



**MORNINGTON
PENINSULA**
Shire

AGENDA

COUNCIL MEETING

TUESDAY, 30 APRIL 2024

6:30PM

**TYABB COMMUNITY HALL 1535
FRANKSTON-FLINDERS ROAD,
TYABB**

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 Simon Brooks Cr Antonella Celi Cr Debra Mar
Watson	Cr Kate Roper

EXECUTIVE TEAM

Mr John Baker Ms Tanya Scicluna Ms Sam Stanton Mr Mike McIntosh Mr Derek Rotter Mr Bulent Oz	Chief Executive Officer Director – Community Strengthening Director – Corporate Strategy and Business Improvement Director – Planning and Infrastructure Acting Director – Infrastructure Chief Financial Officer
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RECORDING

Please note that this Council 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 – Mayor, Cr Simon Brooks

1.1 Acknowledgement of Country

To be read by Cr Race

Mornington Peninsula Shire acknowledges the Bunurong people, who have been the custodians of this land for many thousands of years; and pays respect to their elders past and present. We acknowledge that the land on which we meet is the place of age-old ceremonies, celebrations, initiation and renewal; and that the Bunurong 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 Council Decision Register

- Attachment(s)
1. 2019 Council Decision Register Summary
 2. 2020 Council Decision Register Summary
 3. 2021 Council Decision Register Summary
 4. 2022 Council Decision Register Summary
 5. 2023 Council Decision Register Summary
 6. 2024 Council Decision Register Summary

PURPOSE

Council has requested a Decision Register for all its Council resolutions to be maintained by Shire Team Leaders and Managers.

Attached are Summaries of the 2019-2024 Decision Registers (Attachments 1-6) as at 22 April 2024.

RECOMMENDATION

That Council receives and notes the Decision Register Summaries for 2019-2024 (Attachments 1-6) as at 22 April 2024.

2.4 Petitions and Joint Letters

Tree Removal

A petition with 13 signatures has been received requesting the removal of a 'Plane Tree' on the nature strip at 20 Austin Avenue, McCrae. The petitioner has raised concerns regarding the allergies suffered by a neighbouring resident caused by the Plane Tree at this address.

Immediate Comment

The Mornington Peninsula Shire's (the Shire) Infrastructure team assess trees within the environment on Shire managed land for risk to provide a consistent and equitable process for the community. Removal of a London Plane (*Platanus acerifolia*) requires a planning permit under the State Government's Planning Scheme as there is a Vegetation Protection Overlay at this location. The team has, through recent inspections identified that the London Plane (*Platanus acerifolia*) doesn't trigger removal under an immediate risk planning exemption.

If someone in the community has health issues related to trees, plants, and grasses, like allergies, it's best for them to talk to a doctor who can assist with plans to manage their health.

On the Mornington Peninsula, where we live, there are many different trees and plants. Some of them release pollen that trigger allergies. Since the Shire cannot control what pollen floats into yards, it is important for anyone with allergies to get advice from a doctor.

The Shire's Infrastructure team assesses trees for risk while considering how trees affect people's health and do their best to balance things fairly and within the Acts, regulations, schemes, and Shire policies.

Action Officer: Samantha Dalla Santa, Team Leader – Open Spaces

RECOMMENDATION

That Council receives and notes the above "petition / joint letter".

2.5 Public Question Time

Questions from the public shall be dealt with at commencement of the meeting.

The aim of public question time is to provide an opportunity for the public to ask general questions at Council Meetings requiring routine responses. Questions with or without notice can be submitted.

Questions with notice are to be received in writing by 12.00pm the Friday prior to the relevant Council Meeting and can be lodged via the Shire's website. Questions received by this time will be provided with a considered response prepared by the relevant Shire officer and read by the Chief Executive Officer (CEO) at the Council Meeting.

Questions without notice must be lodged in person no later than 15 minutes prior to the commencement of the meeting. The question will be read by the CEO and taken on notice with a written response forwarded to the person asking the question within 7 days of the Council Meeting and published on the Shire's website.

This segment does not substitute for appeal or other formal business procedures with the Council.

3 COUNCILLORS AND DELEGATES REPORTS

At each Council Meeting, all Councillors will have the opportunity to provide an overview of any meetings attended as an appointed representative of Council.

If a Councillor chooses to provide details, the name of the conference/event and the Councillor attending will be noted in the Minutes for that meeting. If a Councillor requires additional information on the conference/event to be included in the Minutes, the Councillor must submit it in writing to Governance by 12.00 noon the day following the meeting.

Association/Committee	Representative/s	Substitute Representative/s	Shire Contact
Arts and Culture Advisory Panel	Cr Gill	Cr Dixon Cr O'Connor	Tori Hayat, Team Leader – Arts and Culture
Association of Bayside Municipalities	Cr Marsh	Cr Roper	Laura Crilly, Team Leader – Water and Coasts
Audit and Risk Committee	Cr Marsh Cr Roper	Mayor	Bulent Oz, Chief Financial Officer
Australian Coastal Councils	Cr Race	N/A	Laura Crilly, Team Leader – Water and Coasts
Bass Park Trust	Cr Marsh	N/A	Pamela Vercoe, Acting Manager – Governance
Community Consultative Committee on Gaming	Cr O'Connor	Cr Dixon	Kathleen van der Weerden, Social Planning Officer and Kate Hills, Team Leader – Community Wellbeing
Climate Emergency Community Reference Group	Cr Race	Cr Roper	Chris Yorke, Energy and Carbon Management Officer
Disability Advisory Committee	Cr Dixon	Cr O'Connor	Monica Seal, Disability Community Inclusion Officer
Friends of Lospalos	Cr Brooks	N/A	Chris Munro, Manager – Community Partnerships
Greater South East Melbourne	Mayor	Deputy Mayor	John Baker, Chief Executive Officer
Hastings Liquor Industry Accord	Cr Dixon	N/A	Katherine Cooper, Team Leader – Economic Development
Health and Wellbeing Committee	Cr Celi	Cr O'Connor	Kate Hills, Team Leader – Community Wellbeing
Hinterland Local Area Action Plan Advisory Committee	Cr Mar	N/A	Jayde Hayes, Manager – Economic Development, Tourism and Investment
Interface Councils	Mayor	Deputy Mayor	Emma Lindsay, Coordinator – Advocacy

Association/Committee	Representative/s	Substitute Representative/s	Shire Contact
Koala Conservation Group	Cr Mar	N/A	James Rose, Team Leader – Natural Systems
Local Government Mayoral Taskforce Supporting People Seeking Asylum	Cr Brooks	Cr Race	Chris Munro, Manager – Community Partnerships
Metropolitan Transport Forum	Cr O'Connor	Cr Celi	Justine Lewis, Transport Strategy Coordinator
Mornington Liquor Industry Accord	Cr O'Connor	N/A	Katherine Cooper, Team Leader – Economic Development
Mornington Peninsula and Western Port Biosphere Reserve Foundation – Council Liaison Group	Cr Mar	Cr Race	James Rose, Team Leader – Natural Systems
Mornington Peninsula Cemetery Trust	Cr Celi Cr O'Connor Cr Roper	Cr Holland	Jenny Brown, Senior Cemeteries Officer
Municipal Association of Victoria (MAV)	Mayor	Deputy Mayor	Pamela Vercoe, Acting Manager – Governance
MAV Emergency Management Committee	Cr Mar	N/A	Andrew Joseph, Team Leader – Community Resilience and Emergency
MAV Human Services Committee	Cr Celi	N/A	Tanya Scicluna, Director – Community Strengthening
Northern Mornington Peninsula Local Area Action Plan Advisory Committee	Cr O'Connor	N/A	Jayde Hayes, Manager – Economic Development, Tourism and Investment
Peninsula Advisory Committee for Elders	Cr Dixon	Cr Roper	Helen Ridgeway, Positive Ageing Officer
South East Councils Climate Change Alliance	Cr Race	Cr Brooks	Nicci Tsernjavski, Climate Change Partnerships Officer and Chris Yorke, Energy and Carbon Management Officer
Southern Mornington Peninsula Local Area Action Plan Advisory Committee	Cr Celi	N/A	Jayde Hayes, Manager – Economic Development, Tourism and Investment
Southern Peninsula Liquor Industry Accord	Cr Celi	N/A	Katherine Cooper, Team Leader – Economic Development
Triple A Housing Committee	Cr Gill	Cr O'Connor	Kate Hills, Team Leader – Community Wellbeing
Victorian Local Governance Association (VLGA)	Cr Roper	Cr Mar	Pamela Vercoe, Acting Manager – Governance

