

Date: 3 February 2023

Mornington Peninsula Planning Scheme Amendment C219morn

Part A Submission on behalf of Mornington Peninsula Shire Council

Planning Panels Victoria

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LIST OF ATTACHMENTS

1. [DELWP Email dated 14 December 2020](#)
 - a. [Attachment – DELWP Planning Comments](#)
 - b. [Attachment – DELWP Land Use and Population Comments](#)
2. [Council response dated 18 December 2020 to DELWP email on 14 December 2020](#)
3. [DELWP email dated 18 March 2021 and Council response on 25 March 2021](#)
 - a. [Attachment to Council response](#)
4. [Council's email to DELWP dated 14 April 2021](#)
5. [Re-Authorisation Letter dated 18 September 2019](#)
6. [Extract from Minutes of Planning Services Committee meeting held on 20 July 2020](#)
7. [Authorisation Letter dated 19 May 2021](#)
8. [Extract from Minutes of Planning Services Committee meeting held on 18 July 2022](#)
9. [Letter from Council to the Panel in relation to rectification of sea level rise mapping error in Hastings dated 17 November 2022](#)
 - a. [Attachment – Spreadsheet of Affected Properties](#)
10. [Copies of letters giving notice of further post-exhibition changes to owners and occupiers of affected properties at Hastings](#)
11. [Submission 317 \(redacted\)](#)
12. [Updated Desktop Review](#)
13. [Updated explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' \(January 2023\)](#)
14. [Built Form Implications Summary Table](#)
15. [Detailed spreadsheet of proposed zoning changes](#)
16. [Detailed spreadsheet of proposed overlay changes](#)
17. [Table summarising the exhibited Amendment and the Version 2 Amendment Documents with post-exhibition changes](#)
18. [Council Urban Design Sketches – Development on Small Lots](#)
19. [Extract from October 2022 Officer Report – summary of concerns raised in respect of each category of issues and Council response](#)
20. [Version 2 Amendment Documents](#)
21. [Extract from October 2022 Officer Report – summary of individual submissions and Council response](#)
22. [CFA letter dated 15 September 2022](#)
23. [Email advice from DELWP regarding transitional provisions dated 16 May 2022](#)
24. [Table of Related Planning Scheme Amendments](#)
25. [Permit Applications Table](#)

INTRODUCTION

1. These submissions are made on behalf of Mornington Peninsula Shire Council (**Council**), the planning authority for Amendment C219morn (**Amendment**) to the Mornington Planning Scheme (**Planning Scheme**).
2. The Amendment proposes to implement the *Housing and Settlement Strategy: Refresh 2020-2036* (Mornington Peninsula Shire Council, 2020) (**Housing and Settlement Strategy: Refresh**) and the *Neighbourhood Character Study and Guidelines* (Ethos Urban, 2019) (**Neighbourhood Character Study**) by making substantial changes to zones, overlays and policies that affect the Mornington Peninsula Shire (**Mornington Peninsula**)’s residential areas.
3. More specifically, the Amendment proposes various changes to:
 - 3.1. the Planning Scheme Ordinance in respect of the Municipal Planning Strategy (**MPS**), Planning Policy Framework (**PPF**), General Residential Zone (**GRZ**), Low Density Residential Zone (**LDRZ**), Neighbourhood Residential Zone (**NRZ**), Design and Development Overlay (**DDO**), Neighbourhood Character Overlay (**NCO**) and Operational Provisions; and
 - 3.2. the Planning Scheme Maps in respect of residential and public land zones, the Vegetation Protection Overlay (**VPO**), the DDO and the NCO.
4. In broad terms, the Amendment seeks to:
 - 4.1. Direct residential growth towards appropriate areas in a sustainable manner to accommodate the State Government’s population and household projections set out in *Victoria in Future 2019* (**VIF2019**);¹
 - 4.2. Protect and enhance the valued character of the Mornington Peninsula’s residential areas by ensuring residential development respects neighbourhood character; and
 - 4.3. Simplify permit requirements in relation to the construction or extension of a single dwelling on a lot, and improve the drafting and structure of residential zones and overlays.
5. The Amendment is the product of detailed strategic work and has been informed by extensive community consultation, as will be detailed subsequently in these submissions.
6. Direction 11 of the Panel’s directions issued on 24 November 2022 requires this Part A submission to address the following:

¹ Being the period between 2016 and 2036.

- 6.1. background to the Amendment including chronology of events;
- 6.2. strategic context and assessment;
- 6.3. issues identified in submissions;
- 6.4. any suggested changes to the Amendment in response to submissions;
- 6.5. details about how elements in the Housing and Settlement Strategy: Refresh have directly translated into the proposed provisions, particularly the zone and Design and Development Overlay schedules;
- 6.6. justification for each minimum subdivision lot size in the zone schedules;
- 6.7. a list of any changes proposed to the Amendment since exhibition which were not in response to issues raised in submissions;
- 6.8. a two-column table comparing key provisions in the exhibited Amendment with changes proposed by Council since exhibition;
- 6.9. references to strategic work which justifies:
 - a. any new mandatory provisions; and
 - b. more restrictive provisions such as lower maximum building heights;
- 6.10. regarding post-exhibition proposed changes to the Design and Development Overlay – Schedule 1, an explanation of:
 - a. why collectively the changes are needed; and
 - b. how Council envisages it would measure and assess ‘reasonable sharing of views to the coastline’ as specified in the design objectives and decision guidelines;
- 6.11. an updated version of the *Mornington Peninsula C219morn Desktop Review of Strategic Work 2021 (Desktop Review)* which includes changes proposed by Council since exhibiting the Amendment;
- 6.12. a response to how Council has addressed the following items noted in the letter of authorisation dated 19 May 2021:

1. Improve the analysis of population trends and housing capacity in the HSS in accordance with the comments provided by DELWP officers via email on 14 December 2020.

2. Review the existing application of the ESO17 and consider progressing a separate planning scheme amendment to remove the ESO17 from locations where it is now redundant.

3. Undertake strategic work on the Mornington Major Activity Centre, including preparing a structure plan that identifies a suitable level of growth. There is no recent strategic work for the Mornington Activity Centre and it is considered that as the centre is identified in Plan Melbourne as a Major Activity Centre, it has capacity to accommodate more growth in the residential areas adjacent to the commercial core.

4. Undertake a strategic review of the LDRZ areas within the municipality. There does not appear to be any clear reason as to why certain properties have larger minimum lot sizes than others and it is considered that a review of these areas could simplify the application of the LDRZ across the municipality.

5. A further review of the DDOs, in particular subdivision requirements to consolidate controls and improve consistency across the municipality. DELWP recognises the extensive work that council has already undertaken in reviewing the DDOs as part of this amendment.

7. Each of these matters are addressed below.

A. BACKGROUND TO THE AMENDMENT

Land affected by the Amendment

8. The Amendment applies to all residential areas in the Mornington Peninsula, being all land currently affected by the GRZ, the LDRZ and Schedules 1 to 7, 11, 17 to 20, and 22 to 24 to the DDO.

Chronology of events

9. The chronology of key events relevant to the Amendment is as follows:

Date	Event
July 2013	Three new residential zones – the RGZ, GRZ and NRZ – are introduced via Amendment V8 to the Victoria Planning Provisions.

<p>October 2014</p>	<p>The Minister for Planning prepares and approves Amendment C179 to the Mornington Peninsula Planning Scheme to rezone all land previously in the Residential 1 Zone to the GRZ.</p>
<p>October 2015 to April 2017</p>	<p>Council conducts research and investigation, including housing demand and housing supply assessments and internal technical reports on matters such as employment and liveability, and prepares the draft <i>Housing and Settlement Strategy</i>.</p>
<p>27 March 2017</p>	<p>Amendment VC110 is gazetted, implementing the State government's response to the recommendations of the Managing Residential Development Advisory Committee by amending the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone and Township Zone.</p>
<p>June 2017</p>	<p>The Minister refuses authorisation of Amendment C212, which sought to apply interim planning provisions that align with the <i>Mornington Peninsula Localised Planning Statement</i> (Victorian Government, 2014) (Localised Planning Statement), including the NRZ, whilst Council finalised the draft <i>Housing and Settlement Strategy</i>. The Minister directs Council to adopt a housing strategy prior to seeking authorisation of an amendment to implement the NRZ.</p>
<p>August – September 2017</p>	<p>Council undertakes public exhibition of the draft <i>Housing and Settlement Strategy</i>.</p>
<p>October – December 2017</p>	<p>Council reviews submissions in relation to the draft <i>Housing and Settlement Strategy</i> and revises the draft <i>Housing and Settlement Strategy</i>.</p>
<p>4 December 2017</p>	<p>Council adopts <i>Housing and Settlement Strategy</i> (Mornington Peninsula Shire Council, 2017) (Housing and Settlement Strategy).</p>
<p>5 February 2018</p>	<p>Council resolves to request that the Minister for Planning (Minister) authorise the preparation and exhibition of Amendment C219 to the Planning Scheme (Previous Amendment) to implement the Housing and Settlement Strategy by:</p>

	<ul style="list-style-type: none"> • Introducing the NRZ into the Planning Scheme and rezoning areas zoned GRZ1 to NRZ2, NRZ3 and NRZ4 except for select areas within the Mornington, Rosebud and Hastings Major Activity Centres; • Amending the Local Planning Policy Framework; • Removing the DDO1 from areas to be rezoned from the GRZ to the NRZ; • Removing the DPO6, DPO10, DPO11, DPO13, DPO14 and DPO16 from the Planning Scheme, and partially removing the DPO15; and • Amending Schedules 2 to 5, 17 to 20, 23 and 24 to the DDO.
16 February 2018	Council requests authorisation from the Minister to prepare the Previous Amendment.
February 2018 - March 2019	Council writes to the Minister on several occasions requesting that the authorisation of the Previous Amendment be expedited. The Minister responds by advising that DELWP officers are still assessing Council's request and are mindful of the imminent release of updated <i>Victoria in Future 2018</i> figures.
19 November 2018	Council adopts the <i>Mornington Peninsula Planning Scheme Review 2018 (Planning Scheme Review)</i> and forwards the Planning Scheme Review to the Minister. The Planning Scheme Review recommends that Council continue to pursue the Previous Amendment, undertake further strategic work to prepare and implement neighbourhood character studies, and amend the Planning Scheme to ensure alignment with adopted strategic plans and neighbourhood character studies.
November 2018	Ethos Urban commences preparation of the draft <i>Neighbourhood Character Study and Guidelines</i> (a recommendation of the Housing and Settlement Strategy and the Planning Scheme Review).
February 2019	Council and Ethos Urban conduct 'Phase 1' of community engagement in relation to the <i>Neighbourhood Character Study and Guidelines</i> – 'championing the Study'.

<p>March – April 2019</p>	<p>Ethos Urban prepares the draft <i>Neighbourhood Character Study and Guidelines</i> and associated background report and consultation summary report.</p>
<p>May – July 2019</p>	<p>Council undertakes public exhibition of the draft <i>Neighbourhood Character Study and Guidelines</i>.</p>
<p>27 May 2019 to 7 July 2019</p>	<p>Council and Ethos Urban conduct ‘Phase 2’ of community engagement in relation to the draft <i>Neighbourhood Character Study and Guidelines</i> (via drop-in sessions and the use of an interactive website)</p>
<p>July – August 2019</p>	<p>Council and Ethos Urban review submissions in relation to the draft <i>Neighbourhood Character Study and Guidelines</i> and revise the draft <i>Neighbourhood Character Study and Guidelines</i>.</p>
<p>18 September 2019</p>	<p>The Minister writes to Council inviting Council to seek re-authorisation of the Previous Amendment “to ensure a holistic approach to planning for the shire’s residential areas and to ensure the findings of the Neighbourhood Character Study are reflected in the application of the residential zones proposed by the amendment.” The Minister encourages Council to undertake further strategic work, update the drafting and application of the NRZ Schedules and review current provisions that apply to residential land to ensure there are no conflicts, as detailed below.</p>
<p>October 2019</p>	<p>Council commences further strategic work in response to the letter from the Minister dated 18 September 2019, including:</p> <ul style="list-style-type: none"> • Assessing the Mornington Peninsula’s capacity to meet future housing demand associated with the population and household projections in VIF2019; • Considering Council’s adopted <i>Triple A Housing Plan 2020-2030, Social and Affordable Housing Policy</i> and <i>Rooming House Policy</i>; • Refreshing the Housing and Settlement Strategy;

	<ul style="list-style-type: none"> • Incorporating the recommendations of the Neighbourhood Character Study into the policy provisions and controls proposed by way of the Amendment; and • Undertaking a comprehensive review of existing provisions that apply to residential land, primarily the DDO Schedules, to remove unnecessary permit triggers and ensure that the revised Schedules do not conflict with the NRZ Schedules.
14 October 2019	Council resolves to adopt the Neighbourhood Character Study and prepare a planning scheme amendment to incorporate a refreshed Housing and Settlement Strategy and the Neighbourhood Character Study.
22 November 2019	Amendment C206morn is gazetted. The amendment implements the <i>Rosebud Activity Centre Structure Plan</i> by applying new built form controls (the DDO26) to the Rosebud activity centre. The Minister excluded the residential areas around the activity centre that were originally included in the proposed DDO26 from the gazetted DDO26.
19 December 2019	Amendment C190morn is gazetted. The amendment implements the findings of the <i>Hastings Town Centre Structure Plan</i> by applying built form controls (the DDO27) to the Hastings activity centre. The Minister excluded the residential areas to the north and south of the activity centre that were originally included in the proposed DDO27 from the gazetted DDO27.
December 2019	<i>Planning Practice Note 90: Planning for housing (PPN90)</i> and <i>Planning Practice Note 91: Using the residential zones (PPN91)</i> are released.
18 May 2020	Amendment C224morn is authorised with conditions. The amendment originally sought to implement the <i>Dromana Township Plan</i> and <i>Dromana Residential Investigation Areas Report</i> by applying built form controls (the DDO29, DDO30 and DDO31), to the activity centre, township area and hillside area of Dromana, respectively. The Minister authorised the amendment on the condition that the DDO30 and DDO31 together with the associated <i>Dromana Residential Investigation Areas Report</i> be removed, and requested that Council integrate the requirements of the DDO30 and DDO31 into the Neighbourhood Character Study and the NRZ Schedules proposed pursuant to the Amendment.

<p>20 July 2020</p>	<p>Council resolves to:</p> <ul style="list-style-type: none"> • Adopt the Housing and Settlement Strategy: Refresh and associated Residential Change Framework Plan – Housing Change Framework Maps (otherwise referred to as the ‘Residential Development Framework’); • Adopt a new version of the <i>Mornington Peninsula Triple Housing Plan 2020-2030</i> that reflects the Housing and Settlement Strategy: Refresh and other adopted Council policies and plans; • Request that the Minister authorise the preparation of the Amendment; and • Following authorisation, undertake public exhibition of the Amendment.
<p>24 July 2020</p>	<p>Council submits updated Amendment documentation, the Housing and Settlement Strategy: Refresh, the Neighbourhood Character Study and other information to address the matters outlined in the Minister’s letter dated 18 September 2019 and requests re-authorisation accordingly.</p>
<p>6 August 2020</p>	<p>The Minister writes to Council advising that further review is required prior to authorisation.</p>
<p>14 December 2020</p>	<p>DELWP sends an email to Council officers enclosing initial comments on the Amendment, comprised of:</p> <ul style="list-style-type: none"> (a) Comments from DELWP planning officers in relation to the Amendment; (Attachment 1a) and (b) Comments from DELWP’s Land Use and Population Team in relation to the Housing and Settlement Strategy: Refresh (Attachment 1b).
<p>18 December 2020</p>	<p>Council provides a written response to the comments from DELWP planning officers sent on 14 December 2020 (Attachment 2).</p>
<p>18 March 2021</p>	<p>DELWP officers send an email to Council raising queries and requesting a response in relation to the proposed application of the NCO1 to the Ranelagh Estate in Mount Eliza and the proposed application of the VPO1 to new areas.</p>

	The email also provides feedback on Council's response to DELWP's initial comments sent on 14 December 2020 (Attachment 3).
25 March 2021	Council provides a written response to DELWP's 18 March 2021 email enquiry (Attachment 3 and 3a).
14 April 2021	Council sends an email to DELWP officers with specific content from the <i>Ranelagh Conservation Management Plan</i> that provides further strategic justification for the application of the NCO1 (Attachment 4).
19 May 2021	DELWP under delegation from the Minister writes to Council to authorise the preparation of the Amendment subject to conditions including updating the Residential Change Framework Plan, undertaking a desktop review of the strategic work underpinning the Amendment, ensuring that all Planning Scheme Ordinance is drafted in accordance with the Ministerial Direction on the Form and Content of Planning Schemes, integrating the proposed changes to the PPF and Municipal Strategic Statement into the new format PPF and amending the Planning Scheme Maps as detailed below.
June 2021 – August 2021	Council undertakes further work to address the conditions of authorisation and other matters raised in authorisation letter, including preparing the Desktop Review and other work as detailed below.
12 August 2021 – 29 October 2021	Public exhibition of the Amendment (Exhibited Amendment) took place over an extended period due to COVID-19 lockdown restrictions (extended by 5 weeks). 314 submissions are received.
December 2021 – January 2022	Council officers held separate post-exhibition engagement sessions with each of seven community groups to enable the groups to elaborate on their submissions. These groups comprise the Capel Sound Community Group, Dromana Association, Flinders Community Association, Nepean Conservation Group, Nepean Ratepayers Association, Rye Community Group Alliance, and Shoreham Community Association.
18 July 2022	Council resolves to defer consideration of Council officers' recommendations in relation to the Amendment and requests:

