

**IN PLANNING PANELS VICTORIA**

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

**AMENDMENT C243MORN TO THE MORNINGTON PENINSULA PLANNING SCHEME**

**8 MAY 2025**

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## INTRODUCTION

1. This submission is made on behalf of Mornington Peninsula Shire Council (**Council**), the Planning Authority under s 8A of the *Planning and Environment Act 1987* (**Act**) for the Mornington Peninsula Planning Scheme (**Scheme**).
2. Council has prepared Amendment C243morn (**Amendment**) at the request of Proctor Investments No 2 Pty Ltd (**Proponent**).
3. This 'Part B' submission is made in accordance with the Panel's directions dated 1 May 2025 (**Directions**). It is to be read in conjunction with Council's 'Part A' submission that sets out relevant matters of background to the Amendment, as filed on 23 April 2025.
4. This submission addresses the three matters required by direction 12 of the Directions, namely, it provides:
  - 4.1. Council's response to the issues raised in submissions;
  - 4.2. Council's response to expert evidence; and
  - 4.3. Council's final position on the Amendment.
5. In addition to the exhibited material, the various Council reports regarding the Amendment and the two written submissions, Council relies on the expert evidence provided by:
  - 5.1. John-Paul Maina of Impact Traffic in traffic engineering, as per the written statement of evidence dated 29 April 2025 (**Maina Statement**).
6. Council subsequently adopts the evidence of Mr Maina.

## COUNCIL'S RESPONSE TO SUBMISSIONS

7. Direction 12(a) of the Directions requires Council to include a response to submissions within its 'Part B' submission.
8. As noted in Council's 'Part A' submission, a detailed summary of, and response to, the submissions received in response to exhibition of the Amendment forms part of the agenda to the Council meeting held on 25 February 2025 (**Agenda**).
9. At the aforementioned meeting, Council resolved to refer all submissions to the Panel for consideration. At the time of the resolution, 114 submissions have been received by Council. At the time of writing, 1 further submission has been received, bringing the total number of submissions to 115.
10. Of these 115 submissions received, a total of 8 submitters have indicated a desire to be heard at this hearing, as follows:<sup>1</sup>

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<sup>1</sup> Listed in order of appearance as per 'Timetable – Version 4' and noting that Submitter 24 has indicated that they do not wish to be heard at the hearing.

- 10.1. Submitter 49;
  - 10.2. Submitter 92;
  - 10.3. Submitter 103;
  - 10.4. Submitter 89;
  - 10.5. Submitter 97;
  - 10.6. Submitter 115;
  - 10.7. Submitter 63; and
  - 10.8. Submitter 24.
11. This section of the 'Part B' submission firstly sets out a summary of the key 'themes' identified through submissions, followed by a general response to the submissions as a whole, before concluding with a more detailed response to each of the submissions lodged by the submitters who have indicated a wish to be heard at this hearing.

## KEY THEMES ARISING FROM SUBMISSIONS

12. As noted within Council's 'Part A' submission, Council identified a number of key themes that emerged from the submissions received, including from those submitters seeking to be heard at this hearing. These include:
- 12.1. **support for a new high-tech industry and business park;**
  - 12.2. **traffic and transport planning**, including:
    - 12.2.1 Bungower Road does not have the capacity to absorb the increase in traffic;
    - 12.2.2 increase in traffic and heavy vehicles travelling through Somerville's local streets;
    - 12.2.3 increased use of Lower Somerville Road; and
    - 12.2.4 lack of public transport to the land the subject of the Amendment (**Subject Land or Land**);
  - 12.3. **the industrial zone is not appropriate for the Land**, including:
    - 12.3.1 the Land should be rezoned to Green Wedge or farming and not for industrial use.
    - 12.3.2 this precinct should be in Hastings – the preferred site in the *ILARS*;
    - 12.3.3 there is existing supply of industrial land in Somerville;
    - 12.3.4 the rezoning is premature as it should wait for review of all port land;
    - 12.3.5 regional demand for industrial land;

- 12.3.6 suggested alternative locations for industrial use (Tyabb and Crib Point);
  - 12.3.7 potential for similar rezoning requests in SUZ2 if the Amendment is approved, which will change the character of Somerville; and
  - 12.3.8 the Land should be rezoned for residential use;
- 12.4. **future uses in the precinct**, including:
- 12.4.1 Sealite may not be the 'anchor tenant'; and
  - 12.4.2 control over types of industrial uses in the future;
- 12.5. **impacts on surrounding residential and agricultural areas**, including:
- 12.5.1 potential adverse impacts of heavy industry - noise, dust, odour and heavy traffic;
  - 12.5.2 protection of green wedge values;
  - 12.5.3 inappropriate siting near a low-density residential area;
  - 12.5.4 negative impacts of tree removal on habitat for local species;
  - 12.5.5 where will new employees live given local housing shortage;
  - 12.5.6 potential for increase in local crime in the industrial precinct;
  - 12.5.7 will the new precinct provide job opportunities for locals; and
  - 12.5.8 the precinct will devalue nearby properties;
- 12.6. **development of the precinct**, including:
- 12.6.1 provision of open space and community facilities;
  - 12.6.2 management of and public access to the open space facilities and sports area;
  - 12.6.3 protection of the Thomas Brunning heritage homestead;
  - 12.6.4 impact on major oil pipeline through site;
  - 12.6.5 control of built form and heights;
  - 12.6.6 impact of security lighting on rural area;
  - 12.6.7 provision of landscape buffers;
  - 12.6.8 connection to sewer;
  - 12.6.9 stormwater management; and
  - 12.6.10 Environmentally Sustainable Design features.

13. Despite the concerns identified through submissions, the totality of the submissions received in response to the Amendment do not all reflect an opposition to the Amendment, with:
  - 13.1. 40 submissions categorically expressing their support for the Amendment; and
  - 13.2. 11 submissions offering 'no objection' (either expressively or implied).
14. Included at **Appendix A** to these submissions is a table that summarises the 'position' and 'status' of each submitter.

## GENERAL RESPONSE

15. The submissions that follow focus on the specific concerns raised by the submitters who wish to be heard at this hearing only. The detailed consideration included within the Agenda is otherwise adopted for the purposes of responding generally to aforementioned key themes identified through the submissions and to the specific matters raised by those submitters who do not wish to participate in the hearing.
16. Prior to going to Council's detailed response to the matters raised by those submitters, Council submits that there are three important factors in the background material to be borne in mind as general context to the Panel's consideration of these submissions, namely:
  - 16.1. that the Amendment is supported by an extensive body of strategic justification, as outlined within Council's 'Part A' submission, which includes, broadly, a recognised need for additional industrial land and the recognition of the rezoning potential of the Port of Hastings Land and, more specifically, the background work that suggests the Land is appropriate for an industrial re-zoning;
  - 16.2. that the Amendment positively responds to the objectives of planning in Victoria and the Planning Policy Framework, as outlined in the Explanatory Report and Council's 'Part A' submission; and
  - 16.3. that the Amendment achieves compliance with all relevant ministerial directions and practice notes, as outlined within the Explanatory Report.
17. Whilst Council will not explicitly repeat these factors in response to the individual submissions, these considerations nonetheless remain relevant and serve as the starting point to each of the subsequent responses provided in these submissions. Council urges the Panel to keep these factors 'in mind' throughout the hearing process and in its consideration of the submissions made to it.
18. Further, whilst there will naturally be a greater focus on the submissions that oppose the Amendment and the supporting or neutral submissions will subsequently not be given a comparable level of consideration throughout this hearing, the support for the Amendment, either in totality or in part, is an important factor for the Panel to note.
19. In particular, there is a sentiment through the 40 submissions that support that Amendment that there is a need for more localised industrial/commercial development (both within Mornington Peninsula more broadly and within Somerville more specifically) and that the Land represents an opportunity for this need to be addressed.
20. This fits with the strategic background summarised within the Part A submission that demonstrates that:

