stage 3 of the development. VCAT also stated that a Construction Management Plan and Construction Traffic Management Plan would be required as a condition of approval which may include suitable times for certain activities including access or egress to large construction vehicles, measures to manage emissions including noise and a liaison officer for contact by residents and Council. This was considered to be a matter for careful management and not a reason to refuse redevelopment if appropriate.

The internal Traffic referral raised a number of concerns with the level of information provided and was concerned that a number of the preliminary concerns were not adequately responded to in a manner that demonstrated that suggested alternatives were not suitable.

Broadly, officers remain concerned about traffic and parking with respect to site access to and within the site, pedestrian safety and accessibility, and car parking.

Access

Within the current proposal, the application proposes the southern site access via the historic Moondah Gatehouse to operate as a two-way access with no controls for entering and exiting vehicles. This is not supported by Council's Traffic Engineer, noting that a number of proposed alternatives have also been deemed unsuitable. Also of concern to Council's Traffic Engineer was that the Moondah Gatehouse has a 3.5 metre height restriction and although the applicant states that all large vehicles would use the northern access point, it is unclear how this would be managed and communicated to drivers.

While it is noted that the previous VCAT decision states that with an updated application with less dwellings and care beds with lower traffic entering and exiting the site, it would be anticipated that the southern access could be used for two-way traffic without any specific interventions, the decision does not appear to have considered the significantly restricted sight lines at the gatehouse which may make a two-way single lane operation unsuitable.

5.3 (Cont.)

While the applicant's Traffic Engineering Assessment indicates that the gradients conform to the requirements of the Planning Scheme, insufficient information has been provided on the plans to enable assessment of the gradients of the road network and basement ramps.

Pedestrian safety and accessibility

There are a high number of locations (approximately 18) within the site where the pedestrian routes cross the internal access road and it was recommended that the footpath network be reviewed to determine if the number of crossing locations could be reduced.

With regard to pedestrian accessibility within the site, there are concerns that the proposed internal path network is highly circuitous and does not comply with Universal Design principles which would result in a poor outcome for residents, staff and visitors of the village. The site topography generally does not suit the proposed use of the site as a retirement village and aged care and the circuitous nature of the accessible path network will be exacerbated during the staged construction which is considered a poor outcome. In addition, it is not clear how users of the internal footpaths will know which are the accessible routes and which are the non-accessible routes.

Mobility scooters would need to be prohibited or discouraged from accessing the basement via the vehicle access point, and all internal and external doors that form part of the accessible route will be required to provide automatic or electric doors to avoid people using a mobility scooter needing to manually push a door.

Car parking*Number of spaces*

Pursuant to Clause 52.06 'Car Parking', the car parking rate required for each respective use is as follows:

Use	Car Parking rate
Place of Worship (Place of assembly other than listed in this table)	0.3 spaces per patron.
Retirement Village	One space to each one- or two-bedroom dwelling.
	Two spaces to each three or more-bedroom dwellings (with studies or studios that are separate rooms counted as a bedroom).
	1 space provided to every five dwellings for development of five or more dwellings.
Residential Aged Care Facility	0.3 to each lodging room.

The Applicant's Town Planning Report outlines the Proposal's response to these requirements as follows:

5.3 (Cont.)

Use	Component	Size / No	Statutory Parking Rate	Parking Req.	Provision	Surplus / Shortfall
Residential Aged Care Facility	Aged Care	82	0.3 spaces per bed	35 spaces	35	-
	Assisted Living Suites	35				
	1 & 2-bedroom apartments	53	1 space per 1 or 2-bedroom apartment	53 spaces	53	-
Retirement Village	3-bedroom apartment	51	2 spaces per 3-bedroom apartment	102 spaces	102 spaces	-
	Visitor Parking	104	1 space per 5 dwellings	20 spaces	20 spaces (including 2 EV parking spaces)	-
Place of Worship	Place of Assembly	120	0.3 spaces per patron	36 spaces	36 spaces	-
Total				246 spaces	246 spaces	-

Traffic Group Traffic Engineering Assessment, page 14

Although the application submits that the required number of car parking spaces set out at Clause 52.06 has been achieved, Officers do not agree. The calculation of car parking requirements for the Assisted Living Suites (ALS) has been based on the Residential Aged Care Facility requirements. This is not considered appropriate as, based on the description on Ryman's website, it is reasonable to assume that most residents of the ALSs will own a car and regularly drive, creating parking demands above the 0.3 spaces per bed in Table 1 of Clause 52.06. It is also reasonable to assume that the ALSs will attract visitors at the same/ similar rate as the ILUs (one visitor space for every five dwellings) given that the ALSs are serviced apartments with a living area that can accommodate/ entertain visitors. The ALSs should therefore be included within the 'Retirement Village' use for the purposes of calculating the required number of parking spaces.

Based on the above, one parking space per ALS should be provided and one visitor parking space per five ALSs to ensure adequate parking provision for residents of the ALSs. As all ALSs are one bedroom, one parking space per ALS aligns with parking requirements for 'Retirement Village' in Clause 52.06.

With respect to the justification provided by the applicant for the level and layout of parking, case studies that have been used for comparison are not comparable to the Mornington Peninsula due to the lack of proximity to shopping, public transport and other factors. An empirical assessment of actual anticipated parking demand is necessary for this style of development to ensure an adequate parking provision for the site to avoid the potential for detrimental impacts to the subject site (e.g. vehicles parking in inappropriate locations within the site due to inadequate parking) and/or the surrounding area (on-street parking on Kunyung Road and other surrounding streets).

Council's Traffic Engineer has undertaken an indicative empirical assessment and states the following:

5.3 (Cont.)

Based on the indicative empirical assessment... the statutory parking provision in Traffix's TEA is in the order of 62 parking spaces below the actual expected parking demand for the site. Therefore, it appears additional car parking should be included in the proposal relative to what is currently proposed (subject to an empirical assessment undertaken by the applicant).

If the applicant believes that there are ways that parking within the site can be operated/managed to not require as much parking, then the applicant should provide detailed information about how this operation would work in practice. These operations would need to be included in a Car Parking Management Plan for the site (could be a condition of a Planning Permit).

It is suggested to consider a condition of a Planning Permit for the site that requires the applicant to restrict resident vehicle ownership to the number of spaces intended for each resident (eg residents of 1 and 2 bedroom ILUs can only own one vehicle, residents of 3 bedroom ILUs can only own two vehicles etc). This type of restriction could be discussed in a Car Parking Management Plan for the site.