	<ul style="list-style-type: none"> • The presentation of case studies to Councillors that highlight significant changes to both planning permit and building permit processes, and planning permit controls; • That feedback be sought from internal and external stakeholders in relation to the effect of the Amendment on housing affordability on the Mornington Peninsula; • That further public consultation be conducted in an in-person and recorded ‘town hall’ format; and • That officers commence the development of a Frequently Asked Questions document to be added to Council’s website.
<p>July 2022 – October 2022</p>	<p>Council presents case studies to Councillors, conducts further public consultation in an in-person and recorded ‘town hall’ format, seeks feedback from stakeholders in relation to the effect of the Amendment on housing affordability on the Mornington Peninsula and prepares a Frequently Asked Questions document to be included on Council’s website.</p>
<p>30 September 2022</p>	<p>Council receives late submission 315.</p>
<p>24 October 2022</p>	<p>Council resolves to:</p> <ul style="list-style-type: none"> • Receive, note and consider all submissions, including supplementary submissions and late submission 316 received on 24 October 2022; • Endorse the summary of submissions and Council officers’ response to submissions; • Request that the Minister appoint a planning panel to consider all submissions in relation to the Amendment; • Refer all submissions including supplementary submissions and late submission 316 to the planning panel; • Endorse the proposed post-exhibition changes to the Amendment documents;

	<ul style="list-style-type: none">• Delegate authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the planning panel;• Note that the Amendment as exhibited addressed the Minister's conditions of authorisation; and• Write to submitters to thank them for their submissions to the Amendment and advise of Council's decision.
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Ministerial letter inviting Council to seek re-authorisation

10. As outlined in the above chronology, the Amendment is preceded by the Previous Amendment. The Previous Amendment proposed to implement the Housing and Settlement Strategy by:

10.1. Introducing the NRZ into the Planning Scheme and rezoning areas zoned GRZ1 to one of NRZ2, NRZ3 and NRZ4 except for select areas around the Mornington, Rosebud and Hastings Major Activity Centres;

10.2. Amending the Local Planning Policy Framework;

10.3. Removing the DDO1 from areas to be rezoned from the GRZ to the NRZ;

10.4. Removing the DPO6, DPO10, DPO11, DPO13, DPO14 and DPO16 from the Planning Scheme, and partially removing the DPO15; and

10.5. Amending specific Schedules to the DDO.

11. On 18 September 2019, the Minister wrote to Council inviting Council to seek re-authorisation of the Previous Amendment "to ensure a holistic approach to planning for the Mornington Peninsula's residential areas and to ensure the findings of the Neighbourhood Character Study are reflected in the application of the residential zones proposed by the amendment" (**Re-Authorisation Letter**).² The Minister encouraged Council to undertake further strategic work summarised as follows:

11.1. Outline the strategic justification for the amendment, including:

- a. A municipal wide approach to housing provisions on the Mornington Peninsula, accounting for all areas where additional housing can be provided, including major activity centres, investigation areas and holiday homes converting into permanent homes;

² Letter dated 18 September 2019.

- b. Demonstration that the Mornington Peninsula is capable of achieving a 15-year supply of housing and residential land, including analysis of how any proposed minimum subdivision area requirements are consistent with that outcome;
 - c. Demonstration that the proposed residential provisions do not limit the ability of the Mornington Peninsula to provide housing diversity;
- 11.2. Consider refreshing the Housing and Settlement Strategy to reflect the above changes;
- 11.3. Update the drafting and, if required, application of the NRZ Schedules to:
 - a. Reflect any changes required as a result of the further strategic work;
 - b. Incorporate the recommendations of the Neighbourhood Character Study;
 - c. Be consistent with the new Planning Practice Note on using and applying residential zones; and
- 11.4. Review existing provisions that apply to residential land to ensure there are no conflicts between current and proposed controls and remove unnecessary permit triggers.
- 12. A copy of the Re-Authorisation Letter is enclosed at [Attachment 5](#).
- 13. Council began undertaking extensive strategic work from October 2019 in response to the letter from the Minister dated 18 September 2019, including:
 - 13.1. Assessing the Mornington Peninsula's capacity to meet future housing demand associated with the population and household projections in VIF2019 at a municipal level;
 - 13.2. Considering Council's adopted Triple A Housing Plan 2020-2030, Social and Affordable Housing Policy and Rooming House Policy;
 - 13.3. Refreshing the Housing and Settlement Strategy to ensure alignment with the new PPN90 and PPN91, including preparing the Residential Development Framework;
 - 13.4. Incorporating the recommendations of the Neighbourhood Character Study into the policy provisions and controls proposed by way of the Amendment; and
 - 13.5. Undertaking a comprehensive review of existing provisions that apply to residential land, primarily the DDO Schedules, to remove unnecessary permit triggers and ensure that the revised Schedules do not conflict with the NRZ Schedules.

14. In response to the Re-Authorisation Letter and to inform the Housing and Settlement Strategy: Refresh, Council officers undertook an analysis of housing capacity in urban areas within the Mornington Peninsula. The analysis encompassed:
 - 14.1. All residential areas zoned GRZ and LDRZ within the Urban Growth Boundary, and the small number of isolated areas zoned GRZ and LDRZ outside the Urban Growth Boundary; and
 - 14.2. Areas zoned Commercial 1 Zone (**C1Z**) and Public Use Zone 6 (**PUZ6**) in the activity centres of Mornington, Rosebud, Hastings, Dromana, Rye, Somerville and Baxter, on the basis that the C1Z land has the potential to be developed for residential use as part of mixed use development, and the PUZ6 land (which is currently predominantly used for car parking) has the potential to be redeveloped for residential use either in lieu of car parking or in addition to it (subject to future rezoning).
15. The housing capacity analysis is time-stamped March 2019. As noted at Section 6.1 of the Housing and Settlement Strategy: Refresh,³ when considered on a municipal basis in accordance with State planning policy at Clause 11.02-1S and PPN90, the analysis demonstrated that the Mornington Peninsula will have sufficient housing capacity to accommodate the State Government's population and household projections set out in VIF2019.
16. The methodology and assumptions underpinning Council's housing capacity analysis, and the outcomes of the analysis, are detailed in the expert witness statement of Andrew Spencer of SGS Economics and Planning and will be discussed further in Council's Part B Submission.

Council resolution to prepare and exhibit

17. On 20 July 2020, Council resolved to:
 - 17.1. Adopt the Housing and Settlement Strategy: Refresh and associated Residential Change Framework Plan – Housing Change Framework maps;
 - 17.2. Adopt a new version of the *Mornington Peninsula Triple Housing Plan 2020-2030* to reflect the Housing and Settlement Strategy: Refresh and other adopted Council policies and plans;
 - 17.3. Request that the Minister authorise the preparation of the Amendment; and
 - 17.4. Following authorisation, undertake public exhibition of the Amendment.

³ Page 33.

18. A copy of the resolution, extracted from the Minutes for the Planning Services Committee Meeting held on 20 July 2020, is enclosed at [Attachment 6](#).

Pre-authorisation feedback from DELWP

19. On 14 December 2020, DELWP sent an email to Council enclosing initial comments in relation to the proposed Amendment and the Housing and Settlement Strategy: Refresh. The email included two attachments, being:
 - 19.1. a list of questions and comments about the Amendment from DELWP planning officers; and
 - 19.2. notes on the Housing and Settlement Strategy: Refresh prepared by DELWP's Land Use and Population Research team.
20. The DELWP planning officer questions and comments, and Council officers' response sent on 18 December 2020, are enclosed at [Attachments 1, 1a, 1b and 2](#).
21. On 18 March 2021, DELWP planning officers sent an email to Council providing feedback on Council's response dated 18 December 2020, and raising further queries in relation to the proposed application of the NCO1 to the Ranelagh Estate in Mount Eliza and the proposed application of the VPO1 to new areas. The DELWP planning officer feedback, questions and comments, and Council officers' response sent on 25 March 2021 and 14 April 2021, are enclosed at [Attachments 3, 3a and 4](#).
22. Council officers did not respond to the comments from DELWP's Land Use and Population Research team at the time. Nonetheless, Council officers:
 - 22.1. reviewed the comments and formed the view that the comments were either not relevant based on the guidance in PPN90 or concerned detail that would not have a material impact on the findings of the Housing and Settlement Strategy: Refresh; and
 - 22.2. noted that the Housing and Settlement Strategy: Refresh had already been adopted by Council on 20 July 2020.
23. The matters raised by DELWP's Land Use and Population Research team will be addressed further in expert evidence and Council's Part B submission.

Ministerial authorisation

24. On 19 May 2021, DELWP under delegation from the Minister wrote to Council to authorise the preparation of the Amendment subject to the following conditions (paraphrased):

- 24.1. Update the Residential Change Framework Plan - Housing Change Framework Maps to ensure that land identified for minimal change is subject to an identified constraint or special characteristic as per the parameters in the Housing and Settlement Strategy: Refresh, identify non-standard residential areas within the Urban Growth Boundary, identify land at 197A Hendersons Road, Hastings as an investigation area, and ensure that designation of change areas is consistent with concurrent planning scheme amendments, and make any other necessary changes;
- 24.2. Undertake a desktop review of the strategic work underpinning the Amendment and how it justifies the proposed changes to the Planning Scheme;
- 24.3. Ensure that all Planning Scheme Ordinance is drafted in accordance with the Ministerial Direction on the Form and Content of Planning Schemes;
- 24.4. Integrate the proposed changes to the PPF and Municipal Strategic Statement into the new format PPF prior to exhibition;
- 24.5. Update the proposed Planning Scheme Maps to address various matters such as including DDO deletion maps, not showing the application of the GRZ1 and GRZ3 to areas where those controls already apply, applying the NRZ rather than the GRZ to land designated as minimal change at 834-932 Point Nepean Road, Rosebud (excluding 866 Point Nepean Road), amendments to ensure consistency with Amendment C228morn and other changes as specified at condition 5; and
- 24.6. Make any other consequential changes to the Amendment documents,

(Authorisation Letter).

25. In the Authorisation Letter, DELWP also encouraged Council to consider:
 - 25.1. Improving the analysis of population trends and housing capacity in the Housing and Settlement Strategy: Refresh in accordance with the comments provided by DELWP officers via email dated 14 December 2020;
 - 25.2. Reviewing the existing application of the ESO17 and consider a separate planning scheme amendment to remove where redundant;
 - 25.3. Undertaking strategic work on the Mornington Major Activity Centre, including preparation of a structure plan;
 - 25.4. Undertaking a strategic review of LDRZ areas; and

- 25.5. Undertaking a further review of the DDO Schedules, in particular subdivision requirements, to consolidate controls and improve consistency across the municipality.
26. A copy of the Authorisation Letter is enclosed at [Attachment 7](#).
27. Council has satisfied all conditions of authorisation and commenced work in response to the additional matters raised in the Authorisation Letter. In summary, prior to exhibition:
- 27.1. Council updated the Residential Change Framework Plan – Housing Change Framework Maps under the proposed Clause 16.01-1L (Housing – Mornington Peninsula) to ensure that areas designated as minimal change are subject to an identified constraint and/or special characteristic, identify non-standard residential areas within the Urban Growth Boundary, identify land at 197A Hendersons Road, Hastings as an investigation area, and ensure that the designation of housing change areas is consistent with concurrent planning scheme amendments which have since been approved and gazetted;
- 27.2. Council undertook a desktop review of the strategic work underpinning the Amendment and detailed how that strategic work justifies the proposed changes to the Planning Scheme as documented in the Desktop Review;
- 27.3. Council reviewed and amended the proposed Planning Scheme Ordinance to ensure that it is drafted in accordance with the Ministerial Direction on the Form and Content of Planning Schemes;
- 27.4. Council integrated the proposed changes to the PPF and Municipal Strategic Statement into the new format PPF;
- 27.5. Council updated the proposed Planning Scheme Maps to address various matters such as including DDO deletion maps, not showing the application of the GRZ1 and GRZ3 to areas where those controls already apply, applying the NRZ rather than the GRZ to land designated as minimal change at 834-932 Point Nepean Road, Rosebud (excluding 866 Point Nepean Road), amendments to ensure consistency with Amendment C228morn (which has since been approved and gazetted) and other changes as specified at condition 5 of the Authorisation Letter; and
- 27.6. Council made other consequential changes to the Amendment documents.
28. In terms of the other matters Council was encouraged to consider, Council's response is as follows:

- 28.1. The comments provided by DELWP officers via email dated 14 December 2020 in relation to the Housing and Settlement Strategy: Refresh and associated housing capacity analysis are outlined above, including Council officers' response. The Housing and Settlement Strategy: Refresh had already been adopted by Council when the comments from DELWP were received. Council considered the comments from DELWP and determined that inclusion of additional commentary in the Housing and Settlement Strategy: Refresh was not necessary, noting that it already addressed many of the matters raised by DELWP and included a summary of the demographic profile of the Mornington Peninsula including age group, household size and housing diversity, as well as an assessment of housing capacity. In Council's view, the additional information would not have fundamentally changed the outcomes and conclusions of the Housing and Settlement Strategy: Refresh. Further, Council has obtained an independent peer review of the analysis of population trends and housing capacity in the Housing and Settlement Strategy: Refresh by Andrew Spencer of SGS Economics and Planning (**SGS**). Mr Spencer will be called to give expert evidence on Council's behalf;
- 28.2. The Environmental Significance Overlay – Schedule 17 (**ESO17**) applies to streamlines within the Mornington Peninsula. The application of the ESO17 will be reviewed, and Council will consider a separate planning scheme amendment to remove the ESO17 where it is found to be redundant. The timing for this piece of strategic work will be determined as part of the next planning scheme review, which Council has received an extension of time to prepare (due December 2023);
- 28.3. The Mornington Activity Centre Structure Plan was adopted in July 2007. It remains Council's adopted strategic plan for the Mornington Activity Centre. The timing for a review of the Mornington Activity Centre Structure Plan will be determined as part of the next planning scheme review;
- 28.4. The application of the LDRZ on the periphery of townships plays an important role in providing for the rural residential lifestyle that attracts many people to the Mornington Peninsula. This is recognised in the Housing and Settlement Strategy: Refresh. An assessment of minimum lot sizes for land in the LDRZ is outside the scope of this Amendment. The timing for this piece of work will be determined as part of the next Planning Scheme Review, which Council has received an extension of time to prepare (due December 2023); and
- 28.5. A substantial review of the DDOs was undertaken as part of the preparation of the Amendment, in order to implement the Neighbourhood Character Study and Housing and Settlement Strategy: Refresh. The need for any further review will be assessed once this Amendment process is complete.

Public exhibition of the Amendment

29. The Amendment was put on public exhibition from Thursday 12 August 2021 to Friday 29 October 2021. This included a five week extension due to COVID-19 restrictions.
30. Council gave notice of the Amendment in accordance with section 19 of the Act. This included:
 - 30.1. providing direct notice to the four prescribed Ministers, the Minister for Housing, the Minister for Suburban Development, public authorities, and the two neighbouring municipal councils, (City of Frankston and City of Casey);
 - 30.2. providing direct notice to owners and occupiers of properties affected by the Amendment via post, including an explanatory brochure;
 - 30.3. providing direct notice to other key stakeholders such as building surveyors, community groups, environmental organisations, historical trusts and societies, planning consultants, and real estate agents;
 - 30.4. publication in local newspapers – Western Port News, Mornington News, Southern Peninsula News;
 - 30.5. publication on Council's website;
 - 30.6. publication in the Victorian Government Gazette;
 - 30.7. social media campaigns via, for example, Facebook and Twitter; and
 - 30.8. online webinars where participants were provided with a presentation about the Amendment followed by a Q&A session.
31. The community were given the opportunity to make enquiries about the Amendment via the online enquiry function on Council's website, direct message via social media, direct phone call, scheduling a phone appointment with a Council officer, and writing to or emailing Council's Strategic Planning Team.

Submissions received

32. A total of 314 submissions were received in response to exhibition, including submissions from owners and occupiers of affected properties, business owners, industry associations, developers, planning consultants, Frankston City Council, the CFA, the EPA, visitors to the Mornington Peninsula and resident groups/associations. The location of submitters was dispersed, as shown on the map of submitter locations provided to the Panel and parties.
33. Post-exhibition engagement sessions were held between Council officers and various community groups and associations, to enable those groups to speak to their submissions and

to enable Council officers to respond to any outstanding questions. Two post-exhibition engagement sessions were also held between Council officers and local planning consultants who had made joint submissions to the Amendment.

34. Council officers reviewed all submissions, prepared a detailed response to each submission and conducted a thematic analysis of issues raised in submissions, as documented in the report forming part of the agenda for the Planning Services Committee Meeting held on 18 July 2022 (**July 2022 Officer Report**) and reproduced in the report forming part of the agenda for the Planning Services Committee Meeting held on 24 October 2022 (**October 2022 Officer Report**).
35. Council officers grouped the key issues raised in submissions into the following themes:
 - 35.1. Housing change areas – population and housing growth;
 - 35.2. Neighbourhood character and zoning changes;
 - 35.3. Building heights;
 - 35.4. Vegetation, landscaping and open space;
 - 35.5. Subdivision controls;
 - 35.6. Housing affordability;
 - 35.7. Decision making; and
 - 35.8. Site-specific requests.⁴

Council resolution to conduct further public consultation

36. At its Planning Services Committee meeting held on 18 July 2022, Council resolved to defer consideration of the Amendment and requested that, in the interim:
 - 36.1. Council officers present case studies to Councillors highlighting significant changes to both planning permit and building permit processes, and planning permit controls;
 - 36.2. Feedback be sought from internal and external stakeholders in relation to the effect of the Amendment on housing affordability on the Mornington Peninsula;
 - 36.3. An “in-person and recorded town hall forum” be convened “to more widely canvass community sentiment”; and

⁴ October 2022 Officer Report.