- 20.1. there is a need for more industrial land throughout the State, as identified through:
- 20.1.1 *Melbourne Industrial and Commercial Land Use Plan*;<sup>2</sup>,
  - 20.1.2 *Plan Melbourne 2017-2050*;<sup>3</sup> and
  - 20.1.3 *Economic Growth Statement – Victoria: Open for Business*;<sup>4</sup>
- 20.2. there is a pressing need for more industrial land on the Mornington Peninsula, as identified through
- 20.2.1 *Mornington Peninsula Industrial Areas Strategy*;<sup>5</sup>
  - 20.2.2 *Melbourne Industrial and Commercial Land Use Plan*; and
  - 20.2.3 *Industrial Land Use & Infrastructure Assessment Rezoning Strategy*;<sup>6</sup>
- 20.3. land traditionally reserved for use by the Port of Hastings should be investigated for re-zoning in order to contribute to the State and the Peninsula’s industrial land supply (if such investigations deem it appropriate), as identified through:
- 20.3.1 *2018 Port Development Strategy*;<sup>7</sup>
  - 20.3.2 *Somerville Township Structure Plan*;<sup>8</sup>
  - 20.3.3 *Melbourne Industrial and Commercial Land Use Plan*;
  - 20.3.4 *Industrial Land Use & Infrastructure Assessment Rezoning Strategy*;
  - 20.3.5 *Navigating our Port Futures: The Victorian Commercial Ports Strategy*;<sup>9</sup> and
  - 20.3.6 *Economic Growth Statement – Victoria: Open for Business*;
- 20.4. Somerville has the capacity to play host to additional industrial land, as identified through:
- 20.4.1 *Somerville Township Structure Plan*; and
  - 20.4.2 *Industrial Land Use & Infrastructure Assessment Rezoning Strategy*;
- 20.5. the Subject Land is, broadly, an appropriate candidate for industrial development, as identified through:

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<sup>2</sup> Department of Environment, Land, Water and Planning, 2020 (summarised at [63]-[69] of Council’s ‘Part A’ submission).

<sup>3</sup> State Government of Victoria, 2017 (summarised at [105]-[106] of Council’s ‘Part A’ submission).

<sup>4</sup> Department of Treasury and Finance, 2024 (summarised at [107]-[108] of Council’s ‘Part A’ submission).

<sup>5</sup> Essential Economics Pty Ltd, April 2018 (summarised at [46]-[55] of Council’s ‘Part A’ submission).

<sup>6</sup> Hansen Partnership, September 2020 (summarised at [73]-87] of Council’s ‘Part A’ submission).

<sup>7</sup> Port of Hastings Development Authority, December 2018 (summarised at [56]-[59] of Council’s ‘Part A’ submission).

<sup>8</sup> Mornington Peninsula Shire Council, 2019 (summarised at [60]-[62] of Council’s ‘Part A’ submission).

<sup>9</sup> Department of Transport, 2022 (summarised at [97]-[102] of Council’s ‘Part A’ submission).

20.5.1 *Industrial Land Use & Infrastructure Assessment Rezoning Strategy*; and

20.5.2 more specifically, the technical assessments commissioned by the Proponent.

21. Further, whilst not necessarily forming part of the strategic basis to the Amendment, it is relevant to note that the Amendment is anticipated to lead to broader economic benefits.

22. To this end, the economic impact assessment commissioned by the Proponent, includes the following:<sup>10</sup>

- The direct construction cost is estimated at \$357.2 million which is expected to generate another \$450.7 million indirect construction output elsewhere in the economy, totalling \$807.9 million construction output (including direct and indirect) to the economy during the construction phase.
- The development is expected generate approximately 187 direct construction FTE jobs per annum on site and another 295 indirect FTE jobs per annum elsewhere in the economy, totalling 482 construction related FTE jobs per annum during the construction phase.
- Upon completion, the development is expected to support approximately 1,110 ongoing jobs on site (including up to 250 jobs under Planning Permit P14/1846) reflecting the ongoing operation and use of industrial / commercial, manufacturing and technology spaces.

23. The Panel will also have the benefit of hearing expert evidence in economics (and strategic planning) from Mr Haratsis on behalf of the Proponent.

24. Lastly, by way of preliminary factor to be introduced before the specifics of the submissions are considered, Council submits that it is crucial to bear in mind the 'stage' that this Amendment represents in the overall journey of industrial development and use of the Land.

25. In this, the Amendment represents effectively the first of three 'stages' of town planning intervention to facilitate the industrial use and development of the Land. It *merely* facilitates the potential for future proposals to be advanced for industrial development and uses, noting that, following approval of the Amendment, prior to any actual industrial development or use commencing:

25.1. a development plan will be required to be endorsed by Council that provides further specifics regarding the high-level development and use of the Land pursuant to the provisions of the DPO24; and

25.2. planning permits will be required to be issued by Council to facilitate the specific industrial developments (including subdivisions) and uses in a manner which generally accords with the provisions of the DPO24 and the wider provisions of the Scheme.

26. Whilst Council does not dispute that it is important to 'get it right' at this stage – particularly given that this is the stage that provides the opportunity for community engagement – the fact that there will still be two further levels of town planning intervention into the land before any industrial development and use can occur is a highly relevant factor to have regard to in considering the matters raised by the submitters. The future planning intervention presents

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<sup>10</sup> Macroplan, *Memorandum*, 1 April 2022, 34.

the opportunity for addressing the more specific matters raised by submitters, as is wholly appropriate for both the consideration of a development plan and of individual planning permit applications in accordance with the framework established by the Scheme and Act.

27. This provides a relevant 'qualifier' to the manner in which concerns raised by submitters are to be considered and the weight to be given to specific concerns, as generally observed by Garde J in *Dustday Investments Pty Ltd v Minister for Planning*:<sup>11</sup>

[101] Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage. The nature and level of information available at the rezoning or amendment stage will often be significantly less than that available at the permit stage. By the time of a permit application, much more detail is likely to be available as to the proposed use and development including development plans, building specifications, site information, expert reports and the like. At the permit application stage, the considerations the responsible authority is required to take into account include the matters listed in s 60 of the Act, the decision and comments of referral authorities and the considerations relevant to the application under the operative planning scheme.

[102] Given the stages in the planning process, consideration will often need to be given by panels as to the strategic nature of the assessment to be undertaken at the amendment stage as against the more detailed evaluation undertaken at the permit application stage. Where, as here, no use or development plans are available at the amendment stage, the consideration of conservation and heritage matters by a panel is inevitably more circumscribed than that which is possible at the later stage. Assessment of costs associated with restoration and adaptive reuse of a heritage building in poor condition is crucially informed by an understanding of the overall scheme of development, including the nature of the proposed use, and the likely costs and returns. The economics underlying restoration and redevelopment will often be a pivotal component of decision-making concerning buildings with heritage significance.

28. The submissions now proceed by addressing the specific matters raised by the submitters participating in this hearing.

#### SUBMITTER 49

29. Submitter 49 has an interest in 89 Bungower Road, located to the west of the Subject Land on the other side of Lower Somerville Road.
30. The contents of Submission 49 are summarised by Council as:<sup>12</sup>

Opposes the amendment. Concerns about rural landscape and character, further rezoning requests, infrastructure issues, traffic, land use buffers, environmental impacts, amenity and operational issues, loss in property values, local job creation, public open space, heritage protection and crime.

#### ***Impacts to rural character of the area***

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<sup>11</sup> [\[2015\] VSC 101](#).

<sup>12</sup> Council Meeting Agenda – 25 February 2025 (**Agenda**), Attachment Book 1, 347-350.

31. As it relates to impacts to the rural character of the area, Council does not dispute that the Amendment will facilitate development that differs from the existing character of the immediately surrounding area. As noted in Council's 'Part A' submission as it relates to the existing character of Somerville:<sup>13</sup>

[20] Outside of the Township, the remaining land within Somerville bears characteristics of more rural areas, characterised by large lots and rural-type infrastructure.