Association/Committee	Representative/s	Substitute Representative/s	Shire Contact
Western Port Local Area Action Plan Advisory Committee	Cr Dixon	N/A	Jayde Hayes, Manager – Economic Development, Tourism and Investment

4 MANAGEMENT REPORTS

PLANNING & INFRASTRUCTURE

4.1 Planning Scheme Amendment C241morn (Balcombe Estuary and associated reserves) - Public exhibition outcomes

Prepared By	Christian Lynch, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A13015922
Briefing Note Number	BN1865 – 26 March 2024
Attachment(s)	<ol style="list-style-type: none"> 1. Amendment C241morn - Submissions 1 to 20 (redacted) 2. Amendment C241morn - Submissions 21 to 40 (redacted) 3. Amendment C241morn - Submissions 41 to 64 (redacted) 4. Summary of submissions and officer responses 5. Amendment C241morn - d-DDO Map 6. Amendment C241morn - d-VPO Map 7. Amendment C241morn - ESO32 Map 8. Amendment C241morn - Zone Map 9. Amendment C241morn - ESO32 ordinance 10. Amendment C241morn - Clause 66.06 11. Amendment C241morn - Clause 66.06_track changes 12. Amendment C241morn - Clause 72.03 13. Amendment C241morn - Clause 72.03_track changes 14. Amendment C241morn - Clause 72.08 15. Amendment C241morn - Clause 72.08_track changes 16. Balcombe Estuary and associated reserves: Ecological and Planning Study (Biosis, 2022) 17. Amendment C241morn - Explanatory Report 18. Amendment C241morn - Instruction Sheet 19. Amendment C241morn - Authorisation letter 20. Amendment C241morn - South Mornington Football Netball Club - Confirmation of submission withdrawal

EXECUTIVE SUMMARY

This report presents the outcomes of public exhibition of Amendment C241morn to the Mornington Peninsula Planning Scheme (the planning scheme) and recommends that Council refer the amendment and submissions to a Planning Panel for independent review because of an unresolved submission from the Country Fire Authority (CFA).

Amendment C241morn seeks to implement recommendations from Council's adopted Balcombe Estuary and Associated Reserves: Ecological and Planning Study (Biosis, 2022) (the Study) by introducing a new Schedule 32 to the Environmental Significance Overlay (ESO32), rezoning land currently within residential zones (to reflect public ownership and conservation or recreational values), and deleting redundant planning provisions.

The amendment was publicly exhibited for six weeks in late 2023. Sixty-four submissions were received – 59 of which support the amendment. Two submissions from State

4.1 (Cont.)

Government agencies requested changes to the amendment which officers support. The South Mornington Football Netball Club lodged a submission which they later withdrew following further consultation with Shire officers.

A submission from the CFA remains unresolved, despite Mornington Peninsula Shire (Shire) officers engaging with the CFA, providing additional requested information and seeking confirmation as to whether issues raised in its submission have been satisfactorily addressed.

Because this submission remains unresolved, Shire officers recommend that Council refer the amendment and submissions to a Planning Panel for independent review as required under section 23 of the *Planning and Environment Act 1987* (the P&E Act).

Shire officers also recommend several minor changes to amendment maps to correct anomalies identified during the exhibition process.

RECOMMENDATION**That Council:**

- 1. Receives, notes and considers in accordance with Section 22(1) of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C241morn to the Mornington Peninsula Planning Scheme as at Attachments 1, 2 and 3 to this report.**
- 2. Notes and endorses the summary of submissions and Shire officers' response to submissions in relation to Amendment C241morn to the Mornington Peninsula Planning Scheme as at Attachment 4 to this report.**
- 3. Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C241morn to the Mornington Peninsula Planning Scheme referred in accordance with Section 23 of the *Planning and Environment Act 1987* as at Attachment 1, 2 and 3 to this report.**
- 4. Refers all submissions as at Attachment 1, 2 and 3 to this report to Amendment C241morn to the Mornington Peninsula Planning Scheme to a Planning Panel pursuant to Section 23 of the *Planning and Environment Act 1987*, including any late submissions received up until the date of the Panel Hearing.**
- 5. Endorses and includes in Council's submission to the Planning Panel proposed changes to documentation generally in accordance with Attachments 5 - 18 to this report for Amendment C241morn to the Mornington Peninsula Planning Scheme.**
- 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 (if required), including requesting recommendations for proposed changes to the endorsed version of Amendment C241morn to the Mornington Peninsula Planning Scheme in order to resolve matters between Council and submitters.**
- 7. Notifies all submitters to Amendment C241morn to the Mornington Peninsula Planning Scheme in writing of Council's decision.**
- 8. Notifies all individuals that have requested to be provided updates of Amendment C241morn to the Mornington Peninsula Planning Scheme in writing of Council's decision.**

4.1 (Cont.)

- 9. Authorises the Director - Planning & Infrastructure to make minor editorial and administrative changes to Attachments 5 - 18 to this report if required.**

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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

- Strategic Objective 1.2: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles A, B, C, D, F, H and I which are:

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- D. The municipal community is to be engaged in strategic planning and strategic decision making.
- F. Collaboration with other Councils and Governments and statutory bodies is to be sought.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Recommendation 186 of Council's adopted Mornington Peninsula Planning Scheme Review No.4 (2018) which recommends that strategic work be undertaken to determine whether an Environmental Significance Overlay (ESO) should be applied to the Balcombe Estuary and associated reserves given its ecological values.
- At the 15 August 2022 Council Meeting, Council resolved to, among other things:
 - Adopt the Balcombe Estuary and Associated Reserves: Ecological and Planning Study (Biosis, 2022)
 - Seek authorisation from the Minister for Planning to prepare Amendment C241morn to the Mornington Peninsula Planning Scheme
 - Undertake exhibition of Amendment C241morn to the Mornington Peninsula Planning Scheme following receipt of authorisation from the Minister for Planning.

4.1 (Cont.)

DISCUSSION

Purpose

The purpose of this report is to present the outcomes of public exhibition of Amendment C241morn to the Mornington Peninsula Planning Scheme and recommend that Council refer the amendment and submissions to a Planning Panel for independent review and recommendations.