Place of Worship

In addition, there are concerns that the POW Operation Management Plan provides minimal details about how traffic and parking associated with special events will be managed. The Operational Management Plan currently states (Section 4.3), "An additional 40 visitor parking spaces are provided throughout the village, with access to the POW from these spaces available via the network of footpaths", however, only 20 of these 40 spaces are allocated to POW parking and the remaining 20 spaces are required for staff and visitor parking for the ILUs, ALSs and aged care and should not be used by visitors to the POW.

Another key issue for the POW is the basement parking. The POW Operational Management Plan and/or a separate Car Parking Management also needs to address what happens when the POW basement is full to avoid many vehicles driving into the basement to check for available parking which will create congestion and frustration for drivers. In addition, there is no turning bays within the POW basement so a driver isn't able to turn around within the basement and must reverse back to a point that they can exit the basement in a forwards direction.

Suggested conditions if a permit is to be issued include:

- Limiting the maximum number of patrons to the POW to 120 people.
- Restricting special events within the POW to weekends only and to occur only after all stages of the development are complete.
- A separate Car Parking Management Plan for the POW.
- An accessible path to the 8 at-grade spaces to the south of the POW.

Visitor and staff parking access

Visitor parking is scattered throughout the site and some buildings have minimal visitor parking in close proximity (including Buildings 01, 05 and 06 which contain a total of 55 ILUs). Additional visitor parking should be provided to better visitor access to these buildings.

It is preferable for visitor parking to be at-grade within the site and not within various basement carparks, as these spaces will be hard to locate for visitors and it will not be apparent whether they are available without driving into the basement which would be very inconvenient for visitors. Further, the buildings that include visitor parking do not have turning bays at the end of the aisle/s (although it is acknowledged that a potential solution would be

5.3 (Cont.)

to use the waste collection bay to turn around and this may be suitable given the low number of visitor spaces within these buildings).

It is also unclear how visitors would access the basements, as access to the basements is controlled by a roller door.

Staff parking should be centralised as much as possible to avoid staff having to search for available parking in different at-grade locations or different basements.

Suitable linemarking and signage will be required within the basement carparks to assist drivers to safely navigate the basements. This could form part of a signage and linemarking plan which can be a condition of a planning permit.

Tandem spaces have been provided for the ILUs and this is acceptable provided that the tandem spaces are clearly allocated to one ILU and not to residents of different ILUs or visitors.

Other matters

The Traffic Referral response also highlighted some discrepancies in the plans and opportunities to further improve safety through lighting, linemarking, signage etc. It is also recommended that bicycle spaces be provided for residents of the ILUs. These matters could be addressed or clarified by permit condition.

The previous VCAT decision commented that direct foreshore access to Moondah Beach is a key site feature and is an important benefit to future users. If the land is to be used and developed with an aged care facility, convenient and safe foreshore access for at least a proportion of future residents should be provided and this should be integrated with the permissions sought for the use and development. While the applicant has provided some detail of the gradients required for accessibility, there is limited information to demonstrate the extent of works required to achieve these gradients. Such works have the potential to impact vegetation and erosion. It is also unclear at what stage the works would be undertaken and how access to the path will be managed prior to the works providing safe access to future residents.

The subject site is not presently connected into Council's stormwater system. Instead, stormwater from the land is discharged directly into the ocean at Moondah Beach. This arrangement is proposed to be retained with the current proposal however upgrades to the stormwater infrastructure are now proposed (which were not part of the former proposal). The permit application has been referred to DELWP, and it is supportive of the proposed infrastructure upgrades.

While officers have considered the previous VCAT decision, they are also required to consider the current permit application on its merits, and remain concerned about the issues outlined above relating to site access to and within the site, pedestrian safety and accessibility, car parking and foreshore access. It is also acknowledged the previous VCAT decision did not go into substantial detail about traffic related issues given that the application was generally refused on the built form.

Evaluating net community benefit

One of the significant considerations within the previous VCAT decision was the evaluation of net community benefit and whether this could outweigh the more intense built form outside the UGB than what would normally be expected. Relevant commentary from the decision follows (paragraphs 420-422):

All parties relied on the reasoning in Rutherford & Ors v Hume CC and other seminal cases where the Tribunal considered that such effects should be objectively ascertained; must be

5.3 (Cont.)

sufficiently probable to be significant; should have a causal connection to the proposed use or development; would generally involve effects on the community at large or an identifiable section of the community (rather than a small group of individuals); and should be based on a proper evidentiary basis or empirical analysis (such as a formal social impact or socio-economic assessment).

While a significant number of objections were submitted, we do not find that these necessarily equate with a significant social effect of the proposal. We accept that there is substantial local opposition to the aged care facility but consider that the principal adverse effects of the proposal would principally be experienced in built form and strategic planning terms, rather than as social effects per se. No objective evidence was presented by objectors to sustain this allegation beyond a general assumption.

Even if a significant social effect is demonstrated, case law confirms it should still be balanced alongside all other relevant planning considerations.

Paragraph 438:

Residents and Council did not take issue with the provision of aged care per se. Rather, they considered that any claimed need for such a facility of this intensity on the subject land would not outweigh other relevant considerations such as strategic policy considerations and the need to achieve appropriate built form outcomes.

Paragraph 441:

We accept that the need for both aged care facilities and retirement villages will increase over time as the population ages, but consider the evidence falls short of demonstrating either a strong need or one which is particular to this locality.

Paragraphs 444-446:

We agree this is not a preferred location for aged care or a retirement village under policy although it may be an acceptable use of this land. To the extent that planning policy supports 'ageing in place', Clause 16.01-5S seeks to ensure residential aged care facilities are located in residential areas, activity centres and urban renewal precincts, close to services and public transport. While this site may be a suitable candidate from a 'first principles' assessment, it remains relatively remote from other local services and facilities and does not meet these criteria.

We conclude that the need for aged care in the relevant statistical area appears to be low to moderate and it has not been demonstrated these needs (or a continuum of care on an individual site) would not otherwise been met if this application was refused in its current form.

Also, the site is not a preferred location for such land use and any claimed need does not outweigh the deficiencies in responding to policies for land outside the UGB and the inter-urban break between Mt Eliza and Mornington.

Although an integrated aged care and retirement facility may have the capacity to meet the future needs and expectations of an ageing population, the subject site is not a preferred location for aged care, neither is there strong evidence of unmet localised demand. Accordingly, officers agree with the comments of the Tribunal that, when considering the proposal in light of net community benefit and sustainable development, priority needs to be given to preserving what is unique about this site. This would require a more consolidated and considered building layout or scale to achieve important policies for land outside the UGB.

