Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act
Mornington Peninsula Planning Scheme
Amendment C184 Part 2

30 June 2015

Alison Glynn, Chair
Debra Butcher, Member
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<td>MEAEC</td>
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<td>PCRZ</td>
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Overview

Amendment Summary

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<th>The Amendment</th>
<th>Mornington Peninsula Planning Scheme Amendment C184 Part 2</th>
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| Subject Sites      | Site R1084: Kunyung Road, Mt Eliza  
|                    | Site R1156: Bungower Road, Mornington                   |
| The Proponent      | Site R1084: South East Water  
|                    | Site R1156: Retirement Communities Australia            |
| Planning Authority | Mornington Peninsula Shire Council                       |
| Authorisation      | Letter of Authorisation dated 11 August 2014             |
| Exhibition         | 17 November 2014 to 9 January 2015.                      |
| Submissions        | 68 Submissions were received that made specific requests to amend or abandon the Amendment as it relates to Site R1084. This included a petition with 264 signatories and a number of pro-forma submissions.  
|                    | 10 submissions were received that made specific requests to amend or abandon the Amendment as it relates to Site R1156. A number of additional late or supplementary submissions were made by residents of the Beleura Retirement Village.  
|                    | Two additional submissions were received from servicing authorities offering no objection to the Amendment.  
|                    | A list of relevant submitters is attached in Appendix 1. |

Panel Process

| The Panel          | Alison Glynn, Chair;  
|                    | Debra Butcher, Member. |
| Directions Hearing | 23 April, 2015 at the meeting room of the Mornington Library, 2 Queen Street, Mornington. |
| Panel Hearing      | The Hearing was held in two parts. The Hearing for site R1084 was held on 18 and 20 May, 2015 and the Hearing for site R1156 was held on 22 May, 2015. All Hearing days were held at the Rosebud office of the Mornington Peninsula Shire Council at 90 Besgrove Street, Rosebud. |
| Site Inspections   | The Panel undertook unaccompanied inspections of both sites, after the Directions Hearing on 23 April 2015 and before and after the Panel Hearing on the 22 May 2015. |
| Date of this Report| 30 June 2015 |
Executive Summary

(i) Summary

Mornington Peninsula Planning Scheme Amendment C184 Part 2 (the Amendment) relates to two issues:

- The proposed rezoning of surplus South East Water land at 57 Kunyung Road, Mount Eliza from Public Use Zone – Schedule 1 (PUZ1) to Neighbourhood Residential Zone – Schedule 1 (NRZ1) and application of the Environmental Audit Overlay (EAO). This land is referred to by Council as site R1084. A component of this part of the Amendment is also to restrict the use of the land by directing that two of the 24 lots affected by the Amendment cannot be used for dwellings, unless the dwelling is occupied by persons eligible for public housing. This restriction is to be applied through use of an incorporated document under Clause 52.03 of the Planning Scheme.
- Replacing the existing Design and Development Overlay – Schedule 7 (DDO7) with a Development Plan Overlay - Schedule 19 (DPO19) and Design and Development Overlay Schedule 22 (DDO22) for land referred to by Council as site R1156, Bungower Road, Mornington.

In relation to the Kunyung Road, Mount Eliza land (Site R1084) the Panel finds:

- The purpose of the Amendment before the Panel is to assess whether the land, as exhibited, should be zoned for residential purposes. This is considered the appropriate zoning in the absence of any acquiring body for an alternative public purpose.
- The land should be placed in a General Residential Zone – Schedule 1, consistent with the zoning of the surrounding land.
- There is no basis on which to recommend any or all of the land should be zoned Public Park and Recreation Zone or Public Conservation and Resource Zone as a result of its potential habitat values.
- It does not support the proposed Clause 52.03 provision to restrict the use of two lots for residents eligible for public housing as it is not strategically justified or sufficiently implementable as a site specific provision for the land.
- The proposed agreement to apply to the land could be amended to address a number of changes considered by the Panel at the request of South East Water and Council.
- There is no need to apply the Environmental Audit Overlay to the land, provided the environmental assessments proposed in the draft agreement are entered into.

In relation to the Bungower Road, Mornington land (Site R1156) the Panel finds:

- The proposed Amendment is strategically supported and appropriately provides the final ‘step’ in the implementation of planning controls for this portion of Mornington North.
- It does not support the submission requesting retraction of the DPO19 and DDO22 Amendment provisions so as to enable expansion of the Beleura Retirement Village onto the Amendment land.
- It supports the application of DDO22 and DPO19 as exhibited, subject to minor changes to DPO19 to address buffer, drainage and road widening issues.
Recommendations

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

Mornington Peninsula Planning Scheme Amendment C184 Part 2 should be adopted as exhibited subject to the following modifications:

For Site R1084, Kanya Road Mt Eliza:

1. Include the site in the General Residential Zone – Schedule 1 instead of the exhibited Neighbourhood Residential Zone.

2. Delete the amended schedule to Clause 52.03 that would restrict the use of lots 441 and 442, LP10791, Bethanga Street, Mount Eliza.

3. The Panel recommends the Agreement requirements be amended as follows:
   - The decommissioning of and removal of all redundant South East Water infrastructure within the site and surrounding road reserves.
   - The vegetation in areas of earthworks being removed from the site and not burnt on site.
   - The vegetation to be retained being protected during any construction period.
   - The earth embankments being removed and used to fill the basin in accordance with the recommendations of a geotechnical report.
   - The topography of the land generally being reinstated to the same state as prior to the land being used as a water holding basin.
   - Each lot being provided with a drainage property inlet and reinforced concrete vehicle crossings.
   - Each lot being serviced to the satisfaction of all relevant servicing authorities.
   - Two raised road platforms being constructed with the section of Bethanga Street to be constructed.
   - Standard street lighting within Bethanga Street including to the lighting of the raised road platforms.
   - Electricity being undergrounded within Bethanga Street from the existing overhead electricity pole to the south of the site to Kanya Road.
   - Street name signage and regulatory signing.
   - Bethanga Street from Kanya Road to the existing road pavement to the south within Bethanga Street being constructed with a sealed road pavement, underground drainage and 1.5 metre wide sealed footpaths.
   - 1.5 metre wide footpaths within Kanya Road from Barmah Street fronting the site.

4. Delete the 1EAO map applying to site R1084.

For Site R1156, Bungower Road, Mornington

5. Add a new dot point in Clause 2.0 of Schedule 19 to the DPO to state:
   - A drainage report to determine the location of retardation basins and other drainage measures across the site.
6. Amend the second dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to the DPO to state:
   • Land for a 13 metre road widening along Bungower Road.

7. Add an additional dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to state:
   • A 30 metre building setback from the land at 61 Baldock Road.
1 Introduction

Amendment C184 to the Mornington Peninsula Planning Scheme (Planning Scheme) proposes to make a number of changes to numerous sites across the municipality. Amendment C184 was exhibited between November 2014 and January 2015, with submissions received opposing the amendment as it related to sites identified in Council documents as R1084 and R1156.

The amendment as it relates to Site R1084 affects land at 57 Kunyung Road, Mt Eliza. The proposal for this site is to rezone surplus South East Water (SEW) land from Public Use Zone - Schedule 1 (PUZ1) to Neighbourhood Residential Zone – Schedule 1 (NRZ1) and apply the Environmental Audit Overlay (EAO) to the land. It also proposes to restrict the use of the land by directing that two of the 24 lots affected by the amendment cannot be used for dwellings, unless the dwelling is occupied by persons eligible for public housing. This restriction is to be applied through use of an incorporated document under Clause 52.03 of the Planning Scheme.

The amendment as it relates to Site R1156 at Bungower Road, Mornington is to replace the existing Design and Development Overlay – Schedule 7 (DDO7) with a Development Plan Overlay - Schedule 19 (DPO19) and Design and Development Overlay Schedule 22 (DDO22).

Mornington Peninsula Planning Scheme Amendment C184 Part 2 (the Amendment) results from a resolution of Council at its meeting of 23 March 2015 to split Amendment C184 into two parts. At this meeting Council resolved to adopt Part 1 and to refer the submissions opposing matters at Sites R1084 and R1156 (that form Part 2) to a Panel.

The Panel appointed to hear submissions about the Amendment met in the offices of Mornington Peninsula Shire Council on 18, 20 and 22 May 2015. Given the disparate issues relating to the two sites, the Hearing was split into two components. Submissions about Site R1084 were heard on 18 and 20 May, 2015. Submissions about Site R1156 were heard on 22 May, 2015. Those in attendance at the Panel Hearings are listed in Tables 1 and 2.

Table 1 Parties to the Panel Hearing for site R1084

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented by</th>
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<tr>
<td>Mornington Peninsula Shire Council</td>
<td>Ms Ros Franklin, town planner of Mornington Peninsula Shire Council. She called the following witnesses:</td>
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<td></td>
<td>- Jeanette Large, CEO, Women’s Property Initiatives.</td>
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<td>- Mr Tony Nicholls, former Mt Eliza Resident.</td>
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<tr>
<td>South East Water</td>
<td>Mr Andrew Walker, barrister on direct brief. He called the following expert witnesses:</td>
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<td>- Mr John Glossop, town planner of Glossop Planning Pty Ltd.</td>
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<td></td>
<td>- Mr Andrew Stephens, ecologist of Practical Ecology Pty Ltd.</td>
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<tr>
<td>Mornington Peninsula Human Rights Group</td>
<td>Mr Kevin Bain. He called the following expert witnesses:</td>
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<td></td>
<td>- Ms Loretta Buckley Homelessness and Support Services</td>
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Peninsula, Salvo Care.
- Ms Jeanette Lane, Peninsula Advisory Committee on Elderly (PACE).
- Ms Norelle Creaney, CEO Mornington Community House.

Mt Eliza Association for Environmental Care (MEAEC)  Dr Jeff Yugovic.

Mornington Peninsula Ratepayers and Residents Association  Ms Melinda Ryan, town planner of Nepean Planning Consultants. She called the following expert witness:
- Mr Malcolm Legg, ecologist of Mal’s Ecological and Environmental Services Pty Ltd.

Ms Rebecca Taylor
Ms Sophia Schyschow
Mr Leigh Eustace

Table 2  Parties to the Panel Hearing for Site R1156

<table>
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<tr>
<th>Submitter</th>
<th>Represented by</th>
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</thead>
<tbody>
<tr>
<td>Mornington Peninsula Shire Council</td>
<td>Mr Frank Mangan, town planner of Mornington Peninsula Shire Council.</td>
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<tr>
<td>Retirement Communities Australia</td>
<td>Ms Emma Peppler, barrister on instruction of Mr Chris Daly, solicitor of Retirement Communities Australia. She called the following expert witnesses:</td>
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<td></td>
<td>- Mr Jamie Govenlock, town planner of Urbis</td>
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<td></td>
<td>- Mr Chris Butler, traffic engineer of Cardno.</td>
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Mr Peter Brown

1.1  Issues dealt with in this report

The Panel has considered all written submissions, as well as submissions presented to it during the Hearing. It has also addressed all written submissions made prior to the Hearing. This includes a number of late submissions made by residents of the Beleura Retirement Village up to and during the Panel Hearing.

In addressing the issues raised in submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of the two sites. For Site R1084, a representative of South East Water escorted the Panel on site to accord with occupational health and safety protocols of the authority.

Given the discrete nature of the two sites affected by the Amendment, this report deals with the two sites under consideration separately. Issues raised about each site are identified and addressed in the following sections.
2 Site R1084 – Kanya Road, Mt Eliza

2.1 Background to the proposal

The land that is subject of this component of the Amendment is an unconstructed subdivision of 24 lots that has been used as a water reservoir between the mid 1960s to 1995. Each lot has an area just over 1000sqm and the site includes the Bethanga Road reserve. The land is currently zoned Public Use Zone - Schedule 1 (PUZ1) and known as 57 Kunyung Road, Mount Eliza. The proposal is to rezone the land to Neighbourhood Residential Zone - Schedule 1 (NRZ1). The location of the land, based on its existing zoning is identified in Figure 1.

Figure 1  Location of Site R1084,
Source: Planning Maps Online

Each of the existing lots has legal title. Each title has a restrictive covenant that states:

"That no building shall be erected on any lot hereby transferred other than a private dwelling house the cost of which exclusive of fences and outbuildings and architect’s fees shall be not less than five hundred pounds."

A useful history of the reservoir site is found in the report of the Board of Enquiry into the acquisition of land at Mount Eliza by the State Rivers and Water Supply Commission: of 1963, as was tabled by Mr Walker, on behalf of South East Water (SEW) at the Panel Hearing. This report confirms the land forms part of a broader 825 residential lot estate established in Mt Eliza in 1924. By 1958 the land that now forms the reservoir was described

1a Note this map is taken from Planning Maps Online. The Panel is unclear as to why the land has both “GRZ1” and “PUZ1” labels. The land is zoned PUZ1.
as comprising 24 lots, in 18 separate ownerships with two dwellings and Bethanga Road constructed. In 1960 Mr Reginald Ansett purchased all but one of the 24 lots. He then sold the assembled land to the State Rivers and Water Supply Commission to establish a reservoir on the land. This unusual acquisition process was undertaken by Mr Ansett to avoid the Commission developing the reservoir on his land, west of Kunyung Road. It also led to the enquiry that fortuitously provides background for the Panel as to how the lots came to be a reservoir.

The Board of Enquiry report confirms the Commission acquired the final lot through compulsory acquisition in 1961. The land was then modified to establish a potable water reservoir on the land, with construction commencing in 1963. This included establishment of earth bunds and a central concrete culvert into which water was directed. The bottom of the reservoir was lined with clay to minimise seepage of water.

SEW decommissioned the reservoir in 1995. The land has since lain dormant, except for a separate lot at 57 Kunyung Road (not subject of the Amendment) that is used as a back up pumping station.