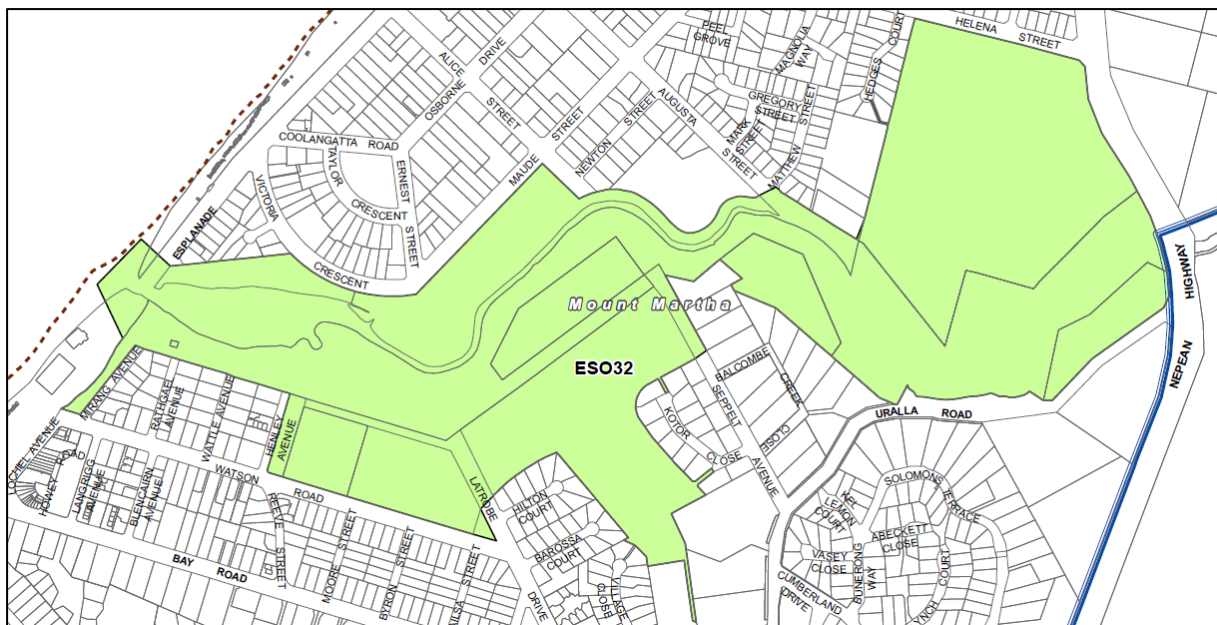
Background

Amendment C241morn seeks to implement recommendations from Council’s adopted Balcombe Estuary and Associated Reserves: Ecological and Planning Study (Biosis, 2022) (the Study). Specifically, the amendment proposes to:

- Introduce a new Schedule 32 to the Environmental Significance Overlay (ESO32) to the area which explicitly identifies critically important ecological values and environmental systems in the area whilst acknowledging the importance of existing community infrastructure
- Rezone land currently within residential zones to reflect public ownership and conservation or recreational values
- Delete redundant planning provisions to avoid unnecessary duplication of controls and improve the overall efficiency of the planning scheme.

The amendment affects land shown in Figure 1 below.

Figure 1: Amendment area



The Study

Adopted by Council on 15 August 2022, the Study (Attachment 16) was commissioned by Council in response to Recommendation 186 of Council’s adopted Mornington Peninsula Planning Scheme Review No.4 (2018). The review recommended that strategic work be undertaken to determine whether an ESO should be applied to the area given its ecological values. The Shire therefore engaged Biosis (environmental consultants) to undertake an ecological study and recommend associated planning controls that would balance the needs

4.1 (Cont.)

of protecting ecological values with maintaining existing sport, recreation and community uses in the area.

The adopted Study recommended that:

- A bespoke ESO should cover the whole study area and include certain exemptions for development associated with minor sport and recreation.
- The existing Schedule 1 to the Vegetation Protection Overlay (VPO1) that applies to the area should be removed and replaced by the ESO to provide stronger planning protection against native vegetation removal.
- There should not be any major changes to the existing Public Conservation and Resource Zone (PCRZ) and Public Park and Recreation Zone (PPRZ), noting that the PPRZ allows for consideration of expanding sport and recreational facilities (albeit subject to the consideration of an ESO).
- Any future sport and recreational development should be located in areas with low or minimal ecological value (i.e. in areas that were not mapped as containing significant native vegetation).
- Any future masterplan to expand sporting facilities in the area should consider the detailed ecological mapping conducted as part of the Study.

Amendment C241morn was therefore prepared to give effect to the above planning recommendations.

Authorisation

Council resolved on 15 August 2022 to seek authorisation from the Minister to prepare and exhibit Amendment C241morn. The amendment was authorised by the Department of Transport and Planning (DTP) on 30 November 2022 under delegation from the Minister. Authorisation was granted on the condition that minor changes were made to the amendment's Explanatory Report and the proposed ESO32 control. These changes are detailed in the authorisation letter (Attachment 19) and were completed to the satisfaction of DTP prior to exhibition.

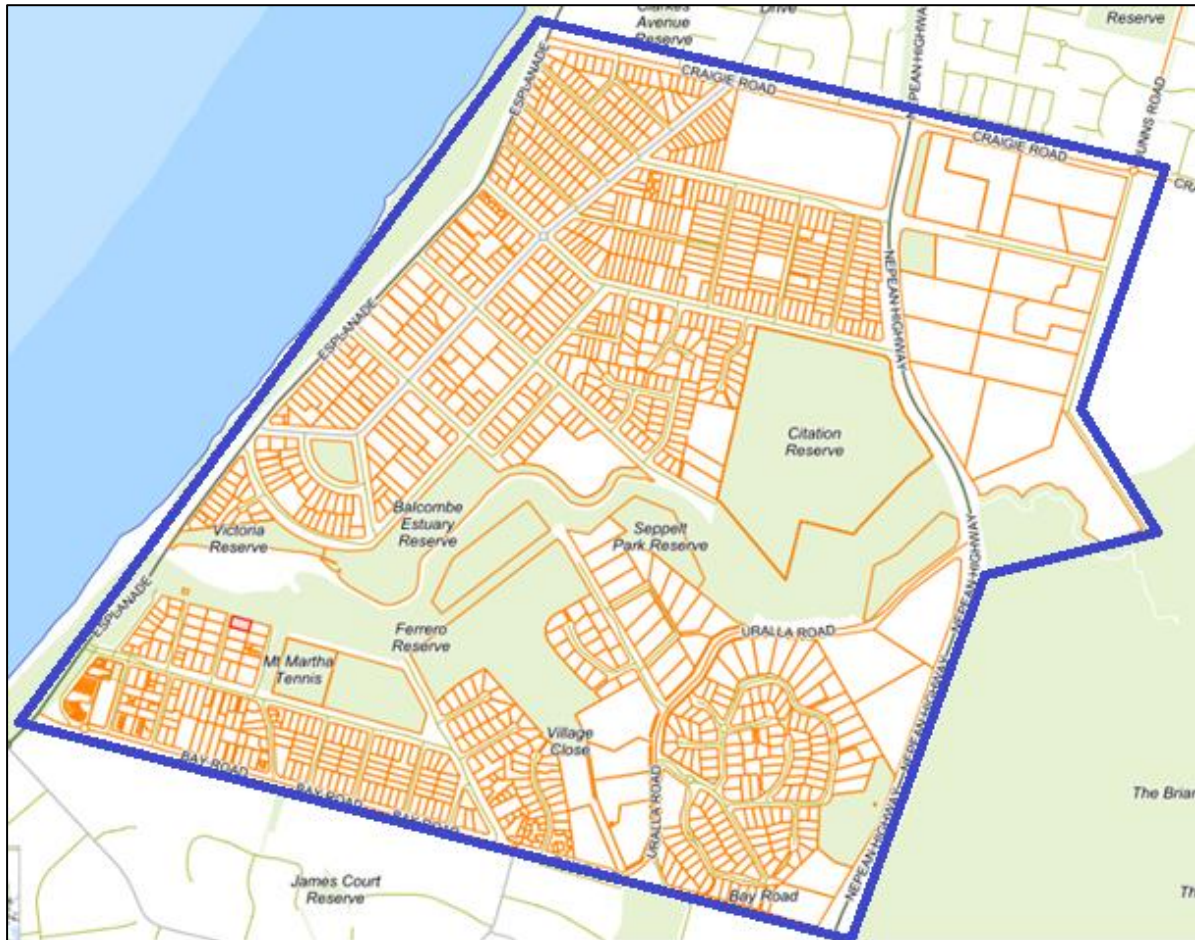
Public exhibition

The amendment was publicly exhibited for a period of 6 weeks, from 2 November to 15 December 2023. Notice of the amendment was given by public notices in the Government Gazette and Mornington News as well as a dedicated webpage on the Shire's website. Individual letters with amendment notices were also sent to:

- owners and occupiers of land surrounding the amendment area (as shown in blue outline in Figure 2)
- the sporting, recreation and other user groups within the amendment area, as well as local community groups and environmental organisations
- prescribed ministers and other relevant ministers, including the Minister for Climate Action and the Minister for Community Sport
- public authorities including the Country Fire Authority (CFA), Melbourne Water, South East Water, VicRoads, and United Energy
- submitters from the previous consultation process for the preparation of the Study (totalling more than 400 submitters).