- 36.4. Council officers prepare a Frequently Asked Questions (**FAQ**) document to be added to Council's website, and extend the opportunity to Councillors to add questions.
37. A copy of the Minutes are enclosed at [Attachment 8](#).
38. An in-person community information session was held on 14 September 2022. Notice of the session was provided to all submitters via email or post (where no email was provided), as well to the wider community via social media, Council's newsletter and local newspapers. 26 people attended the session, whereby Council officers engaged in one-on-one discussions with participants, with the assistance of flowcharts, urban design diagrams/sketches and case studies depicting changes in potential built form outcomes as a result of the Amendment. A detailed description of the community information session is provided in the October 2022 Officer Report, and the flowcharts, urban design diagrams/sketches and case studies are included as attachments to the October 2022 Officer Report.⁵ SGS Economics and Planning were engaged to undertake a peer review of the housing capacity analysis and consider issues of housing affordability as part of the future Planning Panel process and the feedback previously received from the Triple A Housing Committee (dated 6 December 2021) was re-presented to Councillors for consideration and summarised below:⁶
- 38.1. The Triple A Housing Committee made three recommendations:
- a. That social and affordable housing developments in and around activity centres be allowed to reduce "garden space requirements" to make more land available for housing;
 - b. That social and affordable housing developments in and around activity centres be allowed to provide reduced carparking, on the basis that many tenants do not own a vehicle, but in return be required to provide an electric powered share vehicle; and
 - c. That social and affordable housing developments in and around activity centres be permitted to be constructed to three storeys.
- 38.2. In the October 2022 Officer Report, Council officers agreed with the third recommendation, noting that the Amendment supports three storey development in and around activity centres where it is underpinned by an adopted structure plan. For example, there are several GRZ1 areas in Rosebud, in proximity to the activity centre, that will remain zoned GRZ1, thereby allowing three storey development in accordance with the *Rosebud Activity Centre Structure Plan* (Hansen Partnership, 2017). Council officers also noted that the proposed post-exhibition changes to the

⁵ Attachments 17, 18 and 19 to the October 2022 Officer Report.

⁶ Attachment 20 to the October 2022 Officer Report.

GRZ Schedules delete all variations to clause 54 and 55 requirements (except in relation to front fence height), thereby removing restrictive siting requirements and facilitating the provision of affordable housing.

- 38.3. Council officers did not agree with the first recommendation in relation to garden area/private open space requirements, on the basis that there is a need to mitigate urban heat island effect and promote biodiversity in urban, residential areas.
- 38.4. Council officers noted that the second recommendation in relation to carparking is beyond the scope of the Amendment.
39. Finally, Council officers prepared a FAQ document to be added to Council's website,⁷ and the flowcharts, urban design diagrams/sketches, case studies, stakeholder feedback and Council officer response, and FAQ document were presented to Councillors as attachments to the October 2022 Officer Report.⁸

Supplementary and late submissions received

40. In response to the further public consultation, Submitters 161, 194 and 228 made supplementary submissions in relation to the proposed post-exhibition changes to the Amendment, all opposing the reinstatement of the existing exemption to the mandatory maximum building height requirement in the northern areas of the Mornington Peninsula known as the 'Ellerina Road exemption' (**Ellerina Road Exemption**).
41. On 30 September 2022, Council received and accepted a late submission (Submission 315). This submission was included in the October 2022 Officer Report.
42. On 24 October 2022, Council received and accepted a late submission (Submission 316). This submission was not included in the October 2022 Officer Report given it was received at the time of the Planning Services Committee meeting on 24 October 2022.

Council resolution to refer submissions to panel

43. At its Planning Services Committee meeting on 24 October 2022, Council resolved to (paraphrased):
- 43.1. Receive, note and consider all submissions, including supplementary submissions and late Submission 316;
- 43.2. Endorse the summary of submissions and Council officers' response to submissions, as attached to the Council officer report;

⁷ Attachment 21 to the October 2022 Officer Report.

⁸ Attachments 17, 18 and 19 to the October 2022 Officer Report.

- 43.3. Request that the Minister appoints a planning panel to consider all submissions in relation to the Amendment;
 - 43.4. Refer all submissions including supplementary submissions and late Submission 316 to the planning panel;
 - 43.5. Endorse the proposed post-exhibition changes to the Amendment documents;
 - 43.6. Delegate authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the planning panel;
 - 43.7. Note that the Amendment as exhibited addressed the Minister's conditions of authorisation; and
 - 43.8. Write to submitters to thank them for their submissions to the Amendment and advise of Council's decision.⁹
44. Council wrote to Planning Panels Victoria on 27 October 2022 to request the appointment of a planning panel to consider all submissions in relation to the Amendment.
45. A map of submitter locations has been provided to the Panel.

Further notice to owners and occupiers in Hastings

46. On 22 December 2022, Council provided notice of further proposed post-exhibition changes to owners and occupiers of affected properties in Hastings. The post-exhibition changes are required to rectify an isolated sea level rise mapping error in Hastings, as noted below and described in Council's letter to the Panel dated 17 November 2022, which is enclosed at [Attachment 9](#) and [9a](#).
47. Copies of the letters sent to owners and occupiers of affected properties are enclosed at [Attachment 10](#).
48. One submission was received in response to the further notice (Submission 317) and is enclosed at [Attachment 11](#). Submission 317 supports the proposed post-exhibition changes in respect of the submitter's property, namely that the affected property remain in the GRZ.

B. THE AMENDMENT AS EXHIBITED

49. The Amendment proposes to implement the Housing and Settlement Strategy: Refresh and the Neighbourhood Character Study by making substantial changes to zones, overlays and policies that affect the Mornington Peninsula's residential areas.

⁹ Minutes of Planning Services Committee meeting held on 24 October 2022.

50. In broad terms, the Amendment seeks to:
- 50.1. Direct residential growth towards appropriate areas in a sustainable manner to accommodate the State Government's population and household projections set out in *Victoria in Future 2019 (VIF2019)*;¹⁰
 - 50.2. Protect and enhance the valued character of the Mornington Peninsula's residential areas by ensuring that residential development respects neighbourhood character; and
 - 50.3. Streamline the permit application process in relation to the construction or extension of a single dwelling on a lot.
51. The Amendment proposes various changes to the Planning Scheme Ordinance and Planning Scheme Maps as described in the Explanatory Report and outlined below.
52. To assist the Panel and submitters, and in accordance with the Panel's directions, Council has prepared the following explanatory documents which are enclosed with this submission:
- 52.1. [Attachment 12](#): Updated version of the Desktop Review (**Updated Desktop Review**) dated January 2023;¹¹
 - 52.2. [Attachment 13](#): Updated version of the explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' (January 2023);¹²
 - 52.3. [Attachment 14](#): Table summarising built form implications of the Amendment (**Built Form Implications Summary Table**);¹³
 - 52.4. [Attachment 15](#): Detailed spreadsheet of proposed zoning changes;¹⁴
 - 52.5. [Attachment 16](#): Detailed spreadsheet of proposed overlay changes;¹⁵
 - 52.6. [Attachment 17](#): Table summarising exhibited Amendment and the Version 2 Amendment Documents with post-exhibition changes; and
 - 52.7. [Attachment 18](#): Urban Design Sketches – Potential Development Outcomes – Small Lots.
53. The explanatory documents should be read in conjunction with this Part A submission.

¹⁰ Being the period between 2016 and 2036.

¹¹ Updated to reflect Council's proposed post-exhibition changes.

¹² Updated to reflect the further proposed post-exhibition changes to correct isolated mapping error at Hastings.

¹³ Prepared on the basis of Council's proposed post-exhibition changes.

¹⁴ Prepared on the basis of the Amendment as exhibited with post-exhibition changes shown tracked.

¹⁵ Prepared on the basis of the Amendment as exhibited with post-exhibition changes shown tracked.

Planning Scheme Ordinance

54. The Amendment as exhibited proposes the following changes to the Planning Scheme Ordinance:

Municipal Planning Strategy

- 54.1. At Clause 02.03 Strategic Directions, insert a new Clause 02.03.6 Housing, which describes the distinctive landscape and other physical characteristics of the Mornington Peninsula, and its relationship to other urban areas. It also notes the “relatively spacious development pattern” across many parts of the Mornington Peninsula, the demand for larger lifestyle properties, and the pressure for increased residential development. It includes 10 strategic directions for housing, as follows:

- *Apply a scaled approach to residential development to accommodate the State Government’s projected population growth for the Peninsula.*
- *Maintain the relatively spacious development pattern across the majority of the Peninsula through the retention of existing subdivision controls.*
- *Maintain areas with constraints that limit their capacity and service capability to accommodate further residential development as minimal change areas.*
- *Encourage non-constrained areas with capacity and service capability to accommodate housing growth and housing diversity as incremental change areas.*
- *Support non-constrained areas with capacity and service capability to accommodate housing growth and housing diversity in proximity to jobs, services and facilities under a structure plan that supports 3 storeys or more as substantial change areas.*
- *Recognise the limits to the capacity of the Peninsula’s towns and villages to accommodate further growth.*
- *Prioritise the protection of the Peninsula’s residential character and amenity.*
- *Identify and make provision for changing housing needs to the extent that is consistent with the role, character and function of each town, village and locality in the Peninsula.*
- *Determine appropriate change through a consultative process.*

- *Ensure future development is properly supported with infrastructure and services.*

Planning Policy Framework

54.2. At Clause 15.01 Built Environment, insert a new Clause 15.01-5L Neighbourhood Character – Mornington Peninsula. The local policy applies to all residential development in the GRZ, NRZ or LDRZ and comprises:

- a. a built form objective, built form strategies and built form policy guidelines;
- b. a garden setting objective, garden setting strategies and garden setting policy guidelines; and
- c. a fencing objective, fencing strategy and fencing policy guidelines.

The policy is derived from, and implements the findings of, the Neighbourhood Character Study;

54.3. At Clause 16.01 Residential Development, insert a new Clause 16.01-1L Housing Supply – Mornington Peninsula. The local policy applies to all residential development in the GRZ, NRZ, LDRZ, C1Z or MUZ. It comprises housing supply strategies, policy guidelines and the 'Residential Change Framework Plan – Housing Change Framework Plan Maps', which designate areas as Minimal Change, Incremental Change or Substantial Change. The policy is derived from, and implements the findings of, the Housing and Settlement Strategy: Refresh. The Housing Change Framework Plan Maps encompass the following urban areas and include the Major Activity Centres and Neighbourhood Activity Centres, of various sub-levels, as specified in Clause 02.03-1 Settlement:

- a. Arthurs Seat, Dromana and Safety Beach;
- b. Balnarring Beach, Merricks, Merricks Beach, Point Leo and Shoreham;
- c. Balnarring and Somers;
- d. Baxter;
- e. Bittern and Crib Point;
- f. Blairgowrie, Sorrento and Portsea;
- g. Capel Sound and Tootgarook;
- h. Flinders and St Andrews Beach;

- i. Hastings;
- j. McCrae and Rosebud;
- k. Mornington;
- l. Mount Eliza;
- m. Mount Martha;
- n. Red Hill and Red Hill South;
- o. Rye;
- p. Somerville; and
- q. Tyabb;

Zones

54.4. At Clause 32.03 Low Density Residential Zone:

- a. delete the Schedule to the LDRZ; and
- b. insert new Schedules 1 to 11 to the LDRZ including minimum subdivision area requirements and outbuilding permit requirements;

54.5. At Clause 32.08 General Residential Zone:

- a. amend Schedules 1 and 3 to the GRZ (Clause 32.08), including by way of new schedule names, neighbourhood character objectives, variations to Clause 54 and Clause 55 requirements, application requirements for a landscape plan and decision guidelines; and
- b. insert new Schedules 2 and 4 to the GRZ, which include neighbourhood character objectives, variations to Clause 54 and Clause 55 requirements, application requirements for a landscape plan and decision guidelines;

54.6. At Clause 32.09 Neighbourhood Residential Zone:

- a. insert new Schedules 2 to 36 to the NRZ, which include neighbourhood character objectives, minimum subdivision area requirement (for NRZ36 only), variations to Clause 54 and Clause 55 requirements, application requirements for a landscape plan and decision guidelines; and

- b. insert a new Schedule 37 to the NRZ, which is applicable to special neighbourhood character areas and includes a neighbourhood character objective regarding vegetation around dwellings, application requirements for a landscape plan and decision guidelines;

Overlays

54.7. At Clause 43.02 Design and Development Overlay:

- a. delete Schedules 1, 19, 20 and 23;
- b. amend Schedules 2 to 7, 11, 17-18 and 24 to the DDO to remove unnecessary permit triggers, redundant exemptions and superfluous controls and terminology, simplify requirements, move translatable character controls to the NRZ Schedules, move subdivision area requirements to the NRZ Schedules, and minimise the use of sub-precincts so that each DDO Schedule contains the same permit triggers, controls and other requirements;
- c. amend Schedule 22 to the DDO to include an outbuilding permit requirement, and to move the subdivision area requirement to the LDRZ Schedules;
- d. insert a new Schedule 32 to the DDO, which will apply to 3 Clarkes Avenue, 4 and 6 Morrisons Avenue, and 113 to 163 Osborne Drive, Mount Martha and include a different subdivision area requirement to the amended DDO2;
- e. insert a new Schedule 33 to the DDO, which will apply to the 'Bush / Garden Environment Area – Mount Eliza Precinct' (west of Nepean Highway) and include a different subdivision area requirement to the amended DDO4;
- f. insert new Schedules 34 to 53 to the DDO, which will include specific neighbourhood character controls that apply to LDRZ land except land in the Kinfauns Estate, Bittern, land currently affected by the DDO22, and land affected by Amendment C228morn (146-152 Bungower Road, Mornington).

54.8. At Clause 43 Heritage and Built Form Overlays, insert a new Clause 43.05 Neighbourhood Character Overlay and:

- a. insert a new Schedule 1 to the NCO, which will apply to the Ranelagh Estate in Mount Eliza; and
- b. insert a new Schedule 2, which will apply to The Avenues in Rosebud and parts of Tootgarook and Rye.

Operational Provisions

- 54.9. Amend the Schedule to Clause 72.03 What does this planning scheme consist of? to reflect the proposed mapping changes;
- 54.10. Amend the Schedule to Clause 72.08 Background documents to insert the:
 - a. Housing and Settlement Strategy: Refresh;
 - b. Neighbourhood Character Study; and
 - c. Dromana Residential Investigation Areas Report (Hansen Partnership, 2018) (**Dromana Residential Investigation Areas Report**);
 - d. Crib Point Township Plan (Hansen Partnership, NMBW Architecture Studio and Baracco+Wright Architects, 2011);
 - e. Crib Point Urban Design Guidelines (NMBW Architecture Studio and Baracco+Wright Architects, 2010);
 - f. Mornington Peninsula Investigation Areas Study: Bittern Discussion Paper (Hansen Partnership, 2014); and
 - g. Mount Eliza Woodland Neighbourhood Character Study (Planisphere, October 2006);¹⁶ and
- 54.11. Amend the Schedule to Clause 74.01 Application of Zones, Overlays and Provisions to explain how the residential zones, DDO and NCO will be applied to manage use and development in residential areas within the Mornington Peninsula.

Planning Scheme Maps

55. The Amendment as exhibited proposes the following changes to the Planning Scheme Maps:
 - 55.1. Amend the zoning maps to:
 - a. rezone land currently zoned LDRZ to one of the new LDRZ1 to LDRZ11;

¹⁶ The documents at items (d) to (g) are background documents in relation to current planning controls, and Council is now seeking to formally include the documents at Clause 72.08.

- b. rezone a pocket of land in close proximity to the Rosebud activity centre and designated for substantial change from the GRZ1 to the new GRZ2;
- c. rezone land at 866 Point Nepean Road, Rosebud from the GRZ3 to the new GRZ4;
- d. rezone land designated for minimal or incremental change and currently zoned GRZ1 to one of the new NRZ2 to NRZ37;
- e. rezone land at part of the Panorama Bushland Reserve, Mount Martha from the GRZ1 to the Public Conservation and Resource Zone (**PCRZ**), and rezone land at part of the Hove Road Bushland Reserve, Mount Martha and Somers Foreshore from the GRZ1 to the Public Park and Recreation Zone (**PPRZ**), to correct zoning anomalies; and
- f. rezone part of the land at 6, 8, 10, 12, 14, 16 and 18 Hull Road, Mount Martha from the LDRZ to the NRZ15 to correct zoning anomalies;

55.2. Amend the DDO maps to:

- a. delete the DDO1, DDO19, DDO20 and DDO23;
- b. apply the amended DDO17 to areas currently affected by the DDO19, DDO20 and DDO23;
- c. delete the existing DDO2 from, and apply the new DDO32 to, 3 Clarkes Avenue, 4 and 6 Morrisons Avenue, and 113 to 163 Osborne Drive, Mount Martha
- d. delete the existing DDO4 from, and apply the new DDO33 to, the 'Bush / Garden Environment Area – Mount Eliza Precinct' (west of Nepean Highway); and
- e. delete the existing DDO schedules from, and apply the new DDO34 to DDO53 to, land in the LDRZ;

55.3. Insert NCO maps to:

- a. apply the new NCO1 to the Ranelagh Estate, Mount Eliza; and
- b. apply the new NCO2 to The Avenues, Rosebud and parts of Tootgarook and Rye;

55.4. Amend the VPO maps to:

- a. apply the VPO1 to specific residential areas in Dromana, Flinders, McCrae, and Mount Martha.

56. The Amendment is supported by the Housing and Settlement Strategy: Refresh, the Neighbourhood Character Study and the Dromana Residential Investigation Areas Report, which are summarised below as part of the discussion of the strategic context for, and assessment of, the Amendment.