SEW now proposes to sell the reservoir land. In accordance with State document: Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land, August 2000, it seeks to establish the most appropriate zoning for the land to ensure that the highest possible return is achieved.

Council has supported the proposal but exhibited the Amendment with a provision that requires two of the 24 lots to be restricted. The proposed restriction prohibits the use of a dwelling on these two lots unless it is occupied by persons that are eligible for public housing. An agreement proposed under Section 173 of the Planning and Environment Act 1987 has also been signed by South East Water to remediate the site for residential purposes, including reconstructing Bethanga Road, prior to the sale of individual lots.

2.2 Policy framework

The Panel has reviewed the policy context of the Amendment as it relates to this site and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

(i) State Planning Policy Framework

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

- Clause 10.04 - Integrated decision making which seeks to ensure that planning and responsible authorities endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

- Clause 11.02-1 - Supply of urban land seeks to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.

- Clause 11.14-1 - Localised planning statements seeks to protect and enhance the valued attributes of the distinctive areas of the Bellarine Peninsula, Macedon Ranges, Mornington Peninsula and the Yarra Valley and Dandenong Ranges. This Clause
identifies that planning must consider as relevant the *Mornington Peninsula Localised Planning Statement* (Victorian Government, 2014).

- **Clause 15.01-1 - Urban design** seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.
- **Clause 15.01-3 - Neighbourhood and subdivision design** seeks to ensure that the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods.
- **Clause 16 - Housing** seeks to ensure that new housing should have access to services and be planned for long term sustainability, including walkability to activity centres, public transport, schools and open space.
- **Clause 16.01-4 - Housing diversity** seeks to provide for a range of housing types to meet increasingly diverse needs.
- **Clause 16.01-5 - Affordable housing** seeks to deliver more affordable housing closer to jobs, transport and services.

(ii) **Local Planning Policy Framework**

Council submitted that the Amendment supports the following local planning objectives:

- **Clause 21.04 – Mornington Peninsula Strategic Framework Plan** identifies Mount Eliza as a Service Centre rather than a Major Town.
- **Clause 21.07 – Guiding future township development** identifies Mount Eliza as having a large township activity centre and acknowledges a need to avoid the loss of the distinctive character of some areas.
- **Clause 21.12 Reference Documents**

The Council commented that the Local Planning Policy Framework establishes that Mount Eliza is not one of the Peninsula’s towns that are expected to accommodate most growth but that some minor consolidation within the gamut of protecting the environment and its local character is appropriate. It noted that Council is committed to servicing and developing communities and promoting equity of access to a broad range of services and programs.


2.3 **Planning scheme provisions**

(i) **Zones**

The land is currently zoned Public Use Zone - Schedule 1 (PUZ1). All land surrounding the site is currently in a General Residential Zone - Schedule 1 (GRZ1), having converted from the Residential 1 Zone in 2014 via Amendment C179 to the Planning Scheme. The individual lot with frontage to Kunyung Road is to be retained in PUZ1.
(ii) **Overlays**

The Amendment land and all the adjoining land, is subject to the Design and Development Overlay Schedule 2 (DDO2), Bayside and Village Design and Vegetation Protection Overlay Schedule 1 (VPO1), Township Vegetation.

(iii) **Particular provisions**

Clause 52.17, Native vegetation, may trigger a permit requirement for the clearance of native vegetation if the land is held in contiguous ownership of more than 0.4 hectare and vegetation on the land is identified as remnant vegetation.

(iv) **Other policies**

Council referred to a number of policies that sit outside the Planning Scheme that it considers are relevant. This includes adopted Council policies:

- Mornington Peninsula Shire Triple AAA Housing Policy, June 2002;
- Social and Affordable Housing Policy and Action Plan, 2011-2021;

(v) **Ministerial Directions and Practice Notes**

Relevant directions and practice notes include:

- Ministerial Direction No 11 – Strategic Assessment of Amendments;
- Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

The Panel is satisfied the Amendment structure and format is generally consistent with the relevant Ministerial directions and practice notes. There are questions of whether the correct use of the VPPs is made if the land is put in a Public Park and Recreation Zone (PPRZ) or if Clause 52.03 is used in the manner proposed. These are addressed by the Panel in the discussion of issues below.

### 2.3.2 Discussion

The Panel concludes that the Amendment to rezone the land to residential is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. The Panel questions whether the use of Clause 52.03 in the manner proposed is justified by the policy framework and Ministerial direction on the use of the VPPs. This is addressed in the discussion of relevant issues below.

### 2.4 The issues

The key issues raised in the submissions of the various parties are briefly summarised as follows:

- The land is of such ecological significance that it should not be used for residential purposes.
- The land should be zoned Public Park and Recreation so as to be developed and used as a local community park.
- The community was not adequately consulted about the proposal.
• The land should not be encumbered by the proposed restriction in Clause 52.03 that limits the use of a dwelling on two of the 24 lots to accommodating only people who are eligible for public housing.
• The Amendment should be altered to place the land in a General Residential Zone, rather than Neighbourhood Residential Zone.
• The draft Section 173 Agreement to be entered into between Council and South East Water should be amended to address specific infrastructure issues.
• Whether there is a need for both a Section 173 Agreement and an Environmental Audit Overlay (EOA) to address any potential site contamination.

This part of the report deals with these issues under the following headings:
• What is the appropriate zoning for the land?
• Was appropriate notice given and consultation held with the community?
• Is the restriction proposed through Clause 52.03 strategically justified and implementable?
• What should the Section 173 Agreement include?
• Should an EOA be applied to the land?

2.5 What is the appropriate zoning for this land?

In general terms there was no opposition to a change in zoning of this land as it was no longer needed as a water reservoir. The dispute is over what the appropriate new zone of the land should be.

The exhibited Amendment proposed to change the zoning of the 24 lots and road reserve from PUZ1 to NRZ1.

A number of nearby residents have submitted the land has ecological values that have not be properly investigated and could lead to the land being worthy of being placed into a public park for environmental conservation and recreational use. Other submitters consider the land should be transferred to Council as a public park because there is a lack of usable open space in the area. As a result of submissions received, Council supports a position that part of the land (up to 1 hectare) be placed in a Public Park and Recreation Zone “if the land were freely available”.

SEW opposes these changes. It also questions the use of NRZ1 as exhibited. Its submission is that the land should be placed in a GRZ1, as the surrounding land is now in this zone as a result of Amendment C179 approved after exhibition of Amendment C184.

2.5.1 Evidence and submissions

Council’s submission acknowledged that the subject land was originally subdivided for residential purposes as part of a wider subdivision in the area and only later acquired for use as a reservoir. Had it not been for this utility need, it would still be available for residential use. The existing subdivision pattern follows the pattern of the surrounding area and future residential development on the land would enjoy similar amenities to that of surrounding residential development. The officer report in considering submissions about the Amendment also comments:
In accordance with relevant practice, the land should not be zoned for open space (i.e. a Public Park and Recreation Zone) unless it is public land secured for that purpose, and there is no security that this land can be acquired for that purpose. However there is scope for the planning authority (Council) and by extension the Panel to advise on the merit of such a zoning to assist any party/agency that may consider the acquisition of the land for open space. It is agreed that the subject land is well located to ‘fill a gap’ in the local park network, however, this gap is relatively small and has not been recognised in the relevant Council strategies and priorities. However, were the land to be made freely available (by SEW) for open space, a neighbourhood park of approximately 1 hectare would be recommended as being capable of satisfying this low priority need (the land including Bethanga Road has an area of approximately 2.7 hectares). This position is supported by the Shire’s Team Leader Recreation Planning.

A number of submitters are opposed to any of the land being used for residential purposes. Submissions and evidence were presented at the hearing by a number of these submitters including the Mount Eliza Association for Environmental Care (MEAECD) (submitter 11), the Mornington Peninsula Ratepayers and Residents Association (MPRRA), (submitter 14) Ms Taylor (submitter 42, individually and 73 on behalf of the Kunyung Residents Group), Ms Schyschow (submitter 1) and Mr Eustace (submitter 81).

The MEAECD provided expert evidence from Mr Legg that the land supports habitat that is used by a number of animals and birds, two of which were identified as State or nationally significant avifauna. These are the White-throated Needletail and the Grey-headed Flying-fox. Mr Legg acknowledged that he had seen both these species fly over the site or roosting in trees within the site. His review of fauna on the site was through an informal visit to the site with local residents undertaken in December 2014, prior to his appointment by Nepean Planning Consultants to prepare an expert evidence report to the Panel.

Mr Legg had no evidence that either species he identified was dependent upon this specific site for habitat. His evidence was simply that loss of vegetation within the reserve would add to the decline of a food source within the local area for both species. This was because the site provided a link between the Ansett land to the south of Kunyung Road and the creek reserve to the north. Mr Stephens’ evidence on behalf of SEW was contrary to this. While he accepted that both species may have been seen in the area, his evidence was that neither relied on habitat specific to this site. His view was that both species are seen across metropolitan Melbourne. He did not see that this site provides a specific biolink as the gaps between it and the creek or Ansett land are significant.

Dr Yugovic’s submission on behalf of MEAECD was that the site supported a number of native plant species including Kangaroo Grass on the embankment walls and other indigenous colonising plants on the floor of the reservoir. His submission was that while the area is in a biodiversity area of low risk, the size of the area that is affected by the loss of native

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2 Ms Taylor is also a signatory to the petition at Submission No 40.
vegetation is over one hectare thereby placing the site in the moderate risk pathway for biodiversity assessment under Clause 52.17 of the Planning Scheme.

Ms Schyschow and Ms Taylor both submitted they had seen native birds and animals in their own nearby gardens and that these were also seen inside the reservoir. Ms Schyschow submitted that the redevelopment of the reservoir for residential use would see the loss of native birds and animals in her own garden due to the loss of habitat.

Mr Stephen’s expert evidence was that that the extent of native vegetation on the site was low, degraded and in any event almost certainly regrowth given the works that would have occurred in the 1960s to establish the reservoir. This included the establishment of the embankment walls and the importation of clay to line the base of the reservoir. His expert opinion was that the vegetation was potentially exempt from the provisions of Clause 52.17 given these factors. His evidence also acknowledged that if the colonised regrowth was included as native vegetation then it may exceed 1 hectare and follow the moderate risk pathway. This requires consideration of minimising vegetation loss.

Dr Yugovic and other submitters supporting conversion of the land to a park did not seek to retain the land in situ as a conservation reserve. Rather they consider the land should become a park, zoned as Public Park and Recreation. Dr Yugovic and others therefore supported the removal of some or all of the embankment walls. Any vegetation loss through this process was supported with Dr Yugovic stating the Kangaroo Grass could be replanted elsewhere.

In opposing the designation of the land for open space, Mr Walker on behalf of SEW submitted that the approach of Council was simply opportunistic and was not underpinned by any strategic work of Council identifying this land as open space. He submitted that if Council had identified the land as important to its open space needs it could acquire the land through the sale of land processes that SEW is required to go through as a public authority.

A number of submitters also questioned the safety of using the land for residential purposes due to increased traffic, car parking and lack of footpath access associated with the residential use of the land.

2.5.2 Discussion

(i) Identification of the land as open space for recreation

The purpose of this Amendment, as exhibited is to enable the sale of land surplus to the needs of SEW. The Panel understands there is a community perception that as the land is owned by a public body, it can or should be simply transferred to another public body, notably Council, for continued public use, albeit a different use. As stated by the MEAEC, it “believes that the land, although technically freehold, is morally public land and therefore belongs to the community, and particularly to the local community for whom it was established as a water reserve. As with other local parks and public open space in Melbourne, it is not surplus to local community needs and should not be for sale”.

The role of the Panel is to consider the appropriate zoning of the land, having regard to the exhibited Amendment and the submissions made opposing the Amendment. It is not the role of the Panel to recommend whether SEW should dispose or retain its land, or whom it
should dispose it to. Nor is it the role of the Panel to make recommendation on the ownership of land or the need for Council or the State Government to acquire land, unless the Amendment included provision for a Public Acquisition Overlay. No such proposal is before the Panel.

Ministerial Direction made under Section 7(5) of the Planning and Environment Act 1987 states that:

A planning scheme may only include land in a Public Use Zone, a Public Park and Recreation Zone or a Public Conservation and Resource Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council.

The land is owned by a public authority, however the authority is a provider of water, not of parks. The land is also not currently available to the community. However, is understood from resident submissions put to the Panel that, despite the high, barbed wire cyclone fencing, informal access is sometimes gained by residents and it is used as an informal play area by children.

If the land were transferred from SEW to Council or another government agency for use as open space, then it could be appropriate to identify the land as Public Park and Recreation Zone (PPRZ) or Public Conservation and Resource Zone (PCRZ). There is no proposal to undertake such a transfer. SEW seeks only to dispose of the land through the processes set down by the State Government. This enables other bodies, including other State agencies and Council a first right of offer to acquire the land. If such acquisition occurs, only then does the Panel see that the land should be placed in such an alternative public use zone.

The Council submission requests the Panel to “advise on the merit of such a zoning to assist any party/agency that may consider the acquisition of the land for open space”. In doing so it relied on the Open Space Strategy 2002. Ms Franklin also submitted that had this been a new subdivision, Council may have sought a requirement for open space under Clause 52.01 of the planning scheme for open space of up to 10% of the land.

No subdivision is proposed and therefore Clause 52.01 does not apply. In any event, the purpose of Clause 52.01 is to ensure that the intensification of the use of land through subdivision provides for appropriate open space for the use of the additional likely population that results from the subdivision of the land. Panel considers that reinstating 24 lots that were subdivided as part of a broader 825 lot subdivision and included provision of land for open space at that time, should be not burdened with a requirement to provide additional open space because the original subdivision potentially under provided for open space. If the broad area is underserviced it is a collective issue for the area, not a matter that arises as a result of the reinstatement of 24 residential lots that is a consequence of this rezoning. The Panel therefore considers that there is no strategic rationale to require part or all of the land to be acquired as open space because of the principles that underpin Clause 52.01.

