



**MORNINGTON
PENINSULA**
Shire

AGENDA

PLANNING SERVICES COMMITTEE MEETING

MONDAY, 18 JULY 2022

5.30PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL

WARDS AND COUNCILLORS

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

SENIOR LEADERSHIP TEAM

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

Please note that this Planning Services Meeting will be livestreamed to the Mornington Peninsula Shire's YouTube channel and a recording of the meeting will be available on the Shire's website.

Recording of persons in the public gallery is not intended but may occur incidentally. By attending this meeting you consent to being filmed at the meeting and the possible use of subsequent recordings in a live streaming or published video of the meeting.

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1 OPENING AND WELCOME

Appointed Chairperson – Councillor Kerri McCafferty

1.1 Acknowledgement of Country

To be read by Cr Race

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

2 PROCEDURAL MATTERS

2.1 Apologies

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

2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Planning Services Committee Meeting held on 20 June 2022, be confirmed.

3 STRATEGIC PLANNING REPORTS

Nil.

4 PLANNING SCHEME AMENDMENT REPORTS

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

Prepared By	Martin Chin, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11207129
Briefing Note Number	BN1583 – 10 May 2022
Attachment(s)	<ol style="list-style-type: none">1. Consolidated Submissions (redacted)2. Submissions Review and Officers' Response3. Explanatory Report Post-exhibition track changes4. Instruction Sheet Post-exhibition track changes5. Zoning Maps Post-exhibition6. DDO Deletion Maps Post-exhibition7. DDO Maps Post-exhibition8. PPF Post-exhibition track changes9. GRZ Schedules Post-exhibition track changes10. NRZ Schedules Post-exhibition track changes11. LDRZ Schedules Post-exhibition track changes12. DDO Schedules Post-exhibition track changes13. NCO Schedules Post-exhibition track changes14. Operational Provisions Post-exhibition track changes15. Post-exhibition Changes to Amendment C219morn

EXECUTIVE SUMMARY

Planning Scheme Amendment C219morn (the Amendment) seeks to implement the Mornington Peninsula Shires, (the Shire) Housing and Settlement Strategy: Refresh 2020-2036 and the Neighbourhood Character Study and Guidelines (the NCS) (Ethos Urban, 2019) by making substantial changes to zones, overlays, and policy provisions in the Mornington Peninsula Planning Scheme. The Amendment was exhibited for public comment over a period of at least 11 weeks between August and October 2021. A total of 314 submissions were received covering a wide range of issues that encompass both planning matters and matters beyond the scope of the Amendment.

Although Shire officers recommend a raft of post-exhibition changes to the Amendment in response to key issues, there are many submissions that cannot be resolved, particularly those containing site-specific requests. Considering the scale and complexity of the Amendment, this report recommends that all submissions be referred to an independent Planning Panel for review and recommendations and that the proposed post-exhibition changes to the Amendment be referred to the Panel for consideration as part of Council's submission to the Panel.

RECOMMENDATION

That the Committee:

4.1 (Cont.)

1. **Receives, notes, and considers in accordance with Section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C219morn at Attachment 1.**
2. **Notes and endorses the summary of submissions and Shire officer responses to submissions in relation to Amendment C219morn at Attachment 2.**
3. **Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C219morn referred in accordance with Section 23 of the *Planning and Environment Act 1987*.**
4. **Refers all submission in relation to Amendment C219morn to the Planning Panel.**
5. **Endorses the following documents, which include those that have been revised to accommodate potential post-exhibition changes, for the purpose of Council's advocacy position before the Planning Panel:**
 - A. **Revised Explanatory Report at Attachment 3.**
 - B. **Revised Instruction Sheet at Attachment 4.**
 - C. **Revised zoning maps at Attachment 5.**
 - D. **Revised Design and Development Overlay (DDO) deletion maps at Attachment 6.**
 - E. **Revised DDO maps at Attachment 7.**
 - F. **Revised Clause 15.01-5L (Neighbourhood character – Mornington Peninsula) and Clause 16.01-1L (Housing supply – Mornington Peninsula) at Attachment 8.**
 - G. **Revised Schedules to the General Residential Zone (GRZ) at Attachment 9.**
 - H. **Revised Schedules to the Neighbourhood Residential Zone (NRZ) at Attachment 10.**
 - I. **Revised Schedules to the Low-Density Residential Zone (LDRZ) at Attachment 11.**
 - J. **Revised Schedules to the DDO at Attachment 12.**
 - K. **Revised Schedules to the Neighbourhood Character Overlay (NCO) at Attachment 13.**
 - L. **Revised Schedules to specific Operational Provisions at Attachment 14.**
 - M. **A document that summarises the potential post-exhibition changes to Amendment C219morn at Attachment 15.**
6. **Delegates authority to the Director of Planning & Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice, including negotiating proposed changes to the endorsed version of Amendment C219morn in order to resolve matters between Council and submitters generally in accordance with the Shire officer response at Attachment 2 and adopted Council policy.**

4.1 (Cont.)

7. Notes that the exhibition of Amendment C219morn incorporated changes in accordance with the conditions of authorisation provided by the Minister for Planning.
8. Writes to submitters to thank them for their submission to Amendment C219morn and advise of Council's decision identified in 1, 3 and 4 above.

COUNCIL & WELLBEING PLAN

The Amendment relates to the following themes and strategic objectives:

- Theme 1: A healthy natural environment and well-planned townships.
- Strategic Objective 1.4: An accessible built environment that supports diverse, current, and future community needs.

The Amendment delivers actions in the Shire's Housing and Settlement Strategy and the NCS to manage demand for housing and population growth whilst protecting and enhancing local neighbourhood character.

RELEVANT COUNCIL DECISIONS AND POLICIES

- 4 December 2017 Planning Services Committee Meeting – Council resolved to adopt the Housing and Settlement Strategy (MPS, 2017).
- 5 February 2018 Planning Services Committee Meeting – Council resolved to:
 - Request the Minister for Planning (the Minister) in accordance with Section 8A of the *Planning and Environment Act 1987* to authorise the preparation and exhibition of the Amendment to the Mornington Peninsula Planning Scheme (the planning scheme) to implement the *Housing and Settlement Strategy* (MPS, 2017).
 - Undertake exhibition of the Amendment following receipt of authorisation from the Minister for Planning in accordance with Section 19 of the *Planning and Environment Act 1987*.

On 18 September 2019, the Minister invited Council to seek reauthorisation of the Amendment on the condition that a series of work be completed prior to submitting for reauthorisation. Essentially, Council was required to:

- Outline the strategic justification for the Amendment by:
 - Adopting a municipal-wide approach to the provision of housing that includes major activity centres, investigation areas and capacity arising from holiday homes converting into permanent homes.
 - Demonstrating that the Shire is capable of achieving a 15-year supply of housing and residential land that is consistent with the Victorian Government population projections and land supply estimates.
 - demonstrating that the proposed residential provisions do not limit the ability of the Shire to provide housing diversity.
- Update the drafting and application of the Neighbourhood Residential Zone (NRZ) schedules to:

4.1 (Cont.)

- Reflect any changes required as a result of the further strategic work above, including the removal of the minimum lot sizes for subdivision, unless strategically justified.
- Incorporate the recommendations of the neighbourhood character study prepared by Ethos Urban once adopted.
- Be consistent with the new Planning Practice Note 90: Planning for Housing and Planning Practice Note 91: Using the Residential Zones.
- Review existing provisions that apply to residential land to ensure there are no conflicts between the proposed and current controls and remove unnecessary permit triggers.
- 14 October 2019 Planning Services Committee Meeting – Council resolved to:
 - Adopt the NCS and its companion documents, i.e., Neighbourhood Character Study – Background Report and Final Consultation Summary Report.
 - Prepare an appropriate planning scheme amendment to incorporate the Housing and Settlement Strategy and NCS.
- 20 July 2020 Planning Services Committee Meeting – Council resolved to:
 - Adopt the Housing and Settlement Strategy: Refresh 2020-2036 (MPS, 2020).
 - Adopt a new version of the Triple A Housing Plan 2020-2030 with reference to the Housing and Settlement Strategy (MPS, 2017) and implementation actions amended to reflect the Housing and Settlement Strategy: Refresh 2020-2036 (MPS, 2020) and inclusion of other policies and plans that have been approved by Council since the original Triple A Housing Plan was adopted.
 - Request the Minister in accordance with Section 8A of the *Planning and Environment Act 1987* to authorise the preparation and exhibition of Amendment C219morn to the Mornington Peninsula Planning Scheme to implement the Housing and Settlement Strategy: Refresh 2020-2036 (MPS, 2020) and NCS (Ethos Urban, 2019).
 - Undertake exhibition of the Amendment following receipt of authorisation from the Minister for Planning in accordance with Section 19 of the *Planning and Environment Act 1987*.

DISCUSSION

Purpose

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

Background

The Amendment seeks to implement the Housing and Settlement Strategy: Refresh 2020-2036 (MPS, 2020) and NCS (Ethos Urban, 2019) by making substantial changes to zones, overlays, and policy provisions in the Mornington Peninsula Planning Scheme. The Amendment is required to:

4.1 (Cont.)

- ensure the special values and character of the Peninsula’s residential areas are protected and enhanced as the Shire’s population continues to grow to the year 2036
- direct future housing growth to appropriate locations across the Peninsula
- improve the operational efficiency of the planning scheme so that more applications for one dwelling on a lot can be processed under the Building Regulations without needing a planning permit.

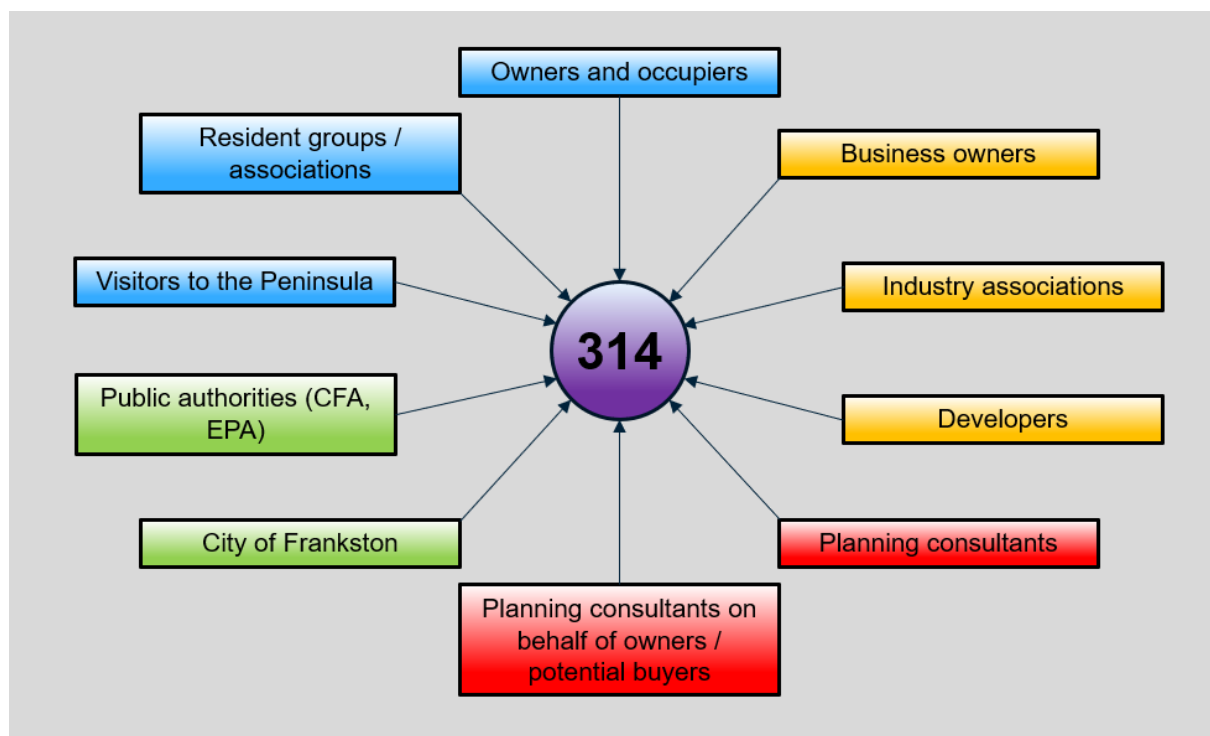
Authorisation and Exhibition

Authorisation to prepare the Amendment was granted by the Minister on 19 May 2021. Exhibition officially commenced Thursday, 12 August 2021 and concluded Friday, 29 October 2021, which was extended by five weeks from the original close date of Friday, 24 September 2021 to allow more time for the community due to the COVID-19 lockdown restrictions.