4.1 (Cont.)

Figure 2: Amendment notification area



During the exhibition period, members of the community could enquire about the amendment with Shire officers from the Strategic Planning team via phone or email, or by arranging an appointment at Shire offices.

Two in-person community information sessions were also held to allow community members to speak directly with a Shire officer. These sessions were held on:

- Session 1: Monday, 13 November (12.00pm - 2.00pm)
- Session 2: Wednesday, 15 November (5.00pm - 7.00pm).

Five community members attended across the two information sessions.

An individual meeting was also held with representatives of BERG which is a key stakeholder for the amendment. The meeting allowed Shire officers to brief BERG on the details of the proposed amendment and answer any questions.

Shire officers also reached out to all of the sporting, recreation and other user groups located within the amendment area to offer individual meetings with Shire officers. Meetings were held with representatives from the Mount Martha Cricket Club and the South Morningside Football Netball Club. No other requests for individual meetings were received.

Submissions

A total of 64 submissions were received, although one was later withdrawn (refer Attachment 1, 2 and 3). Of these, 59 submissions (94%) supported the amendment, one stated no

4.1 (Cont.)

objection, two requested minor changes and one submission – from the CFA – raised concerns with the amendment.

Submitters to the amendment were varied and included:

- Owners and occupiers of land in the vicinity of the amendment area
- BERG members
- Various community and environmental groups
- Other interested local residents.

Submissions were also received from Public Authorities including South East Water (SEW) and the Department of Environment, Energy and Climate Change (DEECA) which requested changes to the amendment. The Head of Transport for Victoria (VicRoads) also provided a submission but only to confirm no objection to the amendment.

Submissions in support

As stated above, most submissions support the amendment. Key themes raised in these submissions can be summarised as follows:

- The Balcombe Estuary and Reserves need to be protected for current and future generations to enjoy.
- The amendment strikes a balance between the recreational needs of the local community and conservation of the Balcombe Estuary as a valuable environmental and ecological asset.
- The ecology of the area is unique, and it is one of the only estuaries in Port Phillip Bay.
- The Balcombe Estuary has significant biological importance because it is home to many species of significant flora and fauna.
- Green spaces should be protected as they are essential to health and wellbeing.
- The Balcombe Estuary is an irreplaceable asset for the Mornington Peninsula and is appreciated by both locals and visitors to the area.
- Protection of natural assets like the Balcombe Estuary is important on the Mornington Peninsula as other areas are being damaged by development and environmental events.

Submissions with concerns**CFA submission**

The CFA raised the following concerns in its submission:

- It is unclear how the Amendment addresses Bushfire Policy under Clause 13.02-1S, in terms of minimising bushfire risk.
- There are concerns that bushfire risk could potentially increase over time through the application of the ESO given the ESO is seeking to 'protect and enhance' the ecological values of the area, which includes native vegetation.

4.1 (Cont.)

The CFA stated that bushfire risk is particularly relevant in the area and needs to be minimised given the number of adjoining residential properties that are at risk of bushfire.

Shire officers met with the CFA in early March 2024 to discuss their concerns in more detail. During this meeting, the CFA confirmed that it is not objecting to the Amendment and is keen to work with the Shire to resolve the above concerns to avoid the need for its submission to be referred to an independent Planning Panel for review under the requirements of the *Planning and Environment Act 1987* (P&E Act). The CFA requested that Shire officers provide further information generally in relation to the following matters to satisfy the CFA that the Amendment responds appropriately to State Government bushfire policy:

- What is intended by the words 'protect and enhance' in the proposed ESO. Specifically, whether this involves increasing fuel loads in the reserves by way of planting substantial additional vegetation.
- Further details around how bushfire risk is managed by Council in the public reserves, including through conservation works undertaken by contracted providers and local community groups.

For clarity, 'protect and enhance' in the context of the proposed planning controls relates to allowing things like:

- Non-native vegetation and exotic weeds to be removed without a planning permit to the minimum extent necessary to carry out conservation works.
- Non-native vegetation to be modified for the reasonable maintenance of any existing sporting, recreation and community facilities, and for vegetation to be modified to ensure the safe access of motor vehicles along any existing or approved access track or road.
- Maintenance of landscaping, including pruning, which does not affect the stability, general form and viability of the native vegetation.

The above matters are explicitly addressed in the proposed ESO. The ESO also requires the preparation of various assessment and plans to ensure any future works in the reserves:

- Minimise the impact of any proposed lighting on flora and fauna, and particularly with respect to aquatic ecology.
- Maintain water quality of the estuary to best practice environmental standards.
- Protect and improve the condition of native habitat, including revegetation for ground stabilisation and the management of invasive environmental weeds.

It is further noted that the Amendment's exhibited Explanatory Report details that Council is the Committee of Management for all Crown Land within the amendment area and manages the land in accordance with the Mornington Peninsula Municipal Fire Management Plan (MFMP). As stated in the Explanatory Report, fire management works within public land under the MFMP aims to reduce fuel hazard and risk to neighbouring properties from potential bushfire and typically consists of slashing, removing or trimming vegetation to reduce connectivity between shrubs and trees, and removing fallen, dead branches. Such works are carried out in designated Fire Management Zones (FMZs), which are generally located around reserve boundaries adjacent to assets and in high bushfire risk areas.

The Explanatory Report also states that land affected by the Amendment includes two FMZs and associated fire protection measures:

4.1 (Cont.)

- Asset Protection Zone (intensive fuel management, including slashing, to reduce the risk of flames or radiant heat from potential bushfire on houses); and
- Bushfire Moderation Zone (vegetation modification to reduce fuel hazard, spread and intensity of potential bushfire).

These FMZs are inspected annually to identify works required to reduce the overall fuel hazard to acceptable limits. Identified works are then prioritised and implemented over the year. Grass slashing occurs regularly throughout the year.

While Shire officers have engaged with the CFA several times and provided requested additional information reflecting the above matters, at the time of finalising this report, the CFA had not responded to repeated requests from Shire officers to confirm whether the issues raised in its submission have been satisfactorily resolved.

South Mornington Football Netball Club

The South Mornington Football Netball Club's submission raised the following points:

- Ovals at Citation Reserve require urgent resurfacing and drainage works and the Club has been working with the Shire to have these works funded as a priority.
- The provision of netball courts at Citation Reserve is needed as the Club is experiencing a growth in netball participation.
- The Club is experiencing growing participation in women's AFL which may require additional infrastructure upgrades at the Reserve.
- The Club has made applications to join Mornington Peninsula Football Netball League (MPFNL), which if successful could require the Club to construct fencing for the collection of entrance fees.
- The Club will likely require additional parking, access and drainage works to accommodate the growing participation noted above.
- The Club requests that the impacts of the amendment on the Club be minimised.

Shire officers from both the Strategic Planning and Recreation and Open Space teams met with a Club representative in February to discuss their concerns. It was confirmed at the meeting that the Club's concerns centred on the provision of sporting and other infrastructure at Citation Reserve and the funding of urgently needed oval upgrades works.