The Panel has also reviewed the MSS and the 2002 Open Space Strategy. Clause 21.07 of the Planning Scheme correlates with recommendations of the Open Space Strategy that the key
direction for open space in Mount Eliza is “Improving access to recreation and open space areas, including open space linkages to regional open space”.

Ms Franklin on behalf of Council commented that the Mornington Peninsula Shire Open Space Strategy set principles to guide the planning and management of open space with a key direction at Volume 1, page 15 that “Acquisition, disposal and consolidation of open space and associated assets should be based on a set of criteria that includes consideration of other provision within the area, the level of use and demand, environmental value etc.”.

The specific priority actions for Mount Eliza as detailed on page 29 – Area 9 are:

- Trails and foreshore linkages;
- Amenities such as seating, shade etc;
- Identification of opportunities to reclaim public open space from private landowners to re-establish the original linear pathways in original township design; and
- Integrated linear and pathway linkages.

The Panel considers that the current Open Space Strategy does not provide a strategic rationale to direct any need for this specific land to be identified as future open space. The Panel accepts that access and links to existing open space are limited. There also appears to be limited access to open space for land north of the Amendment land. This lack of access appears consistent with comments about linkages in the 2002 Strategy. However, there is no identification that this particular area is deficient in open space or that if it is, that this is the best location for Council to acquire such land. If it is, then it is a matter for Council to consider when the land becomes available by SEW in accordance with its obligations to offer the land to Council and other government agencies prior to the land being sold on the open market.

The Panel also notes that Ms Franklin commented that Council proposes to undertake a new Public Recreation Space Strategy in 2015 – 16. If through this process it identifies a strategic need for additional open space in this area, it can then investigate acquiring the land from SEW, or other vacant land that may be available, through relevant processes. If Council acquires the land through such processes it may then be appropriate to zone the land to Public Park and Recreation.

In concluding this discussion the Panel notes that there was also some discussion between SEW and Council about identifying land on the pumping station land for use as a public park. This land does not form part of the Amendment land. Any agreement to use this land for open space and subsequently rezone it to Public Park and Recreation is a matter for Council and South East Water to examine separately to the Amendment before the Panel.

The purpose of the Amendment before the Panel is to assess whether the land, as exhibited, should be zoned for residential purposes. The Panel finds this is the appropriate zoning in the absence of any acquiring body for an alternative public purpose.

(ii) Ecological significance of the land

Clause 12.01 – 1 of the Mornington Peninsula Planning Scheme has an objective to assist the protection and conservation of Victoria’s biodiversity, including important habitat for Victoria’s flora and fauna and other strategically valuable biodiversity sites. It seeks to do
this through using State wide biodiversity information to identify high value biodiversity sites and consider the impact of land use and development on these values.

While a number of written submissions questioned whether appropriate investigation had been undertaken into the ecological significance of the land the Panel was provided with expert reports both on behalf of submitters and South East Water.

The evidence of both Mr Legg and Mr Stephens was that the risk of any loss of biodiversity values of the site was at worst medium risk, or potentially of low risk, as calculated under the “No Net Loss provisions” provided for under Clause 52.17 of the Planning Scheme and directed through Clause 12.01. The assessments made reflect the shift from the previous “Net Gain” provisions that considered the inherent value and conservation significance of native vegetation based on Ecological Vegetation Classes (EVCs) and bioregional conservation status, to a consideration of the significance of the contribution made by the native vegetation to Victoria’s biodiversity.

While the land supports some colonised native vegetation, the Panel finds there is no evidence that its removal presents a high risk to values of the State’s biodiversity that may require its removal being avoided, or that in turn this may lead to a need to retain such land as public land for conservation purposes.

Mr Yugovic’s submission on behalf of the MEAEC acknowledged that if the land was converted to a public park, its primary role would be to provide public park and recreation, not to provide a conservation zone. His submission on behalf of MEAEC was that the value of the land was as a public park that could interpret elements of colonised native vegetation that are found on the site. This could include replanting of Kangaroo Grass that is currently located on embankments and retention of some trees that provide habitat value.

There may be a need to minimise the loss of vegetation if the land is identified as medium risk. This is a matter that can be addressed through consideration of the provisions of Clause 52.17 as part of works to re-establish the subdivision. The Panel is satisfied that this can be addressed through the normal permit process that it considers will be required to redevelop the land for residential purposes (as discussed further in Chapter 2.7).

The Amendment does not impact the VPO1 that is to be retained over the land. This requires a permit for removal of large trees on the land. SEW has also accepted entering into an agreement made under Section 173 of the Planning and Environment Act 1987 to establish building envelopes on the individual lots so as to ensure that development of houses avoids the need to remove large trees.

The Panel finds no basis on which to recommend any or all of the land should be zoned Public Park and Recreation Zone or Public Conservation and Resource Zone on the basis of its potential habitat values.

(iii) Use of Neighbourhood Residential Zone

Council resolved to exhibit Amendment C184 in May 2014. At this time Amendment C179 to introduce the new residential zones into the Mornington Peninsula Planning Scheme was still a draft that was before the Residential Zones Standing Advisory Committee (RZSAC). Draft Amendment C179 proposed to include all land in the immediate area of the site into a
Neighbourhood Residential Zone (NRZ). The RZSAC recommended however, that NRZ not apply, and that GRZ1 be used instead. This was due to conflicts between provisions in the existing DDOs and the NRZ provisions.

Amendment C179 was subsequently approved by the Minister in October 2014. All land surrounding the reservoir site is now zoned General Residential Zone - Schedule 1.

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

Mr Glossop’s evidence on behalf of SEW was that a more consistent approach would be to use the GRZ1 and the Panel agrees. It also agrees that ultimately the actual difference in controls or even purposes will be very small, given the continued application of DDO2 over the land.

For the purposes of consistency with the provisions that apply to other residential land surrounding the site, the Panel finds the Amendment land should be placed in the GRZ1 with DDO2 retained on the land.

(iv) Traffic impacts

A number of submitters are opposed to the use of the land for residential purposes on the basis that it will result in significant additional traffic in the area making it unsafe. This was considered particularly concerning given the nearby primary school in Kunyung Road.

The land was previously constructed as 24 lots with Bethanga Road extending through from Kanya Road to Acheron Avenue. As already discussed, the land is currently covered by DDO2 that restricts the use of land to one dwelling per lot, if the land has an area less than 1,300sqm. The likely additional traffic from the rezoning of the land will be from 24 additional houses. Eight of the lots will face Barmah Street. This street extends from Kanya Road to Burnell Street and currently provides access to 48 dwellings. The street is of a conventional pavement width and includes no footpaths. The Panel considers the use of this road for an additional eight access points will have a minor amenity impact on the street, and the additional traffic can be easily accommodated in the capacity of this road as part of the broader road network.

The Panel appreciates that the re-establishment of Bethanga Road will alter the current amenity of the south end of Bethanga Road where currently 10 properties exist in an effective cul de sac or court bowl. The Amendment will lead to an additional 16 lots with access from this street, and the re-establishment of its through road status that will also add to traffic using the road. The draft Agreement between SEW and Council seeks to ameliorate the impacts of this change through use of raised road pavements and other measures to slow traffic through the area. The detail of these measures is discussed further by the Panel in Chapter 2.7 below.

While the amenity currently enjoyed by residents in Bethanga Road will change through increased traffic, the Panel does not see that this impact is so severe that it warrants
rejection of the Amendment. The Panel also notes that SEW could re-establish the road without the rezoning occurring, as it is a legal road on title.

(v) **Was appropriate notice and consultation held with the community?**

Submissions opposing the Amendment stated that Council had not undertaken sufficient public notification, nor consultation with the local community over what should occur with the disused reservoir. Ms Taylor commented that the Amendment was exhibited over the Christmas 2014 period and that notice was not sufficiently wide to enable people to comment on the Amendment.

Ms Franklin explained that Amendment C184 was exhibited from 17 November 2014 for just over seven weeks until 9 January 2015. All required notices were sent or displayed before publication of the relevant notice in the Government Gazette on 17 November 2014, in accordance with the requirements of the *Planning and Environment Act 1987* and its related regulations. This included notices places in local newspapers, display in Council offices, on the Council website and a sign displayed on site. Individual letters were also sent to nearby residents.

The Panel is satisfied Council has more than met its statutory obligations in notifying the community about the amendment.

### 2.5.3 Conclusions and recommendations

The purpose of this Amendment is to enable the sale of land surplus to the needs of SEW. It is not the role of the Panel to question this sale, it is simply to determine whether NRZ1 is the appropriate zone for the land if it is no longer held by SEW.

The Panel finds no basis on which to recommend any or all of the land should be zoned PPRZ or PCRZ on the basis of its potential habitat values. Nor does the Panel find there basis on which to zone the land as PPRZ given the land is not held by an open space manager and there is no proposal for the land to be acquired by an open space manager. If the land is acquired for open space, then this matter could be reviewed by the relevant agency upon acquisition.

For the purposes of consistency with the provisions applying to other residential land surrounding the site, the Panel finds the Amendment land should be placed in a GRZ1 with DDO2 retained on the land, rather than placed in NRZ1.

The Panel recommends the following change to Amendment C184 Part 2:

1. **Include site R1084, Kanya Road, Mount Eliza in a General Residential Zone – Schedule 1 instead of the exhibited Neighbourhood Residential Zone.**

### 2.6 Is the restriction proposed through Clause 52.03 strategically justified and implementable?

The Amendment, as it affects Site R1084 includes a provision to be inserted in the Schedule to Clause 52.03 Specific Sites and Exclusions, to prohibit the use of two of the twenty-four lots (Lots 441 and 442 of LP10791) on the land for the purpose of a dwelling other than a dwelling that has occupancy restricted to persons that are eligible for public housing.
The explanatory report to the exhibited Amendment states that:

*Given the release of this new residential land stock, it is considered reasonable that there should be a strong implementation of planning scheme policy that supports the provision of more affordable and diverse housing, especially given the significant community need for such housing. In this context, and in the absence of an agreement with the proponent, a new site specific provision (i.e. a new entry in the Schedule to with an associated Incorporated Document) is proposed.*

The explanatory report goes on to state that:

*This is likely to create more incentive for residential buildings (such as residential aged care facilities and boarding houses) and whilst not necessarily providing more affordable housing may provide for more housing diversity which could have an effect on affordability.*

Mr Bain and the Mornington Peninsula Human Rights Group (MPHRG) (submission 80) support the provision, but SEW and a number of nearby residents to the site oppose it.

### 2.6.1 Evidence and submissions

Both SEW and Council referred to the letter of authorisation provided from the then Department of Transport, Planning and Local Infrastructure (DTPLI) on 11 August 2015 that enabled Council to exhibit the Amendment. The letter allowed authorisation subject to a number of administrative conditions about drafting of the Amendment. It then made specific comment on the content of the proposed Amendment stating:

*The department is concerned about the proposal to introduce a site specific provision via the schedule to Clause 52.03 of the Mornington Peninsula Planning scheme to lots 441 and 442 LP10791 Bethanga Street, Mount Eliza, that prohibits the use and development of the land for dwellings unless any dwelling has occupancy restricted to persons who are eligible for public housing.*

*The department is of the view that a site specific provision such as proposed is not an appropriate mechanism for encouraging greater housing diversity and affordability. It is also a control that would not be apparent to the layperson and may be difficult to monitor and enforce.*

*Furthermore, the department notes that the sites in question are not particularly well located with respect to services and public transport and as a consequence may not address the needs of persons eligible for public housing or likely to reside in rooming houses or other residential buildings. No information has been provided as to the characteristics of these sites that make them suited to residential buildings or other non-dwelling accommodation.*

*The department recommends that this proposed site specific provision be removed from Amendment C184 and that Council explore mechanisms outside*
the Mornington Peninsula Planning scheme to encourage greater housing diversity and affordability in the Shire.

Ms Franklin submitted on behalf of Council that as this Amendment resulted in the release of “new” residential land stock, there should be proper recognition and implementation of the Planning Scheme policies that support the provision of more affordable and diverse housing, especially given the significant community need for such housing, and the fact that this land is effectively in public ownership. She submitted the idea behind the Amendment approach is to either:

- make the land more attractive for private developers or non-profit housing providers to buy and develop for affordable housing for low income earners; or
- facilitate other types of residential buildings, such as a boarding house, subject to removal of a covenant affecting the land.

Ms Franklin submitted that, as a Planning Authority, Council “should be able to impose a requirement upon developers that a defined proportion of housing in a particular precinct, local government area or region must be affordable”.

She also contended that the importance of providing more social housing in Victoria is of such high priority that even the Minister in authorising Amendment C184 “did not have the heart” to remove the Clause 52.03 provision. In response to questions from the Panel about whether that the proposal was consistent with the purpose of Clause 52.03 to provide for site specific extraordinary circumstance, she submitted the need for affordable housing and lack of opportunities to address it in other ways was amplified (and therefore extraordinary) by the evidence presented to the Panel.

A number of individuals were called to give evidence on behalf of Council and the MPHGR. These people emphasised the importance and need for affordable and social housing across the Mornington Peninsula, including Mount Eliza. Of these, the Panel found the views of Ms Loretta Buckley (for MPHGR) the most helpful due to her current working knowledge of housing services as the Manager of Homelessness and Support Services for the Mornington Peninsula precinct of Salvo Care.

Other witnesses including Mr Nicholl and Ms Large (for Council) and Ms Creaney (for MPHGR) reinforced the need for affordable housing and the lack of opportunities for such housing in Mount Eliza. They all acknowledged that good access to services and facilities is preferable, but any provision for affordable housing in Mount Eliza would be welcome. As Ms Creaney commented, people will use the facilities if they are available. Currently there are none. But as Ms Large acknowledged, the location being 1.3 kilometres to the town centre and nearest bus stop is by no means ideal.