Submissions

A total of 314 submissions (Attachment 1) were received from a wide range of stakeholders (Figure 1). Shire officers have reviewed and responded to all submissions (Attachment 2).

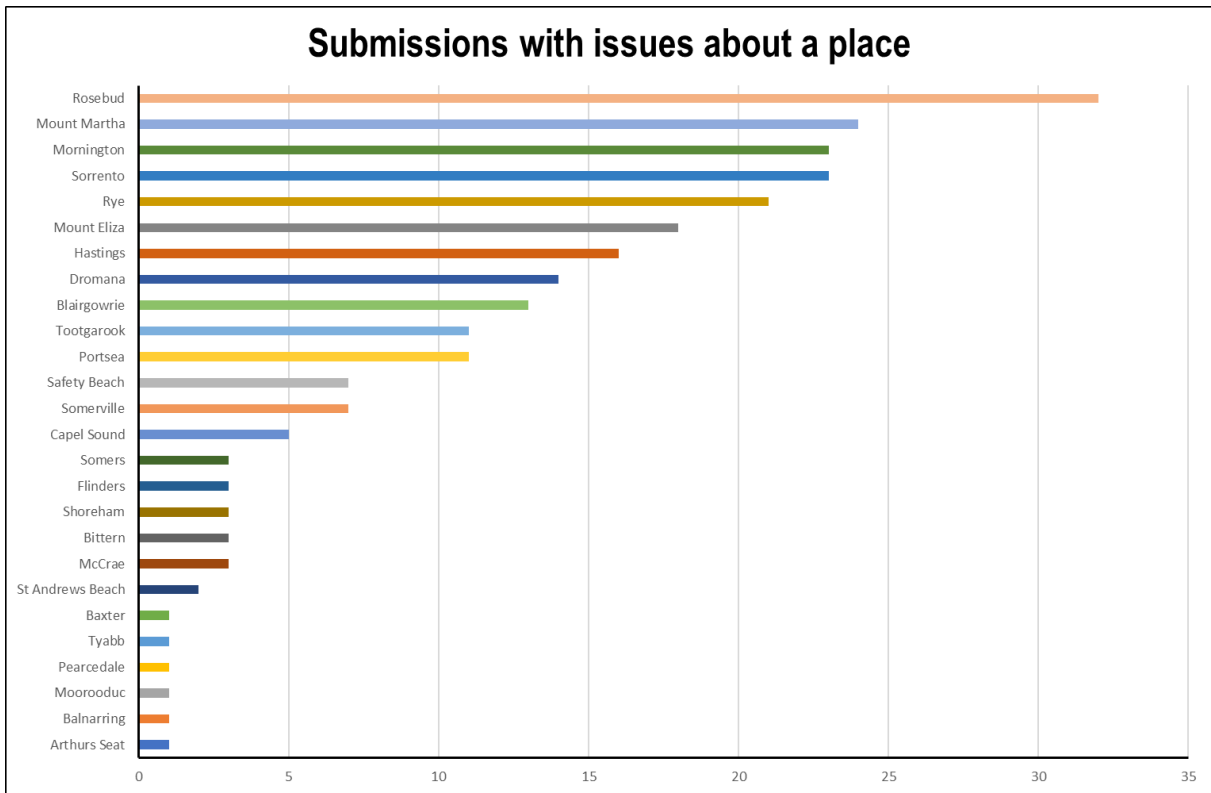
Figure 1: Submissions stakeholder’s map



Around 14 per cent of submissions support the Amendment either fully or parts of it while 28 per cent object to the Amendment either fully or parts of it. Just under 61 per cent of submissions did not specify their position on the Amendment.

Around 65 per cent of submissions contain issues that relate to one or more places (Figure 2). Rosebud was referenced in nearly 16 per cent of these submissions while Mount Martha was referenced in nearly 12 per cent. Mornington and Sorrento were equally referenced in just over 11 per cent.

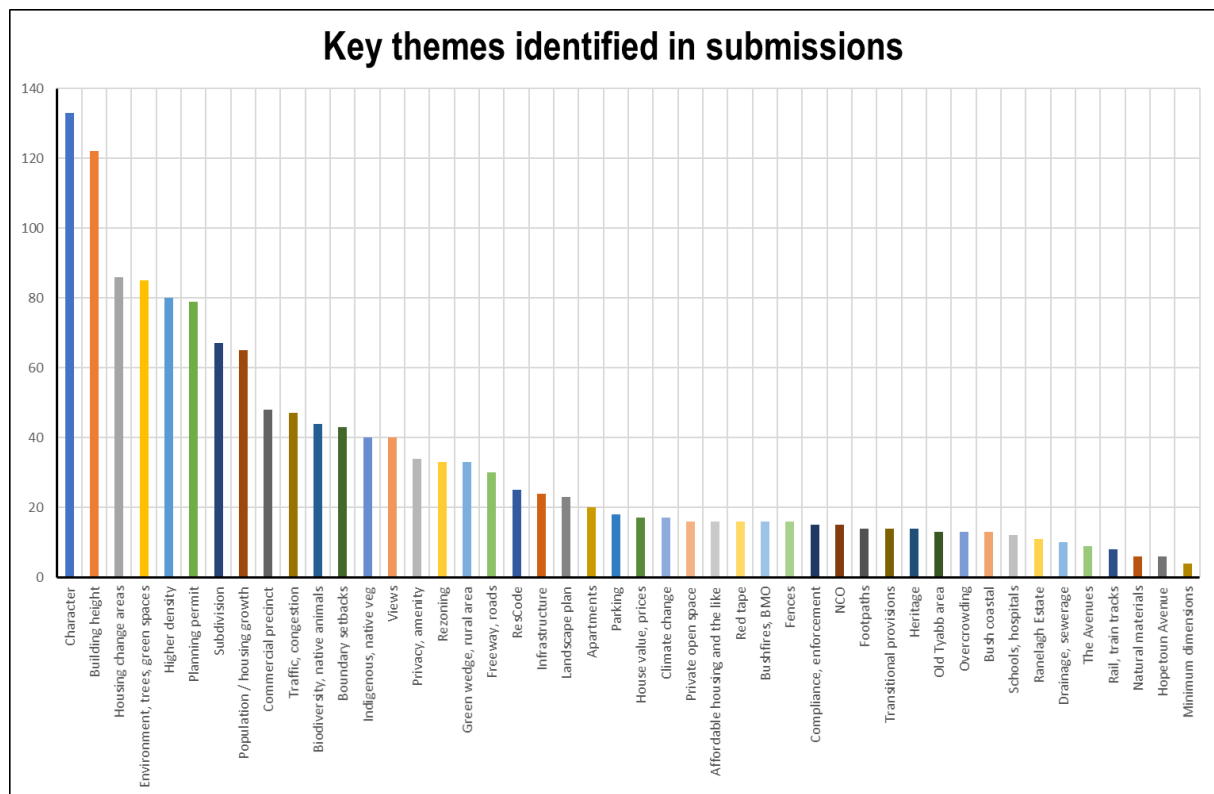
Figure 2: Submissions with issues about a place



A thematic analysis identified character, building height and housing change areas as the top three concerns of the community (*Figure 3*). Other key concerns include the environment, higher density, planning permit, subdivision, and population / housing growth.

Figure 3: Key themes identified in submissions

4.1 (Cont.)



The analysis also identified a wide list of concerns that are beyond the scope of the Amendment such as noise pollution, property values, rubbish and littering, schools and hospitals, traffic and parking, infrastructure, compliance and enforcement, drainage and sewerage, and freeways and roads.

Key Issues

The key issues identified in the submissions can be grouped into the following eight categories:

1. Housing change areas – population and housing growth.
2. Neighbourhood character and zoning changes.
3. Building heights.
4. Vegetation, landscaping, and open space.
5. Subdivision controls.
6. Housing affordability.
7. Decision making.
8. Site-specific requests.

A summary of what the Amendment does, supporting comments and key concerns associated with the first seven categories, and generalised examples of site-specific requests are discussed below. The discussion also includes Shire officer recommendations for potential post-exhibition changes to the Amendment and associated justification. All potential post-exhibition changes to the Amendment are summarised in the document at Attachment 15.

4.1 (Cont.)

Category I: Housing change areas – population and housing growth

What the Amendment does
<ul style="list-style-type: none"> • Directs future housing growth to appropriate areas as per the Shire’s adopted housing strategy (Residential Development Framework (RDF) – substantial, incremental, minimal change areas) via the proposed new local housing supply policy under Clause 16.01-1L (Housing supply – Mornington Peninsula).
Support
<ul style="list-style-type: none"> • Directing more housing and development density towards major towns (Mornington / Rosebud / Hastings) through substantial change areas. • Increased density in town centres with ‘shop-top’ housing. • Protecting the Green Wedge. • Aiming to keep the natural integrity of the Peninsula. • Recognising the need for some incremental housing change on the Peninsula. • Keeping the feel, amenity, appearance, and spaciousness of the Peninsula through minimal change areas.
Concerns
<ul style="list-style-type: none"> • Overdevelopment and overpopulation of the Peninsula; infrastructure not keeping up. • Development intensity – impact of 3+ storeys in substantial change areas on village atmosphere, coastal views, etc. • Impact of 2-storey building height limit in minimal change areas on housing stock. • Not enough incremental and minimal change areas. • Investigation areas should respect, but not replicate, the valued character of adjoining land. • Including commercial areas in the housing change mapping.
Recommendations
<p>R1: No change to the RDF unless there is merit in a site-specific request. There is only one site-specific request with merit (refer to Category VIII for details).</p> <p>The RDF comprising the 17 housing change area maps is carefully prepared per the State Government’s advice in Planning Practice Note 90: Planning for Housing (PPN90). Unless there is merit in a site-specific request, there is little justification to amend the RDF.</p> <p>Shire officers stress that the Mornington Peninsula is not a designated growth area under the State Government’s metropolitan planning strategy – Plan Melbourne 2017-2050. The projected population growth is based on the State Government’s Victoria in Future 2019 (VIF2019) statistics. The State Government requires every local government to plan for housing over a 15-year period through a housing strategy that accommodates the</p>

4.1 (Cont.)

VIF2019's population projections. These projections are not targets to be met but provide guidance for local governments when they prepare their housing strategies. A housing strategy is necessary to ensure future housing is sustainably directed towards appropriate areas. This is achieved through the strategy's RDF, which marks out the locations for substantial, incremental, and minimal housing change. The Amendment is required to incorporate the necessary planning policies and controls into the Mornington Peninsula Planning Scheme to ensure the directions in the Shire's housing strategy on managing future housing change sustainably are implemented.