5.3 (Cont.)

Officers are of the view that the amendments to the development have not successfully addressed the key issues relating to the strategic role of this site within its context, nor has it suitably preserved the unique characteristics of the site including its landscape and heritage values. Buildings 01 and 04 in particular would require removal or substantial modification to achieve an outcome that is appropriately responsive to the policy, landscape and heritage context of this site. The development in its amended form still represents an unwarranted intrusion into the inter-urban break that is inconsistent with the character of the streetscape, the view from the coast and the interface with the Green Wedge land to the south.

Response to Submissions

The concerns raised within the objections submitted are generally consistent with those raised within the previous application and can be summarised as follows:

- Overdevelopment of the subject site
- Inappropriate land use
- Loss of vegetation
- Increased traffic on the surrounding road network
- Impact on fauna
- Adverse emissions
- Bushfire risk
- Coastal degradation
- Construction impact
- Loss of Bay views
- Insufficient stormwater management
- Pedestrian safety along Kunyung Road
- The implications of the proposal with respect to C270morn.

Acknowledging that much of the consideration regarding the Proposal has already addressed several of these concerns the following comments are provided with respect to those that have not yet been discussed:

Overdevelopment of the subject site

The scale and form of the Proposal is discussed in detail throughout the assessment from the perspectives of urban design, heritage and flora and fauna loss. Acknowledging the substantial impact, the development will have on all of these important considerations the Proposal is deemed to represent an overdevelopment.

Loss of vegetation and ecological impact

Refer to the 'Whether the proposal respects the ecological values of the site' section within the consideration of this report for response.

5.3 (Cont.)***Increased traffic on the surrounding road network***

Refer to the 'Whether infrastructure, including parking and traffic impacts, can be managed suitably' section within the consideration of this report for response.

Bushfire risk

Refer to the 'Bushfire mitigation' section within the consideration of this report for response.

Adverse emissions

The Applicant submitted a noise assessment and lighting plan to demonstrate the suitability of the Proposal in relation to these potential amenity issues. The Shire's Environmental Health Department has reviewed this documentation, along with the overall Proposal, and advised of no objection.

Were the Proposal to be approved, conditions have also been provided to ensure that noise and lighting is managed appropriately.

Coastal degradation

The Applicant has submitted a geotechnical report detailing the suitability of the land to accommodate the proposed development without adverse landslip and erosion. The Shire's Development Engineers have reviewed the information and advised of no concern about erosion.

The adverse visual impact from Port Phillip Bay and the suitability of the stormwater system have previously been discussed earlier within the consideration.

Construction impact

Several concerns have been raised regarding the amenity impacts that will be incurred by surrounding allotments during the construction of the Proposal. Were the proposed development to be approved a Construction and Environmental Management Plan (CEMP) would be required pursuant to conditions. The CEMP would establish construction hours, noise controls, air and dust management, traffic management and public safety and site security to ensure that the amenity of the surrounding area is not disregarded.

Loss of Bay views

The previous VCAT decision stated (paragraph 271):

For the record, we do not consider that the curtailment of bay views from this part of Kunyung Road, the adjacent side street (Kanya Road) or from private land opposite would justify the removal or redesign of this building. While these views may be valued by local residents, they are limited and somewhat fortuitous. In our opinion, they are not an integral part of the character of this site when viewed from public land, and should be distinguished from the far more significant, sweeping public views of the bay that can be obtained further north along Kunyung Road.

It is acknowledged that the reduction in height of some buildings may have resulted in less impact to these properties. Regardless, considerations relating to viewlines are well documented in various VCAT decisions and established principles guide that:

- (a) *there is no legal right to a view;*
- (b) *views form part of the existing amenity of a property and their loss is a relevant consideration to take into account;*

5.3 (Cont.)

- (c) *the availability of views must be considered in the light of what constitutes a reasonable sharing of those views;*
- (d) *in addressing the concept of “reasonableness”, it is relevant to consider*
 - (i) *the importance of the view to be lost within the overall panorama available; and*
 - (ii) *whether those objecting have taken all appropriate steps to optimise development of their own properties.*
- (e) *Added emphasis will be placed on principles (b) and (c) above if the issue of views is specifically addressed in the planning scheme.*

Officers do not consider any loss of views to be a key consideration given the lack of associated overlays on the land, the lowered built form heights across parts of the development and the principles above.

Insufficient stormwater management

Refer to the ‘Other Matters’ section within the consideration of this report for response to stormwater management.

Pedestrian safety along Kunyung Road

The frequency of movement to and from the site has been raised as a concern in relation to the safety of pedestrian’s traversing along the road reserve of Kunyung Road, notably to and from adjoining Kunyung Primary School. The Applicant’s Traffic Engineering Assessment has identified a range of mitigation measures which could be applied to for pedestrian safety.

Additionally, the Shire’s Traffic Engineers have notated that the key considerations in maximising pedestrian safety is to provide good sightlines. Due to the subject site’s proximity to Kunyung Primary School with its higher frequency of vulnerable pedestrian movements it is recommended that pedestrian sight splays be substantially larger than the minimum standard.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

The proposed development has not achieved a suitable built form outcome. Whilst it is acknowledged that the use is permissible within SUZ2, the site’s location outside of the UGB and within the inter urban break is a significant consideration. Having regard to this, it is the officer’s view that the proposal has not demonstrated an acceptable built form outcome that responds to its setting, nor preserves what is unique about the site. On balance, it is considered the proposal fails to provide a net community benefit. It is therefore recommended that the Planning Services Committee does not support the proposal.

5.4 Ministerial Planning Application PA2201534 - 1 and 2 Long Island Drive and 35 Cemetery Road, Hastings - Use and development of an energy generation facility and vegetation removal

Prepared By	Lachlan Howard, Principal Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11229307
Attachment(s)	<ol style="list-style-type: none"> 1. Draft response letter ↓ 2. DELWP Notice letter 3. Town Planning report 4. Environmental Safety Security Information report 5. Plans 6. Greenhouse gas assessment 7. Native vegetation assessment 8. Environmental noise assessment 9. Air quality assessment
Application No.	PA2201534 (DELWP reference)
Proposal	Use and development of an energy generation facility and vegetation removal
Melway Reference	155B7
Zoning	Special Use Zone – Schedule 1 (SUZ1)
Applicant	Esso Resources Australia Pty Ltd, C/- Town Planning & Co. Pty Ltd
Date of Application	The Shire was formally notified of the application on 23 May 2022.
Item Called in?	No

EXECUTIVE SUMMARY

Esso Resources Australia Pty Ltd (Esso) is seeking approval from the Minister for Planning to establish an ethane gas-fired electricity generation facility with associated vegetation removal at 1 and 2 Long Island Drive and 35 Cemetery Road, Hastings.