Loretta Buckley’s evidence identified three levels of homelessness:

- People living on the streets or in cars.
- People ‘couch surfing’. That is living as the guest of friends or family in a transitory state, looking for permanent rental.
- People living in rooming houses through lack of more permanent social housing options.

Ms Buckley’s evidence was that a rooming house was not something she would advocate for the two lots that would be included in the Clause 52.03 schedule provision. This is because
in her experience the use of private rooming houses were a poor outcome for residents. They provided little permanency of tenure and were not a particularly safe or amenable environment for residents, particularly females.

Mr Walker submitted that SEW was opposed to the proposed Clause 52.03. His submissions and the evidence of Mr Glossop on behalf of the authority was that:

- The provision was not supported by DTPLI in authorising the Amendment for exhibition.
- The site is not well located for social or affordable housing. This view was also held by a number of local residents who oppose the provision.
- There is no specific local policy that supports the provision.
- Mt Eliza is a low priority in terms of the need for social housing compared to other areas. On proper analysis of the evidence this location is not well located to provide social housing.
- Despite the Council and objectors calling evidence from five different witnesses as to the need for social housing, there is no evidence that the State Government or community housing providers would wish to acquire the two lots or have any proposal to establish social housing on the subject land.
- The proposal is contrary to South East Water’s obligations under the Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land, August 2000.
- Mr Glossop’s evidence is that the Amendment is an inappropriate use of Clause 52.03 as the provision does not address an extraordinary circumstance.

### 2.6.2 Discussion

State policy is quite clear that it seeks to provide more affordable housing and provision for social housing. This is recognised in Plan Melbourne and the State Planning Policy Framework. This was reinforced in the consensus position by all submitters that a lack of affordable housing and a need for social housing were important issues for Victoria and the Mornington Peninsula. Evidence of relevant witnesses was that this was an issue for young and old residents in Mornington and that affordable housing was needed in all towns, including Mt Eliza.

The Panel does not take issue with the need for affordable or social housing and is of the view that Council’s objective to provide for affordable and/or social housing in Mt Eliza is admirable. The key concern the Panel has with the proposal is whether the mechanism proposed is an effective or appropriate means of achieving the outcome sought.

Ms Franklin commented that the current State Government has a renewed position to implement affordable housing and to look at using the sale of government assets to direct funding into affordable housing. Mr Bain submitted that the ideal solution would be for the land to be donated to a public body. Ms Lane’s evidence (on behalf of MPHRG) was that she thought the purpose of the Amendment was to enable the land to be donated to Council.

A donation of the land to a housing provider, or putting some of the money collected from the sale of the reservoir land toward provision of affordable or social housing is something the State can choose to do. Or it could seek to retain some of the land for such purposes if it chose to do so. It is not the role of this Panel however to recommend whether, or how the State dispose of its assets or what to do with any funds collected.
The role of this Panel is to determine if the restriction proposed in the Planning Scheme on the two lots is appropriate having regard to State and local policy and the purposes of the provision proposed.

The main proposition put to the Panel by Council as to why this provision should be put in place was that it would in effect reduce the value of the two lots thereby making it more viable to be purchased by a State or community housing agency or a private provider of housing services.

There are number of problems the Panel identifies with this proposition:

- State policy at Clause 16 of the Planning Scheme has its main objective to “deliver more affordable housing closer to jobs, transport and services”. While affordable housing in any location may be desirable, the Planning Scheme directs that the key incentives are to deliver it where it is close to jobs, transport and services. The two lots are not close to such services. The nearest town centre is Mt Eliza, a hilly 1.3 km walk away. This is also the nearest location to an infrequent bus service.

- Plan Melbourne likewise seeks to investigate planning provisions to deliver affordable housing “especially” within significant change areas. This is not an area identified for significant change in Council’s MSS.

- No evidence was provided that any State or community agency is seeking to develop the two lots. The proposal relies on a premise that provide and it will come. The Panel considers there is a high degree of uncertainty that such a premise will eventuate.

- The existing Planning Scheme provisions that Council seeks to retain over the land include DDO2. This limits each of the two lots to be developed for only one dwelling. The most that each lot could be developed for, would be a large dwelling that in effect is used as a rooming house. Neither lot could be developed for multi unit development similar to the flagship projects presented by witnesses as other successful community housing projects in the Mornington Peninsula area.

- The land is already encumbered by a covenant on title that potentially affects all 825 lots in the subdivision west of Earimil Creek. This covenant restricts the use of the land to a “private dwelling house”. Ms Franklin acknowledged this would prohibit the use of the land for public housing. It also may prohibit the use for other communal housing projects and aged care facilities. The Panel does not consider it is open to it to simply recommend the covenant be amended or removed through an addition to the schedule to Clause 52.02. This requires consideration of the views of all affected beneficiaries of the covenant. This is not part of the Amendment put to the Panel.

- Ms Franklin acknowledged that given the lack of public sector interest in the land, and the covenant applying to the land, the most likely scenario is that the land may be purchased by a private rooming house provider. Ms Buckley’s evidence was that this form of housing was a poor outcome and not one she would advocate.

Ultimately, delivering the outcomes sought by Council require investment in community or social housing projects. The Panel shares the comments of Mr Walker that given the lack of funding, there is a need to get the most ‘bang for your buck’.

Mr Bain referred to Initiative 2.3.1 of Plan Melbourne. This comments that an example of an incentive or mechanism to establish social housing is to “explore the capacity to capture a
proportion of the increased land value to directly contribute to the costs of providing social housing” in urban renewal projects. This directive is to capture the value of the land, not the land itself. Given the location of this site, this would appear to the Panel a more sensible mechanism.

Selling the land for its highest and best use may provide for funds to be put into an alternative project where greater ‘bang for buck’ could be achieved. This may be through a project funded by the State from money recouped from these two lots or through funding delivered to community housing providers through general State revenue. As the Panel has already commented, it is not its place to advise the State on what to do with its funds. The Panel simply comments that the proposed mechanism does not achieve a funding stream. It merely restricts the use of the land and subsequently is likely to devalue the land.

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

In making this finding the Panel comments that even if it did support the approach, it is not comfortable that the inclusion as proposed in Clause 52.03 is an appropriate mechanism. The purpose of this clause is to provide for site specific “extraordinary circumstances”. The need for affordable and social housing is broad, and while important in Mount Eliza, it is not a location where a site specific exceptional circumstance exists that may warrant a non conventional approach. Nor does the Panel consider that formulating a Special Use Zone schedule, the other alternative approach that was considered by Council, is appropriate for the same reasons.

2.6.3 Conclusions and recommendations

The Panel finds the proposed inclusion of a site specific provision in Clause 52.03 to affect development outcomes on lots 441 and 442, LP10791, Bethanga Street, Mount Eliza is unwarranted and an inappropriate use of this tool of the Victoria Planning Provisions. The Panel recommends that Amendment C184 Part 2 be modified to:

2. Delete the amended schedule to Clause 52.03 that would restrict the use of lots 441 and 442, LP10791, Bethanga Street, Mount Eliza.

2.7 What should the Section 173 Agreement include?

When Council exhibited the Amendment, it also displayed a draft agreement made under Section 173 of the Planning and Environment Act 1987 (the Agreement). This Agreement does not form part of the formal Amendment documentation.

Ms Franklin listed a number of matters that Council sought further information about or warranted minor modification to the displayed Agreement. The amended requirements include:

- The earth embankments be removed and used to fill the basin in accordance with the recommendations of a geotechnical report. The topography of the land generally being reinstated to the state prior to the land being used as a water holding basin;
• The removal of or decommissioning of all redundant infrastructure within the site and surrounding road reserves;
• Significant vegetation with high retention value to be protected and opportunity for the rescue of other significant vegetation and the provision of any appropriate vegetation offset;
• Provision of new footpaths along Barmah Street, Kanya Road and Bethanga Street;
• Standard street lighting, the undergrounding of electricity and landscaping within Bethanga Street road reserve;
• A curvilinear road design of Bethanga Street within the confines of the road reserve;
• Lots being serviced via a curvilinear sealed road pavement, underground drainage and vehicle crossings that are aligned to protect street trees;
• Each lot being serviced to the satisfaction of all relevant servicing authorities with appropriate drainage and sewerage easements being placed on titles;
• Plans being submitted for approval and works being in accordance with those plans; and
• At no cost to Council, transfer of Bethanga Street to Council.

2.7.1 Submission and discussion

Council and SEW invited the Panel to comment on the content of the Agreement, particularly the elements that are in dispute between them.

The Panel has identified relevant elements in dispute about the revised Agreement content below with its discussion on each matter.

(i) Preamble

A new preamble to the requirements of the agreement is proposed. This is to state:

Prior to the re-zoning of the land, the owner of the land must enter into an agreement with the Responsible Authority, pursuant to Section 173 of the Planning and Environment Act 1987. This agreement must be registered by the Responsible Authority pursuant to Section 181 of the Planning and Environment Act 1987 on all titles of the subject land. This agreement must provide for the following prior to the transfer or occupation of any lot to be rezoned: (The Panel has underlined the section in dispute).

Mr Walker submitted that this wording should refer to “prior to commencement of the use of any part of the land as a dwelling”. This is to enable SEW to potentially sell the land to a private developer, prior to undertaking the subdivision works to reinstate the 24 lots and road. Council maintained that it wants the relevant public works undertaken before any of the lots are sold individually.

It was agreed that the intention of the preamble is to ensure that the subdivision construction works are undertaken prior to the land being sold into individual holdings. However, the works could be undertaken by an entity other than SEW. The obvious scenario is SEW sells the entire parcel to a developer to undertake the subdivision works and then this developer sells the lots individually. The Panel considers that the disputed wording could be amended to read:
This agreement must provide for the following while the land remains in one contiguous ownership or prior to commencement of the use of any part of the land as a dwelling.

The Panel is not opposed to the parties agreeing to further refinement of this wording, provided the agreed intention that the subdivision works are reinstated before the land is sold into individual small lots, is retained.

(ii) Requirements

There was no dispute to requirement 1:

1. Appropriate drainage and sewerage easements being placed on titles for the servicing of existing lots and Bethanga Street.

It was agreed that the header of requirement 2 could be amended to read as follows (amended words underlined or struck out).

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

The following elements of this requirement were agreed:

- The decommissioning of and removal of all redundant South East Water infrastructure within the site and surrounding road reserves.
- The vegetation in areas of earthworks being removed from the site and not burnt on site.
- The vegetation to be retained being protected during any construction period.
- The earth embankments being removed and used to fill the basin in accordance with the recommendations of a geotechnical report.
- The topography of the land generally being reinstated to the state prior to the land being used as a water holding basin.
- Each lot being provided with a drainage property inlet and reinforced concrete vehicle crossings.
- Each lot being serviced to the satisfaction of all relevant servicing authorities.
- Two raised road platforms being constructed with the section of Bethanga Street to be constructed.
- Electricity being undergrounded within Bethanga Street from the existing overhead electricity pole to the south of the site to Kanya Road.
- Street name signage and regulatory signing.

Two elements relating to road and footpath construction were disputed:

- Bethanga Street from Kanya Road to the existing road pavement to the south within Bethanga Street being constructed with a curvilinear
sealed road pavement, underground drainage and two metre wide curvilinear exposed aggregate footpaths.

- **Two metre wide curvilinear exposed aggregate footpaths within Kanya Road from Barmah Street to Kunyung Road, within Barmah Street fronting the site and within Bethanga Street from the southern boundary of the site to Acheron Avenue.**

SEW opposes the use of a curvilinear road pavement and the provision of two metre wide curvilinear exposed aggregate footpaths. Its position is that it accepts the need to provide footpaths, but that these should be standard width, not 2 metres wide. The Panel also understood SEW to be opposed to the extension of the footpath beyond its site boundaries.

Council agreed the word ‘curvilinear’ could be deleted. The intent is to ensure the road is constructed in a manner that reduces speed. Given the extension of the road is short, and will occur within the existing 15.24 metre wide road reserve any ‘curvilinear’ form will be very limited. The Panel considers other, non disputed requirements such as raised pavement can provide a better solution.

Clause 56.06 of the Planning Scheme establishes standards for road construction. For an access street level 1 or 2, it requires road pavements to be 5.5m wide to 7 – 7.5m wide with a 1.5m footpath on each side, offset from the pavement by 1.0m. The road reserve is just over 15m wide. The southern, constructed part of Bethanga Road has a pavement less than 7m wide, but widens out to 10m near the reservoir southern boundary to allow for vehicle turning.

Based on requirements of a standard street, a 7m wide pavement, with 1.0m offsets to 1.5m wide footpaths on both sides will take up 12m of the road reserve, leaving a further 1.5m on either side for landscaping. In essence, a 2.0m wide path on each side will reduce the landscaped area from 1.5m on each side of the road to 1.0m (assuming the road pavement is restricted to 7m).

The section of street is approximately 300 – 400m from the entry to the nearby primary school. However, it does not have any footpath between the intersection of Kanya Road and Bethanga Road and the school.

The Panel considers that construction of the subdivision should be to conventional modern standards that would include a standard width footpath. Given the lack of connecting path to the school, and the emphasis on tree planting and landscaping sought by residents, the Panel is of the view that conventional 1.5m wide footpaths is appropriate, with landscaping put in place on the road verge.

The Panel does not accept that there is any demonstrated need for a wider, recreation type path nor that it is the responsibility of this reinstatement of subdivision to provide a path beyond its own frontage. The Panel considers that there is not sufficient nexus between the subdivision construction and the broad need for a path network to the school from its broad catchment to impose this requirement on the owner of the land.

The Panel therefore finds the wording of the requirements should be amended to read as follows (the Panel amended words being underlined):
• Bethanga Street from Kanya Road to the existing road pavement to the south within Bethanga Street being constructed with a sealed road pavement, underground drainage and 1.5 metre wide sealed footpaths.

• 1.5 metre wide footpaths within Kanya Road from Barmah Street fronting the site.