Regarding the inclusion of commercial areas in the housing change mapping, this was done per the advice from the Department of Environment, Land, Water and Planning (DELWP) to include commercial areas when assessing the Peninsula's housing capacity to accommodate the State Government's population projections.

R2: Revise the strategy relating to investigation areas in the proposed new local policy under Clause 16.01-1L (Housing supply – Mornington Peninsula) as follows:

- *Ensure development in investigation areas ~~reflects~~ respects the ~~housing change category~~ valued character of surrounding residential areas and is responsive to the environmental conditions and constraints, if any, of the site.*

Shire officers support a submitter's feedback that development in investigation areas should respect, rather than replicate, the character of surrounding residential areas. Nonetheless, it is important that development in these areas is responsive to the environmental conditions and constraints, if any, of the site.

Category II: Neighbourhood character and zoning changes

What the Amendment does
<ul style="list-style-type: none"> • Rezones the GRZ to the NRZ in incremental and minimal change areas. • Introduces a new neighbourhood character policy and controls over residential areas. • Requires smaller site coverage, wider setbacks, and larger private open space in applicable areas. • Implements a uniform approach to managing front fence height across all residential areas. • Applies the NCO over the Ranelagh Estate, The Avenues in Rosebud and parts of Tootgarook and Rye.
Support
<ul style="list-style-type: none"> • Strengthening Peninsula neighbourhood character, which is different to Metropolitan Melbourne. • Implementing the Neighbourhood Character Study (NCS) by Ethos Urban and providing a new local neighbourhood character policy, which helps ensure new development respects existing or preferred character. • Neighbourhood character descriptions from the NCS applied through schedules.

4.1 (Cont.)

- Additional controls to protect neighbourhood character.
- Council's endeavours to update its application of the various residential zones.
- Limitation of building size relative to land size, which is essential to keep the Peninsula green and open, not become another concrete jungle.
- Open space provisions providing for functional open spaces within minimum 5 metres dimension, which is important given the significant reduction in open space and vegetation as multi-unit developments replace single dwellings under current controls.
- Relocating minimum street setbacks from the DDO to the NRZ schedules.
- New DDO decision guidelines; stronger focus on the appearance of buildings in streets and wider landscape – better than current guidelines.
- Introducing the NCO, which supports and enhances the 'look and feel' of the Peninsula and how the community wishes to see the development of the Peninsula in the future.

Concerns

- References to building materials / finishes / reflectivity in decision guidelines may prevent compliance with design verification methods and conflict with the National Construction Code.
- Encouraging materials with lower reflectivity may increase the urban heat island effect.
- No clear direction on wall finishes and colours will allow unacceptable colours to be introduced to residential buildings.
- Neighbourhood character policy seems to favour existing character rather than recognising that character will necessarily change over time in substantial change areas.
- Residential zones should be applied conventionally, e.g., Mixed Use Zone / RGZ in substantial change areas, GRZ in incremental change areas, and NRZ / LDRZ in minimal change areas.
- Decision guidelines for substantial change areas may prejudice intensive development if applied prescriptively.
- More GRZ should be applied, especially to areas close to an activity centre (Mornington / Rosebud / Hastings) and neighbourhood activity precincts (including Mount Eliza).
- Proposed changes to the existing GRZ1 would constrain future development opportunities in an area that is identified for medium-density housing in the Rosebud Activity Centre Structure Plan.
- The RGZ should be applied.

4.1 (Cont.)

- Minimum street setback in the GRZ where no dwelling on either side should be 6-metres not 7.5-metres as front yards are wasted space.
- Increasing side / rear setbacks and private open space requirements in the GRZ impedes appropriate growth and the provision of diversified and affordable housing.
- Overuse of the NRZ will limit opportunities for unit / medium density developments in appropriate areas.
- Too many NRZ schedules; hence, too complex.
- The NRZ schedules omit some controls from the existing DDO schedules.
- ResCode standards should not be varied unless absolutely necessary (otherwise building system will be overloaded with Report and Consent).
- Should limit density and achieve greener outcomes via vegetation and site coverage requirements, not increasing requirement for more secluded private open space.
- The increased side and rear setbacks will encourage more two-storey dwellings and overlooking, potentially impact on shared view lines, and constrain development.
- Tighter side and rear setbacks and private open space requirements would severely impact small (300 square metres) lots.
- The potential for solid, high fences (particularly front fences) will result in significant changes to the streetscapes and prevent wildlife movement.
- Better to use the phrase 'design of fencing' rather than 'choice of fencing'.
- The NCO should not be applied in Tootgarook (nothing special other than proximity to the Bay) or the Ranelagh Estate (character not unique enough).
- The NCO should be applied over Shoreham.
- The NCO triggering a planning permit for all buildings and works, demolition and native vegetation removal.

Recommendations

R3: Revise the built-form strategy relating to external finishes and roofing materials in the proposed new local policy under Clause 15.01-5L (Neighbourhood character – Mornington Peninsula) as follows:

- *Ensure new development utilises external finishes and roofing materials that minimise glare ~~have low reflectivity~~.*

R4: Revise the built-form policy guideline relating to reflectivity of external finishes in the proposed new local policy under Clause 15.01-5L (Neighbourhood character – Mornington Peninsula) as follows:

- *Limiting the reflectivity of external finishes above a tree canopy line through the use of natural materials and subdued tones that complement the landscape ~~and roofing materials to 40 per cent or less to avoid glare when viewed from adjoining buildings, land, or streets.~~*

4.1 (Cont.)

To ensure external finishes and roofing materials of new development minimise glare, it is more effective to limit the reflectivity of external finishes above a tree canopy line through the use of natural materials and subdued tones that complement the landscape rather than specifying a maximum light reflectivity value (LRV). This is because some materials may still complement the landscape with minimum glare even though their LRV exceeds the specified maximum.

R5: Revise the fencing objective in the proposed new local policy under Clause 15.01-5L (Neighbourhood character – Mornington Peninsula) as follows:

- To encourage fencing *choices design* that ~~are~~ *is* consistent with the open streetscape quality of the Mornington Peninsula's townships and villages.

R6: Revise the decision guideline relating to fencing in relevant NRZ and DDO schedules as follows:

- Whether the *choice design* of fencing ...

Shire officers support a submitter's feedback that 'fencing design' is a better phrase than 'fencing choices' given design includes choice and other things such as permeability, etc.

R7: No change to the areas proposed to be rezoned to the NRZ.

Shire officers do not support feedback that the NRZ is applied to too many areas. The residential zones are carefully applied per the State Government's advice in *Planning Practice Note 91: Using the Residential Zones* (PPN91). The GRZ is applied only in areas where dwellings or residential buildings of three or more stories are anticipated, i.e., underpinned by an adopted strategic plan such as a structure plan or township plan. Proximity to a major or large activity centre is not the only criteria considered. The GRZ is not applied to incremental change areas in the Peninsula because the extent of change needs to be interpreted relative to the built form context as per PPN90. The built form context of the Peninsula is more akin to that of an outer urban and regional area. Relative to this built form context, dwellings, or residential buildings of three or more storeys are considered more appropriate in areas designated for substantial change.

As per PPN91, "There is no 'default' residential zone to be applied to a residential area in Victoria" and "There is no prescribed percentage for how much land in a municipality should be in each residential zone." More importantly, "A choice about which residential zone to apply will always need to be made. This choice must be based on the strategic outcomes being sought by the MPS and PPF" and "whether the residential zone implements the relevant strategic framework plan or residential development framework plan identified in the MPS."

PPN90, which provides information and guidance about how to plan for housing growth and protect neighbourhood character to ensure a balanced approach to managing residential development in planning schemes, articulates the importance of undertaking local strategic studies including a local housing strategy and a local neighbourhood character strategy. The State policy under Clause 15.01-5S (Neighbourhood character) requires councils to "ensure development contributes to existing or preferred neighbourhood character."

R8: Facilitate greater housing diversity and housing affordability in substantial change areas.

Notwithstanding **R7** above, Shire officers support facilitating greater housing diversity and housing affordability in substantial change areas by:

4.1 (Cont.)

- retaining the GRZ1 in the area where the GRZ2 is proposed. Hence, the proposed GRZ2 would become redundant and be deleted given a revised GRZ1 that better reflects the character and intensity of residential development anticipated for substantial change would apply to the area.
- removing the exhibited minimum street setback, side and rear setbacks, and private open space requirements from the proposed GRZ1 and GRZ3.
- amending the objectives and decision guidelines in the GRZ1 and GRZ3 to better reflect the character and intensity of residential development anticipated for substantial change areas.
- renaming the GRZ1 and GRZ3 as 'Substantial Change Township Area' and 'Substantial Change Town Centre Area' respectively.

4.1 (Cont.)

R9: Facilitate greater housing diversity and housing affordability in incremental change areas around the major activity centre of Mornington and of Hastings.

Notwithstanding **R7** above, Shire officers support facilitating greater housing diversity and housing affordability in selective incremental change areas around the Mornington Activity Centre and Hastings Activity Centre by:

- removing the exhibited minimum street setback, side and rear setbacks, and private open space requirements (if any) from the NRZ2, NRZ6 and NRZ14 but only for the residential areas contained inside the structure plan area of Mornington Activity Centre and of Hastings Activity Centre (refer to sections 2.1.1 and 2.1.2 in Attachment 15 respectively for detailed mapping of structure plan areas).
- creating three new schedules – NRZ39, NRZ40 and NRZ41 – to enable associated changes to the objectives and decision guidelines of the NRZ2, NRZ6 and NRZ14 respectively to reflect the removal of these requirements.
- naming the NRZ39, NRZ40 and NRZ41 as ‘Garden Residential Township Area’, ‘Garden Court Township Area’ and ‘Bush Coastal Contemporary Township Area’ respectively.

R10: No change to the use of numerous schedules to the NRZ, LDRZ and DDO.

Shire officers do not support feedback that there are too many schedules. The complexity of a planning scheme is not determined by the number of schedules it has to a zone or overlay but more by the number and expression of planning controls that apply to a particular site. Many existing schedules to the DDO contain numerous design objectives far exceeding the permitted number of five per the Ministerial Direction on the Form and Content of Planning Schemes, and numerous permit triggers of which several include specific exemptions. Some of these exemptions only apply if specific conditions are met. Some existing DDO schedules also include numerous sub-precincts with differing requirements. DELWP has strongly advised the Shire that a property owner should be able to easily identify the provisions and requirements that apply to their land and not have to decipher which precinct their land falls within. The need to introduce the proposed number of NRZ and DDO schedules is due to the varied neighbourhood character across the Peninsula’s residential areas in the existing GRZ and LDRZ respectively, which thus requires differing neighbourhood character objectives and controls, as well as the need to minimise the use of sub-precincts. A property owner need only be concerned about the zone and overlay (if any) schedules that apply to their land.

R11: Include an additional decision guideline on the siting and setback of buildings from the side and rear boundaries of a lot in relevant NRZ schedules as follows:

- [Whether the siting and setback of buildings from the side and rear boundaries of a lot maintain the predominant backyard character of the area.](#)

This additional guideline articulates the reason for the increased building setback from the rear boundary and guides the responsible authority to ensure a proposed development would not erode the predominant backyard character of the area. The guideline only applies to schedules that specify a larger rear setback than the VPP, i.e., all proposed schedules except the NRZ19 to NRZ22, NRZ27 and NRZ37.

4.1 (Cont.)