32. However, this character is largely 'incidental' and a result of the interim uses and development of the area as it has been held in abeyance for the Port of Hastings. As noted within Council's 'Part A' submission, the land has, at no time since the implementation of the 'new format' planning schemes, been subject to planning controls that seek to implement or retain a rural character.
33. Whilst it is accepted that the rural character is, to an extent, a product of the location of the Land (and Somerville more broadly), it remains the case that the Land is included within Melbourne's Urban Growth Boundary (**UGB**), which, at a high level, brings with it an expectation that some level of change may be appropriate.
34. Given the 'planning context' of the Subject Land, in that it is within the UGB, subject to the SUZ1 (as opposed to any rural or zones) and is not subject to any environmental or landscape overlays (or other built form overlays) the Subject Land does not get the benefit of the many policies and controls within the Scheme that seek to protect green wedge or significant landscape areas and ensure their character and significance is maintained.
35. At any rate, the transition in character will be managed by the DPO24 which includes, among other things, retention of the Thomas Brunnings homestead and surrounding curtilage, implementation of buffers to surrounding agricultural uses and a 30 metre tree reserve buffer to Lower Somerville Road.
36. Further, in a broader 'net community benefit' sense, any 'detriment' to be suffered by the change to the character of the area (again noting this is largely incidental), will be well and truly offset by the benefit of 'unlocking' a further 36.85 hectares of industrial land in context of acknowledged shortfalls and demand as set out within the various background documents summarised through the 'Part A' submissions.

### **Infrastructure**

37. As it relates to matters of infrastructure connections:
- 37.1. there are no known existing drainage issues that are required to be resolved as part of the Amendment; and
- 37.2. there is an existing sewer connection located approximately 710 metres west of the Land that can accommodate the level of development anticipated by the Amendment.
38. More specifically, matters of drainage are required to be resolved at the time of endorsement of the development plan, with the DPO24 requiring a 'Stormwater Management Strategy' to the satisfaction of both Council and Melbourne Water, which requires, among other things, identification of drainage points and any necessary mitigation measures. Further, the s 173

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<sup>13</sup> Part A Submission, 23 April 2025, 8.

agreement required by DPO24 requires the owner of the Land provide for 'the construction of all identified infrastructure works'.

39. These matters will also be further resolved through consideration of individual planning permit applications when the time comes.
40. The *Infrastructure Assessment Report* provided by the Proponent demonstrates that matters relating to drainage and sewerage can be appropriately dealt with in the future development of the Land.<sup>14</sup>

41. As it relates to drainage, the *Report* considers options to reduce flows into downstream properties back to pre-development levels along with the possibility of increasing these flows to facilitate farming activities on downstream properties. The *Report* concludes with relation to drainage:

3.2.43 As part of the subsequent SWMS for the site, DPM recommend that the volume of additional flows into the downstream landowner's properties is finalised to allow the confirmation of the required drainage reserve size based on the adopted detention volumes. exactly how much additional flow the downstream landowners are willing to accept into their properties so the reserve size and volume of the detention storage can be determined should scenario 2 proceed.

3.2.44 The site has no trapped low points which would present a flooding issue. There is no inundation overlay covering the site. There are existing natural discharge points and area to incorporate retention volume should attenuation be required. From a drainage perspective there is no reason why the site can not be rezoned to facilitate the proposed development.

42. As it relates to sewerage, the *Report* sets out that reticulated mains sewer will be located through the internal road reserves, with a pumping station required at the south-eastern corner of the Land due to the natural topography which, in turn, will require additional on-site storage and with eventual connection through Bungower Road to the existing sewer connection.<sup>15</sup>
43. Beyond these initial investigations to confirm these matters *can* be addressed, it is wholly appropriate for matters of infrastructure to be fully resolved at the next stage of 'planning intervention' (i.e. the approval of the development plan).
44. Relevantly, both Melbourne Water (**Submitter 65**), as the relevant stormwater drainage authority, and South-East Water (**Submitter 43**), as the relevant sewerage authority, have not objected to, nor raised any concerns with, the Amendment.

### **Traffic**

45. Council relies on the expert opinion of Mr Maina with relation to matters of traffic impacts relevant to the Amendment.
46. As a starting point, it is relevant to note two precursory matters that affect traffic considerations as part of the Amendment.
47. First, under the current planning controls affecting the Land, the Land can already be developed and used for industrial purposes. Subsequently, the Amendment does not

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<sup>14</sup> DPM Consulting Group, 14 April 2022.

<sup>15</sup> Ibid 25-27.

necessarily facilitate a wholesale change in terms of traffic generation anticipated under the proposed controls when compared to the current controls.

48. Second, as previously noted, matters relating to traffic and transport will be addressed as part of approval of the development plan under the DPO24. This includes:
  - 48.1. the requirement for a comprehensive 'Transport and Movement Plan' to form part of the development plan that requires, among other things, identification of traffic volumes and intersection treatments;
  - 48.2. the requirement for a 'Staging Plan' that includes staging of roads and infrastructure; and
  - 48.3. the requirement for signalisation of the primary access point to the Land from Bungower Road, to be delivered at the time of completion of the main access.
49. The Panel has before it a number of documents relating to matters of traffic and transport. These include:
  - 49.1. preliminary traffic review, WSP, 6 May 2020 (forming part of *ILARS*);
  - 49.2. initial traffic impact assessment, *Stantec*, 29 September 2021;
  - 49.3. updated initial traffic impact assessment, *Stantec*, 14 April 2022;
  - 49.4. Traffic Assessment Peer Review, *Salt3*, 2 April 2024;
  - 49.5. Preliminary Transport and Movement Plan, *Stantec*, 7 June 2024;
  - 49.6. response to Council traffic comments, *Stantec*, 24 July 2024;
  - 49.7. expert witness statement of Simon Davies of PJA, April 2025 (**Davies Statement**);
  - 49.8. Maina Statement; and
  - 49.9. Statement of Agreed Facts and Opinions, Simon Davies and John-Paul Maina, 6 May 2025 (**Statement of Agreed Facts**).
50. Starting with overall traffic volumes, both Mr Maina and Mr Davies (on behalf of the Proponent) consider anticipated traffic volumes from the development facilitated by the Amendment within their evidence.<sup>16</sup> The Statement of Agreed Facts summarises the opinion of both Mr Maina and Mr Davies as being in agreement that the full development of the Land is anticipated to result in:
  - 50.1. approximately 700-800 vehicle movements per hour during the AM and PM peak periods; and
  - 50.2. approximately 6,000-7,000 vehicle movements per day.<sup>17</sup>
51. The evidence statement of Mr Davies notes that, accounting for anticipated directional splits and future growth in traffic volumes, the anticipated traffic volumes are not anticipated to cross

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<sup>16</sup> Main Statement, 17; Davies Statement, 25.