The need for a roundabout in the next two elements was disputed (as underlined)

• Standard street lighting within Bethanga Street including to the lighting of the roundabout and raised road platforms described below.

• A roundabout being constructed at the intersection of Kanya Road and Bethanga Street.

Council provided no evidence or submission as to why a roundabout was needed or that this was directly the result of the reinstatement of the land as residential lots.

The Panel cannot identify sufficient nexus between the requirement and the re-establishment of the lots. The Panel notes that there are other traffic calming measures that are required and undisputed to ensure slow and safe speeds are maintained. This includes the two raised pavements in Bethanga Street. The cessation of Bethanga Street at Kanya Road requires traffic exiting and entering Bethanga Street to yield. The Panel cannot establish any reason as to why a roundabout would be needed to facilitate this movement in the local road network given it is a “T” intersection.

The Panel therefore considers the requirement references to a roundabout should be deleted.

The Panel records that the following requirements were not disputed by affected parties:

3. Landscaping works within Bethanga Street, Kanya Road frontage and Barmah Street frontage being undertaken in accordance with approved landscaping plans.

4. Road, drainage and footpath assets created within Bethanga Street road reserve and any drainage works within easements being transferred at no cost to Council upon completion of construction and landscaping works.

5. All works being placed on a 12 months maintenance period once the works have been completed and Council’s Construction and Asset Staff have advised the works can be placed on the maintenance period.

6. A bond to the value of 10% of the cost the civil works to be taken over by Council for care and maintenance being provided to Council prior to works being placed on the 12 months maintenance period.

7. Council being able to expend the maintenance bond to carry out maintenance works on the assets created should the owner fail to carry out any maintenance works within the 12 month period as requested by Council.
8. The maintenance bond or unexpended bond, if any, being returned to the owner at the end of the twelve month maintenance period.

9. Once the works are finished and within 1 month of Council’s Construction and Asset Staff advising the works can be placed on the required maintenance period the title of the Bethanga Street road reserve must be transferred to Council free of charge.

The costs in preparation and registration of such agreement are to be met by the landowner and must be paid prior to the registration of the agreement.

2.7.2 Conclusions and recommendations

The Panel finds the use of an agreement to accompany the Amendment an appropriate means of ensuring the 24 lots and road are re-established to meet current subdivision standards.

3. The Panel recommends the Agreement requirements be altered as follows:
   a) The Preamble be amended to read:

   This agreement must provide for the following while the land remains in one contiguous ownership or prior to commencement of the use of any part of the land as a dwelling.

   b) Requirement 2 be amended to read:

   2. Works being undertaken in accordance with a geotechnical report endorsed by Council together with construction plans, traffic management plans and environmental management plans to the satisfaction of and approval all approved by Council including the following:
   - The decommissioning of and removal of all redundant South East Water infrastructure within the site and surrounding road reserves.
   - The vegetation in areas of earthworks being removed from the site and not burnt on site.
   - The vegetation to be retained being protected during any construction period.
   - The earth embankments being removed and used to fill the basin in accordance with the recommendations of a geotechnical report.
   - The topography of the land generally being reinstated to the state prior to the land being used as a water holding basin.
   - Each lot being provided with a drainage property inlet and reinforced concrete vehicle crossings.
   - Each lot being serviced to the satisfaction of all relevant servicing authorities.
   - Two raised road platforms being constructed with the section of Bethanga Street to be constructed.
   - Standard street lighting within Bethanga Street including the lighting of the raised road platforms.
• Electricity being undergrounded within Bethanga Street from the existing overhead electricity pole to the south of the site to Kanya Road.
• Street name signage and regulatory signing.
• Bethanga Street, from Kanya Road to the existing road pavement to the south within Bethanga Street, being constructed with a sealed road pavement, underground drainage and 1.5 metre wide sealed footpaths.
• 1.5 metre wide footpaths within Kanya Road from Barmah Street fronting the site.

2.8 Should the EAO be applied to the land?

The exhibited Amendment includes the imposition of an Environmental Audit Overlay (EAO) on the land. The draft agreement also includes requirements to ensure that any site remediation is undertaken prior to use of the land for residential purposes. The explanatory report for the exhibited amendment summarises this position in stating:

The land would need to be filled and remediated by SEW to be made suitable for future residential use and a Section 173 agreement is proposed to provide security for such remediation. An Environmental Audit Overlay (EAO) is also proposed to address any potential land contamination.

SEW is not opposed to the inclusion of the requirements in the Section 173 agreement, or for it to be amended to clarify wording. It is however, opposed to the use of the EAO.

2.8.1 Evidence and submissions

Council’s submission is that to comply with Ministerial Direction No 1 relating to Potentially Contaminated Land the EAO is necessary. Council is concerned that if no EAO applied, the Section 173 agreement would mean that, if a Phase 1 assessment does not identify any contamination that could potentially affect residential use of the land, then the owner is not required to undertake any further environmental assessments or provide a Certificate or Statement of Environmental Audit as would be required if an EAO applied.

While Council understands there is no present evidence to indicate that the land is potentially contaminated its view is that this matter must be considered in accordance with the Minister’s Direction.

Mr Walker submitted on behalf of SEW that it is unlikely that the site is contaminated as the works and use as a reservoir were to store fresh drinking water. However, to ensure that any potential contamination is addressed, his view is that the the agreement requirements are adequate. SEW opposes the use of the EAO as it creates an unnecessary cost in obtaining a full audit and unnecessarily maintains a long term burden on the land. He relied on evidence of Mr Glossop whose view was that the EAO should not be applied speculatively. Rather it needed to be applied where there was reasonable basis on which to apply it. His view was the Ministerial Direction did not mandate the need for the EAO or that it even applied given the site’s previous use as a water storage. He considered the former reservoir use was not defined as one that may potentially contaminate land.
2.8.2 Discussion

In assessing this issue, the Panel has had particular regard to Ministerial Direction No 1 and the General Practice Note Potentially Contaminated Land, - June 2005. Potentially contaminated land is defined in Ministerial Direction No 1 as:

*Land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of land).*

The Panel firstly agrees with Mr Glossop’s evidence that there is no evidence that the land was used, or known to have been used for industry, or the storage of chemicals. As such the Panel agrees that the Direction may not apply. It seems highly unlikely that any such contaminants would be on the land given its use to store fresh water supply.

Any contamination that may be on the land is likely to be contained in the soil used in the batters created to contain the reservoir. It is unknown to the Panel if these were created from soil found on site, or imported. It is clear that some clay was imported onto the site to line the reservoir. The Panel also accepts there may be some (minor) possibility that chemicals may have been on stored on site for filtration or cleaning purposes, although it is the Panel’s understanding that this reservoir was a holding tank only, not a water treatment plant.

The 2005 General Practice Note identifies that some risk may be associated with imported soil on land. The matrix of assessment provided in this practice note directs that such risk is moderate and that where such land is proposed for residential use an authority should “Require a site assessment from a suitably qualified environmental professional if insufficient information is available to determine if an audit is appropriate.”

The proposed Section 173 agreement, that has been signed and accepted by South East Water, states:

“The Owner covenants and agrees that:

(a) it must undertake a Phase 1 Environmental Assessment prior to selling the Land.

(b) If the Phase 1 Environmental Assessment identifies any contamination that could potentially affect residential use of the Land, then the Owner must obtain either:

i. A Certificate of Environmental Audit; or

ii. A Statement of Environmental Audit that the environmental conditions of the Land are suitable for residential use.

The Agreement directs that if a Phase 1 Environmental Assessment finds no contamination then no further action is required. If a statement of audit is issued, it must be complied with to the satisfaction of the Responsible Authority. The Agreement provides various complementary requirements to provide for this.

The General Practice Note of 2005 comments that “Planning authorities should be careful in applying the overlay. All buildings and works associated with a sensitive use (irrespective of how minor) will trigger the need to undertake an environmental audit”.

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It also states that “where sensitive uses already exist on a site the planning authority, before applying an EAO, should satisfy itself that these sites are potentially contaminated (through site history records). If there is no evidence of potentially contaminated land it may not be appropriate to apply the EAO to these sites”.

The Panel considers that the Agreement provides sufficient provision to ensure that any potential site contamination is addressed prior to the land being used for residential purposes. This is the normal course of consideration under the practice note.

It does not see the need to impose the requirement for all buildings and works to undertake a full audit, as will occur with the EAO, when any potential for contamination is not high and the agreement provides for an environmental audit to be undertaken in the same manner as required under the overlay, prior to selling the land.

The Panel considers this approach in the agreement is sufficient to address any potential contamination and can enable the matter to be addressed and managed prior to its use for residential purposes. It sees no need for the use of an Environmental Audit Overlay that will require an audit to be produced for any buildings and works associated with individual dwellings on the land as will occur once the land is sold.

2.8.3 Conclusions and recommendations

The Panel finds no need for the EAO, provided environmental assessments proposed in the draft Section 173 agreement are entered into. The Panel recommends that Amendment C184 Part 2 to be changed to:

4. Delete the 1EAO map applying to site R1084.
3 Site R1156 – Bungower Road, Mornington

3.1 Background to the proposal

The Bungower Road component of the Amendment relates to land at 141 - 173 Bungower Road, Mornington, 61 Baldock Road, Mornington and part of 71 Baldock Road, Mornington. Figure 2 identifies the land that is subject of the Amendment. It also identifies the adjoining Beleura Retirement Village.

![Figure 2: Site R1156 and adjoining Beleura Retirement Village](image)

Council resolved to exhibit this component of the Amendment as a result of a request by Taylors on behalf of SPP No 1 (Mornington) Pty Ltd (AMP Capital), the then owners of 141 - 173 Bungower Road.

Just prior to the Panel Hearing, AMP Capital sold 141 - 173 Bungower Road to the Retirement Communities Australia (Beleura) Pty Ltd (RCA) the owner of the adjoining Beleura Retirement Village. Thus the ‘proponent’ for the Bungower Road site changed from AMP Capital to RCA.

The original request by Taylors to amend the Planning Scheme was accompanied by a number of supporting documents including various consultant reports as well as a draft Concept Masterplan, a draft Planning Permit and a draft Section 173 agreement in relation to the (then) AMP Capital land only. These documents were not formally exhibited as part of the Amendment and therefore are not matters that are formally before the Panel for consideration.
The Amendment seeks to implement a suite of provisions that will provide for low density residential development on the land, generally in accordance with the Mornington North Outline Development Plan and policies, which were introduced into the Mornington Peninsula Planning Scheme through Amendment C135 Part 2.

The proposed provisions will enable the subdivision of land into lots generally ranging between 2000 and 6000 sqm, with larger lots located along Baldock and Bungower Roads.

These new subdivision controls will be implemented via a new Development Plan Overlay Schedule 19 (DPO19) and a new Design and Development Overlay Schedule 22 (DDO22). The key outcome of these new controls is the provision for a minimum lot size of 2000 sqm on the land, a significant change from the current planning controls affecting the land which impose a minimum average lot size of 4 hectares.

Aside from applying minimum lot sizes, DPO19 also seeks to ensure the low density character of the land is maintained via the requirement for a Development Plan to be prepared to the satisfaction of Council and which must meet various requirements associated with vehicular and pedestrian networks, public open space and tree reserves.

DDO22 will implement a range of controls to ensure the continued low density character of the area. These include mandatory minimum lot sizes, the limitation of one dwelling per lot, and site coverage, building height and set back requirements.

In Council’s submission the Bungower Road site was described as having a total area of approximately 22.5 hectares, in three different landholdings, with a slight rise centrally across the land parcels. The three landholdings can be further described as follows:

- **141 - 173 Bungower Road** – with an area of approximately 16 hectares. This land comprises four land parcels, each of approximately 4 hectares each, and has some vegetation located in its eastern section. Council advised that the easternmost of the four land parcels was previously used as a dwelling and poultry farm, however these buildings have now been removed. It is this land that is now owned by RCA.
- **61 Baldock Road** – with an area of approximately 0.5 hectare. This land is in the ownership of Mr and Mrs Wallis who were submitters to the Amendment but did not make presentation at the Hearing. The land is currently occupied by a dwelling and outbuildings. While this land parcel is proposed to be included in DDO22, it is not proposed to be included as part of DPO19.
- **Part of 71 Baldock Road** – with an area of approximately 6 hectares. Mr Mangan advised in his submission that until recently this property extended further to the west to the railway line however the western section of the lot was recently added to the adjacent Beleura Retirement Village and developed as an extension to the village.

The western boundary of the site has a ‘dog leg’, with this site boundary extending directly north from Racecourse Road, before extending to the east, and then north again to the railway reserve beyond. This ‘dog leg’ was the subject of much discussion at the Panel Hearing and will be discussed further in Section 3.8.

At page 4 of his submission, Mr Mangan described the area surrounding the Bungower Road site as follows:
The land is located in the ‘north-eastern corner’ of the Mornington Township, one of the larger townships on the Mornington Peninsula (Attachment 1).

To the north and east is the ‘green break’ between Mornington and Mt Eliza and the wider Green Wedge.

Immediately north of the subject area is a disused railway line and Padua Secondary College. The railway line is used by a historic tourist railway service on many Sundays. Land along the railway line is the potential location for a section of the Bay Trail.

Immediately to the east is Baldock Road, which is an existing unsealed road that provides access to a number of rural properties.

To the south is low-density land that forms part of a ‘band’ of low-density land that wraps around Mornington. Further south is the Mornington Racecourse.

Immediately to the south is Bungower Road, a dual carriageway that is a major east-west connection across the peninsula, linking to the Nepean Highway, Moorooduc Highway and Peninsula Link.

To the south-west and west are large retirement villages. Further west is a primary school. The retirement village to the west – Beleura Retirement Village - includes some 240 units and has a centrally located facility for a range of services. The retirement village to the south-west – Peninsula Grange Retirement Village – includes some 278 units and a central facility for services. In addition there is a Residential Aged Care Facility.