In response to the Club's main concerns regarding the condition of their grounds, Shire officers noted that a bid has been submitted for consideration as part of the 2024-25 Council Budget to fund reconstruction works to the main oval at Citation Reserve.

Shire officers also discussed the implications for the ESO on the identified infrastructure projects. Noting that Council does not yet have any detailed plans or funding for the proposed projects, Shire officers explained that future delivery of upgrades would not be impeded by the ESO provided that:

- Future works can be designed to avoid removal of significant native vegetation or habitat, and
- It can be demonstrated through appropriate assessments required under the ESO that works will not negatively impact other ecological values of the Balcombe Estuary and Creek environs (such as through water quality, lighting, etc).

4.1 (Cont.)

Shire officers also explained that specific planning permit exemptions have been included in the proposed ESO (including for the removal or modification of vegetation) so the Club can continue to operate and maintain its existing facilities, provided the conditions of the exemptions are met. Otherwise, a planning permit would be required.

Following the meeting, the Club provided the Shire with written notice confirming withdrawal of its submission (see Attachment 20).

Submissions requesting changes to the amendment

Submissions from SEW and DEECA stated no objection to the amendment but requested minor changes to the permit exemptions included in the proposed ESO.

SEW advised that it has several assets in the area, including gravity sewers, a rising main and a pump station, that would be covered by the proposed ESO. Its submission therefore requested that the following additional permit exemption be included to ensure SEW's assets can continue to be accessed and maintained adequately:

Remove, destroy or lop native vegetation to the minimum extent necessary to enable the reasonable maintenance of existing minor utility installations.

Shire officers have no objection to the proposed addition, noting that a similar exemption for works carried out by or on behalf of the public land manager is included in ESO.

The DEECA submission confirmed its overall support for the amendment, but requested a minor addition to the wording of an existing permit exemption in the ESO, which is underlined below:

Remove, destroy or lop native vegetation to the minimum extent necessary for the reasonable maintenance of any existing Minor Sports and Recreation Facility, Education Centre or Office in the Public Park and Recreation Zone.

Shire officers have no objection to the proposed addition.

The above changes have been made to the proposed ESO32 which is included in Attachment 9.

Mapping changes post-exhibition

During exhibition of the amendment, two potential changes to exhibited maps were identified following an enquiry from a landowner near the amendment area and a subsequent review of the ESO boundary. These changes are detailed below.

Firstly, it is noted that the boundary used to inform mapping of the proposed ESO in Amendment C241morn was recommended by the Biosis Study (see Figure 3).

Figure 3: Proposed ESO extent from the Biosis Study



The two proposed changes concern the ESO being expanded to cover the Seppelt Avenue Road reserve and the Uralla Road reserve – both of which are Council managed roadways.

Figure 4 below shows the recommended ESO boundary (red) and the proposed addition of part of the Seppelt Road reserve (blue). Figures 5 and 6 show the recommended ESO boundary (red) and the addition of part of the Uralla Road reserve (light blue)

Figure 4: Proposed ESO boundary change (Seppelt Avenue)



Figure 5 & 6: Proposed ESO boundary change (Uralla Road)



Following exhibition, Shire officers consulted with Biosis to confirm whether it is appropriate for the ESO to cover both these road reserve areas. Biosis advised in writing that the road reserves were not originally included in the recommended ESO boundary, however they confirmed that both areas include native vegetation that warrants protection and inclusion in the proposed ESO. The change near Uralla Road would also ensure that the Balcombe Creek waterway is entirely covered by the ESO.

In response to Biosis' advice, officers have had the ESO32 amendment map updated by in line with the above changes (Attachment 7). These changes also necessitated the updating of the DDO and VPO1 deletion maps (Attachments 5 and 6).

Options for consideration

Pursuant to section 23(1) of the P&E Act, Council must now decide whether to:

- Option 1: change the amendment in the manner requested by submissions, or
- Option 2: refer submissions to a planning panel, or
- Option 3: abandon the amendment or part of the amendment.

4.1 (Cont.)

Shire officers recommend that Council proceed with Option 2, because the CFA's submission remains unresolved.

Option 3 is not recommended because the amendment is strategically justified and overwhelmingly supported by submitters.

Shire officers note that while the changes requested by SEW and DEECA are supported and the additional mapping changes are recommended, these changes can only be formally made at the time Council seeks to adopt the amendment – i.e. following the Planning Panel process. Council cannot resolve to adopt the amendment with the changes now (i.e. Option 1), because there remains an unresolved submission from the CFA which needs to be referred to a Panel if Council wishes to progress the amendment. Nevertheless, the proposed mapping changes and supported changes from SEW and DEECA can be noted in Council's submissions to the Panel.

ENGAGEMENT

Engagement on the amendment was carried out as per the public exhibition requirements set out in the P&E Act and directed by the Minister.

As detailed previously in this report, the amendment was publicly exhibited for a period of 6 weeks, from 2 November to 15 December 2023.

Public notice was given via an advertisement in the Mornington News, notice in the Government Gazette, letters to owners and occupiers of land surrounding the subject site, user groups within the amendment area, relevant authorities, community groups and other stakeholders.

Two in-person community information sessions were held at the Mornington Park Pavilion Hall, and individual meetings were held with BERG, the Mount Martha Cricket Club and the South Mornington Football Netball Club.

A total of 64 submissions were received from nearby owners and occupiers, local residents, BERG members, community and environmental groups, and public authorities. One submission (South Mornington Football Netball Club) was later withdrawn, one submission (from the CFA) raised concerns with the amendment and two submissions (from DEECA and SEW) requested changes to the amendment.

COMMUNICATIONS PLAN

A Communications Plan is not required as all public notice during the planning scheme amendment process is given in accordance with the requirements of the P&E Act.

Once Council has resolved whether to refer submissions to an independent Planning Panel, Shire officers will notify all submitters of Council's decision and update the Shire's webpage.

LEGAL AND REGULATORY FRAMEWORK

As per the section 23(1) of the P&E Act, after considering submissions, Council must decide whether to:

- change the amendment in the manner requested; or
- refer the submission to a panel; or
- abandon the amendment or part of the amendment.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

4.1 (Cont.)

The amendment's exhibited Explanatory Report (Attachment 17) outlines the environmental, social and economic effects of the amendment.

FINANCIAL CONSIDERATIONS

If the Council decides to refer the amendment and submissions to an independent Planning Panel for review and recommendations, Council will incur a fee for the Panel's appointment and services. The fee is not pre-prescribed and depends on several factors including how many Panel members are appointed, the number and nature of submissions, length of a public hearing, etc.

Given this matter is confined to one submission from a public authority (CFA), it is likely that Panel appointment costs will be in the order of \$10,000. This cost is accommodated within existing budgets.

It is noted that this cost may be reduced if the Panel elects to review the matter 'on the papers'. That is, if the Panel decides to review the amendment and submissions and prepare a report with recommendations without holding a public hearing. (This approach is common for uncomplicated amendment proceedings where the matters of contest are confined and do not necessitate additional written or verbal submissions, expert witness statements or cross-examination that is otherwise afforded during a public hearing).

Apart from Panel fees, it is unlikely that any additional fees for Council representation at any Panel hearing will be incurred (such as for legal experts or expert witnesses) given the confined nature of the unresolved submission.