<sup>17</sup> Statement of Agreed Facts, 1.

the threshold for duplication of Bungower Road of 18,000 vehicles per day (15,500 vehicles per day west of the Land and 12,000 vehicles per day east of the Land).<sup>18</sup>

52. Whilst not expressively addressed within the Maina Statement, Mr Maina's agreement with this is recorded within the Statement of Agreed Facts.<sup>19</sup>
53. Subsequently, on the strength of the evidence (and other background traffic studies), Bungower Road is not anticipated to require duplication as a result of future development of the Land.
54. Moving to intersection performance, Mr Maina's evidence includes an analysis of the performance of the three surrounding intersections (along with that of the access to the Land). Accounting for future growth in traffic volumes and full development of the Land, the two immediately surrounding intersections (Bungower Road/Lower Somerville Road and Bungower Road/Westernport Highway) are anticipated to continue to operate within capacity.<sup>20</sup>
55. Conversely, the Bungower Road/Frankston-Flinders Road intersection is anticipated to operate 'above target capacity'.<sup>21</sup> This is based on the 'worst' performing approach to the intersection during both the AM and PM periods, being a 0.93 degree of saturation on the northerly approach from Frankston-Flinders Road during the AM peak and 0.99 degree of saturation on the easterly approach from Bungower Road during the PM Peak.<sup>22</sup> Mr Maina notes that this intersection will require infrastructure improvements to improve capacity.
56. Mr Davies agreement with this view that some mitigation works will be required in the future is recorded within the Agreed Statement of Facts.<sup>23</sup> The Agreed Statement of Facts proceeds to set out some options for future mitigation as:
  - Additional lanes to existing roundabout, subject to compliance with relevant detail design standards
  - Metering (signalising) the existing roundabout
  - Conversion to signalised cross-intersection
57. Mr Maina and Mr Davies' agreed conclusion as it relates to performance of the Bungower Road/Frankston-Flinders Road intersection is:

Any required mitigation works can be appropriately determined as part of the Transport and Movement Plan prepared as part of the Development Plan as required by DPO24 and to the satisfaction of the responsible authority.
58. In considering any mitigation works to the Bungower Road/Frankston-Flinders Road intersection that will be required to be addressed by, and included within, the eventual development plan approved under the DPO24, Council will need to consider a range of factors, including:

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<sup>18</sup> Davies Statement, 25.

<sup>19</sup> Statement of Agreed Facts, 3.

<sup>20</sup> Maina Statement, 23.

<sup>21</sup> Ibid 24.

<sup>22</sup> Ibid 66-67.

<sup>23</sup> Agreed Statement of Facts, 2.

- 58.1. the extent to which it is 'reasonable' and/or 'proportionate' for upgrade or mitigation works to be the responsibility of the developer of the Land;
- 58.2. the potential for a wider future re-zoning of the 'port-related uses' land and mechanisms that could be more proportionately implemented at that point in time to improve the surrounding road network;
- 58.3. the positive contribution to Bungower Road to be made already by the developer of the Land in the form of the signalised intersection and footpath connection to the existing footpath on Frankston-Flinders Road;
- 58.4. ongoing work being undertaken by Council and the Department of Transport and Planning regarding the wider freight network; and
- 58.5. the fact that the Department of Transport and Planning (**Submitter 113**), who are responsible for the intersection, have offered unconditional support for the Amendment.
59. Related to these matters, Mr Maina evidence further speaks to the notion of 'practical limitations' when considering obligations on developers to contribute to mitigation and improvement works to road infrastructure:<sup>24</sup>
- [43] The practical limitations that would typically be considered are:
- Land availability
  - Proportionality of mitigation works - being a consideration of the nexus between the scope of work required to mitigate the impacts vs the quantum of additional traffic added by the development.
  - Strategic network planning
60. These matters will be considered as appropriate through approval of the development plan under the DPO24.
61. Turning to 'heavy vehicle' traffic, Mr Maina considers that approximately 15 percent of the total vehicle movements generated by the future development of the Land will be commercial vehicles, equating to 105 commercial vehicle movements during peak hours and 1,050 total heavy vehicle movements per day.<sup>25</sup> Mr Davies agrees with these numbers.<sup>26</sup>
62. The version of the DPO24 advanced by Council includes a requirement that the 'transport and movement plan' include '*any mitigation measures required to address the impacts of predicted increases in heavy vehicle traffic on local and arterial roads*'.
63. Whilst neither Mr Maina nor Mr Davies express specific concern with the impact of added commercial vehicle traffic to the surrounding road network, they nonetheless both note that there are a range of mitigation measures that can possibly be implemented in the future to manage any increased heavy vehicle volumes.

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<sup>24</sup> Maina Statement, 21.

<sup>25</sup> Ibid 26.

<sup>26</sup> Statement of Agreed Facts, 1-2.

64. Mr Davies opines:<sup>27</sup>

Notwithstanding, as development of Somerville continues, Council in consultation with DTP may continue to look at options to improve the amenity and safety of Somerville township by introducing additional traffic calming measures such as reduced speed limits, additional pedestrian crossings and narrower pavement widths noting there will always remain a need for heavy vehicle access to service the commercial uses within the township.

65. Similarly, Mr Maina notes, with reference to earlier measures outlined by Stantec on behalf of the Proponent:<sup>28</sup>

[75] I have also reviewed the options presented by Stantec that contemplate:

- Prohibiting parking along Bungower Road and Lower Somerville Road as appropriate; and
- A potential truck curfew on Lower Somerville Road

[77] I consider that these options are feasible and would expect that such measures would be subject to due process, which I understand has commenced.

66. Further on this topic, as noted previously, there is ongoing work being undertaken with regard to the surrounding road network that will likely have an impact on the way commercial vehicles are managed in the future. As noted within the Agenda as a broader piece of work:<sup>29</sup>

- To mitigate the amenity and safety impacts on the Somerville township along Frankston Flinders Road, the Shire has commenced freight corridor planning in conjunction with the Department of Transport and Planning with the primary aim to reduce heavy freight movements through Somerville.
- The planning of freight corridors will direct heavy freight vehicle movements to suitable corridors and will consider the needs of appropriate localised freight accessibility where necessary.
- In conjunction with DTP, many recommended types of infrastructure improvements and traffic management measures on the various relevant corridors have been identified for further feasibility assessment with key freight sector stakeholders.
- The main future freight corridors to the Peninsula are still planned to be Western Port Highway along with Peninsula Link that will feed onto the most appropriate local corridors to reduce the use of Frankston-Flinders Road.
- DTP is reviewing the road category classifications within the Shire, acknowledging the level of amenity and safety appropriate for adjacent land uses on key road corridors including Frankston-Flinders Road.

67. Whilst such larger network changes, such as wholesale infrastructure upgrades or changes to the designated heavy vehicle and freight corridors, fall outside the scope of the Amendment, it is nonetheless relevant to observe that such changes are in train and can be factored in as appropriate at the time of consideration of approval of the development plan.

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<sup>27</sup> Davies Statement, 30.

<sup>28</sup> Maina Statement, 28.

<sup>29</sup> Agenda, Attachment Book 1, 297.

68. Subsequently, Council submits that matters regarding traffic and transport are appropriately resolved for this 'level' of the planning process.

***Amenity impacts (generally)***

69. Submitter 49 raises a number of concerns that can be broadly characterised as amenity-based concerns.
70. In response to these concerns, Council notes at a broad level that the IN3Z is, unlike the other industrial zones, a zone that concerns itself with surrounding residential amenity. This is reflected through one of the purposes of the zone, being:

To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

71. Further, the decision guidelines require, among other things, consideration of:

Interface with non-industrial areas.

72. The IN3Z is an appropriate zone selection in areas where there will be an interface to residential or other sensitive land uses. This is reflected in the *Practitioner's Guide to Victoria's Planning Schemes*:<sup>30</sup>

**Industrial 3 Zone (clause 33.03 and schedule)**

This zone is designed to be applied as a buffer between the Industrial 1 Zone or Industrial 2 Zone and residential areas, if necessary. It may also be applied to industrial areas where special consideration is required because of industrial traffic using residential roads, unusual noise or other emission impacts, or to avoid inter-industry conflict. A schedule to the zone allows the maximum floor space to be limited for office use.

The zone provides for some retailing, including convenience shops, small-scale supermarkets and associated shops in appropriate locations.