C. KEY ISSUES RAISED IN SUBMISSIONS

57. The key issues raised in submissions fall within the following categories:

57.1. Housing change areas – population and housing growth;

57.2. Neighbourhood character and zoning changes;

57.3. Building height;

57.4. Vegetation, landscaping and open space;

57.5. Subdivision controls;

57.6. Housing affordability;

57.7. Decision making; and

57.8. Site-specific requests.

58. In the October 2022 Officer Report, Council summarised the concerns raised in respect of each category of issues and provided its response. The relevant table is reproduced at [Attachment 19](#). Where post-exhibition changes are proposed in response to issues raised, those post-exhibition changes are described in the table and shown tracked in the Version 2 Amendment Documents at [Attachment 20](#).

59. In addition, Council has summarised each individual submission and provided a response at Attachment 2 to the October 2022 Officer Report. That table is reproduced at [Attachment 21](#).

60. By way of a high-level summary, the issues raised within each theme include:

Housing change areas – population and housing growth

60.1. The Amendment will lead to over-development and over-population on the Mornington Peninsula. Similarly, development of three or more storeys in substantial change areas will have a negative impact on the village atmosphere and coastal

views which are characteristic of many townships on the Mornington Peninsula, and there are not enough minimal and incremental change areas;

- 60.2. Conversely, the maximum building height requirement of two storeys in minimal and incremental change areas will limit new housing stock, and the widespread application of the NRZ will limit the ability to deliver multi-dwelling or medium density developments in appropriate locations;
- 60.3. Investigation areas should respect, but not replicate, the valued character of adjoining land; and
- 60.4. Inclusion of C1Z areas in the Residential Change Framework Plan is inappropriate and creates confusion. If C1Z areas are included in the Residential Change Framework Plan, they should not be identified as minimal change areas.

Neighbourhood character and the application of residential zones

- 60.5. The application of the NRZ to minimal and incremental growth areas, and the GRZ to substantial growth areas, is unnecessarily restrictive. The residential zones should be applied more conventionally, such as applying the MUZ or RGZ to substantial change areas, the GRZ to incremental change areas, and the NRZ/LDRZ to minimal change areas. Overuse of the NRZ will limit opportunities for medium density developments in appropriate areas, and the GRZ should be applied to more areas, particularly in close proximity to Major Activity Centres and Neighbourhood Activity Centres;
- 60.6. The proposed changes to the GRZ, including minimum street setbacks, increased side and rear setbacks, private open space requirements and decision guidelines, will constrain future development opportunities, impede growth and limit the provision of diversified and affordable housing;
- 60.7. ResCode standards should not be varied unless absolutely necessary;
- 60.8. Reduced side and rear setbacks and private open space requirements will severely impact development potential on small lots (300 square metres);
- 60.9. Increased side and rear setbacks will encourage more two storey dwellings (resulting in overlooking and impacts on shared view lines);
- 60.10. References to building materials, finishes and reflectivity in decision guidelines may prevent compliance with design verification methods and conflict with the National Construction Code. Conversely, the absence of clear direction on finishes and colours will lead to unacceptable outcomes;

- 60.11. Policies in relation to neighbourhood character favour existing character rather than recognising that character will change over time in substantial change areas;
- 60.12. There are too many NRZ and DDO Schedules, which is overly complex; and
- 60.13. There is insufficient justification for the application of the NCO in Tootgarook and the Ranelagh Estate, and the NCO is too onerous. Conversely, the NCO should be applied in Shoreham.

Building Height

- 60.14. A maximum, as-of-right, building height of 8 metres will fundamentally alter the unique and distinctive character of townships on the Mornington Peninsula and have negative impacts on view sharing, particularly in areas where shared views to the coast are significant such as Mount Martha;
- 60.15. There is no justification for the removal of the Ellerina Road Exemption from the DDO2, DDO3 and DDO4;
- 60.16. Mandatory building height requirements in the DDO Schedules should be consistent with those in the Zone Schedules, and not trigger a planning permit requirement for lesser heights; and
- 60.17. Three or more storey apartment developments in substantial change areas will have a negative impact on features such as the village atmosphere and coastal views which are characteristic of many townships on the Mornington Peninsula. Conversely, maximum building heights of two storeys in minimal and incremental change areas will limit new housing stock, and the maximum building height requirement of 9 metres in the NRZ will limit opportunities for higher non-residential development.

Vegetation, landscaping and open space

- 60.18. The Amendment will increase bushfire risk (CFA submission);
- 60.19. Due to the bushfire exemptions, it is unclear how the Amendment will protect vegetation;
- 60.20. Tree and vegetation policies should not undermine State policy in respect of accommodating projected population and household growth;
- 60.21. Vegetation and landscape controls will not be adequately implemented and enforced;

- 60.22. Existing controls in the DDO Schedules regarding landscaping and planting should be retained, including the requirement for a 10 metre setback from public land, to facilitate buffer planting; and
- 60.23. There are too many tree protection controls which are proposed to be applied to the Ranelagh Estate.

Subdivision requirements

- 60.24. Mandatory requirements in the DDO Schedules which provide that the number of dwellings on a lot must not exceed one are overly restrictive;
- 60.25. A minimum, rather than average, lot size for subdivision provides much less flexibility to cater for site-specific constraints such as irregular lot shapes, vegetation and slopes; and
- 60.26. Clarification is required regarding the reference to the 'approval date' in the LDRZ Schedules and DDO Schedules.

Housing affordability

- 60.27. Increasing side and rear setback and private open space requirements in the GRZ impedes growth and the provision of diversified and affordable housing;
- 60.28. The RGZ should be applied;
- 60.29. More land around activity centres should be zoned GRZ;
- 60.30. The maximum building height requirement of two storeys in minimal and incremental change areas will limit new housing stock, and the widespread application of the NRZ will limit the ability to deliver multi-dwelling or medium density developments in appropriate locations; and
- 60.31. Mandatory requirements in the DDO Schedules which provide that the number of dwellings on a lot must not exceed one are overly restrictive – each site should be assessed on its own merit to determine an appropriate number of dwellings.

Decision-making

- 60.32. The removal of planning permit triggers for the construction and extension of a single dwelling on a lot will result in:
- a. Less protection and enhancement of neighbourhood character;
 - b. Increased pressure on the building permit system;

- c. Less community notice and engagement;
 - d. No third party appeal rights;
 - e. No ability for Councillors to call-in applications;
 - f. Decisions being made by private building surveyors rather than Council;
 - g. No ability for Council to monitor changes in residential development;
 - h. No checks and balances in relation to housing design; and
 - i. No transparency in the residential development process.
- 60.33. The building permit system may not provide for the monitoring and enforcement of compliance; and
- 60.34. The Amendment should include transitional provisions to address current permit applications and amendments to current permits.

Site-specific submissions and requests

- 60.35. Various site-specific submissions and requests were made by submitters, including:
- a. Submissions that particular properties should be included within a different housing change area, such as minimal change rather than incremental change and vice versa;
 - b. Submissions that particular properties should be rezoned to a different NRZ Schedule;
 - c. Submissions that particular properties should be retained in the GRZ rather than being rezoned to the NRZ;
 - d. Submissions that street setback, site coverage, permeability and other requirements should be amended in respect of particular properties;
 - e. Submissions in favour of reducing minimum subdivision area requirements;
 - f. Submissions in favour of deleting DDO Schedules from land zoned LDRZ; and
 - g. A submission that land currently zoned Green Wedge Zone (**GWZ**) should be designated for minimal change and rezoned for residential purposes.

61. Council submits that the following issues raised in submissions are beyond the scope of the Amendment:
- 61.1. Noise pollution;
 - 61.2. Property value;
 - 61.3. Rubbish and littering;
 - 61.4. Schools and hospitals;
 - 61.5. Traffic, parking and infrastructure;
 - 61.6. Compliance and enforcement;
 - 61.7. Drainage and sewerage;
 - 61.8. Freeways and roads; and
 - 61.9. That a particular site currently zoned GWZ should be designated for minimal change and rezoned for residential purposes.
62. In accordance with the Panel's Directions, Council's Part B submission will set out Council's response to the key issues raised in submissions.

D. POST-EXHIBITION CHANGES TO THE AMENDMENT

63. Council proposes post-exhibition changes to the Amendment:
- 63.1. in response to issues raised in submissions; and
 - 63.2. to correct clerical errors,
- as described and shown tracked in the October 2022 Officer Report, including the explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn'.¹⁷
64. In addition, Council proposes further post-exhibition changes to:
- 64.1. Rectify an isolated sea level rise mapping error at Hastings, as described in Council's letter to the Panel dated 17 November 2022, which is enclosed at [Attachment 9](#);
 - 64.2. In relation to exemptions to subdivision requirements, amend the exemption relating to realignment as follows:

¹⁷ Refer to the October 2022 Officer Report including Attachments 4-16. Attachment 16 is the explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' which provides a detailed description of the post-exhibition changes.

- a *re-subdivision that realigns the boundary between of existing lots if no new lot or provided the number of lots is not increased and no additional subdivision potential is created.*

- 64.3. Extend the proposed rezoning of 23 Forest Drive, Somerville from the GRZ1 to the NRZ2 to align with the property boundary, noting that part of 23 Forest Drive was recently rezoned from the PUZ2 to the GRZ1 pursuant to Amendment C267morn to correct a zoning anomaly; and
- 64.4. Extend the proposed rezoning of seven properties adjoining Frankston-Flinders Road, Hastings¹⁸ from the GRZ1 to the NRZ39 to align with the property boundaries, noting that parts of those properties were recently rezoned from the TRZ2 to the GRZ1 pursuant to Amendment C267morn to correct a zoning anomaly.
65. A consolidated set of the Amendment documents with all proposed post-exhibition changes (**Version 2 Amendment Documents**) is enclosed at [Attachment 20](#), and an updated version of the explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' (January 2023) is enclosed at [Attachment 13](#).
66. In accordance with the Panel's directions, a table comparing the Amendment as exhibited and the Version 2 Amendment Documents is enclosed at [Attachment 17](#).
67. Council confirms that the proposed post-exhibition changes that do not respond to issues raised in submissions are all confined to corrections of clerical errors, amending the 'realignment' subdivision exemption, and the extension of proposed rezonings to align with property boundaries in response to Amendment C267morn.
68. In summary, the post-exhibition changes in response to submissions include:

PPF

- 68.1. Revising the proposed built-form strategy and built-form policy guideline at Clause 15.01-5L, to encourage new development to utilise external finishes and roofing materials that "minimise glare" (rather than have low reflectivity) and limit the reflectivity of external finishes above a tree canopy line through the use of natural materials and subdued tones (rather than prescriptive requirements in relation to roofing materials);
- 68.2. Revising the proposed strategy at Clause 16.01-1L, to refer to the need to ensure development in investigation areas "respects the valued character of surrounding

¹⁸ 2095 Frankston-Flinders Road, Hastings; 2097 Frankston-Flinders Road, Hastings; 2099 Frankston-Flinders Road, Hastings; Units 1, 2, 3 and 4 at 1 Phillip Court, Hastings.

residential areas and is responsive to the environmental conditions and constraints, if any, of the site”;

- 68.3. Minor changes to the fencing objective and fencing policy guidelines at Clause 15.01-5L to refer to fencing “design” rather than “choice”;

Zones and overlays

- 68.4. Retaining existing building height controls in applicable DDO Schedules in recognition that further strategic work needs to be undertaken (refer to discussion of ‘Residential Heights Review Project’ below);

- 68.5. Facilitating greater housing diversity and housing affordability in Substantial Change Areas by:

- a. deleting the proposed GRZ2 and retaining the GRZ1;
- b. deleting the proposed minimum building setback and private open space requirements in the GRZ1 and GRZ3, thereby removing all proposed variations to the requirements of Clause 54 and Clause 55 except for front fence height requirements (Standards A20 and B32), in recognition of the growth that is expected and encouraged in these areas;
- c. amending the proposed objectives and decision guidelines in the GRZ1 and GRZ3 to better reflect the character and intensity of anticipated residential development; and
- d. renaming the GRZ1 and GRZ3 to ‘Substantial Change Township Area’ and ‘Substantial Change Town Centre Area’ respectively;

- 68.6. Facilitating greater housing diversity and housing affordability in Incremental Change Areas around the Mornington and Hastings Major Activity Centres by:

- a. within the structure plan areas for the Mornington and Hastings Major Activity Centres, deleting the proposed minimum building setback and private open space requirements by applying the NRZ39, NRZ40 and NRZ41 rather than the NRZ2, NRZ6 and NRZ14 respectively;

- 68.7. Reinstating the DDO1, DDO19, DDO20 and DDO23 which were proposed to be deleted as part of the Amendment as exhibited, and amending the DDO1, DDO19, DDO20 and DDO23 to remove unnecessary permit triggers and to simplify complex provisions. The changes include:

- a. In respect of the DDO1:

- i. Renaming the Schedule 'Township Area';
 - ii. Reducing the design objectives to five (in accordance with the Ministerial Direction on the Form and Content of Planning Schemes), by deleting design objectives without a nexus to the requirements of the schedule, and consolidating the remaining design objectives where they share a similar theme;
 - iii. Deleting permit triggers related to setback from a PPRZ and PCRZ and wall height (5.5 metres) and retaining other permit triggers in simplified form;
 - iv. Retaining the mandatory 2 storey maximum building height requirement but deleting the 10 metre maximum building height requirement;
 - v. Retaining all exemptions to the mandatory maximum building height requirement, but amending the 'building alteration or extension' exemption to remove superfluous and overly subjective conditions; and
 - vi. Amending the decision guidelines to align with the amended design objectives and permit requirements;
- b. In respect of the DDO19 and DDO20:
- i. Deleting the term 'residential' from the Schedule names;
 - ii. Reducing the design objectives to five (in accordance with the Ministerial Direction on the Form and Content of Planning Schemes), by deleting design objectives without a nexus to the requirements of the schedule, and consolidating the remaining design objectives where they share a similar theme;
 - iii. Deleting permit triggers that address outdated issues, are unnecessary, overly complex, do not achieve the desired planning outcome, and/or have become redundant by way of the introduction of the reformed residential zones, and retaining other permit triggers that relate to matters beyond

the scope of a residential zone (building height,¹⁹ minimum street setback²⁰, difference between finished and natural ground levels and access to a roof area) in simplified form;

- iv. Retaining the mandatory 8 metre and 2 storey maximum building height requirement;
 - v. Retaining all exemptions to the mandatory maximum building height requirement, but amending the 'building alteration or extension' exemption to remove superfluous and overly subjective conditions;
 - vi. Retaining the mandatory requirement of one dwelling on a lot;
 - vii. Retaining the average subdivision area requirement;
 - viii. Allowing land transferred to Council as public open space to be exempted from the average subdivision area requirement;
 - ix. Rewording, amending and adding an additional exemption to the average subdivision area requirement;
 - x. Amending the decision guidelines to align with the amended design objectives and permit requirements; and
 - xi. Removing the transitional provision;
- c. In respect of the DDO23:
- i. Deleting the term 'residential' from the Schedule name and amending to 'Hendersons / Creswell Road Precinct, Bittern';
 - ii. Reducing the design objectives to five (in accordance with the Ministerial Direction on the Form and Content of Planning Schemes), by deleting design objectives without a nexus to the requirements of the schedule, and consolidating the remaining design objectives where they share a similar theme;

¹⁹ While the NRZ controls building height, it does not contain a building height permit trigger.

²⁰ While the NRZ Schedule can provide variations to the minimum street setback standard, this control is retained in the DDO and not moved to the associated NRZ Schedule because the control cannot be expressed in a format that is consistent with Clause 54 and Clause 55 - being 'whichever is greater' rather than 'whichever is lesser'.

- iii. Deleting permit triggers which address outdated issues, are unnecessary, overly complex, do not achieve the desired planning outcome, and/or have become redundant by way of the introduction of the reformed residential zones, and retaining other permit triggers which relate to matters beyond the scope of a residential zone (building height, minimum street setback, difference between finished and natural ground levels and access to a roof area) in simplified form;
 - iv. Retaining the mandatory 8 metre and 2 storey maximum building height requirement;
 - v. Retaining all exemptions to the mandatory maximum building height requirement, but amending the 'building alteration or extension' exemption to include a second condition regarding an increase to the footprint of the upper storey by 10%; and
 - vi. Retaining the mandatory requirement of one dwelling on a lot;
 - vii. Deleting all subdivision requirements (NB. The minimum subdivision area requirement of 900 sqm is proposed to be moved to the NRZ34); and
 - viii. Amending the decision guidelines to align with the amended design objectives and permit requirements.
- 68.8. In respect of those NRZ Schedules which include rear setback requirements, adding a decision guideline which requires consideration of whether the siting and setback of buildings from side and rear boundaries maintain the predominant backyard character of the area;
- 68.9. In respect of those NRZ Schedules which include side setback requirements (where asymmetric side setbacks are identified as a characteristic of the neighbourhood character precinct and recommended in the Neighbourhood Character Study), adding a decision guideline which requires consideration of whether a reduced side setback from one side boundary is appropriate having regard to the building rhythm within the streetscape;
- 68.10. Changes to the neighbourhood character objective in the NRZ12 to refer to predominantly 1-2 storey dwellings rather than single storey dwellings;

- 68.11. Deleting the permit requirement to demolish a house in the NCO1 and NCO2;
- 68.12. Retaining mandatory maximum building height requirements which currently apply via the DDO in the new and amended DDO Schedules;²¹
- 68.13. Revising design objectives and design guidelines in relation to views, the skyline and the tree canopy line in the DDO Schedules to provide clearer guidance;
- 68.14. Retaining the existing Ellerina Road Exemption in the DDO2, DDO3 and DDO4, which provides that the mandatory maximum building height requirement of eight metres and two storeys does not apply to “a building in the area located to the north of a boundary defined by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street”, provided that the building is two storeys or less above natural ground level;
- 68.15. Retaining the existing ‘building alteration or extension’ exemption to the mandatory maximum building height requirement where it currently applies, with amendments;
- 68.16. In respect of all zone and overlay schedules that include application requirements for a landscape plan:
 - a. including an additional requirement that, where land is in a bushfire prone area, landscaping should be of low threat bushfire risk; and
 - b. including an additional decision guideline in relation to whether the landscaping is low threat bushfire risk,to address CFA concerns;
- 68.17. In areas proposed to be rezoned to the NRZ, deleting the mandatory minimum lot size requirements and retaining average subdivision area requirements in DDO Schedules that currently contain an average subdivision area requirement;
- 68.18. In respect of the LDRZ Schedules:
 - a. Deleting ‘land set aside as common property’ as an exemption to the application of the control, on the basis that common property is not considered a separate lot when assessing subdivision applications; and

²¹ Council has commenced further strategic work to determine whether any changes are required to these permit requirements, and if changes are deemed necessary, Council will implement those changes via a separate planning scheme amendment process – refer to discussion of Residential Heights Review Project.