Ethane is a by-product of retail natural gas, in this case resulting from existing processes undertaken at the Long Island Point Fractionation Plant. Esso's customer for ethane has reduced their demand for gas, and Esso has excess ethane that must be disposed of in some manner. The Application is proposed to facilitate the use of excess ethane, with an operational period of 8 to 12 years.

The Minister for Planning is the Responsible Authority for the Application. The Mornington Peninsula Shire (Shire) has been notified of the Application and is a stakeholder. Given the nature of the Proposal, a decision is sought from the Planning Services Committee on whether the Shire should object to the Application or not.

The proposed use and development have been considered against the policy objectives of the Mornington Peninsula Planning Scheme (Planning Scheme), as well as the Shire's policies relating to the Climate Emergency. While the Proposal would result in an estimated 6% increase in the Mornington Peninsula's annual greenhouse gas emissions, it is considered that the Proposal's climate change impacts are acceptable in the specific context. The Proposal would result in the replacement of a portion of coal-fired electricity, and alternative options for the use of the ethane are either not feasible or would require increased flaring of gas at Long Island Point. Further, it is considered that environmental and amenity impacts resulting from the proposal do not warrant objection.

5.4 (Cont.)

It is therefore recommended that the Committee not object to the grant of a planning permit, subject to conditions to be recommended to the Minister.

PROPOSAL	Use and development of an energy generation facility and vegetation removal
Zoning and Overlays	Special Use Zone – Schedule 1 (SUZ1) Bushfire Management Overlay (BMO).
Permit Triggers	A Planning Permit is required to use the land for an Energy Generation Facility pursuant to Clause 37.01-1 (Special Use Zone). A Planning Permit is required to construct a building or construct or carry out works associated with an Energy Generation Facility pursuant to Clause 37.01-4 (Special Use Zone). A Planning Permit is required to remove, destroy or lop vegetation native to Victoria pursuant to Clause 52.17-1 (Native Vegetation).
Key Issues	Whether the proposed use and development is consistent with key policy directions, in particular surrounding climate change. Whether the circumstances surrounding the Proposal mitigate its potential climate change impacts. Whether the Proposal would result in undue environmental impacts. Whether the Proposal would result in undue amenity impacts.
Recommendation	That the Planning Services Committee resolves to: 1. Not object to planning permit application PA2201534, subject to recommended conditions. 2. Adopts the response (Attachment 1) and forward it to the Department of Environment, Land, Water and Planning (DELWP) prior to 27 June 2022.

RECOMMENDATION

That the Planning Services Committee resolves to:

1. Not object to planning permit application PA2201534, subject to recommended conditions.
2. Adopts the response (Attachment 1) and forwards it to the Department of Environment, Land, Water and Planning prior to 27 June 2022.

5.4 (Cont.)

COMMITTEE DECISION

Moved: Cr Dixon

Seconded: Cr O'Connor

That the Planning Services Committee resolves to lodge an objection to the Minister for Planning in relation to planning permit application PA2201534 on the following grounds:

1. The Application Documentation is insufficient to assess the full impact of the Proposal on its surrounds.
2. The Proposal would yield increased climate change impacts through the burning of ethane. In this manner, the Proposal is contrary to the Shire's adopted Climate Emergency Plan (*Our Climate Emergency Response From 2020 to 2030*) in that it would lead to an increase in the Mornington Peninsula's greenhouse gas emissions. The Proposal does not support the Shire's transition to a carbon-neutral economy.
3. The Application does not adequately recognise the surrounding environmental context, with the surrounding coast and waters being a declared Ramsar wetland, and does not articulate the potential environmental impacts on it surrounds.
4. The Proposal may result in health impacts to surrounding residents through increased noise (including low-frequency noise), and the release of pollutants and particulate matter into the atmosphere.
5. The Proposal may impact existing aircraft operations.
6. An Environmental Effects Statement (EES) should be undertaken under the *Environmental Effects Act 1978*, along with an independently developed Quantitative Risk Assessment (QRA), to determine the full extent of environmental, social, health and climate change impacts of the Proposal.
7. 7. The results of any EES and/or QRA should be reported back to Council and the broader community to ensure the impacts of the Proposal are transparently communicated and understood.

Vote by Division (Requested by Cr Holland)

For: Cr Gill, Cr O'Connor, Cr Dixon, Cr Mercurio, Cr Mar and Cr McCafferty

Against: Cr Holland, Cr Bissinger and Cr Celi

Carried

PROCEDURAL MOTION

Moved: Cr O'Connor

Seconded: Cr Gill

That the meeting time be extended to 10.30pm.

5.4 (Cont.)**DISCUSSION****Existing Conditions**

The subject site consists of three allotments totalling 16.7 hectares located on the southern side of Bayview Road and western side of Long Island Drive in Hastings. The land is currently used as a warehousing facility associated with Esso's Long Island Point Fractionation Plant (located to the immediate south of the subject land). The land contains an existing 25-metre-high warehouse setback 210 metres from Bayview Road and 205 metres from Long Island Drive. In the southern portion of the land includes facilities associated with the access and egress of liquid petroleum gas transport trucks.

Access to the works area is primarily through an existing 7.5-metre-wide sealed driveway from Bayview Road. The site also contains truck access and egress to the Fractionation Plant on Long Island Drive. A disused railway line enters the subject site from its western boundary and terminates parallel with the southern end of the existing warehouse.

Topographically, the subject site features an overall downslope from west to east of approximately 11 metres. The minimum elevation of the land is mapped as 7.5 metres AHD, and the land is not mapped as being at risk of sea level rise impacts. The northern and western portions of the site feature stands of indigenous vegetation, while vegetation cover is more scattered in the eastern portion of the site.

Figure 1 below shows the subject site and surrounds.



Figure 1: Aerial photograph of the subject site and surrounds (December 2021).

The subject site is located within the Hastings Port Industrial Area and is located 400 metres from the shoreline of Western Port. To the immediate south of the subject is the Long Island Fractionation Plant, while to the immediate north is Bluescope Steel's Western Port Facility. The Cemetery Road Estate is located to the south-west of the subject site.