73. The IN3Z will work hand-in-hand with the DPO24 (and proposed policy), which includes a number of provisions to ensure a comprehensive and sensitive response to amenity is incorporated into the eventual development plan, including:
- 73.1. vehicle access to only be taken from two centralised access points on Bungower Road, namely the principal access point being the signalised intersection to what is currently 79 Bungower Road and a secondary access point to what is currently 83 Bungower Road;
  - 73.2. discouragement for offensive or dangerous industries;
  - 73.3. a limitation on subdivision to the area to the west of the pipeline easement, being the area that most directly interfaces with the Low Density Residential Zone Land;
  - 73.4. a 30 metre landscape buffer to Lower Somerville Road;
  - 73.5. a minimum 50 metre setback to Bungower Road;

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<sup>30</sup> Department of Transport and Planning, *Practitioner's Guide to Victoria's Planning Schemes*, June 2024, 32.

- 73.6. areas set aside for vegetation retention and restoration, landscape buffers and landscaping;
- 73.7. the provision of suitable buffers to agricultural land; and
- 73.8. design guidelines for the future development of buildings, including for appearance and scale of buildings and the location of signage and lighting etc.;
74. Cumulatively, the IN3Z, overlaid with the highly specific guidance of the DPO24 are appropriate tools that will ensure amenity is appropriately managed. These two tools have, in the past, been remarked by the Panel to be an appropriate pairing to ensure protection of the amenity of nearby residential and other sensitive uses.<sup>31</sup>
75. At any rate, whilst trite to observe by now, Council nonetheless repeats its submission that more specific amenity impacts will be able to be (and are appropriate to be) considered at the stage of not only endorsement of the development plan under the DPO24, but also through the consideration of eventual permits issued for the development and use of the Land.
76. Consideration of any eventual planning permit applications made in respect of the Land will be required to be 'generally in accordance with' the approved development plan and will be required to respond to the purpose and decision guidelines of the IN3Z along with the wider provisions of the Scheme. Among other things, this includes clause 53.10 Uses and activities with potential adverse impacts (applicable to the interface to the Low Density Residential Zone land to the west within the Somerville Township).
77. Council submits that the Amendment puts in place an appropriate framework to ensure that amenity impacts will be considered as appropriate in the future planning stages that are required to be navigated before the Land can be developed in accordance with the Amendment.
78. In other words, amenity is appropriately resolved for the 'level' that the Amendment represents.

### ***Environmental impacts***

79. As a starting point with relation to environmental impacts, it is relevant to observe that the Land is not currently subject to any environmental overlays or other controls under the Scheme. This is with the exception of clause 52.17 Native vegetation, which applies to all land in the municipality and will continue to apply following the Amendment.
80. In the early days of the Amendment, the Proponent provided an ecological report that considered the existing environmental state of the Land.<sup>32</sup> The report notes that, whilst being largely modified due to previous land uses, the Land nonetheless contains ongoing ecological values.<sup>33</sup> Of these ecological values, the report notes that the indicative development footprint currently contains 8.425 hectares of native vegetation, 15 scattered trees and 28 large trees.
81. The environmental values identified by the ecological report, whilst important, do not suggest that the Amendment should not proceed on the basis of environmental factors.

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<sup>31</sup> See for example, [Warrnambool C72 \(PSA\) \[2011\] PPV 93](#).

<sup>32</sup> *Existing Ecological Conditions Report for proposed Mornington Peninsula Technology, Industry & Business Park*, Ecology and Heritage Partners, April 2022.

<sup>33</sup> *Ibid* 20.

82. Nonetheless, in response to the matters identified within the report, Council included a number of requirements within the DPO24 that go to protection of native vegetation and minimisation of environmental impacts.
83. These requirements were further refined in response to the submission received from the Department of Energy, Environment and Climate Action (DEECA) (**Submitter 44**). DEECA noted broad support for the requirements proposed to be included in DPO24, whilst providing commentary around some of the requirements.
84. Importantly, DEECA ultimately did not object to the Amendment.
85. Returning to the aforementioned requirements of the DPO24, first, the DPO24 includes a requirement for an 'ecological assessment and native vegetation management plan' to form part of the eventual development plan that, among other things, requires recommendations for the retention, conservation and management of native vegetation along with provision for offsets where retention is not possible.
86. Second, as previously noted, the 'Master Plan' also requires identification of the '*areas set aside for vegetation retention and restoration...*'.
87. Third, a 'landscape plan' is required as part of the development plan that includes species to be selected from local ecological vegetation classes where possible.
88. Fourth, a 'construction environmental management plan' is also required to form part of the development plan. Among other things, this plan requires details of site management to ensure appropriate protection measures are put in place to minimise impacts to vegetation and the wider environment (including from run-off etc.).
89. Fifth, the section 173 agreement is required to include provision for the ongoing protection of 'high biodiversity value' vegetation as per the ecological assessment and native vegetation management plan.
90. Finally, in the event that any development proceeds prior to the development plan being approved, the DPO24 includes a 'failsafe' requirement that any application for a permit lodged before the development plan is approved be accompanied by, among other things, an individual ecological assessment and native vegetation management plan and a construction environmental management plan.
91. In this sense, the Amendment not only maintains the 'status quo' as it relates to environmental protection of the Land, but goes well beyond it by introducing a regime by which vegetation conservation will be required to be factored into the initial development and subdivision layout from the outset (or, alternatively, on a site-by-site basis if developed prior).
92. Beyond these requirements, it should also be noted that the Amendment does not obviate the need for approval to be granted pursuant to clause 52.17 for native vegetation removal. Any future removal of trees will require assessment and consideration against clause 52.17 and, if approved for removal, will require the securing of offsets.
93. The manner in which the Amendment addresses environmental considerations is appropriate given that the detailed design of the development and use of the Land will occur at a later stage (in accordance with the regime established by the Amendment).

94. Accordingly, the Amendment deals with environmental factors at an appropriate 'level' and there are no environmental reasons why the Amendment should not be supported.

**Conclusion on Submission 49**

95. In light of the above, Council has elected to not advance any specific changes to the Amendment in response to Submitter 49.
96. Notwithstanding this, Council looks forward to the Panel's recommendation with respect to the concerns raised by Submitter 49.

SUBMITTER 92

97. Submission 92 is filed on behalf of the Somerville Business Group Inc.
98. It is understood that Submitter 92 broadly supports the Amendment, however, voices a concern regarding potential delays in delivery of the development and requests all traffic, other than local traffic, be diverted to the Westernport Highway.
99. Council summarised Submission 92 as follows:<sup>34</sup>
- Conditionally supports the amendment. Concerns about controlling land use and management of non-local traffic impacts.
100. Matters relating to traffic are comprehensively addressed in the response to Submitter 49 and therefore are not set out again here. Council draws the Panels attention in particular to its submissions regarding the wider network planning being undertaken by Council that falls outside the scope of the Amendment and to the evidence of Mr Maina.
101. Council has limited control over the timeframes for eventual occupation of the Land, but notes that the development can proceed once the requirements of the DPO24 are met and the required permits are issued.
102. Council subsequently proposes no specific changes to the Amendment in response to Submitter 92 and looks forward to the Panel's recommendation with respect to the matters raised.

SUBMITTER 103

103. Submitter 103 has an interest in 14 Lower Somerville Road, located to the west of the Subject Land, on the other side of Lower Somerville Road.
104. Council summarised Submission 103 as:<sup>35</sup>
- Opposes the amendment. Concerns about rural landscape and character, and traffic.

***The prospect of viable alternative sites***

105. Submitter 103 raises the potential of viable alternative sites being more appropriate for industrial development.

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<sup>34</sup> Agenda, Attachment Book 1, 390.

<sup>35</sup> Ibid 405.