Finally, if Council decides not to progress the matter to a Panel and instead abandons the amendment, there will be no additional costs to Council. However, budget spent to date on preparing both the Study and Amendment C241morn will have been wasted as no changes will be made to planning controls affecting the Balcombe Estuary and associated reserves.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.2 Planning Application P20/2280 - 185 Maxwell Road, Fingal - The use and development of the land for a winery, native vegetation removal and the sale and consumption of liquor

Prepared By	Emine Gurleyen, Team Leader - Planning Services
Authorised By	Director - Planning and Infrastructure
Document ID	A12997419
Briefing Note Number	BN1876 – 23 April 2024
Attachment(s)	<ol style="list-style-type: none">1. Attachment 1 - Officer Assessment2. Attachment 2 - Development Plans3. Attachment 3 - Without Prejudice Development Plans4. Attachment 4 - Without Prejudice Planning Submission5. Attachment 5 - Without Prejudice Bushfire Management Plan6. Attachment 6 - Farm Management Plan7. Attachment 7 - Native Vegetation Assessment8. Attachment 8 - Objections 1-28 (confidential)

EXECUTIVE SUMMARY

The purpose of this report is to seek a decision on Planning Permit application P20/2280 for the use and development of the land for a winery, native vegetation removal and the sale and consumption of liquor at 185 Maxwell Road, Fingal. The application has been called in by Councillor Gill for a decision by Council.

The proposed use, being the production of wine from on-site vineyards requires a planning permit. The growing of the fruit falls within the land use of “horticulture” within the Mornington Peninsula Planning Scheme and does not require a planning permit in the Green Wedge Zone. The proposed horticultural areas have a combined area of approximately 2.4 hectares (no permit required).

The wine is proposed to be sold wholesale online as well as onsite, with the winery open to the public one day per month (via appointment only) for tastings and sales for groups of up to five patrons. All liquor sold onsite will be for consumption off the premises. The proposed winery building is 242 square metres, proposed to be sited centrally on the land. The native vegetation removal is proposed to be 0.364 hectares, with no large trees to be removed.

Twenty-eight (28) objections have been received to the proposal. However, the proposal was amended by the applicant in response to objections.

The proposal is considered acceptable having regard to the relevant objectives and purposes of the applicable planning controls, subject to conditions modifying the proposal and minimising vegetation removal. Consideration has been given to the matters raised in the objections which relate primarily to traffic, amenity, inconsistency with the Green Wedge and environmental impacts.

It is recommended that Council supports the application and resolves to issue a Notice of Decision to Grant a Planning Permit.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all

submissions received to date and all matters required under Section 60 of the *Planning and Environment Act 1987*, hereby resolves that Planning Permit Application P20/2280 for the use and development of the land for a winery, native vegetation removal and the sale and consumption of liquor, be approved and a Notice of Decision to Grant a Permit be issued subject to the following conditions:

Amended plans required

1. Before the development and/or the use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans/document must be generally in accordance with the plans and supportive document submitted on 18 October 2021 but modified to show:
 - (a) Relocation of the staff carparks to the cleared area west of the orchard and retention of native vegetation in Patch H.
 - (b) Redesign of the loop driveway to avoid any removal of native vegetation.
 - (c) Firefighting water tanks to be relocated to an area clear of native vegetation.
 - (d) The extent of defensible space around the Winery building in accordance with the revision Q plans by Bradley architects dated 13 September 2022.
 - (e) Retention of Native Vegetation Patch G1 with the exception of accessways and defensible space areas.
 - (f) Except for the above conditions, vegetation removal and/or retention to be modified in accordance with revision Q plans by Bradley architects dated 13 September 2022.
 - (g) An updated Native Vegetation Removal Report in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* accurately identify the extent and details of native vegetation to be removed to reflect the revised development layout as required by the above conditions.
 - (h) Replanting of suitable vegetation of indigenous species to the local Ecological Vegetation Class (EVC 858 Coastal Alkaline Scrub) immediately beyond the south side of the defensible space to connect the existing habitat corridor from the east to the west, with a 4 metre clearance for tractor access, to the satisfaction of the Responsible Authority.
 - (i) The location and dimensions of a minimum of two visitor car parking spaces.
 - (j) Deletion of the Cellar Door building and associated works around this building from all plans.
 - (k) Amendment of the finish of the building to be non-reflective.
 - (l) Deletion of the signage and associated illumination from the site frontage.
 - (m) Revision to the Winery building and associated hardstand surfaces around this building in accordance with revision Q plans by Bradley architects dated 13 September 2022.

4.2 (Cont.)

- (n) The extent of wastewater treatment area generally shown in accordance with the revision Q plans by Bradley architects dated 13 September 2022.
- (o) A minimum 6.0 metre wide crushed rock vehicle crossing between the road and the property boundary.
- (p) A Land Management Plan to provide:
 - i. The intended use and development at the site generally in accordance with the details provided in Section 3 'The Proposal' of the 'without prejudice' Planning Report dated May 2023.
 - ii. The anticipated timing of the planting and harvesting of each proposed vineyard as shown on the overall site plan.
 - iii. Details of irrigation for the operation.
 - iv. Details of the Winery operation which must, at least, include details reflective of the remaining conditions of this permit.
 - v. Measures to be implemented to ensure the customer present at the site not to exceed the specified number at any time.
 - vi. Emergency evacuation plan.
 - vii. The land management strategy including weed management of the native vegetation patches on the land.
 - viii. Maintenance and management of the replanting area required by Condition 1 (h).
- (q) A Bushfire Management Plan (BMP) for the Winery in its revised layout as required by the above conditions. The BMP must be generally in accordance with the revised BMP dated 17 March 2022 prepared by Nature Advisory comprises of the Plan sheet and the Schedule of Conditions, but amended to show:
 - i. The Schedule of conditions – Bushfire Protection Measures consistent with and reflective of the Nature Advisory Report 19132 dated June 2022;
 - ii. The 'Water supply for fire-fighting purposes' section revised to delete reference of the use of the building 'for industry or retail premises'.

Use and development not altered

- 2. The approved use and development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (Unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).
- 3. The sale and consumption of liquor may only occur within the designated area shown as 'red line area' on the endorsed plans

4.2 (Cont.)**Sourcing**

4. Unless with the further consent of the Responsible Authority, no wine can be produced or provided or sold for on-site or off-site consumption, other than wine that incorporates a component of grapes that are grown on the subject land or land held in common ownership.

Vine maintenance

5. The sale of vineyard products must only occur in conjunction with the growing of grapes on the subject land.
6. The land must also be used as a productive vineyard with a minimum area under cultivation of 2 hectares.

Sale

7. No alcoholic beverage other than wine sourced from the grapes of the subject land may be sold for consumption off-site.
8. No food of any type or form may be provided for on-site consumption.

Use conditions

9. Unless with the further written consent of the Responsible Authority, no more than four (4) staff members in association with the approved use may present at the site at any one time.
10. Unless with the prior written consent of the Responsible Authority, the approved Winery must not be open to public for more than one day per calendar month.
11. Further to Condition 11 above, unless with the prior written consent of the Responsible Authority, the approved Winery must not be open to public outside the hours of 9.00am – 5.00pm.
12. No more than five (5) customers may present at the site at any one time.
13. No customers may be present at the site outside the day/date and hours referred to in Conditions 11 and 12 above.
14. Deliveries in association with the approved use may only occur within the hours of 9.00am – 5.00pm Monday to Friday.

Finishes

15. The exterior colour and cladding of the building/s must be of a non-reflective nature to the satisfaction of the Responsible Authority.
16. Prior to the occupation of any building, finishes must be completed to a professional standard to the satisfaction of the Responsible Authority.

Disturbed surfaces

17. All disturbed surfaces on the land must be revegetated and stabilised to the satisfaction of the Responsible Authority.

4.2 (Cont.)

Vegetation removal

18. The extent of vegetation removal must be in accordance with the endorsed plans without the further written consent of the Responsible Authority.