- b. Adding a new exemption in relation to re-subdivision of existing lots, provided the number of lots is not increased and no additional subdivision potential is created; and
- 68.19. In relation to 1501 Nepean Highway, Mount Eliza (former Eden Gardens), designate the site as Incremental Change Area rather than Minimal Change Area and apply the DDO1 rather than the DDO33.
69. The clerical errors generally relate to:
- 69.1. Correcting various mapping errors;
 - 69.2. Correcting the GRZ3 (maximum building height requirement) to ensure consistency with the DDO13;
 - 69.3. Correcting the side boundary setback requirement in the NRZ14 and DDO46 to 1m to ensure consistency with the Neighbourhood Character Study; and
 - 69.4. Correcting the DDO40 to DDO42 to include a fencing decision guideline which was inadvertently omitted.
70. The further post-exhibition changes in relation to the sea level rise mapping error at Hastings can be summarised as follows:
- 70.1. As a result of correcting sea level rise hazard mapping on the Western Port Bay side of the Peninsula:
 - a. the Housing Change Framework Map for Hastings is required to be amended to revise the Housing Change Area of 76 properties; and
 - b. the proposed zoning of 46 properties out of those 76 properties is also required to be amended to accord with the revised Housing Change Areas;
 - 70.2. On that basis:
 - a. 27 properties are proposed to be amended from Minimal Change Area²² to Substantial Change Area and revert from the NRZ39²³ to the GRZ1, being the current zone;²⁴

²² Exhibition and post-exhibition versions of the Amendment.

²³ NRZ2 in the exhibition version and NRZ39 in the post-exhibition version of the Amendment.

²⁴ Noting that Schedule 1 to the GRZ is proposed to be amended pursuant to the Amendment.

- b. 19 properties are required to be amended from Incremental Change Area²⁵ to Substantial Change Area and revert from the NRZ39²⁶ to the GRZ1, being the current zone; and
- c. 30 properties are required to be amended from Minimal Change Area²⁷ to Incremental Change Area but without a consequential zoning change.²⁸

71. Council's submissions are made on the basis of the Version 2 Amendment Documents.

E. Amendment to Building Regulations

72. Part 5 of the Building Regulations applies to the construction of a building which does not require a planning permit. Certain regulations within Part 5 require compliance with the associated control in a zone specified in Schedule 6. For example, regulation 74 (minimum street setbacks) requires a building to be set back from a street alignment not less than the setback in the zone specified in Schedule 6.

73. At Schedule 6, the only zone specified for the Mornington Peninsula Planning Scheme is the GRZ. Conversely, other planning schemes specify the GRZ and NRZ, among other residential zones. Council is aware that Schedule 6 to the *Building Regulations 2018 (Vic)* needs to be amended to include reference to the NRZ, irrespective of this Amendment, noting that there is a small section of land in Creswell Street, Crib Point which is currently zoned NRZ. Council has raised this issue with DELWP and requested that it be resolved as soon as possible.

F. STRATEGIC CONTEXT AND ASSESSMENT

74. Unless specified otherwise, all references to the Amendment in the following sections of this submission are to the Amendment with Council's proposed post-exhibition changes.

Housing, settlement and neighbourhood character on the Mornington Peninsula

75. The Mornington Peninsula is located between Port Phillip Bay (to the east) and Western Port Bay (to the west), approximately 50 kilometres south-east of central Melbourne. It has a total area of more than 720 square kilometres, with productive rural areas, scenic landscapes of state significance and townships of various scales, generally concentrated on the extensive coastline.²⁹

76. The Mornington Peninsula Planning Scheme is a 'metropolitan fringe planning scheme' within the meaning of section 46AA of the Act. The Urban Growth Boundary separates the Mornington

²⁵ Exhibition and post-exhibition versions of the Amendment.

²⁶ NRZ2 in the exhibition version and NRZ39 in the post-exhibition version of the Amendment.

²⁷ Exhibition and post-exhibition versions of the Amendment.

²⁸ NRZ2 and NRZ6 in the exhibition version and NRZ39, NRZ40 and NRZ6 in the post-exhibition version of the Amendment, which remains unchanged.

²⁹ Clause 02.01 Context.

Peninsula's urban areas from the Mornington Peninsula Green Wedge,³⁰ being one of 12 designated green wedge areas across metropolitan Melbourne.³¹ The green wedge provisions protect the Mornington Peninsula's areas of environmental, landscape and scenic value from inappropriate metropolitan development.³²

77. The Mornington Peninsula has a distinctive settlement pattern comprising 40 localities within a hierarchy ranging from larger centres (including three Major Activity Centres) to smaller townships and coastal villages. Approximately 70% of land within the Mornington Peninsula is green wedge land, and 30% is urban residential land.³³ Council's strategic directions at Clause 02.03-1 Settlement include the protection of green wedge land and the maintenance of the Urban Growth Boundary, and the consolidation of new residential development into existing settlements. As acknowledged at Clause 02.01 of the MPS:

The settlement pattern, rich history of buildings, places and sites of heritage significance, and the relationship between the townships, coast and rural landscape contribute to the Peninsula's distinctive "sense of place".³⁴

78. It is noted at Clause 02.01 of the MPS that the Mornington Peninsula has a permanent population of approximately 160,000 people (ABS 2016 Census).³⁵ The significant number of holiday homes on the Mornington Peninsula contributes to a substantial increase in population during the summer peak period.³⁶ Updated population data (ABS 2021 Census) is now available and will be addressed in expert evidence on behalf of Council.

79. Council's vision at Clause 02.02 of the MPS, underpinned by the Localised Planning Statement, is to:

- *Value, protect and improve the Peninsula's unique characteristics and its special role that is distinct from and complementary to metropolitan Melbourne.*
- *Protect the role of the Peninsula as one of Melbourne's greatest assets, characterised by contained townships, a substantial and diverse local economy, and areas of national and international significance.*
- *Protect the Peninsula's landscapes, coastlines, seascapes and rural area, including the scenic values of the green wedge.*
- *Protect and enhance the experience and enjoyment of the natural and cultural values of the Peninsula.*

³⁰ Referred to as 'green wedge land' at *Planning and Environment Act 1987* (Vic), s 46AC.

³¹ <https://www.planning.vic.gov.au/policy-and-strategy/green-wedges>

³² Clause 02.01 Context.

³³ Clause 02.01 Context.

³⁴ Clause 02.01 Context.

³⁵ Clause 02.01 Context.

³⁶ Clause 02.01 Context.

- *Retain the Peninsula's agricultural role with a focus on sustainable agriculture.*
- *Protect the important values and resources of Western Port, having regard to existing settlements and the importance of recreation, nature conservation and tourism.*

80. The Amendment has been prepared having regard to Council's vision, in particular the need to protect the Mornington Peninsula's "contained townships", landscapes, coastlines, seascapes, rural areas and scenic values, all of which contribute to the natural and cultural values of the Peninsula. This is to be achieved by directing residential growth to appropriate locations (primarily the Major Activity Centres of Mornington, Rosebud and Hastings)³⁷ and applying controls which have the effect of protecting and enhancing the valued characteristics of the Mornington Peninsula's residential areas.

81. It is recognised at Clause 02.03-5 of the MPS that the Mornington Peninsula's sense of place is "reinforced by the distinctive built-form character of its residential areas", arising from matters such as the balance between natural features and built form and well-established subdivision and development patterns which enable the retention of bushland, woodland and coastal settings via larger lot sizes with minimal site coverage (discussed as part of the strategic assessment below).

Strategic work underpinning the Amendment

82. In accordance with the Panel's directions, the Updated Desktop Review, which includes consideration of proposed post-exhibition changes, is enclosed at [Attachment 12](#).

83. The Updated Desktop Review provides a detailed description of the purpose of the Amendment and the strategic work underpinning the Amendment, namely the Housing and Settlement Strategy: Refresh, the Neighbourhood Character Study, the Dromana Residential Areas Investigation Report and the 'DDO Review' undertaken by Council as part of its preparation of the Amendment.

84. In particular, the Updated Desktop Review:

84.1. Explains the scope, vision and key directions of the Housing and Settlement Strategy: Refresh, including that Council prepares a planning scheme amendment to implement the findings of the Housing and Settlement Strategy: Refresh, including the Residential Change Framework Plan, into the Planning Scheme;

84.2. Explains why the Housing and Settlement Strategy: Refresh is required, having regard State planning policy and the guidance in PPN90;

³⁷ Consistent with Clause 02.03-1 Settlement.

- 84.3. Explains the methodology which Council adopted when preparing the Residential Change Framework Plan (otherwise referred to as the 'Residential Development Framework') and designating minimal, incremental and substantial change areas, including the housing capacity analysis undertaken by Council to determine whether the Mornington Peninsula is expected to accommodate the VIF2019 population and household projections. In particular, Figures 1 and 2 explain how housing change areas in residential areas and activity centres are determined;
- 84.4. Identifies the activity centre structure plans which were considered when preparing the Residential Change Framework Plan. Table 1 confirms how each structure plan, except for the *Balnarring Township Structure Plan* (Plan2Place, 2019) has been implemented in the Planning Scheme including the introduction of height controls;
- 84.5. Explains how the residential zones are proposed to be applied to minimal, incremental and substantial housing change areas, including an explanation of why it is not appropriate to apply the GRZ to incremental change areas on the Mornington Peninsula;
- 84.6. Explains how the Amendment affects 'strategic investigation areas' (**Investigation Areas**) as shown on the Residential Change Framework Plan;
- 84.7. Details the strategic justification for the changes proposed by way of the Amendment;
- 84.8. Details the review of existing DDO Schedules undertaken by Council as part of its preparation of the Amendment and the outcomes of that review, including proposed amendments to existing DDO Schedules. In particular, Table 24 summarises the key changes to existing DDO Schedules and mapping and Table 25 sets out the rationale for the proposed removal of specific permit triggers, requirements and other provisions;
- 84.9. Notes that the Amendment proposes to rezone isolated areas to correct zoning anomalies as shown at Table 26, in addition to explaining Council's position on other matters such as asymmetric side setbacks, permit triggers for demolition under the NCO, walls on boundaries under the NCO, landscape plan application requirements and transitional provisions;
- 84.10. Identifies, and explains the strategic justification for, new mandatory provisions (Table 27) and more restrictive provisions (Table 28) proposed by way of the Amendment.
85. Council relies upon the Updated Desktop Review for the purpose of its submissions to the Panel.

How elements of the Housing and Settlement Strategy: Refresh have been directly translated into planning scheme provisions

86. The Housing and Settlement Strategy: Refresh provides the strategic basis for designating minimal, incremental and substantial housing change areas on the Mornington Peninsula. The criteria set out at Section 4 ('Where should housing growth be located?') are applied to determine the housing change areas described at section 5.2 ('Housing change areas: minimal, incremental and substantial'). Those housing change areas are then reflected in the Residential Change Framework Plan – Housing Change Framework Maps at Appendix B.
87. The Residential Change Framework Plan – Housing Change Framework Plan Maps at Appendix B to the Housing and Settlement Strategy: Refresh are proposed to be included in the new Clause 16.01-1L, together with associated strategies and policy guidelines which are derived from the Housing and Settlement Strategy: Refresh. As noted above, the Housing Change Framework Plan Map for Hastings is proposed to be amended to correct an isolated mapping error, and those proposed post-exhibition changes are reflected in the Version 2 Amendment Documents.
88. The proposed zoning changes relating to residential areas are informed by the designation of the housing changes areas. In general, substantial change areas are proposed to be zoned GRZ, incremental change areas are proposed to be zoned NRZ, and minimal change areas are proposed to be zoned either NRZ or LDRZ.
89. A detailed description of how elements of the Housing and Settlement Strategy: Refresh have been directly translated into the proposed planning scheme provisions is included in the Updated Desktop Review.

How elements of the Neighbourhood Character Study have been directly translated into planning scheme provisions

90. The Neighbourhood Character Study identifies six key character areas (**Neighbourhood Character Types**): Garden Residential; Garden Court; Bush Residential; Bush Coastal; Bush Coastal Contemporary; Rural Settlement (see section 4.1).
91. Minor differences in each Neighbourhood Character Type are identified as character precincts (**Neighbourhood Character Precincts**):
 - 91.1. Garden Residential 1 – 4;
 - 91.2. Garden Court 1 – 3;
 - 91.3. Bush Residential 1 – 3;
 - 91.4. Bush Coastal 1 – 2;

- 91.5. Bush Coastal Contemporary 1 – 3; and
- 91.6. Rural Settlement 1 – 2.
92. The Neighbourhood Character Study specifies a 'preferred character statement', key characteristics and a set of 'design guidelines' (comprising character elements, objectives and design responses) for each of the above character precinct, which provide the basis for the planning controls that are required to protect the key characteristics.
93. By way of implementation of the above work, the Amendment proposes to:
- 93.1. Insert a new local policy at Clause 15.01-5L Neighbourhood character – Mornington Peninsula;
- 93.2. Amend Schedules 1 and 3 to the GRZ, and insert a new Schedule 4 to the GRZ, to include neighbourhood character objectives, variations to Clause 54 and Clause 55 requirements (front fence height only in the GRZ1 and GRZ3), application requirements for a landscape plan and decision guidelines which are consistent with the relevant preferred character statements in the Neighbourhood Character Study;
- 93.3. Introduce new NRZ schedules to incorporate neighbourhood character objectives, variations to Clause 54 and Clause 55 requirements, application requirements and decision guidelines which are consistent with the relevant preferred character statements in the Neighbourhood Character Study;
- 93.4. Introduce new DDO schedules that will replace any existing DDO schedule for land in the LDRZ to incorporate design objectives, built form requirements, application requirements and decision guidelines which are consistent with the relevant preferred character statements in the Neighbourhood Character Study; and
- 93.5. Apply the NCO and incorporate within Schedules 1 and 2 statements of neighbourhood character, neighbourhood character objectives, permit requirements, variations to Clause 54 and Clause 55 requirements and decision guidelines which are consistent with the recommendations of the Neighbourhood Character Study.
94. A detailed description of how elements of the Neighbourhood Character Study have been directly translated into the proposed planning scheme provisions is included in the Updated Desktop Review and will be addressed in the expert evidence of Nikki Hill.

Strategic work underpinning new mandatory provisions and more restrictive provisions

95. The Amendment proposes some new mandatory provisions and more restrictive controls.
96. In summary, the new mandatory provisions comprise:

- 96.1. A new minimum subdivision area requirement of 650 square metres which is proposed to be applied to the 'Dromana Hillside Area' via the new NRZ36. The new minimum subdivision area requirement is consistent with the recommendations of the Dromana Residential Investigation Areas Report;
- 96.2. A new density limit of no more than one dwelling per lot which is proposed to be applied via the amended DDO6 to an isolated pocket of GRZ land in Rye and Tootgarook that is to be rezoned to the NRZ18. The new density limit is required in order to correct an anomaly. The area is surrounded by land that is currently burdened by density limits contained in the existing DDO2 and DDO4 (no more than one dwelling per lot), the LDRZ (no more than two dwellings per lot) and the GWZ (no more than 1 dwelling per lot). The area is currently affected by the DDO6, which contains a density limit of no more than one dwelling per lot for land outside the Urban Growth Boundary only, and therefore does not control density in respect of this particular pocket of GRZ land. Furthermore, the current subdivision pattern of the area reflects the subdivision pattern of the LDRZ land to its west more than the GRZ land to its north. Therefore, there is a gap in relation to density controls which is required to be addressed by amending the density limit in the DDO6 to apply to land inside the Urban Growth Boundary; and
- 96.3. A new density limit of no more than one dwelling per lot which is proposed to be applied to 233 Hodgins Road, Hastings via the amended DDO7. Land to the north, west and south of 233 Hodgins Road is currently burdened by restrictive density limits contained in the LDRZ (no more than two dwellings per lot) and the GWZ (no more than one dwelling per lot). Land to the east of 233 Hodgins Road is generally not burdened by a density limit, however it would be inconsistent with the existing character and subdivision pattern for 233 Hodgins Road to have a density similar to land to the east of Hendersons Road rather than the adjoining LDRZ land.
97. The new, more restrictive provisions generally comprise reduced mandatory maximum building height requirements, tighter mandatory subdivision area requirements and removal of exemptions to subdivision area requirements in specific areas.
98. The strategic justification for reduced mandatory maximum building height requirements lies in the designation of minimal, incremental and substantial housing change areas pursuant to the Residential Change Framework Plan – Housing Change Framework Maps, as contained in the Housing and Settlement Strategy: Refresh. For example, applying the principles set out in the Housing and Settlement Strategy: Refresh,³⁸ areas designated for minimal or incremental change are required to be rezoned from the GRZ to the NRZ, which includes a mandatory

³⁸ See section 5.2 Housing change areas: minimal, incremental and substantial

maximum building height requirement of nine metres and two storeys. The degree of reduction in maximum building height varies according to whether any DDO currently applies to the land.