106. Council relies on the background set out in its 'Part A' submissions, as summarised earlier in these submissions, as providing the strategic basis behind the Amendment. Broadly, it is again noted that:
- 106.1. there is an identified deficit of industrial land;
  - 106.2. the Land is no longer required for the use that it has, to date, been held in reserve for;
  - 106.3. Somerville has broadly been identified as being appropriate for further industrial development; and
  - 106.4. the Land itself has been subject to a level of analysis that suggests it is appropriate for residential development.
107. Whilst it *may* be the case that other areas are also suitable for industrial re-zoning – such as the land identified within the 'Hastings Precinct' – it does not naturally follow that the Subject Land is inappropriate for such re-zoning. Indeed, the *ILARS* specifically identifies the Land as being within an area that is appropriate for a 'supplementary' rezoning alongside the 'Hastings Precinct'.
108. At any rate, such other potential sites are not before the Panel and there is otherwise no evidence before the Panel that suggests either that 1) the industrial estate facilitated by the Amendment will 'take away' from other potential industrial re-zonings, 2) that only a certain number of industrial estates within more preferred locations should be created or 3) that the Land is inappropriate for re-zoning in its own right.
109. Further, irrespective of any potential for other industrial land to be created, industrial land is a valuable commodity for the State and its supply should be facilitated where the opportunity to responsibly do so arises – as it has in this case. As observed by the Panel convened to consider Amendment C108 to the Maribyrnong Planning Scheme (emphasis added):<sup>36</sup>

The Panel considers that the demand for industrial related land in Maribyrnong will increase and decrease over time, and concurs with the observation of Mr Montebello that once industrial land is gone it won't be coming back. The Panel considers it is important to maintain a constant level of supply over time, notwithstanding that there will be periods when the level of supply is well in excess of what is required. Matters specific to Precinct 4 are discussed in Chapter 8.

110. Such comments are even more apt now in light of the shortfalls that have been identified since the Panel's comments.

#### ***Other matters raised by Submitter 103***

111. Matters relating to traffic, impacts to the rural character of the area and amenity have been comprehensively addressed in response to Submitter 49 and are therefore not repeated here.

#### ***Conclusion on Submission 103***

112. In light of this, Council has elected to not advance any specific changes to the Amendment in response to matters raised Submitter 103.

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<sup>36</sup> [Maribyrnong C108 \(PSA\) \[2015\] PPV 102](#), section 11.4.

113. Notwithstanding this, Council looks forward to the Panel's recommendation with respect to the concerns raised by Submitter 103.

## SUBMITTER 89

114. The matters raised by Submitter 89 are summarised by Council as follows:<sup>37</sup>

Opposes the amendment. Concerns about consistency with ILARS, traffic and parking.

115. Council relies on the summary of the *ILARS* provided within its 'Part A' submission, which demonstrates that there is no inconsistency between this Amendment and *ILARS*.
116. In particular, it is again noted that *ILARS* identifies the Subject Land as being within an area that is appropriate for 'supplementary' rezoning along with the preferred 'Hastings Precinct'. Whilst the Amendment has progressed further along than any amendment for the 'Hastings Precinct', this is due to factors largely beyond Council's control.
117. At any rate, the fact that the 'Hastings Precinct' is yet to proceed is not a reason to hold up an industrial re-zoning that is otherwise ready to proceed and has been sufficiently justified.
118. Matters relating to traffic have been comprehensively set out in response to Submitter 49 and are not repeated here.
119. As it relates to car parking, car parking will be required to be addressed through future planning 'intervention' into the development, including both as part of the 'transport and movement plan' that will form part of the development plan and through any future planning permit applications, which will be required to be assessed against the provisions of clause 52.06 Car parking of the Scheme.
120. Given the fact that the particulars of the eventual development will not be resolved until these later stages, it would be inappropriate to attempt to further resolve car parking through the Amendment. Clause 52.06 provides an appropriate mechanism to deal with car parking at the planning permit application stage.
121. Council has not elected to advance any changes in response to Submitter 89 and otherwise looks forward to the Panel's recommendation with relation to these concerns.

## SUBMITTER 97

122. Submitter 97 is a nearby resident to the Subject Land.

123. Council summarised the contents of Submission 97 in the following terms:<sup>38</sup>

Opposes the amendment. Concerns about rural landscape and character, traffic, lack of public transport and active transport, strategic justification for the amendment and alternative sites for industrial development.

124. As it relates to the lack of public transport, Council acknowledges that it is a shortfall of the proposal. However, it is a wider issue that exists throughout the municipality and is likely to be a negative factor for any industrial re-zoning throughout the municipality (this is particularly

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<sup>37</sup> Agenda, Attachment Book 1, 384.

<sup>38</sup> Ibid 401.

in light of the imperative to create mixed residential and commercial activity centres around public transport hubs).

125. Notwithstanding this, the DPO24 requires, as part of the 'transport and movement plan' that provision be made for a future bus stop on Bungower Road. This will ensure the development is 'ready' in the event any public transport routes are redeveloped to the land, noting that the potential to do so otherwise falls outside the scope of the Amendment (and is not within the remit of Council).
126. The remaining matters raised by Submitter 97 have been comprehensively addressed in response to the earlier submissions and therefore are not set out again here. Council draws the Panel's attention in particular to the earlier submissions set out with respect to the change to the character of the area.
127. In light of the earlier responses, Council has not opted to make any changes to the Amendment in response to Submitter 97.
128. Council looks forward to the Panel's recommendation in respect of Submitter 97.

#### SUBMITTER 115

129. Submission 115 is a late submission that consists of a petition containing 100 signatures. As noted in Council's 'Part A' submission, a number of the signatories were also individual submitters to the Amendment.
130. The submission raises broad concerns about the strategic justification of the Amendment. In response, Council continues to rely on the strategic basis set out within its 'Part A' submissions and as summarised earlier in these submissions.
131. Beyond this, Submission 115 contains further, more specific concerns regarding:
  - 131.1. impacts to the green wedge and environmental values and characteristics of the Land;
  - 131.2. the potential for retention of the Land as part of the green wedge or for residential development;
  - 131.3. concerns regarding competition with other nearby industrial land; and
  - 131.4. traffic impacts.
132. With the exception of the potential for the Land to be used for residential purposes, the remainder of these concerns have already been addressed in some detail in these submissions and are not repeated here.

#### ***Potential for the Land to be used for residential development***

133. With relation to the potential for use of the Land for residential purposes, Council notes that [Amendment C219morn](#) – which addresses housing throughout the municipality by implementing the [Housing and Settlement Strategy: Refresh 2020-2036](#) – has been adopted by Council and is currently before the Minister for approval. Amendment C219morn identifies the existing residential land as being sufficient to deal with projected population increases and therefore does not identify a need to 'unlock' more residential land, noting that the *Strategy*

provides capacity for 25,183 new dwellings, which goes beyond the 24,000 new dwelling target [set by the State for the municipality](#).

134. At any rate, a proposal to re-zone the Land for residential purposes is not before the Panel and there is otherwise no evidence to suggest that a residential re-zoning is a more appropriate use or of a greater net community benefit than an industrial re-zoning.

#### **Conclusion on Submission 115**

135. In light of the above, Council does not propose to advance any specific changes in response to Submitter 115 and looks forward to the Panel's recommendation in response to this submitter.

#### **SUBMITTER 63**

136. Submitter 63 has an interest in 90 Bungower Road, Somerville, located on the opposite side of the Bungower Road/Lower Somerville Road intersection.

137. Council summarised the contents of Submitter 63 in the following terms:<sup>39</sup>

Opposes the amendment. Concerns about rural character and landscape, implications of the specific siting/location of the proposal, traffic, procedural and other matters.

138. The matters raised by Submitter 63 have been addressed in response to other submitters, as already set out within these submissions. In particular, Council draws the Panel's attention to these matters relating to amenity set out in response to Submitter 49.
139. With respect to the potential for this amendment to open the proverbial floodgates for future industrial re-zoning of surrounding land, Council observes that *ILARS* suggests that other industrial rezoning outside of the 'Hastings Precinct' and the 'supplementary' area in Somerville that supports the Subject Land is unlikely to be appropriate for industrial re-zoning.
140. At any rate, any re-zoning request will need to be addressed on its own merits if such request is advanced in the future.
141. Council does not propose any specific changes in response to Submitter 63 and looks forward to the Panel's recommendations in response to these matters.