R12: Include an additional decision guideline on reducing side setback from one side boundary in relevant NRZ schedules as follows:

- [Whether a reduced side setback from one side boundary is appropriate having regard to the building rhythm within the streetscape.](#)

This additional guideline identifies the neighbourhood character precinct where a reduced side setback from one side boundary is a characteristic of the precinct as per the NCS. The asymmetric application of side setbacks in such precincts would provide more scope for a proposed development in terms of building siting and footprint. The guideline only applies to schedules where a reduced setback from one side boundary is identified as a characteristic of the neighbourhood character precinct, i.e., the NRZ2, NRZ3, NRZ5, NRZ10, NRZ12, NRZ13, NRZ28 to NRZ31, NRZ33, NRZ35 and NRZ36.

R13: Amend the first neighbourhood character objective in the proposed NRZ12 to provide for 1-2 storey dwellings in the Bush Coastal 1 precinct.

Shire officers support a submitter's feedback that "new development should complement the 1-2 storey building height and forms of existing dwellings" for the Bush Coastal 1 precinct, as per the NCS. Hence, the first objective should be amended by replacing "predominantly single-storey dwellings" to "predominantly 1-2 storey dwellings".

R14: No change to the areas where the NCO is proposed to apply.

The strategic justification for the proposed application of the NCO over the affected areas is contained in the Strategic Document, i.e. *A Desktop Review of the Strategic Work Underpinning Amendment C219morn* (Mornington Peninsula Shire, 2021). The justification is underpinned by recommendations from the NCS and the *Ranelagh Conservation Management Plan* (Context, 2009). While a key purpose of the Amendment is to improve the operational efficiency of the planning scheme by removing unnecessary planning permit triggers and simplifying complexities, the planning permit triggers which the NCO would introduce are deemed necessary given the affected areas are identified to possess a special neighbourhood character that warrants greater protection, as per the advice in PPN90. Also, the areas where the NCO would apply are only a fraction of the total residential areas of the Peninsula.

R15: Remove the permit requirement relating to the demolition or removal of a building from the proposed NCO1 and NCO2 and revise the decision guidelines to remove consideration of demolition.

Shire officers support the feedback that the need for a planning permit to construct a building or construct or carry works under the NCO is deemed sufficient for the responsible authority to assess an application to ensure the proposed development respects the special neighbourhood character of the area without the extra burden of a demolition permit.

R16: In the walls on boundaries modified requirement under the proposed NCO1 and NCO2, amend the garage wall length exemption to 6.5 metres.

Shire officers support a submitter's feedback that the garage wall length should be increased to 6.5 metres to allow for a standard garage of 6m internal dimension plus 250 millimetres wall thickness front and rear, for practicality.

4.1 (Cont.)

Category III: Building heights

What the Amendment does
<ul style="list-style-type: none"> • Retains existing maximum heights in substantial change areas, i.e., mostly 11 metres / 3 storeys in the GRZ. • Reduces the maximum height to 9 metres in incremental change areas, i.e., the NRZ with no DDO. • Retains the existing maximum 8 metres height in the DDO where applicable in minimal change areas. • Removes most exemptions to the maximum 8 metres height, including the 'Ellerina Road' exemption. • Removes the building wall height trigger and building height trigger.
Support
<ul style="list-style-type: none"> • Retaining the 8 metres mandatory height limit in existing DDO schedules instead of defaulting to the NRZ's standard 9 metres, given: <ul style="list-style-type: none"> ○ 9 metres does not allow view sharing to the coastline ○ 9 metres can dominate the streetscape and / or tree canopy ○ no gain / benefit for 9 metres since it can't allow an extra storey or increase the occupancy rate ○ unfair for residents who have complied to possibly now have their view affected because of new development ○ no need to increase by 1 metre (all housing has complied up to now) ○ the hilly terrain affording sea views on the Peninsula, hence the Peninsula's difference from most other suburban LGAs. • Keeping the mandatory 8 metres and 2 storeys (carried from current DDO schedules).
Concerns
<ul style="list-style-type: none"> • An 8 metres as-of-right building height will fundamentally alter the unique and distinctive character of townships in Mornington Peninsula and dissolve view sharing particularly in areas where shared views to the coast are potentially significant such as Mount Martha. • Zones should dictate height limits, i.e., mandatory height limits in the DDO schedules should be consistent with those in the NRZ and not trigger a planning permit for lesser requirements. • The NRZ's 9 metres may limit opportunities for non-residential developments to go higher.

4.1 (Cont.)

- Removal of the 'Ellerina Road' exemption to the mandatory 8 metres building height requirement in existing DDO2 to DDO4 areas (no justification to now limit height in these areas).
- Removal of the 'building alteration or extension' exemption to the mandatory 8 metres building height requirement in the DDO3; hence, would not be able to expand upper storey footprint by no more than 10 per cent.
- Impact of 3+ storey apartment blocks in substantial change areas on village atmosphere, coastal views, etc.
- Impact of 2-storey building height limit in minimal change areas on housing stock.

Recommendations

R17: Retain the existing building height trigger where it currently applies via the DDO.

It is recommended that the existing building height trigger where it currently applies via the DDO be retained, and that detailed work be undertaken at a later stage to determine whether any further changes to this trigger is warranted as part of a 'Stage 2' planning scheme amendment. The detailed work would include an assessment of view lines / visual impact as well as the relative significance of tree canopy lines. This recommendation implies that the DDO1, DDO19, DDO20 and DDO23, which were initially proposed to be deleted from the planning scheme, will need to be retained. These schedules will also be amended to remove unnecessary permit triggers and complexities (refer to section 7.1 in Attachment 15 for details).

While the DDO1 is to be retained, there are several areas from which it needs to be deleted to avoid conflicting maximum building height controls. These areas comprise:

- land around the Rye Activity Centre where the DDO1 is already proposed for deletion under Amendment C275morn (refer to Figure 3 under section 2.2.1 in Attachment 15 for detailed mapping)
- land around the Rosebud Activity Centre that has been designated for substantial change in the RDF (refer to Figure 4 under section 2.2.1 in Attachment 15 for detailed mapping).

R18: Revise the design objective relating to the skyline and existing tree canopy line in relevant DDO schedules as follows:

- *To ensure ~~new~~ the form, siting, materials, and tones of buildings ~~are designed and sited to~~ avoid being visually obtrusive against a skyline or existing tree canopy line,*
...

R19: Revise the decision guideline relating to the skyline and existing tree canopy line in relevant DDO schedules as follows:

- *Whether the ~~design and form,~~ siting, materials, and tones of a buildings detracts from ~~views to~~ the skyline and existing tree canopy line when viewed from surrounding streets and properties.*

The revised design objective and associated decision guideline would provide clearer guidance when assessing a development that exceeds the building height trigger. The

4.1 (Cont.)

revision to the associated decision guideline is necessary to achieve better nexus with the relevant design objective and permit requirement.

R20: Retain the existing 'Ellerina Road' exemption to the mandatory maximum 8-metre building height requirement where it currently applies and redefine the boundary with accurate references to existing roads.

Shire officers support feedback to retain this exemption. Any concerns such as lack of view-sharing or intrusions into tree canopies that may result from this exemption would be mitigated by the reduction in the mandatory maximum building height in the zone from 11 to 9 metres for a dwelling or residential building following the proposed rezoning to the NRZ.

R21: Retain the existing 'building alteration or extension' exemption to the mandatory maximum building height requirement where it currently applies but amend the exemption as follows:

- *Alteration to or extension of a lawfully existing building but only if all of the following requirements are met:*
 - ~~*The existing building has a building height of more than 8 metres or contains 3 or more storeys above natural ground level.*~~
 - *The maximum building height of the existing building is not exceeded.*
 - ~~*The external bulk of the existing building is not significantly increased.*~~
 - *The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.*

Shire officers support a submitter's request to retain the exemption given minor buildings and works on the upper level of existing lawfully constructed buildings should be permissible. Nonetheless, the first condition relating to the existing building height is superfluous and should be deleted given the exemption already only applies to a building with an existing height that exceeds the mandatory building height requirement. The third condition relating to the external bulk of the existing building should be deleted given it is too subjective and not helpful in decision-making. Also, specifying the approval date of 6 May 1999 in the fourth condition would provide clarity that the date refers to when the Mornington Peninsula Planning Scheme first came into effect.

Category IV: Vegetation, landscaping, and open space

What the Amendment does

- Applies the existing VPO1 to specific locations in Mount Martha, Dromana, McCrae, and Flinders.
- Introduces a landscape plan application requirement.
- Introduces garden setting provisions in the new local neighbourhood character policy.

4.1 (Cont.)

Support

- Intent to retain a significant amount of existing vegetation or ensure like-for-like replacement of existing vegetation.
- New landscape plan application requirements plus planting schedule including indigenous species, specific trees and shrub height and pot sizes.
- Extension of the VPO1 in Flinders and Dromana.

Concerns

- Bushfire exemptions: cannot see how the Amendment will protect vegetation or prevent further loss.
- May increase bushfire risks (comments from the Country Fire Authority [CFA]).
- Tree / vegetation policies should not undermine the State Government's goal to accommodate approximately 9 million people in Metropolitan Melbourne by 2056.
- Are landscape plans actually being implemented?
- Specific provisions in the VPO1 routinely ignored by developers.
- Not confident detailed landscaping / planting requirements in the NRZ schedules will be implemented via the building system.
- Want to retain existing DDO controls for landscaping / planting requirements; support the existing approach to meaningful and appropriate landscaping / planting through the planning system.
- Should retain the 10 metres setback from public land requirement in applicable DDO schedules to facilitate buffer planting of native vegetation.
- Too many tree protection controls in the Ranelagh Estate – against changes to Standard A8 'Significant Trees' in the NCO1.

Recommendations

R22: Include an additional requirement that landscaping should be low threat in all schedules that include the landscape plan application requirements as follows:

- [*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.*](#)

R23: Include an additional decision guideline on landscaping in all schedules that include the landscape plan application requirement as follows:

- [*Whether the landscaping is of a low-threat bushfire risk if the land is in a bushfire prone area.*](#)

To address the CFA's concerns that the Amendment may have "the potential to lead to unintended increases, intensification or introduction of new bushfire risks" particularly on land that is in a bushfire prone area, Shire officers recommend an additional requirement in the application requirements for a landscape plan to ensure landscaping is of a low-

4.1 (Cont.)

threat bushfire risk as defined in the relevant Australian Standard. Shire officers also recommend including an additional decision guideline that considers whether the landscaping is of a low-threat bushfire risk if the land is in a bushfire prone area. This would improve the nexus between the application requirements and decision guidelines.

In response to proposed Amendment C282morn, the CFA has suggested that for land in a bushfire prone area: (i) a new requirement for landscaping to be of a low threat should be added to the landscape plan application requirements; and (ii) a new decision guideline be added that considers whether the landscaping is designed to ensure bushfire risks do not increase over time. Shire officers have considered the relevance of these suggestions to C219morn and determined that it would be appropriate to address the first suggestion by including an additional requirement and decision guideline as outlined in **R22** and **R23** above respectively.

Regarding the CFA's second suggestion, however, Shire officers have determined that it is unnecessary and inappropriate to include a decision guideline that considers whether landscaping is designed to ensure bushfire risks do not increase over time given the State policy under Clause 13.02-1S (Bushfire planning) already requires the responsible authority, when assessing a planning permit application, to: consider the risk of bushfire to people, property and community infrastructure; require the implementation of appropriate bushfire protection measures to address the identified bushfire risk; and ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts. The 'Planning Scheme Rules' in *A Practitioner's Guide to Victorian Planning Schemes, Version 1.4* (DELWP, 2020) clearly indicate that provisions in a local policy must not duplicate those in a State policy. Another reason why it would be inappropriate to include such a decision guideline is because it is not possible to control bushfire risks over time once a planning permit application has been approved.