99. The strategic justification for tighter subdivision area requirements generally relates to simplifying existing, complex controls contained in the DDO4, DDO19 and DDO20.
100. The removal of certain exemptions to subdivision area requirements (e.g. subdivision in accordance with a Restructure Overlay or a Development Plan Overlay) is a result of translating the relevant subdivision area requirements from a current DDO schedule to a new NRZ or LDRZ schedule. There is no scope for the relevant exemptions to be included in a zone schedule (see also the discussion of average and minimum subdivision areas below).
101. A detailed description of the strategic justification for the above provisions is set out at section 6 (in particular, Tables 27 and 28) of the Updated Desktop Review.

Strategic justification for minimum subdivision areas

102. By way of post-exhibition changes, Council proposes to retain current average subdivision area requirements in amended DDO2, DDO3, DDO6, DDO7, DDO11, DDO17, DDO19, DDO20 and DDO24, which are proposed to apply to areas zoned NRZ. Average subdivision area requirements are also proposed to be included in the DDO32, which is a new schedule derived from the DDO2 and proposed to apply to areas zoned NRZ.
103. Minimum subdivision area requirements are proposed to be included in LDRZ1 to LDRZ11, derived from existing planning controls which apply to the relevant areas, as depicted in the following table:

ZONE	Minimum subdivision area (ha)	Applies to areas currently affected by
LDRZ1	0.2	DDO1, or DDO22 and not located in the 'Bungower Road' or 'Baldock Road' sub-precinct of the DDO22
LDRZ2	0.25	DDO4
LDRZ3	0.3	DDO22 and located in the 'Bungower Road' sub-precinct of the overlay
LDRZ4	0.4	DDO3
LDRZ5	0.5	DDO5
LDRZ6	0.6	DDO22 and located in the 'Baldock Road' sub-precinct of the overlay
LDRZ7	1	DDO6, or the DPO7 except the Kinfauns Estate in Bittern
LDRZ8	2	DDO7 and not located in the Mornington or Bittern sub-precinct of the overlay
LDRZ9	4	DDO7 and located in the Mornington sub-precinct of the overlay
LDRZ10	8	DDO7 and located in the Bittern sub-precinct of the overlay
LDRZ11	1	DPO7 and located in the Kinfauns Estate in Bittern

104. Of the current controls specified in the above table, the DDO6, DDO7 and DPO7 contain average subdivision area requirements. When translating subdivision area requirements from

DDO Schedules and the DPO7 to LDRZ Schedules, it is necessary to convert average subdivision areas to minimum subdivision areas because there is no ability to specify average subdivision areas in the Schedules to the LDRZ. The LDRZ at Clause 32.03-3 states:

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone.

Any area specified must be at least:

- *0.4 hectare for each lot where reticulated sewerage is not connected. If no area is specified each lot must be at least 0.4 hectare.*
- *0.2 hectare for each lot with connected reticulated sewerage. If no area is specified each lot must be at least 0.2 hectare.*

(emphasis added)

105. Accordingly, the subdivision area requirements sourced from the DDO6, DDO7 and DPO7 are converted from averages to minimums in the respective LDRZ Schedules.

Strategic justification for post-exhibition proposed changes to the DDO1

106. As outlined above, the key proposed changes to the DDO1 are:

- 106.1. Reducing the design objectives to five, by deleting the design objectives without a nexus to the requirements of the DDO1, and consolidating the remaining design objectives where they share a similar theme;
- 106.2. Removing permit triggers for buildings and works related to setback from the PPRZ or PCRZ, and wall height, but retaining permit triggers for buildings and works related to building height, setback from the Nepean Highway, and the difference between finished ground level and natural ground level;
- 106.3. Simplifying the drafting of permit triggers and mandatory requirements;
- 106.4. Deleting the mandatory maximum building height requirement of 10 metres, but retaining two storeys;
- 106.5. Retaining all exemptions to the mandatory maximum building height requirement, but amending the 'building alteration or extension' exemption to remove superfluous and overly subjective conditions (e.g. removing 'the external bulk of the existing building is not overly exceeded'); and
- 106.6. Amending the decision guidelines.

107. The proposed changes to the DDO1 are required in order to:
- 107.1. Comply with the Ministerial Direction on the Form and Content of Planning Schemes;
 - 107.2. Remove permit triggers that are unnecessary or add little value to the overall planning outcome;
 - 107.3. Retain permit triggers which are beyond the scope of residential zone schedules (i.e. building height, setbacks³⁹ and difference between finished ground level and natural ground level);
 - 107.4. Enable Council to assess whether a proposed development would meet the design objective that seeks to “ensure the form, siting, materials and tones of buildings avoid being visually obtrusive against a skyline or existing tree canopy line, when viewed from surrounding streets and properties, and provide reasonable sharing of views to the coastline” by retaining the permit trigger in relation to building height (6 metres). As explained in the Updated Desktop Review,⁴⁰ tree canopy lines and views to the coastline are important matters and valued characteristics on the Mornington Peninsula, given its unique topography, extensive coastline and significant vegetation. The concept of a ‘reasonable sharing of views’ is not a new concept that is sought to be introduced by way of the Amendment. It is a consolidated, amended expression of the current design objectives “To protect shared viewlines where reasonable and practical” and “To ensure that buildings do not encroach visually on foreshore areas or main roads”, and is a recognised planning concept which has been the subject of various decisions of the Victorian Civil and Administrative Tribunal (**VCAT**);⁴¹
 - 107.5. Align with the reduced maximum building height requirement in the NRZ (nine metres and two storeys), by deleting the mandatory maximum building height requirement of 10 metres;
 - 107.6. Remove superfluous and overly subjective content (e.g. ‘the external bulk of the existing building is not overly exceeded’) from the ‘building alteration or extension’ exemption to the mandatory maximum building height requirement; and
 - 107.7. Ensure the decision guidelines align with the amended design objectives and requirements.

³⁹ While residential zone schedules can address building height and setbacks, residential zone schedules cannot provide for a building height permit trigger nor a setback from a specific road, hence the retention in the DDO1.

⁴⁰ Pages 49-50.

⁴¹ See, for example, the principles set out in [Healy v Surf Coast SC \[2005\] VCAT 990](#) and adopted in [Nicholls v Queenscliff BC \[2019\] VCAT 428](#). In relation to the Mornington Peninsula, see [Damiani v Mornington Peninsula SC \[2009\] VCAT 2507 \(26 November 2009\)](#) and [Van Hoof v Mornington Peninsula SC & Anor \[2009\] VCAT 2065 \(6 October 2009\)](#).

Activity Centre Structure Plans and other relevant background documents

108. The following activity centre structure plans informed the Residential Development Framework in the Housing and Settlement Strategy: Refresh:

- 108.1. Balnarring Township Structure Plan (Plan2Place, 2019)
- 108.2. Baxter Township Structure Plan (Plan2Place, 2019);
- 108.3. Dromana Township Project Report (Hansen Partnership, 2021);
- 108.4. Hastings Town Centre Structure Plan (Planisphere, 2017);
- 108.5. Mornington Activity Centre Structure Plan (Ratio Consultants, 2007)
- 108.6. Rosebud Activity Centre Structure Plan (Hansen Partnership, 2017);
- 108.7. Rye Township Plan (REALMstudios, 2020); and
- 108.8. Somerville Township Structure Plan (Plan2Place, 2019).

109. As set out at Figures 1 and 2 of the Updated Desktop Review:

109.1. For the purpose of the Residential Development Framework, 'activity centre' is defined as:

- a. the area affected by an existing DDO that implements one of the above structure plans; or
- b. if no such DDO applies, the area zoned C1Z;⁴²

109.2. In relation to 'activity centres':

- a. if land is within one of the Major Activity Centres of Mornington, Rosebud or Hastings; or
- b. if land is identified in one of the above structure plans as suitable for three storeys or more,

it is designated for substantial change;

109.3. In relation to residential areas outside 'activity centres':

- a. if land is not subject to an identified constraint; and
- b. it is identified in one of the above structure plans as suitable for three storeys or more,

⁴² Updated Desktop Review, Figure 2.

it is designated for substantial change.

110. Except for the Balnarring Township Structure Plan, all of the above structure plans have been implemented in the Planning Scheme via the DDO and included as background documents at Clause 72.08. The Mornington, Hastings and Rosebud structure plans are also referenced at Clause 11.03-1L of the PPF as policy documents. The following table sets out the associated planning scheme amendments, DDO Schedules and maximum building heights:⁴³

Table 1: Building height controls under an implemented strategic plan

	Amendment (gazettal date)	DDO Schedule	Maximum Building Height
Baxter	C269morn (30 June 2022)	DDO31	9 m / 2 storeys (discretionary)
Dromana	C224morn (18 March 2022)	DDO29	11 m / 3 storeys (mandatory)
Hastings	C190morn (19 December 2019)	DDO27	11 m / 3 storeys (discretionary)
Mornington	C095morn (24 September 2009)	DDO13	Area 1: 11 m / 3 storeys (mandatory) Area 2: 11 m / 3 storeys (mandatory) Area 3: 14 m / 4 storeys (mandatory) Area 4: 11 m / 3 storeys (mandatory)
Rosebud	C206morn (22 November 2019)	DDO26	Area 1: 14 m / 4 storeys (discretionary) Area 2: 11 m / 3 storeys (discretionary)
Rye	C275morn (7 July 2022)	DDO58	Precinct 1: 11.5 m / 3 storeys (mandatory) Precinct 2: 9 m / 2 storeys (mandatory) Precinct 3: 11.5 m / 3 storeys (discretionary)
Somerville	C269morn (30 June 2022)	DDO30	11 metres / 3 storeys (discretionary)

111. As noted in the Updated Desktop Review, although the Balnarring Township Plan has not been implemented in the Planning Scheme, the plan has been adopted by Council and supports a discretionary maximum building height of 9 metres and 2 storeys.
112. In addition, as detailed in the Updated Desktop Review (section 3.5), the Rosebud activity centre structure plan area contains land zoned C1Z, MUZ, PUZ and GRZ1, and the Hastings activity centre structure plan area contains land zoned C1Z, MUZ, PUZ and GRZ1. Council sought to implement the recommended controls in the Rosebud structure plan by applying the DDO26, and the recommended controls in the Hastings structure plan by applying the DDO27. The associated planning scheme amendments (Amendment C206morn and Amendment C190morn respectively) were awaiting Ministerial approval at the time of the finalisation and adoption of the Neighbourhood Character Study. Accordingly, Council determined to remove the GRZ1 areas that were affected by Amendments C206morn and C190morn from the final version of the Neighbourhood Character Study, to avoid any conflict in controls. After the Neighbourhood Character Study was adopted by Council in October 2019, Amendments C206morn and C190morn were approved with changes, including the removal of GRZ1 areas

⁴³ Extract from the Updated Desktop Review.

from the application of the DDO26 and DDO27 ('omitted GRZ1 areas'). In order to prepare a complete Residential Development Framework encompassing all residential zoned land, Council relied on the character areas and controls recommended for the omitted GRZ1 areas in the previous 'public consultation' version of the Neighbourhood Character Study, as well as the maximum building heights recommended for the omitted GRZ1 areas in the Rosebud and Hastings structure plans (consistent with the approach outlined above).

Assessment of the strategic basis for the Amendment

113. An assessment of the strategic basis for the Amendment, in response to the strategic considerations set out in *Ministerial Direction No. 11 Strategic Assessment of Amendments* and *Planning Practice Note 46: Strategic Assessment Guidelines (PPN46)* is set out below and should be read in conjunction with the strategic assessment contained in the Explanatory Report (with post-exhibition changes).

Why is the Amendment required?

114. The Amendment is required for three overarching reasons:
- 114.1. Firstly, the Amendment is required in order to direct future residential growth towards appropriate areas in a sustainable manner;
 - 114.2. Secondly, the Amendment is required in order to protect and enhance the valued character of the Mornington Peninsula's residential areas by ensuring that future residential development respects neighbourhood character; and
 - 114.3. Thirdly, the Amendment is required in order to streamline the permit application process in relation to the construction or extension of a single dwelling on a lot.
115. The Amendment is the product of Council having undertaken strategic planning to ensure the Mornington Peninsula is capable of accommodating projected population growth and housing change over at least a 15 year period having regard to relevant environmental, social and economic factors, and where conflict arose, having balanced competing objectives in favour of net community benefit and sustainable development in accordance with PPN90.⁴⁴
116. At Clause 11.02-1S Supply of urban land, planning policy seeks:
- "To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses",*

and includes as strategies:

⁴⁴ PPN90, page 1.

“Ensure that sufficient land is available to meet forecast demand.

Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.

Planning for urban growth should consider:

- *Opportunities for the consolidation, redevelopment and intensification of existing urban areas.*
- *Neighbourhood character and landscape considerations.*
- *The limits of land capability and natural hazards and environmental quality.*
- *Service limitations and the costs of providing infrastructure.”*

117. At Clause 15.01-5S Neighbourhood character, planning policy seeks to “recognise, support and protect neighbourhood character” by:

117.1. supporting development that respects existing neighbourhood character or contributes to preferred neighbourhood character;

117.2. ensuring the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing; and

117.3. ensuring development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment by respecting the pattern of local urban structure and subdivision, underlying natural landscape character and significant vegetation, and neighbourhood character values and built form that reflect community identity.

118. At Clause 16.01-1S Housing supply, planning policy seeks to facilitate well-located, integrated and diverse housing that meets community needs including by encouraging higher density housing development on sites that are well located in relation to jobs, services and public transport.

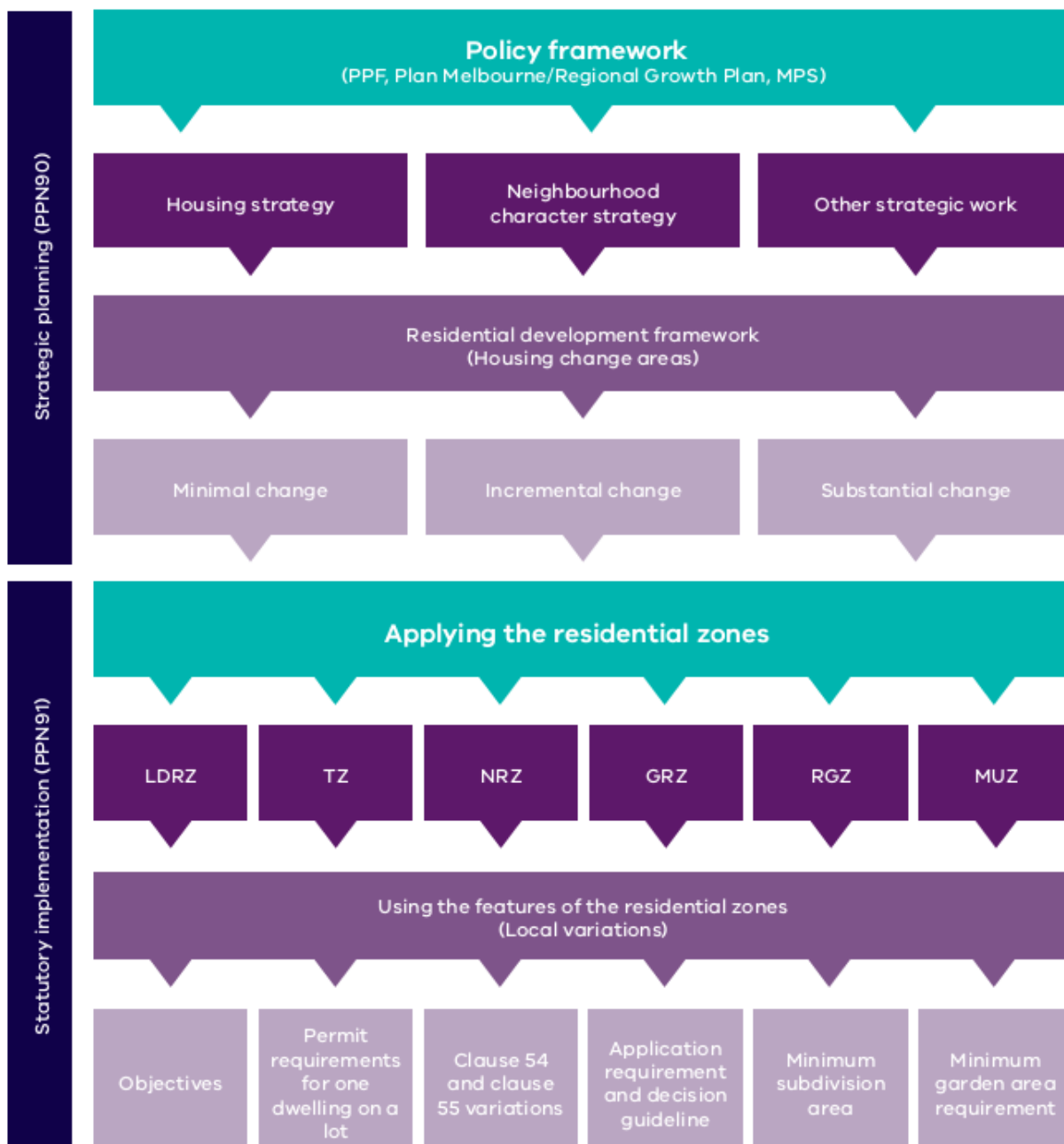
119. At Clause 16.01-2S Housing affordability, planning policy seeks to deliver more affordable housing by ensuring land supply continues to meet demand, increasing choice in housing type, tenure and cost, promoting good housing and urban design, and encouraging a significant proportion of new development to be affordable for householders on very low to moderate incomes.

120. PPN90 refers to the above planning policies and encourages planning authorities to undertake strategic planning – “typically expressed in the form of a housing strategy which may also be accompanied by a neighbourhood character strategy” – in order to achieve policy objectives and strategies in relation to housing and settlement.⁴⁵ As noted in PPN90, a housing strategy identifies the extent and nature of future housing, while a neighbourhood character strategy assists in identifying valued characteristics of areas that need to be considered when identifying the preferred future character for residential areas.⁴⁶
121. In order to balance housing growth and the protection of neighbourhood character, PPN90 and PPN91 recommend the following approach to strategic planning and statutory implementation:⁴⁷

⁴⁵ PPN90, page 7.