#### **SUBMITTER 24**

142. Submitter 24 is a submission on behalf of the Westonport Action Group.

143. Council summarised the nature of submission 24 as follows:<sup>40</sup>

Opposes the amendment based on traffic impact and location.

144. Matters relating to traffic have been comprehensively set out in response to Submitter 49 and are further addressed through the evidence of Mr Maina (and Mr Davies for the Proponent). Further, the strategic basis that suggests the Land is appropriate for industrial re-zoning is comprehensively set out through Council's 'Part A' submission.

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<sup>39</sup> Ibid 360.

<sup>40</sup> Ibid 326.

145. Subsequently, these matters are not repeated here.
146. Council does not propose to advance any specific changes in response to Submitter 24 and looks forward to the Panel's recommendations in response to these matters.

## COUNCIL'S RESPONSE TO EVIDENCE

147. Direction 12.b) requires Council's 'Part B' submission include a response to expert evidence.
148. As noted, Council adopts the evidence of Mr Maina.
149. Further, Council accepts the evidence of both Mr Davies and Mr Haratsis on behalf of the Proponent, noting that neither expert witness identifies any issues with, or recommends any changes to, the Amendment.
150. There are no changes emerging out of the expert evidence that are required to be incorporated into the documents that form part of the Amendment.

## COUNCIL'S FINAL POSITION ON THE AMENDMENT

151. Direction 12.c) requires Council include its final position on the Amendment within its 'Part B' submission.
152. Council's final position on the Amendment is the Amendment as exhibited, save for the following revisions listed in the two paragraphs that follow.
153. The first set of revisions are those that form part of Council's resolution from 25 February 2025.<sup>41</sup> They include (as generally outlined in Council's 'Part A' submission with further explanation provided):
  - 153.1. the following modifications to Schedule 24 to the DPO:
    - 153.1.1 under clause 3.0:
      - addition of permit conditions relating to bushfire protection, emerging from the submissions from the CFA (**Submitter 112**);
    - 153.1.2 under clause 4.0, as requirements of the eventual development plan:
      - addition of a requirement for an 'intrusive soil contamination assessment', emerging from the submissions from EPA Victoria (**Submitter 111**);
      - further requirements to be included in the 'ecological assessment and native vegetation management plan' that relate to retention of the highest value native vegetation, emerging from the submission from DEECA (**Submitter 44**);

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<sup>41</sup> As contained within the Agenda, Attachment Book 1, 421-438

- modification to the requirement as part of the 'master plan' related to the proposed access points to Bungower Road, so that they are no longer required to be 'to the satisfaction of' the Department of Transport and Planning (**DTP**), with consultation instead required with DTP given that Bungower Road is a Council managed road, as generally a response to the submissions received from DTP (**Submitter 113**);
- addition of a requirement of the 'master plan' that relates to bushfire protection, emerging from the submissions from the CFA (**Submitter 112**);
- modification to the requirements of the 'transport and movement plan', as generally emerging out of submissions that relate to traffic and transport impacts and the submissions received from DTP (**Submitter 113**), including provisions to deal with 'heavy vehicle' traffic, specific requirements for intersection treatments at the entries, removal of the requirement for identification of road widening and a requirement that consultation be undertaken with the Department of Transport and Planning (**DOTP**);
- addition of a requirement to the 'landscape plan' that requires inclusion of a species list, that are to be from local EVC where possible, emerging out of the submission from DEECA (**Submitter 44**);
- addition of a requirement for 'major pipeline infrastructure', that specifies requirements for subdivision and development related to the gas and oil pipelines that pass through the north-western portion of the Land, emerging from the submissions received from Viva Energy Australia (**Submitter 61**), Esso Australia (**Submitter 95**) and Energy Safe Victoria (**Submitter 110**);
- additional requirements forming part of the 'staging plan', that generally relate to the access points from Bungower Road, including identification of any potential interim access required;
- additional requirements for the 'construction and environmental management plan relating to the retention of native vegetation and minimization of impacts to such vegetation, emerging from the submission received from DEECA (**Submitter 44**);
- additional requirements to the s 173 Agreement as generally emerging out of the submissions that relate to traffic and transport impacts as to tie the required infrastructure works back to the other approved plans that form part of the development plan, require the signalisation of the primary access point to Bungower Road at the time of completion of this primary access and require treatments to the secondary access point to Bungower Road as to limit its use by certain vehicle types.

153.2. amendments to the content of the explanatory report, including:

- 153.2.1 reference to the oil and gas pipeline that runs through the Land (page 3);
  - 153.2.2 reference to the specific conditions included in response to the CFA submission (**Submitter 112**) (page 4);
  - 153.2.3 a note that the proposed conditions under the DPO24 are consistent with the guidelines in *Planning Practice Note 30 – Potentially Contaminated Land* (DELWP, 2021), as emerging from the submission from EPA Victoria (**Submitter 111**) (page 6);
  - 153.2.4 inclusion of clause 13.02-1S Bushfire, clause 13.04-1S Contaminated and potentially contaminated land and clause 19.01-3S Pipeline infrastructure under the list of relevant policies along with additional analysis as to how the Amendment meets these policies (pages 6-7);
  - 153.2.5 inclusion of a summary of the submissions received from DEECA (**Submitter 44**), CFA (**Submitter 113**), EPA Victoria (**Submitter 111**), DTP (**Submitter 113**) and Energy Save Victoria (**Submitter 110**) (pages 8-9); and
  - 153.2.6 further 'housekeeping' modifications.
154. The second set of revisions post-date the Council resolution, but represent Council's 'preferred position' on the Amendment for the purposes of this hearing. Those changes include the following the Schedule 24 to the DPO:
- 154.1. further clarification around what is an 'offensive or dangerous' industry for the purposes of excluded land uses within the 'Master Plan' that is to form part of the development plan, which adopts wording used in the table of uses within industrial zones (including the IN3Z); and
  - 154.2. a further qualifier added to the limitation on subdivision west of the existing gas pipeline required within the 'Master Plan' that is to form part of the development plan as to ensure excision of the land and any subsequent subdivision necessary for the community precinct is not precluded.
155. All of the above changes are shown in track changes in the 'Day 1' version of the Amendment documentation filed alongside this submission, with comments included to identify at what stage the changes have been made.
156. It is this final position that Council requests the Panel considers in its report to Council.
157. Notwithstanding this, Council flags that it is likely to produce a further revised version of the proposed Schedule 24 to the DPO for the Panel's consideration that 'housekeeps' the drafting of the Schedule (whilst leaving the substance of these provisions unchanged) in order to address some issues with the drafting of the Schedule that have been identified by Council in preparation for this hearing.

## CONCLUSION

158. A final response to any further submissions and other matters raised by the Panel during the hearing will be provided as a 'Part C' submission in accordance with Direction 28 of the Directions (if necessary).
159. This concludes Council's 'Part B' submission.