Category V: Subdivision controls

What the Amendment does
<ul style="list-style-type: none"> Retains minimum subdivision area and mandatory 'one dwelling' requirement where applicable. Simplifies complex subdivision requirements by removing integrated subdivision and rectangular dimensions and changing subdivision area from 'average' to 'minimum'. Introduces new subdivision controls in the hillside of Dromana via the NRZ schedule.
Support
<ul style="list-style-type: none"> Changes to the LDRZ areas and the DDO schedules to protect these areas from smaller-lot subdivisions / multiple dwellings. Removing integrated subdivision (1,300 square metres) requirement in DDO2 areas (Flinders) and making it a 650 square metres minimum is right given old controls were from the pre-sewerage era.

4.1 (Cont.)

Concerns
<ul style="list-style-type: none"> • The existing mandatory one dwelling requirement is too restrictive; each site should be assessed on merit to determine an appropriate number of dwellings. • A 'minimum' rather than 'average' lot size for subdivision provides much less flexibility to cater for site-specific constraints, e.g., irregular lot shapes, vegetation, slopes, especially in LDRZ areas. • Whether the approval date in the subdivision exemptions refers to the date of the approval of C219morn.
Recommendations
<p>R24: Retain the average subdivision area requirement via the DDO where it currently applies in areas proposed to be rezoned to the NRZ.</p> <p>Average subdivision allows greater flexibility for relatively smaller sites with specific constraints such as vegetation, existing buildings, and topography. Given large sites are unlikely to be subject to such constraints, this recommendation is thus deemed unnecessary for areas in the LDRZ. The following changes are needed to implement this recommendation:</p> <ul style="list-style-type: none"> • Remove the minimum subdivision area requirement from the proposed NRZ23 to NRZ27 and NRZ29 to NRZ33 to retain the average subdivision area requirement in relevant DDO schedules. • Retain the average subdivision area requirement and allow land set aside as common property to be included in the calculation of the average area. This only applies to proposed NRZ areas where an average subdivision area requirement currently applies, i.e., the DDO2, DDO3, DDO6, DDO7, DDO11, DDO17, DDO19, DDO20, DDO24 and DDO32. • Add a new map to the proposed DDO24 that shows the five precincts as per the proposed NRZ23 to NRZ27.
<p>R25: In the exemptions to subdivision requirements, reword the exemption relating to realignment as follows:</p> <ul style="list-style-type: none"> • <i>a <u>re-subdivision</u> that realigns the boundary between <u>of</u> existing lots if no new lot or provided the number of lots is not increased and no additional subdivision potential is created.</i> <p>This change is to better reflect the original intention of this exemption. The change will affect all proposed DDO schedules that contain the exemption. The revised exemption will also be added to the proposed LDRZ schedules given subdivision in the LDRZ areas would be controlled via the LDRZ rather than the DDO schedule under the Amendment.</p>
<p>R26: Delete the subdivision exemption 'land set aside as common property'.</p> <p>The exemption is unnecessary given land set aside as common property is not considered a separate lot when assessing subdivision applications. This change will affect all proposed schedules that contain the exemption.</p>

4.1 (Cont.)

R27: Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.

Many of the proposed schedules include a reference to the approval date, which appears in a provision relating to an exemption to the minimum subdivision area requirement. The provision allows two or more dwellings to be subdivided to create separate lots for each dwelling that are below the minimum subdivision area provided they have lawfully existed on a lot at the approval date.

One submitter seeks confirmation that the approval date refers to the date of approval of Amendment C219morn. It is important to clarify that the approval date refers to the date when the Mornington Peninsula Planning Scheme commenced operations, i.e., 6 May 1999. It is recommended that the commencement date '6 May 1999' be explicitly referenced in the approval date in all proposed schedules that contain this reference for clarity and to prevent subdivision of a lot containing two or more dwellings that were erected after the 6 May 1999.

Category VI: Housing affordability

What the Amendment does
<ul style="list-style-type: none"> • Reduces red tape by reducing planning permit triggers for single dwellings and fences. • Streamlines development approvals and limits the scope of planning assessment to key issues; therefore, less time and money to build a home on the Peninsula.
Support
<ul style="list-style-type: none"> • Measured approach to rationalising planning permit requirements for single dwellings on a lot. • Reduced red tape means economic benefits to consumers and Council, directing planning resources to more important complex planning applications will be significant. • The removal of permit triggers for a single dwelling where opportunities exist.
Concerns
<ul style="list-style-type: none"> • Increasing side / rear setbacks and private open space requirements in the GRZ impedes appropriate growth and the provision of diversified and affordable housing. • Need the RGZ. • Need more GRZ around activity centres. • Overuse of the NRZ will limit opportunities for unit / medium density developments in appropriate areas. • The mandatory one dwelling requirement is too restrictive; each site should be assessed on merit to determine an appropriate number of dwellings.

4.1 (Cont.)

Recommendations
<p>Refer to R8 and R9 above.</p> <p>The proposed removal of the setback and private open space requirements from substantial and incremental change areas under R8 and R9 will help facilitate more housing diversity and supply in aid of affordability.</p>

Category VII: Decision making

What the Amendment does
<ul style="list-style-type: none"> • Less planning permit triggers for single dwelling applications; therefore, more single houses managed via the building system. • Planning system to focus on significant issues only, e.g., earthworks, setbacks from cliff face / edge, slope, ridge, access to a roof area; existing DDO schedules refined. • Planning system to assess housing in the LDRZ via new DDO schedules with character controls from the NCS.
Support
<ul style="list-style-type: none"> • Reducing red tape for single dwellings on a lot means economic benefits to consumers and Council, directing planning resources to more important complex planning applications will be significant.
Concerns
<ul style="list-style-type: none"> • Removal of planning permit triggers for single dwellings means: <ul style="list-style-type: none"> ○ more building permits / Report and Consent (overload the building system) ○ less community notice (advertising) and engagement (objections) ○ no VCAT appeal rights ○ no ability for councillors to call-in applications ○ more power to private building surveyors, not Council ○ no ability for Council to continuously monitor / understand changes in housing development ○ no checks / balances in housing design ○ no transparency in the development process. • Defeats the purpose of the Amendment to protect / enhance the Peninsula's character. • Building system may not enforce compliance.

4.1 (Cont.)

- Lack of transitional provisions to deal with 'live' permit applications or amendments to existing permits.

Recommendations

Refer to R17 above.

The recommended retention of the existing building height trigger under **R17** would mean that a proposed development of a single dwelling on a lot that exceeds the height trigger would continue to be assessed under the planning system.

R28: Do not include transitional provisions.

As per section 68 of the *Planning and Environment Act 1987*, any planning permit approved prior to the approval date of an amendment will still be valid provided the permitted use and/or development commences before the applicable expiration date.

Nonetheless, some submitters are concerned that applications submitted prior to the approval and gazettal of C219morn but still being processed might become prohibited or be unfairly subjected to the new controls. A key issue is the expected decrease in the mandatory maximum building height for a dwelling or residential building in the parent clause when the zoning changes from the GRZ to the NRZ.

DELWP has confirmed that they do not support transitional provisions, advising that "the parent clauses do not provide for the provision of transitional provisions and further it is considered that the exhibition period for the Amendment is sufficient notice to landowners of impending planning scheme changes." DELWP also advised that "The issue of transitional provisions was raised in discussions between council and DELWP during the processing of Hobsons Bay Amendment C131hbay and advice consistent with the same advice provided above was provided to Hobsons Bay council."

Given Council has been implementing the recommendations of the NCS since it was adopted in October 2019, the community is broadly familiar with Council's position on ensuring new development responds appropriately to existing and preferred neighbourhood character in different residential areas across the Peninsula. It would therefore be inconsistent to provide transitional provisions to exempt applications from complying with the proposed character requirements and controls (such as the varied ResCode standards) which are specifically derived from the NCS. Similarly, Council has been implementing the refreshed housing strategy since it was adopted in July 2020, which seeks to implement, among other things, the NCS.

Category VIII: Site-specific requests

Examples

- Changing the housing change designation, e.g., minimal to incremental and vice versa.
- Rezoning to another NRZ schedule, i.e., alternative neighbourhood character precinct.
- Retaining the existing GRZ1 instead of the proposed NRZ schedule (Sorrento).
- Changing requirements for street setbacks, site coverage, permeability, etc.

4.1 (Cont.)

- Reducing the minimum subdivision area.
- Deleting any DDO schedule over a LDRZ site.
- Rezoning a site in the GWZ to a residential zone.
- Increasing the maximum building height in the proposed GRZ4 from the existing 13.5 metres to 14 metres (Jetty Road Café precinct – Banksia Point development).

Recommendations

R29: Review and assess each request on its merit.

Only one site-specific request has merit. The request relates to land at 1501 Nepean Highway, Mount Eliza (former Eden Gardens). It is recommended that:

- the site be designated for incremental instead of minimal change
- an amended DDO1 would apply to the site instead of the proposed DDO33 (refer to Figure 8 under section 2.3.2 in Attachment 15 for detailed mapping).

The DDO1 will be amended to remove unnecessary permit triggers and complexities (refer to section 7.1.1 in Attachment 15 for details). The site is identified to be part of the Garden Court 3 neighbourhood character precinct, which covers the residential areas north and west of the site. Given these residential areas are currently subject to the DDO1, it is thus more appropriate to apply an amended DDO1 to the site than the proposed DDO33, which is derived from the existing DDO4.

Other Matters

Environment Protection Authority's submission

The Environment Protection Authority (EPA) supports Council in its implementation of the Shire's housing strategy and neighbourhood character study and has determined that the Amendment presents a low risk to the environment, amenity, and human health as a result of pollution or waste. While the EPA does not have any specific advice for Council's consideration, it recommends that Council gives due consideration to:

- Ministerial Direction No. 1 by updating the draft Explanatory Report accordingly
- potentially contaminated land
- potential encroachment issues between land uses and recommended separation distances for existing industry, for any future rezoning proposals.

As a result, minor updates to the Explanatory Report are recommended (Attachment 3)

Updating Road Zones to the new Transport Zones (VC205)

On 20 January 2022, the Minister for Planning gazetted Amendment VC205, which introduces a new Transport Zone (TRZ) to the Victoria Planning Provisions (VPP) and all planning schemes, replacing the current Road Zone categories 1 and 2 (RDZ1 and RDZ2) and Public Use Zone 4 (PUZ4), to improve alignment of VPP tools with the Transport Integration Act 2010. It also makes consequential changes to the VPP and all planning schemes to include references to the new zone and associated terminology.

4.1 (Cont.)

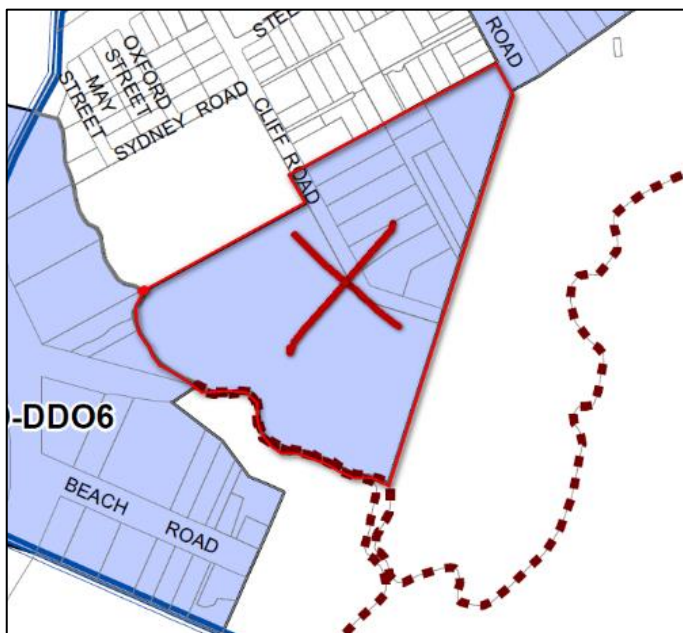
As a result, land in the RDZ1 is now rezoned to Transport Zone 2 (TRZ2). Given Amendment C219morn makes references to the RDZ1 in the requirements for front fences, it is recommended that the reference be changed to TRZ2.