3.2 Policy framework

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

(i) State Planning Policy Framework

The following clauses in the SPPF are of relevance to the planning considerations associated with the Bungower Road site.

Clause 10.04 – Integrated decision making which seeks to ensure that planning and responsible authorities endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

Clause 11 – Settlement which includes as its overriding objective seeks to anticipate and respond to the needs of existing and future communities through the provision of appropriately zoned and serviced land for a range of land uses.

Clause 11.02-1 - Supply of urban land which seeks to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.

Clause 11.02-3 – Structure planning which seeks to ensure effective planning and management of the land use and development of an area through the preparation of
strategic plans, statutory plans, development and conservation plans, development contribution plans and other relevant plans.

**Clause 11.04-7 – Green wedges** which seeks to protect the green wedges of Melbourne form inappropriate development including protecting important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.

**Clause 11.04-8 - Open space network in Metropolitan Melbourne** which seeks to create a network of metropolitan open space by creating new parks.

**Clause 11.14-1 - Localised planning statements** seeks to protect and enhance the valued attributes of the distinctive areas of the Bellarine Peninsula, Macedon Ranges, Mornington Peninsula and the Yarra Valley and Dandenong Ranges. This clause identifies that planning must consider as relevant the *Mornington Peninsula Localised Planning Statement (Victorian Government, 2014)*.

**Clause 15.01-1 - Urban design** seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

**Clause 15.01-3 - Neighbourhood and subdivision design** seeks to ensure that the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods.

**Clause 16 - Housing** seeks to ensure that new housing should have access to services and be planned for long term sustainability, including walkability to activity centres, public transport, schools and open space.

**Clause 16.01-4 - Housing diversity** – seeks to provide for a range of housing types to meet increasingly diverse needs.

**Clause 16.02-1 – Rural residential development** – seeks to identify land suitable for rural living and rural residential development.

**Clause 16.02-3 - Residential aged care facilities** – seeks to ensure the timely development of residential aged care facilities to meet existing and future needs.

**Clause 16.02-4 – Design and location of residential aged care facilities** – seeks to encourage well-designed and appropriately located residential aged care facilities.

The Amendment responds to these clauses by proposing new DDO and DPO controls that seek to implement a greater density of development in a low density residential area while still ensuring the character and integrity of the area is maintained and an appropriate buffer to the adjoining Green Wedge area is provided.
(ii) Local Planning Policy Framework

Municipal Strategic Statement

Council submitted that the Amendment supports the following local planning objectives contained in the MSS.

Clause 21.02 – Profile of the Mornington Peninsula identifies the Mornington Peninsula as having experienced strong population growth over the past 20 years whilst also highlighting that it is policy to avoid the spread of urban development on the Peninsula, with growth to be focussed on designated growth corridors.

Clause 21.03 – Mornington Peninsula – Regional Role and Local Vision identifies the need to maintain established growth boundaries for townships on the Peninsula and to maintain the ‘green break’ between the Peninsula and Metropolitan Melbourne.

Clause 21.04 – Mornington Peninsula Strategic Framework Plan identifies Mornington as a ‘Major Town’ and also identifies the need to define township growth boundaries as a method of focussing future development, whilst also recognising and protecting strategic landscape areas between and around townships.

Clause 21.06 – Strategic Framework and the Peninsula’s Settlement Pattern identifies the importance of providing boundaries to townships and providing for the planned expansion of major towns, including Mornington, while also highlighting the need to maintain a range of different low density lot sizes having regard to land capability and landscape values. This Clause also makes specific reference to need to define a clear and stable township boundary which reinforces the separation between Mt Eliza and Mornington.

Clause 21.07 – Guiding future township development identifies that growth on the Peninsula should be directed to the major townships such as Mornington, and the need to ensure that the development of new housing takes into account a range of factors including the availability and accessibility of services and infrastructure as well as other matters such as neighbourhood character and environmental capacity.

Local Planning Policy

In addition to the elements of the MSS listed above, the following local policies are also of relevance to the Bungower Road site.

Clause 22.13 – Township Environment seeks to ensure that new development is environmentally sustainable, particularly in relation to the provision of appropriate servicing and infrastructure to new development.

Clause 22.21 – Mornington North Policy is the most relevant of all LPPF policy references.

This policy was included in the Planning Scheme via Amendment C135 (Part 2) and includes as a reference document the Mornington North Outline Development Plan (July 2013). The Clause identifies the vision for Mornington North as being:

A clearly defined low-density residential area and urban residential area, with Racecourse Road generally being the boundary between these two areas, as shown on Map 1 forming part of this clause.
A low-density residential area generally east of Racecourse Road that provides:
- A low-density and well-landscaped edge to Mornington that contributes to its sense-of-place as a township in a rural setting.
- A contribution to housing diversity within the Township.
- An interface to the east and north-east that is sensitive to the environmental and landscape values of the Green Wedge.
- A ‘home with a country setting’ for the Mornington Racecourse.
- Opportunities for land uses that are complementary to the racecourse.

An urban residential area generally west of Racecourse Road that contributes to residential development opportunities that provide housing diversity and complement the existing urban residential area to the west.

Clause 22.21-3 refers to each of the seven precincts shown on Map 1 of the clause (including one sub-precinct) and identifies relevant policies for each. In the case of the Bungower Road site, the land is located in Precinct 1B with the following identified policy:

**Precinct 1B - Land north of Bungower Road, east of Racecourse Road**
- Support low-density residential development.
- Support the use and development of land that contributes to housing diversity and/or the services provided to the Mornington community and that complements the low density residential character of the area. This includes recreational, health and education establishments that are prohibited in the Green Wedge Zone.
- Discourage the use and development of land that detracts from the low-density character of the area and that does not provide adequate setbacks and landscaping.
- Require the coordinated use and development of the area based on a comprehensive development plan.

The Amendment responds to these various clauses by proposing new overlay controls that provide specific requirements in relation to density, subdivision and built form and which responds to the policies of Clause 22.21 for Precinct 1B and the requirements of the Mornington North Outline Development Plan (July 2013).

Figure 3 below identifies the boundaries of Precinct 1B and how they align with the area proposed to be included in the proposed DDO22. It is relevant to note that the ‘dog leg’ along the western boundary is clearly marked as the “Boundary between the low density residential area (generally east of Racecourse Rd) and the urban residential area (generally west of Racecourse Rd)”.
3.3 Planning Scheme provisions

(i) Zones

The Bungower Road site is located in the Low Density Residential Zone (LDRZ) of the Scheme. The purpose of the Zone includes:

To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

Pursuant to the LDRZ, a planning permit is required to subdivide land, with a minimum lot area requirement of 0.4 hectares for each lot where reticulated sewerage is not connected or 0.2 hectares per lot where connection is available to reticulated sewerage.

A planning permit is required in the zone for buildings and works associated with Section 2 uses.
Land to the north and east is in the Green Wedge Zone - Schedule 3 (GWZ3), with the Urban Growth Boundary running along Baldock Road and part of the abutting rail corridor to the north between the site and the GWZ3.

Land to the north west and west is included in the Special Use Zone – Schedule 2 (SUZ2) and the general Residential Zone - Schedule 1 (GRZ1) respectively.

Land to the south, on the south side of Bungower Road, is included in the LDRZ.

(ii) Overlays

The Bungower Road site is currently included within Design and Development Overlay - Schedule 7 (DDO7). The design objectives of this overlay seek to ensure that the design of low density subdivision and housing is responsive to the environment, landform, site conditions and character of areas and that development densities are also compatible with the environmental and infrastructure capacities of an area.

DDO7 includes a series of buildings and works requirements including both ‘general’ requirements (which are able to be varied with a planning permit where it can be demonstrated that compliance is unreasonable or unnecessary and no loss of amenity will result) and mandatory requirements (which cannot be varied with a planning permit).

The Bungower Road site is also affected by the Vegetation Protection Overlay - Schedule 1 (VPO1). This overlay requires a planning permit to remove, destroy or any vegetation specified in the schedule, except in particular circumstances outlined at Clause 42.02.

In addition, the southern portion of the site, fronting Bungower Road, is affected by a Public Acquisition Overlay - Schedule 1 (PAO1).

The PAO1 provides for the future acquisition of land to enable the widening of Bungower Road.

(iii) Particular provisions

Relevant particular provisions include:
- Clause 52.01 – Public Open Space Contribution and Subdivision
- Clause 52.17 – Native vegetation.

(iv) Other planning strategies

Mornington North Outline Development Plan, July 2013

The Mornington North Outline Development Plan (ODP) was included as a reference document in the Planning Scheme via Amendment C135.

It is this document upon which Clause 22.21 is based and which provided the basis for the seven precincts now shown in the Planning Scheme.

Under the ‘Implementation’ section of the Plan at page 17, in relation to ‘Land North of Bungower Road’, the following policies are identified:
- Rezone the section generally west of the Racecourse Road intersection to a Residential 1 Zone, and remove Design and Development Overlay 7.
• Retain the existing low-density residential zoning generally east of the Racecourse Road intersection. Retain the existing Design and Development Overlay (DDO7) unless it can be shown that changing the development controls will achieve both the objectives of the ODP and provide a significant net community benefit. Any change must ensure that large lots are created along Baldock Road and that adequate public open space is provided.

• Include in any change to the DDO provisions the application of a Development Plan Overlay to the existing low density residential zone generally east of the Racecourse Road intersection. This is to ensure coordinated planning for the development of the land and to discourage the use and development of land with a built form that is inconsistent with the low density character of the area.

Mornington Peninsula Localised Planning Statement, July 2014

The Mornington Peninsula Localised Planning Statement is a reference document in the Planning Scheme. The Statement identifies the Peninsula as an area of special character and importance with a role clearly distinct from and complementary to metropolitan Melbourne and designated growth areas.

(v) Ministerial Directions and Practice Notes

Relevant Ministerial Directions and Planning Practice Notes include:
• Minister’s Direction No 11 – Strategic Assessment of Amendments.
• Planning Practice Note 13 – Incorporated and Reference Documents.

3.3.2 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. The following sections provide a discussion of the issues that were raised at the Panel Hearing and the Panel’s view in relation to those issues.

3.4 The issues

The key issues raised in the submissions of the various parties are briefly summarised as follows:
• The lot sizes proposed as a result of Amendment C184 Part 2 will detract from the rural outlook currently enjoyed across this land.
• Larger lot sizes should be retained to be consistent with the provisions of the Mornington North Outline Development Plan.
• The proposed DDO22 and DPO19 should not apply to part of the site so as to enable a potential expansion of the adjoining Beleura Retirement Village.
• Additional buffers should be provided to land north east of the DPO19 area.
• The additional development likely to result from the lots developed under DPO19 will lead to unreasonable additional traffic.
• The additional development will exacerbate existing drainage problems on the land.
This part of the report deals with these issues under the following headings:

- Is the suite of provisions proposed strategically justified?
- Should the Amendment be retracted to allow expansion of the Beleura Retirement Village?
- Are sufficient buffer distances provided to the adjoining land to the north east?
- Will the likely development under DPO19 lead to unreasonable traffic or drainage impacts?

### 3.5 Is the suite of provisions proposed strategically justified?

#### (i) Evidence and Submissions

Council’s submission provided useful background information as to how the Amendment as it relates to the Bungower Road site came to be.

The Panel does not intend to repeat the submissions of Council in relation to the background information other than to note that the Amendment has clearly evolved from a planning process that began some years ago with the development of the Mornington North ODP. The Panel found this outline of the planning issues and amendments extremely helpful in understanding the basis for the Amendment and in understanding the strategic context in which the Amendment sits.

Mr Mangan submitted that the Amendment was seeking to put in place clear controls that would ensure there would be no confusion around the subdivisional and built form outcome Council is seeking for the site, and no on-going disputes around what would or wouldn’t be appropriate for the land in terms of future development. Mr Mangan also advised that care had been taken in the preparation of the overlay controls to minimise duplication while also ensuring the appropriate level of control was put in place.

It was Council’s submission that there is a clear strategic basis for the Amendment as it relates to the Bungower Road site and that the Amendment represents the final part of a process that was started with the Mornington North Outline Development Plan and implemented via Amendment C135 with the inclusion of Clause 21.21 in the Mornington Peninsula Planning Scheme.

The submission of Mr Brown, a resident of the neighbouring Beleura Village, on behalf of himself and his wife (submission 55) focussed on the broad strategic policies and locational circumstances of the Bungower Road site.

In contrast to Council, Mr Brown’s main contention was that current Planning Scheme policies in so far as they relate to Mornington North, do not support the change in the minimum lot size that would result if the Amendment were approved in its current form. Mr Brown was of the view that it is time to ‘draw a line in the sand’ and that ‘normal residential densities for Mornington should not extend generally east of the intersection of Racecourse Road and Bungower Road’.

Mr Brown’s key contention was that the Amendment will not result in a strong land use framework for the Mornington North area as the Amendment:

- does not support current Council policies in relation to the requirement for a ‘soft-edge transition’ to the neighbouring Green Wedge area; and
does not support the need to support the Mornington Racecourse and land uses associated with the equine industry.

A number of written submissions from residents of neighbouring Beleura Village also had similar concerns about the change in minimum lot sizes and the resultant change in outlook from ‘rural’ to ‘suburban’ (including submissions 6, 34, 35, 38, 52 and 53).

The submission made by Ms Peppler on behalf of RCA (Submission 79) focused on the impact of the Amendment in restricting the ability of the neighbouring Beleura Retirement Village to expand to the east onto land that forms part of the Amendment site.

Notwithstanding the expansion issue (which the Panel addresses specifically at Section 3.8) below), Ms Peppler stated at the outset of her submission that her client was largely supportive of the Amendment.