Gas production processes at Long Island Point

Gas extracted from the Bass Strait is processed at Esso's facilities at Longford. The processing facilities at Longford produce sales gas (raw natural gas) and natural gas liquids (used in the production of liquid petroleum gas). Natural gas liquids are transported by pipe from Longford to the Long Island Point Fractionation Plant in Hastings.

5.4 (Cont.)

At the Fractionation Plant, natural gas liquids are separated into ethane, propane and butane. Butane and propane are utilised for domestic, commercial and industrial purposes. Ethane produced at the Fractionation Plant is used in the manufacture of plastics and resins. It is transported to a downstream customer, Qenos in Altona.

In 2021, Esso's customer announced plans to close one of two ethylene production units, reducing the required intake of ethane. As a result, a portion of the ethane produced at Hastings is undersubscribed (i.e., surplus to needs). Esso seeks an alternative use for the undersubscribed portion of the ethane.

Proposal

To utilise the excess ethane, Esso is seeking approval to establish an ethane gas-fired electricity generation facility. The proposal would have a maximum generating capacity of 40 megawatts; however, the application material indicates that this would fluctuate depending on the amount of undersubscribed available. The facility is proposed to be located generally to the south of the existing warehouse on the land, with buildings and works consisting of:

Three freestanding Solar Titan 130 turbine generators (maximum height 14.7 metres) located to the south of the existing warehouse.

A vent stack located to the immediate east of the generators, with a maximum height of 15 metres.

A sealed oily water well adjacent to the vent stack.

An electrical switch yard, transformer system and single-storey electrical equipment building located between the warehouse and generators.

A general operations buildings, consisting of offices and amenities, located to the south-west of the existing warehouse building.

Underground fuel gas supply piping from the Fractionation Plant to the proposed facility.

Circulating and perimeter roads with 7.5-metre sealed width.

On-site car parking for up to 80 vehicles.

A 45-metre-long and 5-metre-high acoustic noise wall on the southern boundary.

In addition to the buildings and works, the removal of 0.857 hectares of native vegetation generally surrounding the facility is proposed to facilitate the creation of defensible space to the buildings.

The Permit Applicant states that the land use is intended to be temporary in nature, with an operating period of 8 to 12 years as Victoria transitions away from natural gas. Shire officers are unaware of whether this would be intended to be enforced by way of permit condition on any permit granted.

The Proposal is expected to generate an average of 172,462 megawatt hours per year over the life of the facility. On average annual household electricity consumption in Victoria, this would supply power for around 35,000 homes. At its peak, this would represent an 0.36% increase in the total fossil fuelled power in Victoria, and 0.09% of Victoria's total electricity generated.

Post-construction, up to six (6) staff would be present on-site at any one time.

5.4 (Cont.)**Council's role**

Despite the Application affecting land within the Shire, Council has no statutory decision-making powers regarding the Application. The decision on whether to approve the Application rests entirely with the Minister for Planning as he is the Responsible Authority for applications relating to energy generating facilities exceeding 1 megawatt generating capacity. The assessment is undertaken on behalf of the Minister by officers at the Department of Environment, Land, Water and Planning (DELWP).

Council is a stakeholder in the assessment and approvals process and has been formally notified of the Application by DELWP. Council received formal notice of the Application on 23 May 2022.

Council may choose to object to the Application, state no objection subject to conditions, or elect not to respond to the notice.

Notice periods ended on 15 June 2022. The Application may be determined on any date following the closure of the notice period. Council officers have advised DELWP officers that a resolution of Council will not be available until after 20 June 2022 due to the timeframes involved.

INTERNAL REFERRALS**Climate Change and Sustainability**

The Shire's Climate Change and Sustainability Unit has reviewed the Application and does not object to the grant of the permit, subject to conditions requiring:

- The Applicant to undertake all greenhouse gas mitigation measures proposed in the Application Documentation.
- Certified carbon offsets to be derived from direct investment in location projects within the Shire.
- The development of an End of Useful Life Land Use/Economic Transition Plan.

Their reasons for not objecting are further discussed in the 'Consideration' section below.

Development Engineering

The Shire's Development Engineering Team has reviewed the Application and does not object, subject to conditions relating to the submission of engineering plans, a Construction Management Plan, and a Traffic Management Plan to the Shire (should the Minister grant a permit), and the implementation of drainage works.

Natural Systems

The Shire's Natural Systems Team has reviewed the Application and does not object to the Application, noting that the impact of the proposal on native vegetation is minimal and vegetation to be removed is generally low quality.

5.4 (Cont.)

PLANNING SCHEME PROVISIONS**Permit Triggers**

A Planning Permit is required to use the land for an Energy Generation Facility pursuant to Clause 37.01-1 (Special Use Zone);

A Planning Permit is required to construct a building or construct or carry out works associated with an Energy Generation Facility pursuant to Clause 37.01-4 (Special Use Zone);

A Planning Permit is required to remove, destroy or lop vegetation native to Victoria pursuant to Clause 52.17-1 (Native Vegetation).

Municipal Planning Strategy
Clause 02.01 Context
Clause 02.02 Vision
Clause 02.03 Strategic Directions
Clause 02.04 Strategic Framework Plan
Planning Policy Framework
Clause 11.03-5S Distinctive areas and landscapes
Clause 12.01-1S Protection of biodiversity
Clause 12.01-2S Native vegetation management
Clause 12.02-1S Protection of the marine and coastal environment
Clause 13.01-1S Natural hazards and climate change
Clause 13.02-1S Bushfire planning
Clause 13.05-1S Noise abatement
Clause 13.06-1S Air quality management
Clause 13.07-1S Land use compatibility
Clause 17.03-2S Sustainable industry
Clause 17.03-3S State significant industrial land
Clause 19.01-1S Energy supply
Other
Clause 52.17 – Native Vegetation
Clause 53.18 – Stormwater Management in Urban Areas
Clause 65 – Decision Guidelines

5.4 (Cont.)**RELEVANT COUNCIL POLICIES****Climate Emergency Response Plan**

Our Climate Emergency Response From 2020 to 2030 details the Shire's response to its August 2019 Climate Emergency declaration. The Plan commits the Shire to proactive leadership to support and encourage individuals, organisations, businesses and all levels of government to integrate Climate Emergency responses into their operations and daily lives. Providing a framework for Council-led action, the Plan moves beyond mitigation and adaptation measures. Through the Plan, the Shire has adopted targets of a 65% reduction in greenhouse gas emissions by 2030 and net zero emissions by 2040.