⁴⁶ PPN90, page 7.

⁴⁷ PPN90, Figure 3, page 6; PPN91, Figure 1, page 4.



122. Consistent with the above approach, the Housing and Settlement Strategy: Refresh outlines how future housing and population growth will be accommodated within the Mornington Peninsula over a period of 16 years, while ensuring the special values and character of the Mornington Peninsula are protected for current and future Victorians. The Housing and Settlement Strategy: Refresh directs future housing and population growth towards appropriate areas in a sustainable manner via the Residential Change Framework Plan. The Residential Change Framework Plan comprises a series of Housing Change Framework Maps that identify ‘minimal change’, ‘incremental change’ and ‘substantial change’ housing areas in the Mornington Peninsula’s urban areas. The Residential Change Framework Plan is a scaled approach to residential development that ensures the extent of housing change is

commensurate with housing capacity, limitations and constraints (if any) and the service capability of the area. The general approach is as follows:

- 122.1. Land that is subject to a limitation or constraint is designated for minimal change;
 - 122.2. Land that is suitable for a building height of three stories or more, based on an adopted strategic document, is designated for substantial change; and
 - 122.3. Land that is neither subject to a limitation or constraint, nor suitable for a building height of three or more stories, is designated for incremental change.
123. The Amendment is required in order to implement the Housing and Settlement Strategy: Refresh by:
- 123.1. Introducing additional content into the MPS at Clause 02.03-6 to provide context for the Mornington Peninsula's strategic directions for housing;
 - 123.2. Introducing a new local policy at Clause 16.01-1L Housing Supply – Mornington Peninsula which incorporates the Residential Change Framework Plan – Housing Change Framework Maps;
 - 123.3. Where GRZ land is designated for substantial change, retaining that land in the GRZ;
 - 123.4. Where GRZ land is designated for incremental or minimal change, rezoning that land to the NRZ; and
 - 123.5. Where LDRZ land is designated for minimal change, retaining that land in the LDRZ.
124. The Neighbourhood Character Study was commissioned by Council in order to enable proper consideration of neighbourhood character and landscape considerations while planning for urban growth and future residential development. The Neighbourhood Character Study recommends neighbourhood character objectives, landscaping requirements and siting requirements such as site coverage, permeability, side setbacks and front fence heights that reflect the character of a residential area / precinct. The Neighbourhood Character Study identifies the lack of private open space and backyards as an issue that is particularly evident in areas where multi-unit subdivision and development is prevalent. The Amendment proposes to address that concern by requiring increased private open space and rear setbacks for specific areas that are designated for incremental change. The Neighbourhood Character Study also identifies two special character areas that warrant stronger protection – the Ranelagh Estate in Mount Eliza, and The Avenues in Rosebud and parts of Tootgarook and Rye.
125. The Amendment (with post-exhibition changes) is required in order to implement the Neighbourhood Character Study by:

- 125.1. Introducing a new local policy at Clause 15.01-5L Neighbourhood character – Mornington Peninsula that addresses matters pertaining to built form, garden setting and fencing that are beyond the scope of what a schedule to a residential zone or overlay can provide;
- 125.2. Introducing tailored neighbourhood character objectives (NRZ and GRZ Schedules), design objectives (DDO Schedules), neighbourhood character statements and objectives (NCO Schedules), landscaping, siting and design requirements, landscape plan application requirements and decision guidelines into the Planning Scheme by:
 - a. For substantial change areas: amending GRZ1 and GRZ3 and introducing GRZ4;
 - b. For incremental change areas and minimal change areas that are not in the LDRZ: introducing NRZ2 to NRZ41;
 - c. For minimal change areas in the LDRZ: introducing DDO34 to DDO52;
 - d. For special character areas: introducing the NCO1 and NCO2;
 - e. Where vegetation is a significant contributory element to the neighbourhood character of a residential area: applying the VPO1; and
 - f. Where residential areas are currently subject to tailored landscaping and siting requirements underpinned by a detailed strategic study (such as the Woodland Area in Mount Eliza and the Beleura Hill Precinct in Mornington): retaining those tailored landscaping and siting requirements.
126. In addition, the Planning Scheme is currently one of the most complex planning schemes in terms of constructing or extending a single dwelling on a lot due to numerous permit requirements in the DDO Schedules, which apply to extensive residential areas. Council has identified that many of those permit requirements are unnecessary or redundant. The Amendment is required in order to reduce the time and cost of constructing or extending a single dwelling on a lot by:
 - 126.1. Removing unnecessary permit triggers;
 - 126.2. Introducing permit exemptions for the construction or extension of a single dwelling on a lot if all requirements are met;
 - 126.3. Simplifying complex provisions in residential zones and overlays, such as integrated subdivision and dimension requirements for subdivision;

- 126.4. Removing redundant and superfluous content, such as permit exemptions for solar panels, swimming pools and a dependent person's unit⁴⁸; and
- 126.5. Minimising the use of multiple precincts in a Schedule to the DDO.
127. Overall, the Amendment guides the location and form of housing and settlement patterns in the Mornington Peninsula to meet the needs of Victoria's growing population, as sought by the PPF and PPN90.⁴⁹ It provides clear guidance and direction on where and how future residential development should occur, and enables the protection and enhancement of existing neighbourhood character in the Mornington Peninsula's residential areas. The amendment achieves those outcomes by introducing new local policy content in the MPS and PPF, introducing new and amended zone and overlay schedules which are tailored to meet specific housing change and neighbourhood character areas, and simplifying permit application requirements within existing zone and overlay schedules.

How does the Amendment implement the objectives of planning in Victoria?

128. The Amendment provides for the fair, orderly, economic and sustainable use and development of land⁵⁰ by:
- 128.1. Providing clear and consistent direction for residential growth and housing change across the Mornington Peninsula's townships and villages via the Residential Change Framework Plan and associated housing supply policy at Clause 16.01-1L; and
- 128.2. Ensuring that the extent of housing change is commensurate with the housing capacity, limitations and service capability of an area.
129. The Amendment balances the present and future interests of all Victorians who live in, or visit, the Mornington Peninsula⁵¹ by:
- 129.1. Protecting and enhancing the valued characteristics of the Mornington Peninsula's residential areas through the introduction of new local policy at Clause 15.01-5L Neighbourhood character and the introduction of planning controls which apply various tailored neighbourhood character objectives, design objectives, neighbourhood character statements and objectives, landscaping, siting and design requirements, landscape plan application requirements and decision guidelines, based on the findings of the Neighbourhood Character Study; and

⁴⁸ Clause 62.02-2 provides planning permit exemptions for a solar energy system, dependent person's unit and swimming pool.

⁴⁹ PPN90 page 4.

⁵⁰ The Act, s 4(c).

⁵¹ The Act, s 4(g).

- 129.2. Ensuring that there is sufficient housing capacity to accommodate projected population growth over a period of 16 years, as documented in the Housing and Settlement Strategy: Refresh.

How does the Amendment address environmental, social and economic effects?

130. The Amendment addresses environmental effects by:

- 130.1. Ensuring that future residential development occurs in a way that is commensurate with the housing capacity, limitations and service capability of an area;
- 130.2. Encouraging residential development to retain existing vegetation, plant more canopy trees and replace trees that need to be removed with new trees that will grow to a similar mature height, thereby contributing to a cooler and greener environment;
- 130.3. Ensuring that future residential development is directed away from areas that are prone to natural hazards such as bushfires, flooding, inundation, erosion and sea level rise impacts; and
- 130.4. Directing future residential development away from areas of environmental or landscape significance.

131. The Amendment addresses social effects by:

- 131.1. Ensuring that future residential development reflects the preferred character of a residential area, thereby protecting and enhancing the valued characteristics of the Peninsula's residential areas;
- 131.2. Amending the current DDO Schedules to remove unnecessary permit triggers, redundant exemptions and superfluous controls and terminology, simplify requirements, move translatable character controls to the NRZ Schedules, move minimum subdivision area requirements to the NRZ Schedules, and minimise the use of sub-precincts so that each DDO Schedule contains the same permit triggers, controls and other requirements. This will make it easier for residents to undertake the construction or extension of one dwelling on a lot.

132. The Amendment addresses economic effects by:

- 132.1. Directing future residential development to suitable areas in a sustainable manner, and as part of that process, ensuring that the Mornington Peninsula has sufficient housing capacity to accommodate projected population growth over a 16 year period. This will contribute to the building and construction industry in the Mornington Peninsula, and promote higher density housing in close proximity to the Mornington Peninsula's activity centres which will contribute to the local economy.

How does the Amendment address any relevant bushfire risk?

133. The Amendment addresses bushfire risk by:
- 133.1. Directing substantial change to low or no risk areas;
 - 133.2. Directing incremental change to mostly low or no risk areas; and
 - 133.3. Directing minimal change to areas with bushfire risk; and
134. In addition, by way of post-exhibition changes, where there is a landscape plan application requirement in a zone or overlay schedule:
- 134.1. including the following requirement:

“If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas.”
 - 134.2. including the following decision guideline:

“Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.”
135. This additional requirement and decision guideline have been developed by Council in consultation with Council’s independent bushfire expert, Mr Hazell, and has been endorsed by the CFA, who in its letter dated 15 September 2022 ([Attachment 22](#)) confirmed that it supports the Amendment subject to Council’s proposed post-exhibition changes.

Does the Amendment comply the requirements of any other relevant Ministerial Direction?

136. In preparing the Amendment, Council has satisfied itself that the land affected by the Amendment is not potentially contaminated land because it is currently zoned for residential purposes and the Amendment does not propose a change in land use. Accordingly, *Ministerial Direction No. 1 Potentially Contaminated Land* does not apply.
137. The Amendment complies with the requirements of *Ministerial Direction No. 9 Metropolitan Planning Strategy* by supporting, or giving effect to, the following directions in *Plan Melbourne 2017-2050*:
- 2.2 Deliver more housing closer to jobs and public transport
 - 2.5 Provide greater choice and diversity of housing
 - 4.4 Respect Melbourne’s heritage as we build for the future
 - 5.1 Create a city of 20-minute neighbourhoods

6.2 Reduce the likelihood and consequences of natural hazard events and adapt to climate change

6.4 Make Melbourne cooler and greener

138. The Amendment complies with the requirements of *Ministerial Direction No. 17 Localised Planning Statements* by:

138.1. Having regard to the relevant adopted Localised Planning Statement; and

138.2. Including in the Explanatory Report a discussion of how the Amendment implements the Localised Planning Statement.

139. As noted in the Explanatory Report, the Amendment will achieve the following objectives in the Localised Planning Statement:

139.1. "To recognise that maintaining the special values of the Mornington Peninsula is dependent on integrated and balanced planning, involving all agencies and having regard to the needs and aspirations of current and future generations."⁵²

a. The Amendment will achieve this objective by "maintaining and enhancing the character and role of the settlements, towns and villages on the Mornington Peninsula, both individually and as part of a hierarchy of settlements", "effectively managing future change" and not accommodating major population growth, being strategies within the Localised Planning Statement.⁵³

139.2. "To protect the role and character of the Mornington Peninsula's settlements, towns, and villages."⁵⁴

a. The Amendment will achieve this objective by ensuring that the hierarchy of settlements on the Mornington Peninsula is "recognised and maintained" and introducing provisions to "reinforce the distinction between major activity centres and other townships through appropriate density, height and built form controls...", being strategies within the Localised Planning Statement.

b. The Amendment also reflects the guidance within the Localised Planning Statement that "the townships of the Mornington Peninsula are expected to accommodate at most moderate and generally low levels of housing

⁵² Localised Planning Statement, page 3.

⁵³ Localised Planning Statement, page 3.

⁵⁴ Localised Planning Statement, page 6.

growth, with many smaller towns and villages intended to accommodate very limited further development.”⁵⁵

- c. Furthermore, the Amendment will ensure that “development within the Urban Growth Boundary...will be of a type and scale that maintains the existing valued character of each town or settlement, or supports a change to a preferred future character that is clearly established through community consultation and the adoption of a relevant local area plan.”⁵⁶

139.3. “To protect landscape and cultural values.”⁵⁷

- a. The Amendment will achieve this objective by protecting the rural landscapes, coastlines and seascapes of the Mornington Peninsula, including by introducing provisions to ensure the appropriate siting and appearance of buildings and works in residential areas, being strategies within the Localised Planning Statement.⁵⁸

How does the Amendment support or implement the Planning Policy Framework and any adopted State policy?

140. The Amendment supports and/or implements the following provisions of the PPF:

140.1. Clause 11.02-1S Supply of urban land, by:

- a. Ensuring the ongoing provision of land to support sustainable urban development;
- b. Ensuring that sufficient land is available to meet forecast demand;
- c. Planning to accommodate projected population growth over at least a 15 year period and providing clear direction on locations where growth should occur, with residential land supply considered on a municipal basis, rather than a town-by-town basis;
- d. As part of planning for urban growth, considering opportunities for the consolidation, redevelopment and intensification of existing urban areas, neighbourhood character and landscape considerations, the limits of land capability and natural hazards and environmental quality, and service limitations and the costs of providing infrastructure.

⁵⁵ Localised Planning Statement, page 6.

⁵⁶ Localised Planning Statement, page 6.

⁵⁷ Localised Planning Statement, page 8.

⁵⁸ Localised Planning Statement, page 8.

- 140.2. Clause 11.03-5S (Distinctive areas and landscapes, by:
- a. Protecting and enhancing the valued attributes, unique features and special characteristics of the Mornington Peninsula, which is identified as a distinctive area and landscape; and
 - b. Implementing the strategic directions of the Localised Planning Statement (refer above);
- 140.3. Clause 15.01-1S Urban design, by:
- a. Requiring development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate; and
 - b. Ensuring that development minimises detrimental impacts on amenity and on the natural and built environment;
- 140.4. Clause 15.01-2S Building design, by:
- a. Ensuring development is designed to protect and enhance valued landmarks, views and vistas;
 - b. Encouraging development to retain existing vegetation; and
 - c. Encouraging development to provide landscaping that responds to its site context, enhances the built form, creates safe and attractive spaces and supports cooling and greening of urban areas.
- 140.5. Clause 15.01-5S Neighbourhood character, by:
- a. Supporting development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character; and
 - b. Ensuring development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:
 - i. Pattern of local urban structure and subdivision;
 - ii. Underlying natural landscape character and significant vegetation; and
 - iii. Neighbourhood character values and built form that reflect community identity.

- 140.6. Clause 15.01-6S Design for rural areas, by:
- a. Protecting the visual amenity of valued rural landscapes and character areas along township approaches by ensuring new development is sympathetically located; and
 - b. Requiring that development is sited and designed to minimise visual impacts on surrounding natural scenery and landscape features;
- 140.7. Clause 16.01-1S Housing supply, by:
- a. Encouraging higher density housing development on sites that are well located in relation to jobs, services and public transport (i.e. sites in close proximity to activity centres); and
 - b. Identifying opportunities for increased residential densities to help consolidate urban areas;
- 140.8. Clause 16.01-1R Housing supply – Metropolitan Melbourne, by:
- a. Facilitating increased housing in established areas to create 20 minute neighbourhoods close to existing services, jobs and public transport;
 - b. Providing certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas; and
 - c. Allowing for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing.
- 140.9. Clause 16.01-2S Housing affordability, by:
- a. Improving housing affordability by ensuring land supply continues to be sufficient to meet demand.

How does the Amendment support or implement the Municipal Planning Strategy?

141. The Amendment implements the MPS by:
- 141.1. Directing population growth primarily to its three Major Activity Centres (Mornington, Rosebud and Hastings), and to a more limited extent, to its Neighbourhood Activity Centres in accordance with Clause 02.03-1 Settlement. As stated in that provision, directing population growth to the Major Activity Centres, and to a lesser extent, the Neighbourhood Activity Centres, "...prevents dispersed population growth throughout the Peninsula's rural area and thereby protects the unique characteristics of small

coastal townships and rural villages as well as areas of environmental, landscape, agricultural or recreational significance...”;

- 141.2. Protecting the unique environmental and landscape values of the Mornington Peninsula, in accordance with Council’s strategic directions at Clause 02.03-3 Environmental risks and amenity;
- 141.3. Protecting and enhancing the Mornington Peninsula’s sense of place which, as noted at Clause 02.03-5 Built environment and heritage, is “reinforced by the distinctive built-form character of its residential areas.” The MPS at Clause 02.03-5 explains that this distinctiveness arises from:
- *The relationship between the settlement and its environmental setting.*
 - *The balance between natural features and built form that in many areas has produced a definite local character where the open space, landform and landscape provide a dominant setting for the built form.*
 - *The influence of heritage sites, gardens and precincts such as the Peninsula’s rich history of buildings, places and sites of heritage significance contained in many of its townships that include the Ranelagh Estate in Mount Eliza and the Sorrento Historic Precinct.*
 - *The cultural significance of heritage places, heritage buildings, structures and gardens such as places, sites and objects of Aboriginal cultural significance.*
 - *Well-established subdivision and development patterns where the ability to retain a bushland, woodland or coastal setting is often dependent on maintaining larger lot sizes with minimal site coverage.*

The Amendment will ensure that future residential development respects and contributes to this distinctiveness, by ensuring that the location, design and construction of buildings and works are compatible with the built form and landscape character of the surrounding area, in accordance with Council’s strategic directions for built environment and heritage at Clause 02.03-5; and

- 141.4. Retaining the requirement that new development is connected to reticulated sewerage or an alternative to the satisfaction of the responsible authority, consistent with Council’s strategic directions for infrastructure at Clause 02.03-8 Infrastructure, being to: ensure that new development does not adversely impact on the regional drainage function of waterways, drains, retarding basins and floodplains; ensure that major development in new areas is connected to reticulated sewerage; ensure that development does not contribute to the pollution of groundwater or surface waters;

and ensure that development is designed to protect the environment from polluting discharges and activities.