In relation to the Amendment at a strategic level Ms Peppler submitted that:

- The rationale for the Amendment is clear.
- It is supported by previous and more current strategic planning analysis as well as detailed investigations into the subject land.
- It is supported by Clause 22.21 as well as the Mornington North ODP.
- The Amendment can achieve a ‘soft edge’ transition from the urban uses to the west, to the Green Wedge uses to the east.
- The proposal strikes the right balance between having a low density, landscaped, character for the Amendment land while ensuring that land within the Urban Growth Boundary is not underutilised.

(ii) Discussion

The Panel is of the view that the suite of provisions proposed by the Amendment is strategically justified and supports the LPPF outlined in the Planning Scheme for the Mornington North area.

At a State level, relevant policies seek to ensure an appropriate supply of urban land that is well planned, protects Green Wedge areas and provides for a diversity of housing types.

At a municipal wide policy level, there are a number of consistent themes outlined in the MSS which are of particular relevance to this Amendment. These themes can be summarised as:

- The need for clear boundaries to townships.
- The need to maintain ‘green’ breaks between townships, with specific mention made of the need to maintain such a break between Mornington and Mt Eliza.

The MSS also makes reference to low density development and identifies the need to consider land capability and landscape values when considering what is the appropriate density for new residential development.

At a local policy level, there is also very specific guidance and direction provided for the Mornington North area and to the area affected by this Amendment. In relation to the Bungower Road site, these directions:

- Support low density residential development on the site.
• Support development and use that contributes to housing diversity and/or provides services to the local community.
• Support development and use that is appropriately setback and landscaped to maintain the low density character of the area, via the implementation of a Development Plan.

The Mornington North ODP specifically refers to the site and identifies that DDO7 should only be changed if the change meets the objectives of the ODP and provides a net community benefit.

The Panel is of the view that the Amendment clearly assists in the achievement of these various policies and objectives, including those of the Mornington North Local Policy at Clause 22.21, and will ultimately represent a net community benefit for the residents of Mornington.

In coming to this conclusion there are two key matters the Panel has considered:
• whether the proposed change in minimum lot size is appropriate in the context of the policy directions outlined above; and
• whether the various siting and design requirements proposed via DDO22 and DPO19 are appropriate in the context of the outcomes sought by the relevant policy.

The Panel acknowledges that the Amendment will result in an increase in the number of lots that can be created on the site (minimum of 2000 square metres) compared to what is possible at the moment under the existing planning controls (currently an average lot size of 4 hectares).

This was a key concern of Mr Brown, who was of the view that the Amendment would result in ‘normal’ residential densities extending inappropriately to the Green Wedge area when a ‘soft-edge transition’ is required by policy.

This was also the view of a number of other written submissions from the neighbouring Beleura Retirement Village, concerned about their rural outlook changing to a ‘suburban’ outlook as a result of the increased densities proposed by the Amendment.

The Panel notes that ‘low density’ is not specifically defined in the Planning Scheme. However, the Panel considers that a reasonable way to assess whether a proposal could be defined as low density is in the context of the provisions of the LDRZ and, in particular, the minimum lot sizes specified in the LDRZ.

The increased densities proposed in DDO22 will be no greater than the ‘default’ minimum lot size of 0.2 hectares that is permissible within the LDRZ and, indeed, will result in larger lots than the ‘default’ in those parts of the site that abut either major roads or the Green Wedge Zone. The Panel is therefore of the view that what is proposed constitutes ‘low density’ development and will not result in ‘normal’ or ‘suburban’ development as suggested by submitters.

There is no doubt that the change in minimum lot size from an average of 4 hectares to 0.2 hectares as a result of the Amendment will result in a different outlook from neighbouring properties and a different ‘feel’ to that which is there today or would be possible under the current planning controls.
However, the Panel is satisfied that, in conjunction with appropriate built form and siting controls for any new development (discussed below), the increased density responds appropriately to the policy framework in the Planning Scheme.

The Panel considers that any change in outlook from adjoining properties that results from the Amendment will not be ‘suburban’ in nature, but will be representative of low density development and will be appropriate in the context of the nature of development sought for this area by the planning policy framework. The Panel also notes that any impacts on outlook as a result of the changed densities can be further minimised as a result of the various siting and design requirements that the Amendment seeks to implement.

In relation to this second key issue of siting and design requirements, the Panel is of the view that the controls proposed via DDO22 and DPO19 are appropriate and will help ensure that the low density residential character of the Bungower Road site is able to be maintained.

The two overlay controls would put in place a range of design objectives and both discretionary and mandatory subdivision, siting and design requirements.

Some of these mandatory requirements proposed in DDO22, include:
- minimum lot sizes of 3000 square metres along Bungower Road and 6000 square metres along Baldock Road;
- the restriction of not more than one dwelling on a lot;
- maximum building heights;
- maximum site coverage restrictions; and
- a range of side and rear set back requirements.

Requirements in the proposed DPO19 include:
- the same subdivisional specifications as included in DDO22;
- the provision of public open space;
- the provision of pedestrian and bicycle paths; and
- the provision for tree reserves along the adjoining roads and railway line.

The Panel’s view is that the various requirements of the two overlays will ensure retention of the low density character of the area. In doing so, the site will continue to act as a ‘transition’ area between Mornington township and the neighbouring Green Wedge Zone, and the required ‘definition’ between low density residential and urban residential shown on Map 1 of Clause 22.21-4 will remain and be reinforced by the Amendment.

The Panel initially questioned whether there was the need for the use of two overlay controls or whether the various objectives and requirements could be dealt with in one overlay control only. In responding to this concern Council advised at the hearing that the two overlay controls were necessary as, individually, the overlays could not ensure the appropriate control over the development of the land. Mr Govenlock’s evidence on this matter was that:

I generally support Council’s approach to select and apply the DDO22 and DPO19 overlay controls. While often not used together, these overlay controls have been drafted in a way which complement rather than duplicate, and together provide clear guidance about the kind of development which is expected to occur on the land.
The Panel accepts the views of Council and Mr Govenlock on this issue. While it considers that typically the use of both a DDO and DPO is not ideal, the Panel acknowledges that it is a reasonable approach in this instance given the importance of the site as an interface area between the residential area and the Green Wedge Zone and the way in which the two schedules have been constructed.

The Panel is also satisfied that the Amendment is appropriate in the context of Council policies associated with the Mornington Racecourse and the need to support land uses associated with the equine industry, as raised in submission by Mr Brown. The Panel highlights the individual precinct policies identified at Clause 22.21-3 of the Scheme and refers in particular to Precincts 4 and 5 – both of which include policies that relate specifically to supporting the racecourse, and use and development associated with the racecourse.

No such specific policy reference is made in relation to Precinct 1B (which affects the Amendment site). Further, the Panel considers that the proposed Amendment, which is consistent with the specific policies of Precinct 1B, is unlikely to have any significant impact on the way use and development occurs in Precincts 4 and 5 given the continued low density form of development that is proposed.

Therefore the Panel considers that the proposed Amendment is appropriate in the context of relevant policy associated with the racecourse and its associated land uses and is of the view that the Amendment will not have any unreasonable impacts on the continued operation of the racing industry in the area to the south of the Bungower Road site.

(iii) Conclusions

The Panel is satisfied that the proposed Amendment is strategically supported and appropriately provides the final ‘step’ in the implementation of planning controls for this portion of Mornington North that were first contemplated some time ago in the preparation of the Mornington North ODP.

The Panel supports the application of DDO22 and DPO19 and is of the view that proposed controls around minimum lot areas, along with the various built form and layout controls and the requirement for a Development Plan to be prepared, will ensure the site continues to provide an appropriate interface between the urban residential area and the adjoining Green Wedge Zone land.

3.6 Should the amendment be retracted to allow expansion of the Beulera Retirement Village?

(i) Evidence and submissions

The proponent, RCA, seeks what it described as a minor change to the Amendment to provide for the possibility of the extension to the Beulera Village onto the Amendment land that will be included in DDO22 and DPO19.

The possible extension relates to Lots 1 to 3 shown on a Concept Masterplan prepared for the site by Taylors as part of material submitted to Council prior to exhibition of the Amendment. This did not formally form part of the exhibited Amendment documentation
but the Panel understands that this same plan also now forms part of a Section 173 agreement associated with 141-173 Bungower Road and lodged on title.

This plan was also attached to documents tabled to Council as part of background material in its consideration to exhibit the Amendment. Figure 4 is a copy of the concept plan, as detailed as an attachment to this Council report.

![Figure 4 Concept Masterplan as considered by Council](image)

An indicative sketch plan was also provided to the Panel that showed a preliminary layout of retirement village units on the three lots.

On behalf of RCA, Ms Peppler submitted that, under the current planning controls affecting future Lots 1 to 3, there is the ability to lawfully apply for an extension of the retirement village. However, if the Amendment was to proceed, this ‘opportunity’ for an extension would effectively be prohibited as a result of the site coverage and set back controls included in DDO22 and the need to be “generally in accordance with” a development plan approved under the DPO19.

Mr Govenlock’s written evidence on this issue was that the Amendment could be modified to achieve an extension by retaining the land in DDO7 and amending the proposed DPO19 as it would apply to these lots to add a dot point into the Development Plan requirements to state:

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A subdivision layout showing:
• The potential location of a retirement village in the western portion of the site.
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The Panel noted at the start of Hearing (about the Bungower Road site) that it had concerns that the change as put in Mr Govenlock’s written evidence circulated prior to the Hearing could be considered a ‘transformation’ of the Amendment, as the inclusion of a reference to a retirement village in the DPO would enable the use to establish without further third party input as the use could be seen to be ‘generally in accordance’ with the DPO.

Ms Peppler clarified in her response to this matter, and through the course of her main submissions that:

- Her client had made a submission requesting the proposed refinement during the exhibition period for the Amendment, and as such, it was on the public record and would be known to residents of the retirement village.
- The change proposed, as put by RCA to the Panel (and an agreed amended position by Mr Govenlock in his oral evidence to the Panel), would in effect be a retraction of the Amendment, so that the current DDO7 controls would be retained on Lots 1 to 3 and the DPO19 only applying to the DDO22 land, not Lots 1 to 3.
- The proposed change as put to the Panel would not remove the need for RCA to apply for a planning permit for use of a retirement village on the land, or for this to be exempt from notice. Residents of the retirement village would therefore have opportunity to comment on a proposal to expand the village through a planning permit process.
- On the basis of the above she did not believe the proposed refinement constituted a ‘transformation’ or that additional notice was warranted.

Mr Govenlock’s evidence was that there is ‘opportunity’ to further refine the western boundary of the Bungower Road land, based on site context and site characteristics rather than title boundaries, which would provide the opportunity for future Lots 1 to 3 to be integrated with the retirement village while still maintaining a clear delineation between the urban residential area and Green Wedge Zone to the east.

In discussing the location of the boundary, Mr Govenlock referred to the Panel Report associated with Amendment C135 for the origins of the boundary and advised at page 16 of his statement of evidence that:

Commentary from the Panel identified that Racecourse Road was selected as the boundary between the urban residential development and the low density residential development, which is to provide a soft transition’ to the Green Wedge to the east. The basis for the selection of Racecourse Road is as [sic] there is a ridgeline, which forms a logical basis as a boundary in terms of creating a transition. As Racecourse Road does not extend further north of Bungower Road, the Panel recommended that the alignment was continued from Racecourse Road extending up to the Tourist Railway line. The Council have selected property title boundaries as their approach, and as a result the boundary between Precinct 1A and 1B is dog legged, or irregular.

Mr Govenlock was of the view that the boundary refinement as requested by RCA would support Council policies for aging in place through the provision of an additional 24 retirement village units as part of Beleura Retirement Village. He was also of the opinion that due to the location of future Lots 1 to 3 and the topography of the land, any extension to the village would not impact on the ‘soft interface’ to the Green Wedge Zone. Mr
Govenlock provided as an annexure to his evidence a short paper by Dr Richard Rosewarne of Applied Aged Care Solutions that looked at the population demographics of the Mornington Peninsula.

Mr Butler’s evidence was that there was no reason from a traffic engineering perspective to not support the boundary refinement and resultant increase in retirement units.

Council was not supportive of any change to the Amendment that would enable further expansion of the retirement village into the Amendment land. Council’s position is that that the western boundary as exhibited for DDO22 and DPO19 is entirely consistent with Map 1 at Clause 22.21 where the boundary between low density residential (identified as generally east of Racecourse Road) and the urban residential area (identified as generally west of Racecourse Road) is clearly shown.

Council also submitted that ‘... there is no strategic planning ground to change the boundary’ and that the current boundary is ‘based on a deliberate decision to set back and screen the eastern section of the retirement village from Bungower Road as much as possible, to stick as close as practicable to the ‘Racecourse Road rationale’.

Mr Brown submitted that he supported the proposed expansion of the adjoining Beleura Village into the proposed Lots 1 to 3, but only on the basis that the 4 hectare average lot size (as exists in DDO7) is retained on the remainder of the land.

A number of residents of the Beleura Retirement Village made late written submission to Council and the Panel that they opposed the expansion of the retirement village into proposed Lots 1 to 3. These submissions raised concerns with both the impact of further intensive form in an area they had expected to be retained as low density development, and the lack of notice or consultation provided to residents about the proposed change sought by RCA.

(ii) Discussion

As discussed in Section 3.5 above, the Panel considers there is strong strategic support for the Amendment as it relates to the Bungower Road site and that, from a strategic planning perspective, this Amendment represents an end point to a planning process which started some years ago with the preparation of the Mornington North ODP.

Map 1 of Clause 22.21-4 of the Planning Scheme clearly identifies Council’s desired boundary between low density residential and urban residential development in the Mornington North area. The need for such a boundary definition is identified in the first dot point of the ‘vision’ outlined at Clause 22.21-1 and is reflected in the objectives and policies of the Clause where Racecourse Road is identified as the boundary between low density and urban density residential development.

While the objective at Clause 22.21-2 does indeed refer to land ‘generally east of Racecourse Road’ (the Panel’s emphasis) it does then go on to state ‘as shown on Map 1’.