OTHER APPROVALS**Environment Protection Act 2017**

Concurrent to the Planning Permit Application, the Applicant is seeking a development and operating licence under the *Environment Protection Act 2017*. The Environment Protection Authority of Victoria (EPA) is responsible for the assessment of relevant licences.

Environment Effects Act 1978

The *Environment Effects Act 1978* requires significant projects to be referred to the Minister for Planning to determine whether an Environmental Effects Statement (EES) is required to be created. Whether referral is required is based on set self-assessment criteria. The Applicant has advised that the proposal does not pass the threshold for referral to the Minister and consequently an EES is not required.

Climate Change Act 2017

The Climate Change Act provides Victoria with a legislative foundation to manage climate change risks and drive the transition to a climate resilient community and economy with net zero emissions by 2050. The Act embeds a 2050 net zero emissions target and provides for the setting of five-yearly interim greenhouse gas emissions reduction targets, climate change strategies, and adaptation action plans to ensure the 2050 target is achieved and vulnerabilities to climate change impacts are reduced while potential opportunities are realised.

No approvals required are required under this Act. Consideration of this Act does not apply to decisions made under the *Planning and Environment Act 1987*, but it does apply to decisions made under the *Environment Protection Act 2017* (i.e. the EPA's licence application).

Aboriginal Heritage Act 2006

The Application does not require the preparation of a Cultural Heritage Management Plan under the Aboriginal Heritage Act 2006 as the activity area of the land use is located outside of an area of cultural heritage sensitivity.

Other Acts

Additional regulatory requirements apply to the Proposal under the following acts:

National Electricity (Victoria) Act 2005

Electrical Industry Act 2000

Electrical Safety Act 1998

5.4 (Cont.)

Gas Safety Act 1997

Occupational Health and Safety Act 2004

Dangerous Goods (Storage and Handling) Regulations 2012.

CONSIDERATION**Limitations**

As the period of time to make submissions is limited, Shire officers have not had the breadth of time to undertake assessment to the standard that would normally be undertaken if the Application was under the Shire's assessment. As the notice period ended on 15 June, there is a risk that any delays to a decision on whether to object or not to the Application could lead to the Shire being shut out from the decision-making process.

The below assessment largely focuses on what officers consider to be the most significant potential issues with the Application, had Council been the Responsible Authority for this proposal.

Land Use and Built Form

The land is located within the Hastings Port Industrial Area and is zoned Special Use Zone – Schedule 1 (SUZ1). The SUZ1 seeks to provide for selected industrial uses which depend upon or gain significant economic advantages from the natural deep water channels in Western Port, subject to environmental and amenity considerations. The proposed use is an energy generation facility and is a permit-required use not subject to any restrictions.

While the Proposal does not necessarily derive benefit from proximity to a deep water port, it is considered to form part of the broader Long Island Point Fractionation Plant facilities, which are long established and do derive benefit from proximity to Western Port. As a part of the Fractionation Plant, the Proposal is not considered to be fundamentally at odds with the Zone.

The buildings and works associated with the Proposal are generally consistent with the dispersed heavy-industrial built form characterised by the subject site and surrounds. The generators and vent stacks, while in excess of 15 metres in height, are below the ridgeline of the adjoining warehouse building. The buildings and works are well setback from all boundaries, with the nearest occupied land not in the possession of Esso being approximately 400 metres to the northwest. Given the buildings present in the immediate vicinity, the proposed buildings would not significantly impact on views from the Hastings Foreshore.

Climate Change Impacts

The combustion of ethane for electricity generation purposes results in the emission of greenhouse gases to the atmosphere. The direct impacts of the proposal with respect to climate change are a fundamental consideration in determining the Shire's position on the Application.

Within the Planning Scheme, the Municipal Planning Strategy seeks to ensure that the Shire is a leader in climate change mitigation and adaptation. While subsequent planning policy is mostly geared towards adaptation, Clause 19.01-1S (Energy supply) seeks to support transition to a 'low-carbon' economy with renewable energy and greenhouse emission reductions. Victoria's commitment to net zero by 2050 is, unfortunately, not referenced in the Planning Scheme. As the *Climate Change Act 2017* does not apply to decisions made under the *Planning and Environment Act 1987*, there is deficient scope for the Minister to consider the climate change impacts of the Proposal under the Planning Permit Application.

5.4 (Cont.)

As the Shire is a stakeholder, these deficiencies are not binding on the Shire's position on the Application.

In August 2019, Council unanimously declared a Climate Emergency, calling for immediate and urgent action to reverse global warming and the significant damage that climate change is causing to the environment and society. As a leader in responding to climate change, the Shire should review any proposal that would result such an increase in greenhouse gas emissions with caution. Weight should be given to the Shire's adopted policies relating to responding to the Climate Emergency.

A central aspect of the Climate Emergency Response Plan is a commitment to move towards zero greenhouse gas emissions by 2040, phase out reliance on fossil-fuels – including gas – and support a transition to a renewable energy-based economy with maximum uptake in energy efficiency measures and operations.

The Application is accompanied by a Greenhouse Gas Assessment by AECOM (Attachment 6). The report outlines the 'worst case' greenhouse gas emissions scenario for the proposed use and development within three scopes:

Direct emissions of greenhouse gas from sources that are owned or operated by a reporting organisation.

Indirect emissions associated with the import of energy.

Other indirect emissions, which are a direct result of the operations, but from sources not owned or operated by them and due to upstream or downstream activities (examples include indirect upstream emissions associated with the extraction, production and transport of purchased construction materials and business).

Due to the Proposal's relationship to the broader gas production system, upstream emissions resulting from processes undertaken at Longford have not been factored into the Assessment.

The Assessment estimates the following (worst case) emissions from the Proposal:

357 tonnes carbon dioxide equivalent associated with construction.

114,625 tonnes carbon dioxide equivalent associated with the operations, averaged annually.

1,260,847.7 tonnes carbon dioxide equivalent associated with the operations across the expected lifespan of the facility.

The operational output of greenhouse gas emissions equates to 0.13% of Victoria's total greenhouse gas emissions in 2019. Council's Climate Change and Sustainability Unit estimate this to constitute a 6% increase on the Mornington Peninsula's total annual greenhouse gas emissions.

The Proposal represents a marked increase in the Peninsula's total annual greenhouse gas emissions and is contrary to the Shire's adopted response to the Climate Emergency. Despite this, the Application Documentation makes a case that the Proposal's overall impact is minimal when viewed in the context of the State's energy production system, noting that:

The quantity of ethane intended to be burned would traditionally have been used in plastics and resin production. These production methods would produce 60.8% of the carbon dioxide equivalent per unit of ethane compared to the Proposal, meaning that a substantial portion of the emissions associated with the proposal are not 'additional' emissions.