Native vegetation offset

19. To offset the approved removal of native vegetation the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified in the approved Native Vegetation Removal Report referred to in Condition 1(g).
20. Before any native vegetation is removed evidence that the required offset has been secured must be provided to the satisfaction of the responsible authority. This evidence is one or both of the following:
 - a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site and/or
 - b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.
21. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

Tree protection

22. The trees retained on the subject site and adjoining land must be protected from damage during development in compliance with the tree management process, tree protection zones and tree protection measures (including the erection of tree protection fencing) contained in Australian Standard AS 4970-2009 Protection of trees on development sites.
23. All excavation within the Tree Protection Zones (TPZ) of retained trees on the subject site and adjoining land must be undertaken using a method which is non-destructive to tree roots in compliance with Australian Standard AS 4970-2009 Protection of trees on development sites. Any tree roots which require pruning must be cut with a clean sharp cutting implement with a final cut to undamaged wood at an angle which minimises the size of the wound. No tree roots over 40mm in diameter are to be cut unless under the direct supervision of a Level 5 qualified Arborist. No tree roots critical to maintaining tree health, structure or viability are to be cut. These tree roots must be retained undamaged and alternative design and construction methods used.
24. Any pruning of trees must be undertaken to the minimum extent necessary in compliance with the procedures and practices described in AS 4373-2007 Australian Standard pruning of amenity trees.
25. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained and are advised of any obligations in relation to the protection of those trees.
26. No trenching or soil excavation is to occur within the Tree Protection Zones of retained trees unless shown on the endorsed plans without the prior written

4.2 (Cont.)

consent of the Responsible Authority. No vehicular or pedestrian access, storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.

Replanting

27. Prior to the occupation of the development building and/or the commencement of the use/s (or other time agreed to in writing by the Responsible Authority) the replanting of native vegetation as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
28. The replanting referred to in the above condition must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced as soon as practicable.

Bushfire Protection

29. The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

Engineering Plans

30. After the endorsement of Condition 1 plans and before any works associated with the development starts, a signed and completed 'Checklist for Development Engineering Plan Approval' along with engineering plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and shall be emailed to devengadmin@mornpen.vic.gov.au in pdf format.

The plans must show:

- a) All areas of the development being drained by means of an underground drainage system to retain a post-development 1% AEP storm event for the critical storm duration on the property and being based on a soil percolation test report prepared by an appropriately qualified geotechnical consultant.
- b) Details, including levels of the driveways and car parks within the site.
- c) The crushed rock vehicle crossing being a minimum width of 6.0 metres between the road and the property boundary.
- d) Sight distance for vehicles and pedestrians not being unduly restricted at the exit from site by fencing or landscaping works.
- e) Tree Protection Zones (TPZs) impacted by the works, or as shown on any other development plans and documents.
- f) Drainage works designed to avoid TPZs where possible.
- g) Proposed methodologies for complying with AS4970-2009 (Protection of trees on development sites) for any works that are required within TPZs.

4.2 (Cont.)

31. Before the approval of engineering plans, drainage computations and documentation are required for the proposed drainage system.
32. Prior to the commencement of any works, a project-specific Major Construction Management Plan (CMP) must be endorsed by the Responsible Authority. This CMP is to be based on the standard Major CMP template found on the Mornington Peninsula Shire's website. When approved, the CMP will be endorsed and form part of the Planning Permit. The endorsed CMP must be implemented to the satisfaction of the Responsible Authority prior to, and during the works.
33. Before the initial occupation of the development drainage works within the development must be constructed in accordance with approved engineering plans, and to the satisfaction of the Responsible Authority.
34. Before the initial occupation of the development, vehicle crossings, areas set aside for the parking of vehicles and driveways as shown on the endorsed plans must be constructed in accordance with approved engineering plans, surfaced and drained to the satisfaction of the Responsible Authority.
35. Car spaces, access lanes and driveways must always be kept available for these purposes.

Waste management

36. Waste must be regularly managed, stored and collected by the permit holder to the satisfaction of the Responsible Authority.
37. Prior to the initial occupation of the development and/or the commencement of the uses hereby permitted and for the life of the development/uses, the permit holder must arrange for private waste collect to regularly remove solid waste from the site to the satisfaction of the Responsible Authority.
38. Waste collection may only occur within the hours of 9.00am – 5.00pm Monday to Friday unless with the further written consent of the Responsible Authority.

Health

39. Prior the commencement of the use/s, an on-site septic tank system approved by the Environment Protection Authority must be installed and connected to the development in accordance with the Council's Wastewater Management Policy. The system must be maintained thereafter to the satisfaction of the Responsible Authority for the life of the development and/or the use remains on site.
40. The premises must have a Food and Oil Interceptor (FOI) provided for wastewater treatment from food processing and manufacturing and must be located to the satisfaction of the Shire's Environmental Health Team
41. Any external areas used for the storage or cleaning of waste receptacles, equipment or vehicles must be connected to the onsite wastewater management system to the satisfaction of the Responsible Authority.
42. The amenity of the area must not be detrimentally affected by the use or development, through the:
 - a) Transport of materials, goods or commodities to and from the land;
 - b) Appearance of any buildings, works or materials;

4.2 (Cont.)

- c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil.

Noise

43. No external sound amplification equipment, loudspeaker, siren or other audible signalling device may be installed on the land unless with the written permission of the Responsible Authority.
44. No live music may occur within the site in association with the use/s unless with the written permission of the Responsible Authority.
45. Noise levels emanating from the land must not exceed those set out in *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (Noise Protocol), EPA publication 1826.4 or any other subsequent standard.

Lighting

46. All lighting in unenclosed areas of the site must be designed, baffled, and directed in a downwards position to prevent upward light spill and any direct light being emitted beyond the boundaries of the site and so that no nuisance is caused to adjoining lands to the satisfaction of the Responsible Authority.

Permit expiry

47. This permit will expire if either one of the following applies:
- a) The development is not completed within four years of the date of this permit.
- b) The use is not commenced within four and a half years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Part B

That Council resolves that Attachment 8 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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.
- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

4.2 (Cont.)

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles B, H and I which are:

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION

Purpose

The purpose of this report is to provide a summary of:

- The relevant background of the site;
- The proposal;
- The key issues;
- Submissions and officer response; and
- The assessment against the relevant provisions of the *Planning and Environment Act 1987* and Mornington Peninsula Planning Scheme.

For a detailed assessment of all the relevant matters please see Attachment 1 – Officer Assessment.

The key planning considerations are summarised in the below table:

Proposal	Use and development of the land for a winery, native vegetation removal and sale and consumption of liquor.
Zoning and Overlays	<p>Zone:</p> <ul style="list-style-type: none"> • Green Wedge Zone Schedule 4 (GWZ4) • Planning Overlays: <ul style="list-style-type: none"> • Environmental Significance Overlay Schedules 15, 23 and 28 (ESO15, ESO23 and ESO28) • Vegetation Protection Overlay Schedule 2 (VPO2) • Bushfire Management Overlay (BMO).
Permit Triggers	<ul style="list-style-type: none"> • GWZ4 – Section 2 Use (Winery) and buildings and works

4.2 (Cont.)

Permit Triggers	<ul style="list-style-type: none"> • GWZ4 – Section 2 Use (Winery) and buildings and works • ESO15 – a planning permit is required for buildings and works and vegetation removal • ESO23 – a planning permit is required for buildings and works and vegetation removal.
Advertising	The application was advertised by sending direct notice to adjoining properties, properties opposite and erecting a sign on site for 14 days.
Submissions	Twenty-eight objections have been received to date.
Consultation	A Planning Application Conference (PAC) was held on 15 December 2021 online via Microsoft Teams.
Key Issues	<ul style="list-style-type: none"> • Whether the proposed use of land for a winery and the sale and consumption of liquor is appropriate. • The design and appearance of the building and its landscape and environmental impacts. • Whether the extent of vegetation removal is appropriate. • Consideration of the matters raised in the objections.
Recommendation	Notice of decision to grant a planning permit.

Background***Subject site and surrounds***

The subject site is Lot 2 on Plan of Subdivision PS 346647 and is known as 185 Maxwell Road, Fingal. The site occupies an area of approximately 5.07 hectares and is irregular in shape. The site has a frontage to Maxwell Road of approximately 93.34 metres and a maximum depth of approximately 290 metres.