Clerical errors

It is recommended that the Panel be informed of the errors explained below and a request to rectify these errors be made during the Panel Hearing stage:

1. The proposed GRZ2, which was intended to apply to an area around the Rosebud Activity Centre, has been omitted from the exhibited zoning maps by accident. Nonetheless, as per R8 above, this area is recommended to remain in the existing GRZ1, thus rendering the proposed GRZ2 redundant.
2. A clerical error has been detected in the exhibited maps affecting land around the southern end of Cliff Road in Shoreham. The affected map, i.e., Map No 38DDO, which shows the Design and Development Overlay (DDO) to be deleted under the Amendment, currently indicates that the Schedule 3 to the DDO (DDO3) affecting the General Residential Zone (GRZ) land around Cliff Road is proposed to be deleted (Figure 4). This is incorrect given the DDO3 is proposed to be deleted if it affects land in the Low-Density Residential Zone (LDRZ), not the GRZ.

Figure 4: Clerical error in a DDO deletion map



3. The proposed GRZ3, which affects two pockets of land adjacent to the Mornington Activity Centre, specifies that "A building used as a dwelling, or a residential building must not exceed a height of 14 metres and must not contain more than 3 storeys". Given nearly all proposed GRZ3 areas are currently affected by the existing DDO13, which supports 4 storeys where it applies in the GRZ3, it is therefore necessary to amend the mandatory requirement to avoid conflict as follows:
 - A building used as a dwelling, or a residential building must not exceed a height of 14 metres ~~and must not contain more than 3 storeys~~.
4. The exhibited side boundary setback requirement in the proposed NRZ14 (Bush Coastal Contemporary 1) and proposed DDO46 (Low Density Bush Coastal Contemporary A) is 2 metres. This should be amended to 1 metre to comply with the NCS.

4.1 (Cont.)

5. A decision guideline on fencing was erroneously omitted from the proposed DDO40 to DDO42, which contain fence height requirements that apply to land in the LDRZ. The following guideline should therefore be included in these three schedules:
- [Whether the design of fencing allows views to front garden areas and trees from the street.](#)

Editorial changes

Proposed changes to improve phrasing or correct grammatical and spelling errors across various amendment documents have been identified and marked-up in Attachments 3-14.

Options for Consideration

Having noted and considered all submissions received in response to the Amendment, Council must, under Section 23(1) of the *Planning and Environment Act 1987*:

- change the Amendment in the manner requested; or
- refer submissions to a panel appointed by the Minister; or
- abandon the Amendment or part of the Amendment.

Given the nature of submissions, numerous requested changes to the Amendment that cannot be resolved, and the scale and complexity of the amendment, Shire officers recommend that Council refer the Amendment and all submissions to an independent Planning Panel to be appointed by the Minister. Shire officers further recommend that Council endorses the Shire officers' responses to submissions, recommended post-exhibition changes to the Amendment, and request to the Panel to rectify the clerical errors during the Panel Hearing stage as part of Council's advocacy position before the Planning Panel.

ENGAGEMENT

Notification about the Amendment was provided to the community via direct mail (paired with a full-coloured brochure) to all owners and occupiers of residential land across the Peninsula affected by the Amendment, the Victorian Government gazette, social media campaigns, Peninsula Wide, local newspapers, and the Shire's website. Due to the inability to hold in-person consultation sessions under prevailing COVID-19 public health restrictions, the Shire held six online webinars via Zoom during the exhibition period where participants were provided with a presentation about the Amendment followed by a Q&A session.

The Shire provided many ways through which the community could contact officers or make an enquiry such as online enquiry via the Amendment's webpage, direct message via social media, direct phone call, booking a planner for a phone appointment, and writing to or emailing the Strategic Planning Team.

Shire officers also invited a range of community groups and associations to attend one-on-one post-exhibition engagement sessions to enable them to speak to their submissions and clarify any further questions. The following associations and groups met with Shire officers as a result: Nepean Ratepayers Association, Capel Sound Community Group, Shoreham Community Association, Flinders Community Association, Dromana Association, Nepean Conservation Group, and Rye Community Group Alliance.

Shire officers also held two engagement sessions with the consortium of local planning consultants who made a joint submission to the Amendment.

4.1 (Cont.)

Next Steps

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

- Directions Hearing – to commence in the week beginning 15 August 2022.
- Panel Hearing – to commence in the week beginning 19 September 2022.

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

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

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

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

As per the *Planning and Environment Act 1987* (the Act), under:

- Section 22(1), Council must consider all submissions made on or before the date set out in the notice.
- Section 22(2), Council may consider a late submission and must consider one if the Minister directs.
- Section 23(1), after considering a submission which requests a change to the Amendment, Council must
 - change the Amendment in the manner requested; or
 - refer the submission to a panel appointed under Part 8 of the Act; or
 - abandon the Amendment or part of the amendment.
- Section 23(2), Council may refer to the panel submissions which do not require a change to the Amendment.

SUSTAINABILITY CONSIDERATIONS

Environment, social and economic impacts

The Amendment's environmental, social, and economic effects are articulated in the Explanatory Report (Attachment 3).

4.1 (Cont.)

Climate change impacts

The Amendment addresses climate change impacts by promoting a cooler and greener Peninsula as it encourages residential development to retain existing vegetation, plant more canopy trees, and replace trees that have to be removed with new ones that will grow to a similar mature height.

The Amendment also ensures future housing is directed away from areas that are prone to natural hazards such as bushfires, flooding, inundation, erosion, and sea level rise impacts.

FINANCIAL CONSIDERATIONS

The following approximate costs (including GST), which are already accounted for within existing budgets, has been incurred to date since the Amendment was placed on exhibition for public comment:

- \$217,500 to notify all owners and occupiers that may be affected by the Amendment.
- \$7,100 to produce explanatory brochures enclosed in the notification letters.
- \$3,800 to implement the interactive 'Property Search' webtool.
- \$51,100 for expert consultants' advice.

If Council decides to refer the Amendment and submissions to a Planning Panel, the following approximate costs (including GST) will be incurred:

- \$10,000 - \$15,000 to appoint a Planning Panel
- \$92,00 for legal representation at the Planning Panel
- \$87,000 for expert witnesses at the Planning Panel

The above costs can be accommodated within existing budgets.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.2 Amendment C271morn and C282morn - Planning Scheme Amendment Exhibition Outcomes

Prepared By	Sandy Ribic, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11204967
Briefing Note Number	BN1607 – 21 June 2022
Attachment(s)	<ol style="list-style-type: none">1. Submissions received (redacted)2. Submissions review and officer responses3. Amendment C271morn revised Explanatory Report4. Amendment C271morn revised Schedules 14, 15, 54, 55, 56 and 57 to the Design and Development Overlay5. Amendment C271morn revised EMO6 with tracked changes6. Amendment C271morn revised LSIO4 with tracked changes7. Amendment C271morn revised LSIO planning scheme amendment maps8. Amendment C282morn Final planning scheme amendment documentation9. Amendment C271morn authorisation letter10. Amendment C282morn authorisation letter11. Amendment C282morn revised Explanatory Report12. Amendment C282morn revised DDO21

EXECUTIVE SUMMARY

Amendments C271morn and C282morn (the Amendments) to the Mornington Peninsula Planning Scheme seek to give statutory effect to the Western Port Coastal Villages and Surrounding Settlements Strategy (the Strategy) as well as to the Crib Point Township Plan refresh (Township Plan refresh) adopted by Council in 2019 and 2021. The Amendments introduce planning controls along Western Port to ensure coastal areas respond to erosion and inundation hazards from predicted sea level rise and protect local township character.

The Amendments were exhibited concurrently as both Amendments aim to implement the key strategic directions of the Western Port Coastal Villages Strategy. Exhibition officially commenced on 21 February 2022 and ran for a period of eight and ten weeks respectively. Seventeen submissions were received during the exhibition of the Amendments, most of which relate to C271 and remain unresolved. Submissions received relating to Amendment C282morn have been resolved and subsequently withdrawn.

This report:

- provides a response to submissions relating to Amendment C271morn and recommends that the Planning Services Committee (the Committee) refer the submissions to an independent Panel for review pursuant to section 23 of the *Planning and Environment Act 1987* (the Act); and
- recommends that the Committee adopt Amendment C282morn and forward to the Minister for Planning for approval under section 31 of the Act.

4.2 (Cont.)

RECOMMENDATION

That the Planning Services Committee:

1. **Receives, notes, and considers in accordance with Section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendments C271morn and C282morn as at Attachment 1.**
2. **Notes and endorses the summary of submissions and Shire officer responses to submissions in relation to Amendments C271morn and C282morn at Attachment 2.**
3. **Requests that the Minister for Planning appoint a Planning Panel to consider submissions in relation to Amendment C271morn referred in accordance with Section 23 of the *Planning and Environment Act 1987*.**
4. **Refers all submissions in relation to Amendment C271morn to the Planning Panel.**
5. **Endorses the following documents, which include those that have been revised to accommodate potential post-exhibition changes, for the purpose of Council's advocacy position before the Planning Panel:**
 - A. **Revised Explanatory Report at Attachment 3.**
 - B. **Revised Schedules 14, 15, 54, 55, 56 and 57 to the Design and Development Overlay (DDO) at Attachment 4.**
 - C. **Revised Schedule 6 to the Erosion Management Overlay (EMO6) at Attachment 5.**
 - D. **Revised Schedule 4 to the Land Subject to Inundation Overlay (LSIO4) at Attachment 6.**
 - E. **Revised LSIO maps at Attachment 7.**
6. **Delegates authority to the Director of Planning & Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice, including negotiating proposed changes to the endorsed version of Amendment C271morn in order to resolve matters between Council and submitters generally in accordance with the officer's response at Attachment 2 and adopted Council policy.**
7. **Notes that the exhibition of Amendment C271morn and C282morn incorporated changes in accordance with the conditions of authorisation provided by the Minister for Planning.**
8. **Notifies all submitters to Amendment C271morn to the Mornington Peninsula Planning Scheme in writing of the Committee's decision.**
9. **Adopts Amendment C282morn to the Mornington Peninsula Planning Scheme pursuant to Section 29(1) of the Act, generally in accordance with Attachment 8 to this report.**

4.2 (Cont.)

10. **Submits the adopted Amendment C282morn to the Mornington Peninsula Planning Scheme to the Minister for Planning for approval pursuant to Section 31(1) of the Act generally in accordance with Attachment 8 to this report.**
11. **Notifies all submitters to Amendment C282morn to the Mornington Peninsula Planning Scheme in writing of the Committee's Decision.**
12. **Authorises the Director of Planning and Infrastructure to make editorial changes and administrative changes to Attachment 8 to this report as required prior to submitting Amendment C282morn to the Mornington Peninsula Planning Scheme to the Minister for Planning for approval.**

COUNCIL & WELLBEING PLAN

The Amendments align with:

- Theme 1: A healthy natural environment and well-planned townships.
- Strategic Objective 1.3: A sustainable built environment that respects the natural environment and protects the community from the impacts of the climate emergency.