5.4 (Cont.)

While the burning of ethane is more emissions-intensive than the production of plastics, the Applicant notes further environmental impacts associated with plastics production across the life cycle of the product. However, the relative environmental impacts are not quantified.

The Proposal would generate 0.66 tonnes carbon dioxide equivalent per megawatt. This is less than current production at Victoria's coal-fired power stations in the Latrobe Valley, which average 1.36 tonnes carbon dioxide equivalent per megawatt.

The Shire's Climate Change and Sustainability Unit has reviewed the Application, and taking the Applicant's figures at face value, does not object to the proposal. Due to the limited timeframes involved with the receipt of notice of the Application, there has not been sufficient time to interrogate the validity of the Permit Applicant's propositions with respect to estimated greenhouse gas emissions.

While it is acknowledged that the Application does not contribute to the Shire's commitments to move to a zero greenhouse gas emissions by 2040, the Climate Change and Sustainability Unit views that there would be an overall reduction in Victoria's greenhouse gas emissions through the (small-scale) replacement of coal-fired electricity.

Further, the Application Documentation emphasises that the Proposal is intended to be a temporary measure while Victoria transitions away from gas production and demand for natural gas liquids from the Bass Strait field reduces.

The expected operating life of the facility is 8 to 12 years. While it is unclear if this would be enforced by way of permit condition, it is considered there is a sufficient state-level framework to ensure that the operational life of the facility would be limited. The *Climate Change Act 2017* mandates a transition to net zero by 2050, while the State Government is in the process of developing a Gas Substitution Roadmap to ensure the gas industry achieves net zero, while reducing Victoria's demand for natural gas. Should operations wholly cease prior to 2040, the Proposal would not compromise the Shire's long term target of reaching net-zero emissions by 2040.

The Greenhouse Gas Assessment recommends several mitigation measures during the construction and operation phases of the facility. The Shire's Climate Change and Sustainability Unit has advised that the Shire recommends these measures be implemented by way of condition on permit. One of the measures proposed is the use of certified carbon offsetting, which the Climate Change and Sustainability Unit have recommended that offsetting should be achieved through projects within the Shire's municipal boundary to ensure that the facility contributes to the delivery of the Shire's Climate Emergency Response Plan. This would ensure that whilst short-term greenhouse gas emissions would exceed current local emissions, the net-benefit over the longer-term (post its 8-12 year operation) would be achieved.

Given the limited lifespan of the Proposal, it is recommended that the Shire request that an End of Useful Life Plan and Economic Transition Plan be implemented as a condition on any permit issued. This would go some way to ensuring adaptive re-use of the assets constructed on the subject site, which would secure long-term employment generated through the facility.

Alternatives to electricity production

In addition to the above, officers suggest that the specific circumstances the Application is sought under renders it an appropriate solution to the situation that the Applicant has found itself in.

The natural gas produced by Esso supplies 80% of the Victorian gas market and constitutes an essential service under the *Essential Services Act 1958*. Ethane, butane and propane are by-products of the production of sales gas, and the processes undertaken at the Long Island

5.4 (Cont.)

Point Fractionation Plant are necessary for continued domestic supply of propane and butane. The Permit Applicant has advised that a substitute use for the undersubscribed portion of ethane is necessary to ensure the continued supply of sales gas, butane and propane.

The Permit Applicant outlines that the Proposal forms one of seven (7) options for the utilisation of the ethane. The table below provides a summary of the six (6) alternatives and the stated reasons they were deemed to be unfeasible:

Option	Stated reason for rejection
Increasing ethane consumption within the Long Island Point or Longford Facilities.	Long Island Point can increase its consumption of ethane by approximately 20 tonnes per day. Further increases needed to fully consume the undersubscribed ethane will take “considerable time” to implement and would require a “significant amount” of flaring before such measures could be implemented.
Increasing the ethane content within sales gas	<p>There is some scope to increase ethane content of sales gas (raw natural gas), however ethane can only be incorporated into sales gas at a specific rate which is insufficient to dispose of the undersubscribed ethane.</p> <p>Sales gas is separated from liquid petroleum gas at Esso’s Longford facility and transported by separate pipe.</p> <p>Incorporating the ethane produced at Long Island Point into sales gas would require the construction of a new pipeline between Long Island Point and the sales gas pipeline.</p>
Alternative market	“This option is a desirable option; however, it is dependent upon sourcing a new market and/or customer. Neither of which have been sourced to-date. Marketing uncertainty makes scheduling for the upcoming need to utilise surplus gas unpredictable.”
Decreasing production	<p>“As Victoria moves to Net Zero in 2050, the Victorian government is in the process of developing a Gas Roadmap Strategy. This Strategy will identify ways that Victoria can reduce its dependence on natural gas in line with its commitments made under the <i>Climate Change Act 2017</i>. The successful implementation of this Strategy will result in the reduced reliance on natural gas, resulting in gas production from the Bass Strait to decline and ultimately cease. The reduction and eventual cessation of natural gas will also result in a decline and cessation of ethane.”</p> <p>It is assumed that due to the aforementioned status as an essential service, reducing total gas production solely for the purpose of minimising undersubscribed ethane has not been considered as feasible.</p>
Reinjection to Bass Strait	Reinjection of excess ethane back into Bass Strait would require the construction of a 187-kilometre return pipeline

5.4 (Cont.)

	between Hastings and Longford and would not be online before the unsubscribed ethane is required to be flared.
Flaring of excess ethane	Flaring of excess ethane would result in light impacts, with associated impacts on surrounding wildlife and amenity impacts to the community. Flaring would also result in greenhouse gas emissions with no purpose.

It is noted that the Application Documents do not assess these options in terms of their climate change impacts relative to the proposal at hand, however it is assumed that flaring, increasing ethane consumption at Longford, increasing ethane content in sales gas and finding an alternative market would also yield greenhouse gas emissions. Whether there are further options for the use of ethane is also not understood.

Given the situation that has arisen, the excess ethane ultimately has to be disposed of in some manner. In light of the other options listed, it is considered that electricity generation is an appropriate alternative use for the ethane, subject to suitable conditions ensuring the Shire can achieve its long term net-zero carbon emission objectives.