142. The Amendment supports the MPS by proposing to insert a new Clause 02.03-6 Housing. Clause 02.03-6 describes the features and characteristics of housing on the Mornington Peninsula, including various benefits, issues, opportunities and constraints. It also specifies Council's strategic directions for housing, which are derived from the strategic work underpinning the Amendment, in particular the Housing and Settlement Strategy: Refresh.

Does the Amendment make proper use of the Victoria Planning Provisions?

143. The Amendment makes proper use of the Victoria Planning Provisions (**VPP**).
144. The Amendment applies the residential zones in accordance with the following guidance set out in PPN91:
- 144.1. The LDRZ is applied to "areas on the fringe of urban settlements and townships"⁵⁹ with tailored minimum subdivision area requirements derived from current minimum subdivision area requirements;
- 144.2. The GRZ is applied to "areas where housing development of three storeys exists or is planned for in locations offering good access to services and transport";⁶⁰ and
- 144.3. The NRZ is applied to "areas where there is no anticipated change to the predominantly single and double storey character" and to "areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area".⁶¹ These areas comprise a large portion of the Mornington Peninsula's residential areas, which are characterised by low-scale, single and double story detached dwellings on a lot.
145. The proposed application of the residential zones is consistent with the principles outlined in PPN91, including:
- 145.1. **Principle 2:** "All residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes or other constraints and hazards exist."⁶² This means that planning for urban growth requires the development of compact urban areas that are based around existing and planned activity centres to maximise accessibility to facilities and services. However, increased housing is not necessarily appropriate where special neighbourhood

⁵⁹ PPN91, page 2.

⁶⁰ PPN91, page 2.

⁶¹ PPN91, page 2.

⁶² PPN91, page 3.

character, heritage, environmental or landscape attributes, constraints or hazards are identified;

145.2. **Principle 4:** “The General Residential Zone is a three-storey zone with a maximum building height of 11 metres.”⁶³ This means that the GRZ should be applied to areas where housing development of three storeys exists or is planned for, and that it is inappropriate to apply the GRZ to areas where the planning authority seeks to respect the existing single and double storey character of an area; and

145.3. **Principle 5:** “The density or number of dwellings on a lot cannot be restricted in the Neighbourhood Residential Zone unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist.”⁶⁴ This means that dwelling density is no longer a basis for restricting development outcomes in the NRZ – rather, it is appropriate for development outcomes to be restricted in the NRZ where special neighbourhood character, heritage, environmental or landscape attributes, constraints or hazards are identified.

146. Furthermore, the proposed application of the residential zones is derived from the Residential Change Framework Plan contained in the Housing and Settlement Strategy: Refresh and proposed to be incorporated in the MPS at the new Clause 16.01-1L Housing supply – Mornington Peninsula. This is consistent with the guidance in PPN91 that “applying the right residential zone must be derived from the municipal-wide strategic framework plan or residential development framework plan contained in a Municipal Planning Strategy (MPS).”⁶⁵ In applying the residential zones, Council has applied the “test” in PPN91, that is – “whether the residential zone implements the relevant strategic framework plan or residential development framework plan map identified in the MPS.”⁶⁶ The residential zone applied to any given parcel of land reflects the true development capacity of that land, and where the land is impacted by special attributes or physical constraints, the residential zone aligns with those attributes and constraints. Council has also used the residential zones to apply local requirements to achieve preferred built form outcomes identified in the MPS and local policies. This is all consistent with the approach set out in PPN91.⁶⁷

147. In terms of overlays, the Amendment applies the DDO, NCO and VPO to give effect to preferred built form outcomes where the residential zone does not fully achieve the identified housing or neighbourhood character objectives for that area. This is a proper use of overlays as noted in PPN91.⁶⁸

⁶³ PPN91, page 3.

⁶⁴ PPN91, page 3.

⁶⁵ PPN91, page 4.

⁶⁶ PPN91, page 5.

⁶⁷ PPN91, page 5.

⁶⁸ PPN91, page 10.

148. In relation to maximum building heights, PPN91 notes that a maximum building height lower than the maximum building height specified in a residential zone can only be implemented via an overlay which recognises a special neighbourhood character, heritage, environmental and landscape value or constraint. In those cases, the height requirement in the overlay applies in addition to the height requirement in the zone.⁶⁹ Consistent with that guidance:
- 148.1. The Amendment (with post-exhibition changes) retains maximum building height requirements which currently apply via DDO Schedules in the new and amended DDO Schedules.⁷⁰ Those maximum building height requirements are lower than the maximum building heights specified in the associated zones; and
- 148.2. The Amendment (with post-exhibition changes) specifies maximum building height requirements in the GRZ Schedules and NRZ Schedules, where building heights greater than those specified in the head clause are appropriate due to the special characteristics of an area (e.g. Beleura Hill, Mornington).
149. The NCO is applied to limited, specific areas – the Ranelagh Estate, Mount Eliza (NCO1) and The Avenues, Rosebud and parts of Tootgarook and Rye (NCO2). Council has determined that the following criteria in PPN91 are satisfied in respect of each of those areas, and therefore the application of the NCO is warranted:
- 149.1. the areas exhibit existing characteristics that require protection;
- 149.2. the areas, relative to the rest of the municipality, can be demonstrated to require a specific approach to neighbourhood character; and
- 149.3. the application of local planning policy, the objectives and standards of clause 54 and clause 55 or variations to clause 54 and clause 55 in the schedule to the residential zone will not meet the neighbourhood character objectives for those areas.⁷¹
150. The NCO1 and NCO2 are used to modify Clause 54 and Clause 55 standards and apply local neighbourhood character objectives and decision guidelines to achieve a preferred neighbourhood character.⁷²
151. The DDO is applied to promote specific urban design outcomes for an area, by way of design objectives, built form requirements and decision guidelines.⁷³ For example, the DDO is used to direct buildings away from ridgelines and to regulate the difference between finished and natural ground levels. The DDO is also used to maintain the ‘single dwelling on a lot’ character

⁶⁹ PPN91, page 7.

⁷⁰ Council has commenced further strategic work to determine whether any changes are required to these permit requirements, and if changes are deemed necessary, Council will implement those changes via a separate planning scheme amendment process – refer to discussion of Residential Heights Review Project.

⁷¹ PPN91, page 10.

⁷² PPN91, page 11.

⁷³ PPN91, page 11.

that is predominant across large parts of the Mornington Peninsula's residential areas, as well as maintain a maximum building height of 8 metres and 2 storeys which cannot be imposed by way of the zone schedules.

152. The VPO is used to recognise and protect areas of significant vegetation, to ensure that development minimises loss of vegetation, to preserve existing trees and other vegetation, to recognise vegetation protection areas a locations of special significance, natural beauty, interest and important consistent with the purpose of the head clause.⁷⁴
153. The Amendment does not include transitional provisions, consistent with the advice of DELWP that the head clauses (i.e. the GRZ, NRZ, LDRZ, DDO and NCO) do not provide for transitional provisions and that the exhibition period was sufficient notice of the proposed changes to the Planning Scheme. A copy of the email advice from DELWP is enclosed at [Attachment 23](#).

Does the Amendment address the views of relevant agencies?

154. The following agencies provided feedback in relation to the Amendment:

154.1. DELWP, as contained in:

- a. The letter from the Minister dated 18 September 2019, inviting Council to seek re-authorisation of the Previous Amendment "to ensure a holistic approach to planning for the Mornington Peninsula's residential areas and to ensure the findings of the Neighbourhood Character Study are reflected in the application of the residential zones proposed by the amendment."⁷⁵
- b. The email from DELWP officers dated 14 December 2020, enclosing initial comments in relation to the proposed Amendment and the Housing and Settlement Strategy: Refresh; and
- c. The letter from DELWP under delegation from the Minister dated 19 May 2021, authorising the preparation of the Amendment subject to conditions and including notes for Council's consideration;

154.2. The CFA, as contained in Submission 83. The CFA expressed concern that the Amendment as exhibited lacked sufficient consideration of bushfire risk and policy and had potential to result in unintended increases or intensification of bushfire risk, or the introduction of new bushfire risk;

154.3. The EPA, as contained in Submission 143. The EPA determined that the Amendment presented a "low risk to the environment, amenity and human health as a result of

⁷⁴ Clause 42.02.

⁷⁵ Letter dated 18 September 2019.

pollution or waste...” and therefore confirmed that it did not have any “specific advice” for Council’s consideration.⁷⁶ Rather, the EPA provided some “high-level information” – it recommended that Council “give due consideration to [*Ministerial Direction No. 1 Potentially Contaminated Land*] and potentially contaminated land, as well as potential encroachment issues between land uses and recommended separation distances for existing industry, for any future rezoning proposals”⁷⁷, and that the Explanatory Report be amended to address *Ministerial Direction No. 1 Potentially Contaminated Land*;

- 154.4. The Department of Jobs, Precincts and Regions (DJPR) as contained in Submission 178, whereby the DJPR acknowledged notice of the Amendment and provided no further comment; and
 - 154.5. Frankston City Council, as contained in Submission 180. Frankston City Council expressed support for particular aspects of the Amendment as relevant to its municipality.
155. Council has addressed the views of relevant agencies by:
- 155.1. Updating the Amendment documents in response to feedback from DELWP, prior to seeking re-authorisation, and addressing the conditions of authorisation, as described earlier in this submission;
 - 155.2. Proposing the following post-exhibition changes to address the concerns of the CFA:
 - a. In respect of all Zone and Overlay Schedules which include application requirements for a landscape plan:
 - i. including an additional requirement that, where land is in a bushfire prone area, landscaping should be of low threat bushfire risk; and
 - ii. including an additional decision guideline in relation to whether the landscaping is low threat bushfire risk,noting that the CFA confirmed in its letter dated 15 September 2022 that it supports the Amendment subject to those post-exhibition changes;
 - 155.3. Confirming that it acknowledges and supports the EPA’s recommendations, and proposing post-exhibition changes to the Explanatory Report to address *Ministerial Direction No. 1 Potentially Contaminated Land* and potentially contaminated land;

⁷⁶ Submission 143, page 2.

⁷⁷ Submission 143, page 4.

155.4. Acknowledging the DJPR's submission; and

155.5. Acknowledging Frankston City Council's support for the Amendment.

Does the Amendment address the requirements of the Transport Integration Act 2010?

156. The Amendment will not have a material impact on the transport system.

Impact on administrative costs of the responsible authority

157. The Amendment is not anticipated to impose increased or unreasonable administrative costs on Council. Rather, it is anticipated the Amendment will either decrease, or have a neutral impact, on the number of permit applications received by Council for the construction or extension of one dwelling on a lot.

G. CONCURRENT AMENDMENTS AND PERMIT APPLICATIONS

Other planning scheme amendments and strategic work

158. The table enclosed at [Attachment 24](#) identifies amendments to the Planning Scheme which have been prepared, and those which have been completed, between the authorisation of this Amendment (19 May 2021) and the date of this submission (**Concurrent Amendments Table**). The Concurrent Amendments Table identifies whether the land affected by an amendment is also affected by this Amendment, and whether an amendment potentially conflicts with this Amendment.

159. There are four instances of potential conflict, all of which can be resolved as follows:

159.1. In relation to Amendment C241morn (scheduled for exhibition in mid-2023), by implementing changes either prior to or after exhibition of the amendment, to ensure consistency with this Amendment once finalised;

159.2. In relation to proposed Amendment C247morn (combined permit application and planning scheme amendment request), if the amendment is authorised, by implementing changes to the amendment to ensure consistency with the Amendment once finalised;

159.3. In relation to proposed Amendment C249morn (combined permit application and planning scheme amendment request), if the amendment is authorised, by implementing changes to the amendment to ensure consistency with the Amendment once finalised; and

159.4. In relation to Amendment C267morn (gazetted on 6 June 2022), Council proposes post-exhibition changes to:

- a. extend the proposed rezoning of land at 23 Forest Drive, Somerville from GRZ1 to NRZ2 to align with the lot boundary (noting that the entirety of the lot is now zoned GRZ1, rather than PUZ2 and GRZ1, as a result of Amendment C267morn); and
 - b. extend the proposed rezoning of land at seven properties along Frankston-Flinders Road, Hastings⁷⁸ from GRZ1 to NRZ39 to align with the lot boundaries (noting that the entirety of the lots are now zoned GRZ1, rather than TRZ2 and GRZ1, as a result of Amendment C267morn).
160. In addition, Council is currently undertaking a review of existing building height controls within DDOs which apply to residential zoned land on the Mornington Peninsula (**Residential Heights Review Project**). The purpose of the Residential Heights Review Project is to strategically justify and ground truth the application of existing height controls, and determine whether they ought to be retained, removed or refined based on contemporary landscape assessments.
161. The Residential Heights Review Project responds to submissions to the exhibited Amendment which opposed the deletion of the building height permit trigger in many existing DDOs and the Ellerina Road Exemption in the DDO2, DDO3 and DDO4. The removal of these discretionary controls would mean that building height would instead be governed by mandatory maximum heights in the relevant DDO or applicable zone.
162. The Residential Heights Review Project also responds to the Minister's Re-Authorisation Letter which encouraged Council to review existing controls that apply to residential land, primarily the DDO Schedules, and "remove unnecessary permit triggers".
163. The overall aim of the project is to ensure that future residential built form protects the distinctive and significant landscapes of the Mornington Peninsula while appropriately managing reasonable view-sharing to valued landscapes and waterbodies.
164. The key objectives of the project are to:
- 164.1. identify sensitive landscapes on the Peninsula where new built form should not be visually obtrusive against the skyline or tree canopy line;
 - 164.2. identify residential areas where built form should protect key view lines and provide for the reasonable sharing of views from nearby properties and public areas to significant landscapes and waterbodies;

⁷⁸ 2095 Frankston-Flinders Road, Hastings; 2097 Frankston-Flinders Road, Hastings; 2099 Frankston-Flinders Road, Hastings; Units 1, 2, 3 and 4 at 1 Phillip Court, Hastings.

- 164.3. identify residential areas that should be subject to general requirements in relation to site excavation or filling, and provide nominal permit triggers to protect sensitive or valued landscapes, associated view lines and neighbourhood character;
 - 164.4. assess the appropriateness and recommend any necessary changes to the application and drafting of planning controls in relation to building height, slope, ridge, cut-and-fill;
 - 164.5. assess whether there is a strategic justification and a landscape benefit of retaining the Ellerina Road Exemption; and
 - 164.6. undertake comprehensive community and stakeholder engagement to help inform the final project outcomes and recommendations.
165. The project is expected to commence in the second quarter of 2023.

Permit Applications

166. Of the submitters appearing at the Panel hearing, the following have lodged permit applications which are yet to be determined by Council:
- 166.1. Submitter 115 (Australian Unity Healthcare Property Trust) – Permit Application P22/3195 concerning the land at 925 Nepean Highway, Mornington (Beleura Hospital) and seeking permission for construction of buildings and works to an existing hospital, construction and display of signage, removal of vegetation and alteration of access to a road in the Principal Road Network. The permit application is currently under consideration by Council officers;
 - 166.2. Submitter 312 (Alesci Investments Pty Ltd) – Permit Application P20/2610 concerning the land at 1475 Point Nepean Road, Rosebud and seeking permission for development of five dwellings (double storey), fencing, and associated works. The permit application is the subject of an application to VCAT for review of Council's failure to grant a permit, with a hearing scheduled for 30 and 31 January 2023. Council has advised the parties that it supports the permit application; and
 - 166.3. Submitter 258 (Tango Property Group and Tango Development No. 6 Pty Ltd) – Combined Permit Application P21/3339 and planning scheme amendment request concerning the land at 4 Woodbyne Crescent, Mornington and seeking permission for subdivision of the land into 63 lots, creation of reserves, removal of reserve, creation of roads, removal of vegetation and associated works generally in accordance with the submitted plans. The combined permit application and planning scheme amendment request is currently at the referral stage. The land is identified as an Investigation Area in the Residential Change Framework Plan, with the

appropriate level of housing change to be identified as part of the combined permit application and planning scheme amendment request process.

167. The above permit applications will be addressed in greater detail as part of Council's Part B submission. Other permit applications raised by submitters appearing at the Panel hearing have since been determined and are therefore not affected by the Amendment.
168. The Permit Applications Table at [Attachment 25](#) provides details of the above permit applications. It also provides a sample of other current permit applications and a description of how they will be affected by the Amendment.

H. ADDITIONAL MATERIAL COUNCIL INTENDS TO RELY ON

169. As referred to previously in this submission, Council intends to rely upon the following additional material:
 - 169.1. Built Form Implications Summary Table;
 - 169.2. Detailed spreadsheet of proposed zoning changes;
 - 169.3. Detailed spreadsheet of proposed overlay changes;
 - 169.4. Version 2 Amendment Documents;
 - 169.5. Table comparing exhibited Amendment and Version 2 Amendment Documents;
 - 169.6. Updated explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' (January 2023);
 - 169.7. Updated Desktop Review;
 - 169.8. Concurrent Amendments Table;
 - 169.9. Permit Applications Table; and
 - 169.10. All other Attachments referred to throughout this Part A submission.

I. CONCLUSION

170. This Part A submission will be followed by:
 - 170.1. The expert evidence of Nikki Hill in relation to planning, Rob Milner in relation to planning (peer review), Kevin Hazell in relation to bushfire planning, Marcus Spiller in relation to housing affordability and Andrew Spencer in relation to housing capacity; and

- 170.2. Council's Part B submission, which will set out Council's substantive response to issues raised in submissions, and Council's closing submission.

3 February 2023

HARWOOD ANDREWS
on behalf of
Mornington Peninsula Shire Council