RELEVANT COUNCIL DECISIONS AND POLICIES

Council has previously resolved to prepare and exhibit the Amendments as follows:

- At the Committee Meeting held on 17 August 2020, the Committee resolved to seek authorisation from the Minister for Planning to prepare and exhibit Amendment C271morn.
- At the Committee Meeting held on 4 May 2021, the Committee resolved to seek authorisation from the Minister for Planning to prepare and exhibit Amendment C282morn.

DISCUSSION

Purpose

The purpose of this report is to:

- Advise the Committee on submissions received during the exhibition of the Amendments to the Mornington Peninsula Planning Scheme and a response to submissions by Shire officers.
- Recommend that the Committee resolves to request the Minister for Planning to appoint an independent Planning Panel to consider unresolved submissions received in relation to Amendment C271morn.
- Recommend that the Committee includes in the Shire's submission to the planning Panel proposed post exhibition changes to the Planning Scheme Amendment documentation to address some of the points raised in submissions to Amendment C271morn.
- Recommend that the Committee resolves to adopt Amendment C282morn and forward to the Minister for Planning for approval.

4.2 (Cont.)

Background

The purpose of the Amendments is to implement the key strategic directives of the Strategy and the Township Plan refresh.

The Amendments aim to ensure that new developments in coastal areas respond to erosion and inundation hazards from predicted sea level rise and that new developments in commercial and industrial areas respect the height, scale, and design of the existing township character. The Amendments were exhibited concurrently as both Amendments propose to implement the key strategic directions of the Strategy.

The Amendments affect land in Hastings, Tyabb, Bittern, Crib Point, Balnarring and Balnarring Beach, Flinders, Red Hill and Red Hill South, Somers, Merricks and Merricks Beach, Point Leo, and Shoreham.

Western Port Coastal Villages and Surrounding Settlements Strategy and Amendment C271morn

The Strategy, adopted by Council on 14 October 2019, was commissioned by Council in partnership with the Department of Environment, Land, Water and Planning (DELWP) to help Council deliver on its commitment in the 2017-2021 Council Plan to 'demonstrate leadership in climate change mitigation and adaptation', following the declaration of a Climate Emergency. The Strategy builds Council's understanding of, and capacity to respond to coastal climate change issues through the planning system.

The Strategy aims to address potential climate change impacts along the Western Port Bay coastline (specifically relating to erosion and inundation caused by predicted sea level rise) whilst protecting and enhancing sensitive coastal and foreshore areas and township character. The Strategy also responds to the findings of the Western Port Local Coastal Hazard Assessment (WPLCHA) which provides the best available scientific data, mapping, and modelling of potential storm surge and sea level rise impacts of 0.8 metres by the year 2100.

The Strategy applies to the townships of Hastings, Tyabb, Bittern, Crib Point, Balnarring and Balnarring Beach, Flinders, Red Hill and Red Hill South, Somers, Merricks and Merricks Beach, Point Leo, and Shoreham.

The Strategy provides:

- An overall vision, framework plan and set of design objectives for each township.
- Defined character areas and associated design guidelines for commercial, industrial and foreshore land in each township, with residential guidelines adapted from Council's adopted Neighbourhood Character Study & Guidelines (Ethos Urban, 2019).
- Mapping of potential coastal inundation and erosion hazards for each township.
- Recommended actions to address coastal hazards through the planning system and other initiatives in partnership with the State Government and allied government agencies.

Amendment C271morn seeks to implement the Strategy by:

- Introducing new and revised Design and Development Overlays (DDO) to commercial and industrially zoned areas in select townships, with design objectives and requirements consistent with the corresponding character typology identified in the Strategy.

4.2 (Cont.)

- Introducing a new Erosion Management Overlay (EMO) schedule and updated Land Subject to Inundation Overlay (LSIO) schedules over land identified as subject to erosion and inundation hazards, consistent with mapping from the Strategy and WPLCHA, and including objectives, statements of risk, and application requirements to manage these risks in accordance with these documents, as well as Clause 13.01-2S (Coastal inundation and erosion) and the Marine and Coastal Policy (Victorian Government, 2020). This includes the need for applicants to provide a Coastal Vulnerability Hazard Assessment (CVHA) in support of development.
- Updating and applying Schedule 2 to the Significant Landscape Overlay (SLO) to significant coastal and foreshore landscapes to conserve environmental and landscape values and prevent inappropriate buildings and works.

The specific changes proposed by the amendment are detailed in the exhibited Explanatory Report (Attachment 3).

Crib Point Township Plan refresh and Amendment C282morn

The original Crib Point Township Plan (Township Plan) was developed between 2009 and 2011 but was never formally adopted by Council. In 2019, Council resolved to update the Township Plan as it was 10 years old. Overall, the vision for the township remained unchanged and the update focused on reviewing the Township Plan against existing State and local planning policies, conditions, and relevant strategies.

The Township Plan refresh establishes a long-term vision for the township of Crib Point as a basis for future planning and decision making about the use and development of private and public land. It seeks to provide greater certainty for residents, landowners, and stakeholders regarding the future of Crib Point over the next 10-20 years. The vision seeks to express the key values of Crib Point and to provide directions for critical decisions on the level and types of change and the future form and function of the town.

An implementation action identified in the Township Plan refresh is for Council to review existing planning provisions (specifically Schedule 21 to the Design and Development Overlay (DDO21)) that apply to the township, ensuring clarity, guidance, and consistency with the current vision of the Township Plan refresh.

Amendment C282morn proposes to make these changes to DDO21 in accordance with both the Township Plan refresh and the Strategy. DDO21 applies to the commercial areas of Crib Point and aims to protect and enhance local township character. The amendment also proposes to apply DDO21 to land in the Commercial 1 Zone at 141-149 Disney Street, Crib Point.

The revised DDO21 retains the existing 8.5 metre (two storey) mandatory height limit and requires that new development respects the existing coastal village character of the Crib Point township. Application requirements are introduced to ensure a Site and Context Analysis response and Landscape Plan are prepared to accompany a permit application. Requirements are also included from the Strategy to ensure the protection of the role and character of Crib Point commercial areas. This includes further built form requirements relating to the use of building materials which complement the existing character of the area and provision of vehicle and pedestrian access.

4.2 (Cont.)

Authorisation

Amendment C271morn

Council resolved at the 17 August 2020 Committee meeting to seek authorisation from the Minister for Planning to prepare and exhibit Amendment C271morn. The amendment was authorised on 7 September 2021 with a series of conditions as detailed in the authorisation letter (Attachment 9). These required changes were made to the amendment to the satisfaction of DELWP prior to exhibition.

Amendment C282morn

Council resolved at the 4 May 2021 the Committee meeting to seek authorisation from the Minister for Planning to prepare and exhibit Amendment C282morn. The amendment was authorised on 9 July 2021 with a condition to '*amend DDO21 to exempt minor works and to remove the sign requirements*' (Attachment 10). This condition was complied with prior to exhibition.

Exhibition and Community Engagement

The Amendments were exhibited concurrently as both Amendments aim to implement the key strategic directions of the Strategy.

Exhibition officially commenced on 21 February 2022 and concluded on 22 April 2022 for Amendment C282morn and 6 May 2022 for Amendment C271morn (8 weeks and 10 weeks respectively).

Notice of preparation of the Amendments was given in accordance with section 19 of the *Planning and Environment Act 1987* (the Act) and included the following:

- Direct notification to all owners and occupiers materially affected by the amendment.
- In person and online consultation sessions including:
 - five in person sessions held in Hastings, Balnarring, Somers, Main Ridge and Shoreham
 - three online sessions held via Microsoft Teams.
- Direct notification to key stakeholders, community groups, referral authorities, industry professionals and consultants, prescribed Ministers, and other relevant authorities.
- Notices placed in the Government Gazette and newspapers.
- Amendment documentation made available on the Shire's website (including an interactive property search tool) and DEWLP's Amendment Webpage.

Submissions

A total of 17 submissions were received relating to the Amendments (Attachment 1). The breakdown of submissions is as follows:

- Two submissions of no objection to both Amendments (from the Environment Protection Authority and Department of Transport).
- Two landowner submissions in support of the Amendments.

4.2 (Cont.)

- One submission from the Port Phillip East Presbytery in support of Amendment C282morn but requesting minor changes (This submission was later resolved and withdrawn).
- One submission from Parks Victoria requesting changes to Amendment C271morn.
- One submission from the Flinders Community Association in support of Amendment C271morn but requesting minor changes.
- One submission from the Port of Hastings that is generally supportive of the purpose of Amendment C271morn, but requests changes.
- Four landowner submissions objecting to Amendment C271morn.
- One submission from Point Leo Parks and Reserves Committee objecting to Amendment C271.
- One submission from the Shoreham Community Association objecting to Amendment C271morn.
- Two submissions with no objection from the Country Fire Authority (CFA) but requesting changes to the amendment documentation for both Amendments C271morn and C281morn to address State policy relating to bushfire risk at Clause 13.02-1S.

The main issues raised in the submissions relate to the following:

- Support for the application of planning controls (including proposed built form height controls) to protect township character (with some requests for minor changes to specific DDO provisions).
- Support for the application of planning controls to protect coastal environments and native vegetation from inappropriate development and address sea level rise.
- Concern that the Amendments do not go far enough to protect environmentally sensitive foreshore areas from sea level rise erosion and inundation and that further scientific studies are required.
- Concern about the accuracy of erosion and/or inundation data and associated application of the EMO and LSIO to private properties (with some landowners opposing what is considered an unjustified constraint on development and overly complex planning controls or contesting whether their land would ever flood or become eroded due to predicted sea level rise).
- Concern that the application of proposed planning controls to Port of Hastings land unnecessarily duplicates requirements present in other legislation relevant to the Port, does not reflect underlying zones, does not have proper regard for the State significance of the Port or its operations and future utility, does not recognise the Port of Hastings Development Strategy, and introduces unnecessary and/or unclear planning permit application requirements (i.e. Coastal Vulnerability Hazard Assessment).
- The need for appropriate exemptions within the EMO and LSIO to allow Parks Victoria to undertake land management works pursuant to the *National Parks Act 1975*, *Crown Land Reserves Act 1978*, or *Parks Victoria Act 2018*.

4.2 (Cont.)

- Concerns that the Strategy does not address bushfire risk and that the Amendments should be assessed against relevant State Policy relating to bushfire risk at Clause 13.02-1S.
- Issues beyond the scope of the Amendments such as the timeliness of decisions made by public authorities, the commercialisation of the Peninsula, and changes to the adopted Strategy.