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## JACKSON LANE LEGAL

Jack Chiodo  
Principal Town Planner

on behalf of the Planning Authority

8 May 2025

## APPENDIX 1 – SUBMITTER SUMMARY TABLE

| Submitter #   | Initial submission date | Further submission date | Position on Amendment | Participating in Panel proceeding? |
|---------------|-------------------------|-------------------------|-----------------------|------------------------------------|
| 1             | 15 March 2023           |                         | Oppose                |                                    |
| 2             | 16 March 2023           |                         | Oppose                |                                    |
| 3             | 17 March 2023           |                         | Support               |                                    |
| 4             | Undated                 |                         | Oppose                |                                    |
| 5             | 20 March 2023           |                         | Oppose                |                                    |
| 6             | 20 March 2023           |                         | Oppose                |                                    |
| 7             | 20 March 2023           |                         | Oppose                |                                    |
| 8             | 21 March 2023           |                         | Oppose                |                                    |
| 9             | 21 March 2023           |                         | Support               |                                    |
| 10            | 22 March 2023           |                         | Oppose                |                                    |
| 11            | 22 March 2023           |                         | Support               |                                    |
| 12 (VicTrack) | 21 March 2023           |                         | No objection          |                                    |
| 13            | 26 March 2023           |                         | Support               |                                    |
| 14            | 26 March 2023           |                         | Oppose                |                                    |
| 15            | Undated                 |                         | Oppose                |                                    |
| 16            | 29 March 2023           |                         | Oppose                |                                    |
| 17            | 29 March 2023           |                         | Oppose                |                                    |
| 18            | 29 March 2023           |                         | Oppose                |                                    |
| 19            | 30 March 2023           |                         | Oppose                |                                    |
| 20            | 30 March 2023           |                         | Oppose                |                                    |
| 21            | 1 April 2023            |                         | Oppose                |                                    |
| 22            | 30 March 2023           |                         | Support               |                                    |
| 23            | 4 April 2023            |                         | Oppose                |                                    |
| <b>24</b>     | <b>4 April 2023</b>     |                         | <b>Oppose</b>         | <b>Yes</b>                         |

|   |                      |              |               |            |
|---|----------------------|--------------|---------------|------------|
| 25  | 3 April 2023         |              | Oppose        |            |
| 26  | Undated              |              | Oppose        |            |
| 27  | 5 April 2023         | 6 April 2023 | Support       |            |
| 28  | 5 April 2023         |              | Oppose        |            |
| 29  | 11 April 2023        |              | Oppose        |            |
| 30  | 11 April 2023        |              | Oppose        |            |
| 31  | 11 April 2023        |              | Oppose        |            |
| 32  | 12 April 2023        |              | Oppose        |            |
| 33  | Undated              |              | Oppose        |            |
| 34  | 12 April 2023        |              | Support       |            |
| 35  | 13 April 2023        |              | Oppose        |            |
| 36  | 13 April 2023        |              | Support       |            |
| 37  | 16 April 2023        |              | Support       |            |
| 38  | 15 April 2023        |              | Oppose        |            |
| 39  | Undated              |              | Oppose        |            |
| 40  | Undated              |              | Oppose        |            |
| 41  | 17 April 2023        |              | Oppose        |            |
| 42  | 18 April 2023        |              | Oppose        |            |
| 43 (South East Water)                                     | 12 April 2023        |              | No objection  |            |
| 44 (Department of Energy, Environment and Climate Action) | 22 April 2023        |              | No objection  |            |
| 45  | Undated              |              | Oppose        |            |
| 46  | 23 April 2023        |              | Support       |            |
| 47  | 24 April 2023        | 20 May 2023  | Oppose        |            |
| 48  | 24 April 2023        |              | Oppose        |            |
| <b>49</b>   | <b>24 April 2023</b> |              | <b>Oppose</b> | <b>Yes</b> |
| 50  | 25 April 2023        |              | Oppose        |            |

|                            |                |  |                                      |            |
|----------------------------|----------------|--|--------------------------------------|------------|
| 51                         | 25 April 2023  |  | Support                              |            |
| 52                         | 26 April 2023  |  | Oppose                               |            |
| 53                         | Undated        |  | Support                              |            |
| 54                         | 27 April 2023  |  | Support                              |            |
| 55                         | 27 April 2023  |  | Support                              |            |
| 56                         | 27 April 2023  |  | Oppose                               |            |
| 57                         | 28 April 2023  |  | Support                              |            |
| 58                         | 28 April 2023  |  | Oppose                               |            |
| 59                         | 28 April 2023  |  | Support                              |            |
| 60                         | 28 April 2023  |  | Support                              |            |
| 61 (Viva Energy Australia) | 28 April 2023  |  | No objection (subject to conditions) |            |
| 62                         | 28 April 2023  |  | Enquiry                              |            |
| <b>63</b>                  | <b>Undated</b> |  | <b>Oppose</b>                        | <b>Yes</b> |
| 64                         | 28 April 2023  |  | Support                              |            |
| 65 (Melbourne Water)       | 26 April 2023  |  | No objection                         |            |
| 66                         | 1 May 2023     |  | Support                              |            |
| 67                         | 1 May 2023     |  | Support                              |            |
| 68                         | 2 May 2023     |  | Support                              |            |
| 69                         | Undated        |  | Oppose                               |            |
| 70                         | 5 May 2023     |  | Oppose                               |            |
| 71                         | 4 May 2023     |  | Support                              |            |
| 72                         | 9 May 2023     |  | Support                              |            |
| 73                         | Undated        |  | Support                              |            |
| 74                         | 9 May 2023     |  | Object                               |            |
| 75                         | 10 May 2023    |  | Support                              |            |
| 76                         | 10 May 2023    |  | Oppose                               |            |
| 77                         | 10 May 2023    |  | Support                              |            |

|                     |             |                 |                                 |     |
|---------------------|-------------|-----------------|---------------------------------|-----|
| 78                  | May 2023    |                 | Support (subject to conditions) |     |
| 79                  | Undated     |                 | Support                         |     |
| 80                  | 10 May 2023 |                 | Oppose                          |     |
| 81                  | 11 May 2023 |                 | Oppose                          |     |
| 82                  | 11 May 2023 |                 | No objection                    |     |
| 83                  | Undated     |                 | Support                         |     |
| 84                  | 11 May 2023 |                 | Support                         |     |
| 85                  | 11 May 2023 |                 | Support                         |     |
| 86                  | 11 May 2023 |                 | Oppose                          |     |
| 87                  | Undated     |                 | Oppose                          |     |
| 88                  | 11 May 2023 |                 | Support (subject to conditions) |     |
| 89                  | Undated     |                 | Oppose                          | Yes |
| 90                  | 12 May 2023 | 8 February 2025 | Oppose                          |     |
| 91                  | Undated     |                 | Oppose                          |     |
| 92                  | 12 May 2023 |                 | Support (subject to conditions) | Yes |
| 93                  | Undated     |                 | Oppose                          |     |
| 94                  | 11 May 2023 |                 | Support                         |     |
| 95 (Esso Australia) | 12 May 2023 |                 | Support (subject to conditions) |     |
| 96                  | 12 May 2023 |                 | Support                         |     |
| 97                  | Undated     |                 | Oppose                          | Yes |
| 98                  | 12 May 2023 |                 | Oppose                          |     |
| 99                  | 12 May 2023 |                 | Oppose                          |     |
| 100                 | 12 May 2023 |                 | Oppose                          |     |
| 101                 | 12 May 2023 |                 | Oppose                          |     |
| 102                 | 12 May 2023 |                 | Oppose                          |     |
| 103                 | 12 May 2023 |                 | Oppose                          | Yes |

|  |                     |                  |                                      |            |
|--|---------------------|------------------|--------------------------------------|------------|
| 104 (Frankston City Council)               | 15 May 2023         |                  | Support                              |            |
| 105  | 15 May 2023         |                  | Oppose                               |            |
| 106  | 15 May 2023         |                  | Oppose                               |            |
| 107  | Undated             |                  | Oppose                               |            |
| 108  | 16 May 2023         |                  | Support (subject to conditions)      |            |
| 109 (Casey City Council)                   | 16 May 2023         |                  | No objection                         |            |
| 110 (Energy Safe Victoria)                 | 22 May 2023         |                  | No objection (subject to conditions) |            |
| 111 (EPA Victoria)                         | Undated             |                  | No objection (subject to conditions) |            |
| 112 (CFA)                                  | 6 June 2023         | 20 November 2024 | No objection (subject to conditions) |            |
| 113 (Department of Transport and Planning) | 19 June 2023        | 27 October 2023  | Support                              |            |
| 114 (Port of Hastings Corporation)         | 3 July 2023         |                  | Support (subject to conditions)      |            |
| <b>115 (petition)</b>                      | <b>1 April 2025</b> |                  | <b>Oppose</b>                        | <b>Yes</b> |