While the Applicant categorically presents flaring as the least desirable option under consideration, if the Minister were to refuse the Application, there would be an elevated potential that excess ethane would be disposed of through increased flaring at Long Island Point due to the time and infrastructure investments necessitated by the alternative options.

Furthermore, it is noted that the Proposal would not prevent Esso from finding an alternative market for the ethane during the operational life of the facility.

Overall, while the proposal would yield increased greenhouse gas emissions at a local level, when considered at a state-level and with the intended lifespan of the facility, the circumstances under which the proposal has arisen, and the alternatives available, the greenhouse gas emissions resulting from the Proposal are acceptable. On this basis, it is not considered that the Application warrants objection on climate change grounds.

Environmental Impacts**Vegetation removal**

A Planning Permit is required to remove native vegetation pursuant to Clause 52.17 (Native vegetation). The Application seeks to remove 0.857 hectares of native vegetation within the subject site.

Pursuant to the Guidelines for the removal, destruction or lopping of native vegetation (DELWP, 2017, 'Guidelines'), the Proposal triggers under the 'detailed' assessment pathway. The Application is accompanied by a Native Vegetation Assessment by Nature Advisory (Attachment 7). The Assessment advises that native vegetation removal has been minimised through siting the buildings within existing cleared areas of the site. Vegetation proposed to be removed is primarily for the purpose of creating defensible space around the facility, and clearance to accessways.

As the vegetation removal falls under the 'detailed' assessment pathway, DELWP's Regional Secretary is a referral authority for the Application (separate to the Minister's decision-making authority).

Council's Natural Systems Team advises that the impact of the proposal on native vegetation is likely to be minimal and vegetation to be removed is generally low quality. It is considered that the extent and condition of the vegetation to be removed is consistent with the decision

5.4 (Cont.)

guidelines listed in the Guidelines for the detailed assessment pathway, particularly as the purpose of the removal is for defensible space purposes.

On this basis, it is not considered that the extent of vegetation removal gives cause to object to the Application.

The Application Documentation notes the potential for Southern Brown Bandicoot to be present within the subject site. The Southern Brown Bandicoot is an endangered species listed under the *Environment Protection Biodiversity Conservation Act 1999* (Commonwealth). Council's Natural Systems Team has advised that the proposed vegetation removal would potentially require further approval from the federal Minister for the Environment and Water. While this is not cause for objection to the application, this should be noted to the Minister for Planning.

Amenity Impacts

The potential amenity impacts of the Proposal are a relevant consideration. Specifically, the Planning Scheme raises noise (at Clause 13.05-1S) and air quality (at Clause 13.06-1S) as amenity issues relevant to the Application. These issues would also form part of the EPA's assessment of the separate licence application.

Due to the development of the Hastings Port Industrial Area, the subject site is somewhat isolated from surrounding occupied dwellings, with the nearest dwelling being at 11 Cemetery Road, Hastings approximately 560 metres to the southwest. There are four other dwellings within the Cemetery Road area between 570 metres and 1 kilometre from the subject site. Beyond the Cemetery Road Estate, the nearest dwellings are on Marine Parade 2.3 kilometres due west and on Skinner Street 2.3 kilometres to the southwest.

Noise

The Application includes an Environmental Noise Impact Assessment by Wood (Attachment 8) that assesses noise impacts from the use relative to existing conditions for the closest eight (8) dwellings to the subject site. The Assessment is made against Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, EPA Publication 1826.4 Part 1A ('Noise Protocol').

Factoring in the location of operations and existing recorded night time noise levels, the predicted night time noise level to each of the eight nearest dwelling is below the limits set by the Noise Protocol. The nearest dwelling would experience an estimated noise level of 46.4 decibels (A-weighted), with a mandated noise limit of 49 decibels (A-weighted).

Air Quality

The Application is accompanied by an Air Quality Assessment by AECOM (Attachment 9). The Assessment estimates emissions of nitrogen dioxide, carbon monoxide, sulphur dioxide, particulate matter and volatile organic compounds for the Proposal. Together with emissions from Long Island Point and background air quality, the cumulative impact to nine (9) sensitive receptors (dwellings and business) within a kilometre of the subject site has been considered. The modelling shows that air quality impacts resulting from the proposal would not exceed air emissions thresholds set under relevant environment protection legislation.

Due to the limited timeframes involved with the receipt of notice of the Application, there has not been sufficient time to interrogate the validity of the Permit Applicant's documentation in relation to noise and air quality. These documents have been taken at face value. The EPA (and its specialist staff in noise assessment) undertake detailed review of these documents as part of their assessment of the licence application. DELWP has confirmed that the Planning Permit Application has been referred to the EPA, but a response is yet to be received.

5.4 (Cont.)

Given the above, it is not considered that air quality and noise impacts give cause to object to the Application.

Traffic Impacts

Pursuant to Clause 52.06 (Car Parking), vehicular parking must be provided to the satisfaction of the Responsible Authority. There is no specified rate of car parking for the proposed land use. The Application Documentation outlines that not more than six (6) staff would be present on-site at any one time during operations. The subject site has 80 on-site car parking spaces generally spread around the existing accessways. Given the relatively low volume of staff the available car parking on the land would be sufficient to cater for vehicles.

From a traffic perspective, it is not considered that the Proposal would significantly impact the surrounding road network in either short (construction phase) or long term (operational phase) capacity or traffic safety. The subject site is accessed by an existing sealed crossover to Bayview Road. While it is noted that the vehicle accessways have been designed for semi-trailer movements, given that ethane is to be piped from the adjacent Fractionation Plant to be combusted on the subject site, it is not expected that there would be a significant increase in truck movements resulting from the land use.

On this basis, the traffic impacts of the Proposal are not expected to warrant objecting to the Application.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

While the proposed use and development of a gas-fired electricity generation facility would result in an increase to the Mornington Peninsula's annual greenhouse gas emissions, it is considered that the Proposal's climate change impacts are acceptable. Further, it is considered that environmental and amenity impacts resulting from the proposal do not warrant objection.

It is therefore recommended that the Committee not object to the grant of a planning permit, subject to conditions to be recommended to the Minister.

6 NOTICES OF MOTION

Notices of Motion must be received 10 clear business days prior to a meeting.

Nil.

7 URGENT BUSINESS

Under Council's Governance Rules, no business may be admitted as urgent business unless it:

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

Nil.

8 CONFIDENTIAL ITEMS

Nil.

9 MEETING CLOSE

As there was no further business, the meeting closed at 9.56pm

Confirmed this 18th day of July

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Cr Kerri McCafferty, Chairperson - Planning Services Committee