Response to submissions

A review of submissions with Shire officer responses to issues raised is included in Attachment 2. In summary officers:

- Support Parks Victoria's request to amend Schedule 6 to the Erosion Management Overlay (EMO6) and Schedule 4 to the Land Subject to Inundation Overlay (LSIO4) to include permit exemptions for buildings and works (including vegetation removal) when conducted by or on behalf of Parks Victoria under the *National Parks Act 1975* or *Crown Land Reserves Act 1978* or *Parks Victoria Act 2018*. (Marked-up versions of EMO6 and LSIO4 are contained in Attachments 5 and 6 respectively).
- Support Parks Victoria's request to correct permit exemptions within LSIO4 relating to boardwalks. As the exemptions were introduced by Amendment C216morn (led by Melbourne Water and approved on 24 July 2019), officers consulted with Melbourne Water to confirm appropriate corrections. The endorsed corrections are reflected in Attachment 6.
- Support the Port of Hastings request to correct mapping of LSIO schedules to ensure that only one schedule applies to Port land. However, Shire officers recommend that LSIO4 be applied in contrast to the Port's request for LSIO2, given LSIO4 is designed for public use zones, whereas LSIO2 is designed for residential, industrial, and commercial zones.
- Support the Port of Hastings request to amend EMO6 and LSIO4 to include a permit exemption for buildings and works carried out in the Port Zone or Special Use Zone 1 (Port related uses) by or on behalf of the relevant Port authority (as has been identified by Parks Victoria for their land) on the basis that this requirement duplicates other legislative requirements for the Port to consider climate change hazards in its operations and development.
- Do not support the Port of Hastings request to amend the schedules to the LSIO to include reference to the Port and the Port Development Strategy as these changes are considered unnecessary. In deciding on planning permit applications, Council is obliged to consider the Port and Port Development Strategy by virtue of the need to consider the Municipal Planning Strategy and Planning Policy Framework of the planning scheme (which includes Clauses 17.03-3S: State significant industrial land and Clause 18.02-6S: Ports) under the Decision Guidelines of the LSIO parent control (Clause 44.04-8).
- Support the Port of Hastings request to provide further clarity with regard to the Application Requirement for a Coastal Hazard Vulnerability Assessment in the schedules to the LSIO and EMO6.

It is noted that the two submissions received regarding Amendment C282morn have been resolved and subsequently withdrawn. These submissions were:

4.2 (Cont.)

- The Submission received from Port Phillip East Presbytery supported the amendment but requested changes to proposed DDO21 to ensure that the proposed upper-level setback requirement did not unreasonably impact non-compliant existing built form. Following post-exhibition consultation, the submitter understood that the setback requirement is not applied retrospectively, is discretionary and can be varied if development complies with the overall objectives of DDO21. On that basis, the submitter withdrew their submission.
- The Submission received from the CFA did not object to the amendment although requested changes to the amendment documentation for both Amendments C271morn and C281morn to address State policy relating to bushfire risk at Clause 13.02-1S.

Changes are proposed to be made to the Explanatory Report and Schedules to the Design and Development Overlay that include an application requirement for a Landscape Plan in response to the concerns raised.

The Explanatory Reports for both Amendments C271morn and C282morn are proposed to be revised to provide further assessment against Clause 13.02-1S.

It is considered that the amendment will not increase bushfire risk to life, property, community infrastructure and the natural environment and is considered to meet the objectives of Clause 13.02-1S – *Bushfire to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.*

A tracked changes version of the revised Explanatory Report for Amendment C271morn is contained in Attachment 3 and in Attachment 11 for Amendment C282morn.

An **additional provision** has been included in the Landscape Plan requirement to ensure landscaping is of a low-threat bushfire risk as defined in the relevant Australian Standard.

It is also recommended to include an additional **decision guideline** that considers whether landscaping is of a low-threat bushfire risk if the land is in a bushfire prone area. This will improve the nexus between the application requirements and decision guidelines. Tracked changes versions of the Schedules to the Design and Development Overlay are contained in Attachments 4 and 12.

The CFA also provided a suggestion to include a decision guideline that considers whether the landscaping is designed to ensure bushfire risks do not increase over time. Officers consider that this is unnecessary given that State policy at Clause 13.02-1S already requires the responsible authority, when assessing a planning permit application to:

- *Consider the risk of bushfire to people, property, and community infrastructure.*
- *Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.*
- *Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.*

A Practitioner's Guide to Victorian Planning Schemes, Version 1.4 (DELWP 2020) indicates that provisions in a local policy must not duplicate those in a state policy. It is also not possible to control bushfire risks over time once a planning permit has been approved.

4.2 (Cont.)

In this context, officers consider that the issues raised by the CFA have been properly responded to through the changes made to the Explanatory Report in assessing the amendment against relevant bushfire provisions at Clause 13.02-1S and changes made to the Landscape Plan requirement in the Schedules to the Design and Development Overlay.

Mapping errors

Post-exhibition, Shire officers identified an error in proposed mapping of the LSIO. The LSIO2 has been erroneously mapped to apply to Commonwealth Land along the coastline which is exempt from the Mornington Peninsula Planning Scheme.

Following discussions with DELWP officers, at this stage it is recommended that this error is rectified by removing LSIO2 from the land and replaced with LSIO4 which applies to Public Use Zones. The updated planning scheme amendment maps are included at Attachment 7.

Options for consideration

In accordance with the Act, a *Planning Authority must consider all submissions made on or before the due date set out in the notice* and subject to section 23 of the Act:

- 1) *After considering a submission which requests a change to the amendment, the planning authority must –*
 - a. *Change the amendment in the manner requested; or*
 - b. *Refer the submission to a panel appointed under Part 8; or*
 - c. *Abandon the amendment or part of the amendment.*

Both Amendments are considered necessary to effectively implement important Council strategies. Both have been modified as far as reasonably practical to address submissions, enabling Amendment C282morn to be considered for adoption by Council.

However there remain some submissions in relation to Amendment C271morn which cannot be resolved without undermining the purpose of the amendment. Abandonment of the amendment would not support Council's adopted strategies and cannot be recommended, Therefore, referral of submissions in relation to Amendment C271morn to a Panel is the only remaining option available under the Act.

Amendment C271morn

Shire officers recommend that the Committee refer the submissions relating to Amendment C271morn to a Panel.

The following dates have been pre-set for a Panel hearing for Amendment C271morn:

- Directions Hearing: Week beginning 19 September 2022
- Panel Hearing: Week beginning 17 October 2022.

If Council resolves to proceed to the Panel stage for Amendment C271morn, all submitters will be notified and have the opportunity to address the Panel at the hearing if they wish (with or without third party representation).

Following the Panel Hearing, the Panel will prepare a report with recommendations for Council to consider before Council decides whether to adopt the amendment (with or without

4.2 (Cont.)

changes). The Panel's report will be presented to Council for a decision at a later Committee Meeting.

If Council decides to adopt Amendment C271morn (with or without changes), it must submit the Amendment to the Minister for approval and notify all submitters of its decision. If Council decides to abandon the Amendment, it must notify the Minister and all submitters.

Amendment C282morn

Shire officers recommend that the Committee adopts Amendment C282morn subject to proposed changes to the Explanatory Report and DDO21 in response to concerns raised by the CFA in relation to State policy relating to bushfire at Clause 13.02-1S.

The suite of updated amendment documentation is contained in Attachment 8.

Following adoption, Council must submit Amendment C282morn to the Minister for Planning for approval under section 31 of the Act and notify all submitters of its decision to adopt the amendment.

ENGAGEMENT

As noted above, Amendments C271morn and C282morn were exhibited concurrently commencing on 21 February 2022 and concluded on 22 April 2022 for Amendment C282morn and 6 May 2022 for Amendment C271morn (8 weeks and 10 weeks respectively).

Notice of the Amendment was given in accordance with section 19 of the Act.

COMMUNICATIONS PLAN

Not applicable – notice was given in accordance with the statutory process for exhibition of a planning scheme amendment.

LEGAL AND REGULATORY FRAMEWORK

The exhibition of Amendments C271morn and C282morn and consideration of submissions received are in accordance with Council's obligations under the Act.

SUSTAINABILITY CONSIDERATIONS

The Amendments aim to deliver on Council's commitment in the 2017-2021 Council Plan to 'demonstrate leadership in climate change mitigation and adaptation', at a time when a Climate Emergency has been declared by introducing changes to planning controls affecting coastal and inland areas of Western Port.

The proposed planning controls will help increase the community's ability to adapt to climate change impacts caused by predicted sea level rise (specifically erosion and inundation).

FINANCIAL CONSIDERATIONS

Should an independent Planning Panel be appointed, Council will need to bear the costs of the Panel which will be in the order of \$10,000. Council has existing budget to cover these costs.

Council is currently seeking legal representation for the Panel, and it is likely that Council may need to appoint expert witnesses on Council's behalf. The costs of such representation are currently unknown and will depend on factors, including number of days required for the

4.2 (Cont.)

hearing. It is estimated that legal representation will cost in the order of \$20,000 to \$30,000. Both the Strategic Planning and Legal teams have existing budget to cover these costs.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 STATUTORY PLANNING REPORTS

Nil

6 NOTICES OF MOTION

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

6.1 Notice of Motion 350 (Cr Gill)

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

1. *That Council agrees with and advocates for the concept of Tiny Houses and that officers be asked to provide information and planning proposals seeking ways to make Tiny Houses into a viable and successful alternative housing form on the Mornington Peninsula.*

Officer Comment Prepared by	Sandy Ribic – Senior Strategic Planner, Strategic Planning Allan Cowley, Acting Manager – Strategic and Infrastructure Planning
Authorised by	Mike McIntosh – Director, Planning and Infrastructure

OFFICER COMMENT

The concept of ‘Tiny Houses’ has been put forward for some time as one possible means of (partially) addressing the issues of housing affordability and homelessness.

Although there is no planning scheme definition, the expression ‘tiny house’ is often used to refer to an independent single bedroom/bathroom/kitchenette dwelling of less than 50 square metres, which is often designed to be relocatable. The Department of Environment, Land Water and Planning (DELWP) has also used the related term ‘secondary dwelling’ to refer to dwellings with a floor area up to 60 square metres, with a maximum height of 5 metres and providing the minimum garden area required under the zone.

There are currently three main options in Victoria for locating a tiny house:

- In a backyard as a 'dependent person's unit'.
- As an approved second dwelling on a lot.
- In a caravan park.

While there are various changes to the planning controls that could facilitate the development of ‘tiny houses’, such as removing the requirement that only dependent persons can use a relocatable ‘granny flat’ there are also a range of issues that still need to be resolved, including:

- the appropriate definition of a tiny house (need they be relocatable, should they have a maximum floor area or number of bedrooms)
- the level of exemption that should be provided to standard siting and design standards to facilitate their development,
- whether they should be an as of right use or subject to some form of assessment in regard to neighbourhood character, garden area, car parking etc,

6.1 (Cont.)

- how many tiny houses should be permissible on a single lot/property,
- security of tenure for occupants when properties change ownership,
- policy regarding the use of tiny homes for airbnb and short stay accommodation,
- the provision of services and connections,
- how to manage long term leases or expectations that over time separate titles will be granted for tiny house sites etc

The research required to resolve these issues and to develop an effective legal and planning framework would be substantial.

In this context, between August 2020 and March 2021, a pilot program was introduced by the Minister for Planning to facilitate ‘secondary dwellings’, which would encompass tiny houses. The program introduced a code for secondary dwellings (a small dwelling on the same lot as an existing dwelling) in the City of Greater Bendigo, City of Kingston, City of Moreland and the Shire of Murrindindi (Amendment VC186).

DELWP have advised that a total of 10 Applications were submitted during the pilot project, however the Minister for Planning has decided not to roll-out the code State-wide at this time and DELWP are currently analysing the data gained from the program.

In this context, it is considered preferable for Council to be informed of the analysis resulting from the pilot program and any proposed state-wide framework, before committing to support for the tiny house concept or developing a separate set of planning proposals.

It is also relevant to note that the Shire is currently preparing a Social and Affordable Housing Contributions Plan and this work may also consider tiny houses as one element in an overall strategy.

Legal Implications

Not applicable

Financial and Resourcing Implications

Not applicable

Potential Alternative Wording

Not applicable

7 URGENT BUSINESS

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

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

8 CONFIDENTIAL ITEMS

Nil.