Indeed, these clear statements and directions around the alignment of this boundary were implemented as a result of recommendations made by the Panel for Amendment C135 where the Panel stated on page 60 that:
The Panel considers the Policy would be significantly strengthened by clearly indicating a line on the map to the policy which clearly delineates the ‘urban’ and ‘low density’ area.

The Panel agrees with Mr Govenlock that the proposed boundary refinement is small. The Panel is also aware of the need for a greater diversity of housing, including retirement village accommodation, on the Mornington Peninsula and the importance of being able to ‘age in place’.

However, the Panel is of the view that the above matters do not offer adequate strategic justification to modify an identified boundary between low density and urban residential development land uses that was only recently established in the Planning Scheme following a lengthy planning process.

Mr Govenlock acknowledged his opinion was not based on a detailed visual assessment or other empirical evidence that the boundary between conventional density form and low density was incorrectly drawn and should be amended to align with a more logical boundary. His evidence was simply that this was an opportunity that should be taken and in his view would have little impact on the policy as the change was small.

The retraction of the Amendment to allow future expansion of the retirement village would bring it closer to Bungower Road, east of the Racecourse Road, visually exposing this more intense building form to the road in an area where low density form is directed by policy. The current alignment retains a low density view of the land from the public domain. The establishment of low density lots in front of the retirement village, based on the current alignment will in effect ‘mask’ the retirement village from the Bungower Road, east of Racecourse Road.

While the Planning Scheme policies around ageing in place are acknowledged, the Panel does not believe that such policies outweigh the clear and defined ‘line in the sand’ that is identified at Clause 22.21 of the Scheme between low density and urban residential development.

If the Panel supported the proposed refinement to the overlay boundaries the outcome would create planning controls (in the form of DDO22 and DPO19) that would be inconsistent with the enabling policy directions and mapping contained at Clause 22.21 (and its associated reference document).

The Panel therefore does not support the submission made on behalf of RCA to retract the Amendment in order to allow for expansion of the retirement village.

(iii) Conclusions

The Panel is of the view that there is inadequate strategic justification to support the retraction of DDO22 and DPO19 from future Lots 1 to 3 as proposed by RCA. The Panel supports the Amendment to apply DDO22 and DPO19 to the exhibited area.
3.7 Will the likely development under DPO19 lead to unreasonable traffic or drainage impacts?

A number of submissions were made by residents of the Beleura Retirement Village indicating concerns in relation to potential drainage and traffic issues as a result of the Amendment and the development that might ultimately occur on the site.

(i) Evidence and submissions

A number of submitters advised that the ‘lower end’ of Beleura Retirement Village currently experiences drainage issues whenever there is heavy rain. These submitters sought confirmation from Council that this problem would be addressed in any future Development Plan that might be approved for the site.

Written submissions also indicated concern at the prospect of additional traffic from the dwellings that might ultimately be developed on the site using the existing Racecourse Road extension into Beleura Retirement Village and the resultant pedestrian and traffic dangers associated with this. In particular, residents highlight delay in exiting onto Bungower Road from the retirement village due to the dominant flow of traffic heading east and west along Bungower Road. This was particularly difficult at peak school drop off and pick up times due to the nearby school to the west.

Council referred to a servicing report that was one of the many documents prepared by Taylors in support of the original Amendment request. On the basis of the recommendations of that report, Council submitted that the low density residential development that might result from the Amendment is likely to improve the current drainage situation being experienced by residents as all drainage on the Bungower Road site will be appropriately managed, where at the moment it isn’t.

Council also provided an overview of the strategic traffic management policy for the area and then outlined advice received from Council’s traffic engineers about the way in which the roundabout operates. Council submitted that the roundabout is currently operating appropriately, however, Council will be undertaking further investigation into how it would operate. Council submitted that the roundabout and access road will be able to adequately accommodate the additional traffic generated by the low density residential development envisaged by the Amendment.

Ms Peppler called traffic evidence from Mr Chris Butler. His evidence contemplated two different development scenarios, one being the development of the Bungower Road site for lower density development as envisaged in the exhibited Amendment and the other also taking into account the proposed change sought by RCA to for use of proposed Lots 1 to 3 as a retirement village.

In summary Mr Butler’s opinion was that:

- the roundabout has capacity to accommodate additional traffic to both the exhibited and the preferred RCA development scenarios;
- the combination of existing pedestrian paths and paths proposed as part of the low density residential development will ensure safe pedestrian access to the site and surrounding area;
- the access point to the proposed low density residential development (as shown on the Taylor’s Concept Masterplan) is appropriately located;
- traffic lights are not warranted at the Bungower Road/Racecourse Road intersection, as was sought by some submitters.

**(ii) Discussion**

Detailed drainage design is typically dealt with as part of preparation of a development plan and/or panning permit application for any new subdivision, when there is a formal subdivision layout and servicing report put before Council for consideration.

In this Amendment there is no such application before the Panel, notwithstanding the fact that such materials were prepared and submitted as part of the original amendment request by Taylors.

The Panel has had the benefit of reviewing the Taylors Servicing Report dated 18 February 2014 and an ‘addendum’ dated 10 February 2015. On the basis of that review, and as outlined in Council’s submission, the Panel is of the view that the development of the Bungower Road site for low density residential is likely to improve any existing drainage issues as a result of drainage on the land adjoining Beleura Village being appropriately and formally managed where currently it is not.

However, to ensure there is a positive outcome in relation to drainage issues associated with the Bungower Road site, the Panel is also of the view that an additional dot point should be included at Clause 2 of Schedule 19 that relates specifically to drainage issues.

At present there is one dot point that relates to drainage, which requires ‘the provision of a public open space reserve to the south west corner and a drainage reserve in the south-east corner’.

The ‘addendum’ to the Taylors Servicing Report, and as also outlined in Council’s submission, advises that:

> ‘A passive stormwater open space feature incorporating a retarding basin and some form of treatment will be required to be provided along the northern boundary of the property, immediately upstream of the existing drainage culvert under the railway line. The stormwater feature and any internal stormwater infrastructure will be designed and constructed in accordance with the requirements of Melbourne Water and Mornington Peninsula Shire Council. The development of the land will alleviate the current drainage concerns along the southern side of railway line through the provision of a dedicated stormwater management facility and by filling of some parts of the land’.

The exhibited DPO19 includes a specific requirement for the provision of a drainage reserve in the south east corner of the site. However, there is no reference to any similar such requirement in the northern portion of the area affected by the DPO, or for a drainage report to confirm how the identified issues will be addressed. The Panel considers that, to provide greater certainty around drainage matters, DPO19 should require specific
consideration to drainage requirements in the northern portion of the site as part of a general direction to address drainage across the land.

In relation to the traffic concerns the Panel again notes that detailed consideration of traffic impacts would not typically be dealt with in any detail at this stage of the planning process given that there is no ‘formal’ Development Plan or subdivision application before the Panel to consider.

Nonetheless, as with the drainage issues, the Panel has had the benefit of reviewing additional material associated with traffic issues including the evidence provided by Mr Butler. On the basis of the material that has been provided, the Panel is of the view that the development of the subject land for a low density residential development will not result in unreasonable traffic impacts.

The Panel empathises with the retirement village residents that accessing Bungower Road from the retirement village may at times be frustrating due to the imbalance of traffic flow through the roundabout at this intersection. However, both Council and the proponent’s traffic engineers are in agreement that the existing roundabout at the intersection of Bungower Road and Racecourse Road operates effectively and will continue to do under the likely development scenario for the Bungower Road site. While there are delays experienced, they are not so lengthy to warrant an alternative solution or rejection of the DPO19 and DDO22 provisions that will enable greater intensification of the land than possible under DDO7. The Panel also notes Council’s on-going identified commitment to managing the concerns of residents in relation to the operation of the roundabout.

In relation to pedestrian connections, Mr Butler is also of the view that appropriate existing connections are available to and from the retirement village, and that any development of the subject land will only improve the access to walking paths in and around Beleura Retirement Village. The Panel also notes that DPO19 includes requirements for pedestrian and bicycle paths along the internal road network of any development and in tree reserves.

Accordingly the Panel is of the view that the traffic impacts will not be unreasonable and that any on-going concerns around traffic impacts will be able to be managed via any future Development Plan and planning permit application process.

Finally the Panel notes that, in discussion of the detail of the Amendment documentation at the Hearing, Ms Peppler initially questioned the requirement for “A 13 metre wide road widening along Bungower Road”. She submitted RCA sought the wording to be amended to state “The potential for...” the widening. Mr Mangan submitted the intent was clear that the land should be marked on future subdivision plans as “road” to be transferred to Council at no cost. Ms Peppler then confirmed that RCA was prepared to transfer the land, but did not want the burden of constructing the widening. Mr Mangan confirmed it was the land only that was sought. The Panel considers this could be clarified in the wording of the provision to refer to “Land for a 13 metre road widening”.
(iii) Conclusions and recommendation

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

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

3.8 Are sufficient buffer distances provided to the adjoining land to the north east?

(i) Evidence and submissions

The owner of land at 61 Baldock Road made a submission to the Amendment (submission 6) requesting the provision of a 30m setback to their property boundary. This request was made so as to minimise the impacts of future development on their property and lifestyle.

The property at 61 Baldock Road is a lot of approximately 0.5 hectares, in the north east of the Amendment land. It is proposed to be included in DDO22 but not in DPO19.

Council submitted it supported the request and recommended that an additional line be added to at the end of Clause 2 of the DPO19 to require ‘A 30 metre building setback from the land at 61 Baldock Road’.

This proposed change to DPO19 was not disputed by any other party, including RCA, at the Panel Hearing.

(ii) Discussion

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

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

(iii) Conclusion

The uncontested request for additional setback to 61 Baldock Road is considered reasonable. Accordingly the Panel is of the view that Clause 2 of Schedule 19 of the DPO should be amended to add a dot point at the end of the subdivision layout requirements stating ‘A 30 metre building setback from the land at 61 Baldock Road’.
3.9 Recommendations

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

6. Amend the second dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to the DPO to state:
   - Land for a 13 metre road widening along Bungower Road.

7. Add an additional dot point under the heading commencing “A subdivision layout showing:” in Clause 2.0 of Schedule 19 to state:
   - A 30 metre building setback from the land at 61 Baldock Road.
# Appendix A  List of Submitters

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<tr>
<th>No</th>
<th>Submitter</th>
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<tbody>
<tr>
<td>1</td>
<td>Ms Sophia Schyschow</td>
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<td>2</td>
<td>Department of Environment and Primary Industries</td>
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<td>3</td>
<td>Retirement Communities Australia</td>
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<td>Ms Rebecca Taylor</td>
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<td>VicRoads</td>
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<td>Mr Don and Mrs Donna Wallis</td>
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<td>Mr Jolyon and Mrs Joanne Ford</td>
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<td>8</td>
<td>Anonymous</td>
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<td>J Brown</td>
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<td>South East Water</td>
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<td>Ms Lindy Davis</td>
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<td>Mr Curtis and Ms Brookes</td>
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<td>Mrs T M Doncom</td>
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<td>Mr Ian Morrison</td>
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<td>Mr George Parsons</td>
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<td>Ms Sandra Plackett</td>
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<td>Ms Anne Clifton</td>
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<td>Mr John Derek van Cuylenburg</td>
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<td>Ms Jacquie Brown</td>
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<td>Mr and Mrs Mannes</td>
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<td>Ms Gwynnyth Williams</td>
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<td>Mrs Brenda Wood</td>
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<td>Ms Lindsay Watts</td>
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<td>Leanne and Steve Harrison</td>
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<td>Mr Eric Abbott</td>
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<td>Ms DeRoche and Mr Barnett</td>
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<td>Eric and Lyn Hunter</td>
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32  Ms Belinda Reinehr
33  Ms Patricia Salter
34  Mrs Ann-Maree Abbott
35  Mr Daryl and Mrs Holly White
36  Ms Aileen Nash
37  Mr Phillip Large
38  Mr Jim and Mrs Sandy Crawshaw
39  B H and P V Montgomery
40  Mr Steve Brett
40  Ms Rebecca Taylor
41  Ms Jeanette Newton
42  Mr Stephen Addison
43  Mrs Sue Chaffey
44  Mrs Barbara Amsel
45  Ms Sylvia Mair
46  Ms Minna-Liisa Aenkoe
47  Ms Jan Kaslin
48  Mrs Jennifer Jenkins
49  Mr Glen Beckett
50  Ms Main and Mr Siveyer
51  Mr Simon Kerley
52  Ms Mary Dyer
53  Mrs Rosemary Fowler
54  Mr and Mrs Hogan
55  Mr P J and Mrs G K Brown
56  Ms Susan Kerley
57  Mr and Mrs Colquhoun
58  Ms Leslie Harris
59  Mr and Mrs Gooding
60  Ms Sophie Cantor
61  Mr David Crowson and Ms Bronwen Robson
62  Mr David Mazou
63  Mount Eliza Association for Environmental Care
64  Mr Cameron and Mrs Julie McLean
Ms Taya Harrison
Mr Clem and Mrs Penny Langford
Ms Samantha Medlicott
Ms Joanne Stapleton-Pfister
Mr Jeff and Mrs Desley Orrill
Ms Ella Whistlecroft
Ms Lily Whistlecroft
Mr Tom Bish
Kunyung Residents’ Group
Ms Margaret Sheffield
Ms Marlene Priestley
Ms Joanne Stapleton-Pfister
Ms Samantha Lamond
Retirement Communities Australia Pty Ltd
Mornington Peninsula Human Rights Group
Mr Leigh Eustace
Mr Simon Hogg
Mr Steve Karakitsos
Petition, first signature: Yolanda Pledger, with a total of 259 signatories. Some of these are signatures of individual submitters.
Ms Carolyn Marshall
Mr Neil and Ms Violet Coles
Mr Max Turnbull
Ms Sandra Jeffree