Access to the site is provided via an unsealed crossover which is centrally located along the frontage. The crossover accesses a tree-lined gravel driveway which extends to an existing dwelling. The single storey dwelling is setback approximately 65 metres from the street frontage.

Flowers and vegetables are currently grown on the land. Existing machinery sheds are located to the rear of the dwelling.

Historical clearing for development and cultivation has resulted in a mixture of remnant vegetation and cleared areas. The landscape is undulating and vegetation on the land consists of coastal alkaline scrub – primarily comprising Coastal tea tree but also featuring Moonah and Coast beard-heath.



Figure 1: Aerial Photo showing subject site and surrounding properties - Nearthmap 2023

Surrounding properties

The subject site is located on the southern side of Maxwell Road, approximately 660 metres south-east of the intersection of Sandy Road and Truemans Road. The land is bordered by Maxwell Road to the north, rural residential properties to the east and west (featuring cleared land amidst heavily vegetated area) and agricultural land to the south.

The built form character of the area is diverse within the vicinity, including a horse-riding school, horse training facility, brewery and golf courses. Where built form is visible, it is diverse in character but generally single storey and often set amongst a vegetated landscape or a rural setting.

North	Maxwell Road – Local, Council-maintained unsealed road.
East	175 Maxwell Road – Rural residential lot of 0.8 hectares, containing a dwelling, outbuildings and horticulture area. 171 Maxwell Road – Rural residential lot of 2.2 hectares, predominantly comprised of bushland and containing a dwelling and cleared area towards the south.
South	725 Truemans Road - Vacant cleared land of 25 hectares used for pasture
West	195 Maxwell Road – Melbourne Water pipeline land of 8.7 hectares. Well vegetated bushland adjoining the north-west of the subject site and vacant land adjoining the south-west of the site.

4.2 (Cont.)**Proposal**

Please refer to the following for further details:

- Attachment 1 – Officer Assessment
- Attachment 2 – Development Plans
- Attachment 3 – Without Prejudice Development Plans
- Attachment 4 – Without Prejudice Planning Submission
- Attachment 5 – Without Prejudice Bushfire Management Plan
- Attachment 6 – Farm Management Plan
- Attachment 7 – Native Vegetation Assessment
- Attachment 8 - Objections 1-28 (confidential).

The details of the application are as follows:

Use of land:

The applicant is seeking permission to use the land for a winery. The proposed use includes production of wine from on-site vineyards. The wine will be sold wholesale online as well as onsite, with the winery open to the public one day per month (via appointment only) for tastings and sales for groups of up to 5. All liquor sold onsite will be for consumption off the premises.

0.6 hectares of land is already used for market garden (section 1 use under the Green Wedge Zone) and is under crop with a variety of fruits, vegetables and flowers. This produce is sold at local markets and to local businesses. The market garden area will be increased, and the produce will continue to be sold in the same manner.

Buildings and works:

The application includes a winery building measuring 176 square metres in area which is sited centrally on the land, a driveway through the centre of the site including turning area, and 4 staff car parking spaces. It should be noted the without prejudice plans (on which the decision and proposed conditions are based) show a building of 242 square metres. Additional overflow car parking is available on the land which can be used by patrons.

Horticulture areas of approximately 2.4 hectares will be developed on the land (no permit required).

Signs:

The applicant proposes illuminated business identification signage on the site's frontage. The sign is proposed to be 0.6 metre x 0.6 metre and backlit with the company's logo and name fixed to a rammed earth wall.

The without prejudice plans and proposed conditions would require removal of the illuminated business identification sign.

4.2 (Cont.)**Vegetation removal:**

It is proposed to remove 0.364 hectares of native vegetation in order to create more area for horticulture, defensible space around the proposed winery building and for the creation of the driveway and carparks.

The proposed conditions would further reduce the extent of clearing in Patches G1 and H by approximately 1,000 square metres.

The applicant has provided plans and documentation on a without prejudice basis with the differences summarised below:

	Assessed Plans	Without Prejudice Plans
Winery size	176 square metres No bathroom	242 square metres Includes bathroom
Sign	Internally illuminated sign attached to rammed earth wall	No rammed earth wall or sign
Red Line	Entire winery building	Excludes kitchen, bathroom and storage tanks
Other		Wastewater area increased Retaining wall to the south of the building setback 1 metre

NOTIFICATION AND CONSULTATION**Notification**

The application was advertised by sending direct notice to adjoining properties, properties opposite and erecting a sign on the site for 14 days.

Submissions

Please refer to Attachment 8 – Objections 1-28.

Twenty-eight objections were received, and the matters raised in those objections are discussed further in this report.

REFERRALS

Referrals were undertaken by internal departments including Health, Engineering, Traffic, Natural Systems, Rural Business Officer and Council's Senior Vegetation Officer. No objections were received, and the queries raised within referrals have been addressed via permit conditions.

Notice of the application was given to Country Fire Authority and Melbourne Water. No objection was received from either authority.

CONSIDERATION

Please refer to Attachment 1 – Officer Assessment for full details of assessment.

4.2 (Cont.)

The following key issues are summarised below:

- Whether the proposed use of land for a winery and the sale and consumption of liquor is appropriate.
- The design and appearance of the building and its landscape and environmental impacts.
- Whether the extent of vegetation removal is appropriate.
- Consideration of the matters raised in the objections.

Whether the proposed use of land for a winery and the sale and consumption of liquor is appropriate.

The proposal is consistent with the objectives and strategies contained throughout relevant Planning Policy Framework. The land is located within the Green Wedge Zone which aims to provide for the use of land for agriculture and to encourage sustainable farming activities and provide an opportunity for a variety of productive agricultural uses.

There is a clear and demonstrable link between the winery and the vineyard. The application documents state that 12,000 vines will be planted (approx. 2.1 hectares) throughout the cleared areas of the site with an estimated yield of 24 tonnes or 16,800 litres which equates to 22,400 bottles per year. As detailed within the Farm Management Plan, the vineyard will be organically farmed and includes sustainable practices; no chemicals are proposed to be used, and the applicant will instead employ regenerative farming practices as outlined within the Land Management Plan. These include companion and crop rotation planting, and cover cropping in the vineyard will assist in increasing soil health and retaining moisture. Grapes will be picked by hand and the wine will be made with minimal additions or interventions. This method is dependent on healthy wild yeasts from the vineyard and therefore production of wine on-site is an important part of this proposal.

Production will occur within the winery building as shown on the development plans, minimising transportation associated with the winery. Wine will be sold both online and in person (one day per month via appointment) which will assist in spreading awareness of the agricultural values of the Mornington Peninsula region.

The Land Management Plan also outlines the existing and proposed market garden which is compatible and complementary to the vineyard and winery. The produce and flowers will be sold to hospitality and at local markets which will promote agricultural values within a local context, and further demonstrates the holistic approach to agriculture on the subject site.

Visitors to the winery will be minimal, with it proposed to be open to the public only one day per month for small groups of up to 5 people. The purpose of being open to the public is to provide an opportunity for tastings and sales, and permit conditions will ensure that no food is served for on-site consumption. Further, conditions will require that no wine is produced or provided or sold other than wine that incorporates a component of grapes that are grown on the subject land or land held in common ownership; and a related condition will require that no alcoholic beverage other than wine sourced from the grapes of the subject land may be sold for consumption off-site. The proposal suitably responds to the surrounding rural residential area and will not result in unreasonable amenity impacts.

Permit conditions will also ensure that the sale of vineyard products occurs only in conjunction with the growing of grapes on the subject land and that the minimum area under cultivation is 2 hectares, which will protect the link between the proposed winery and the vineyard as well as retaining the scale of the vineyard.

4.2 (Cont.)

The proposal supports agribusiness activities in an appropriate location and at an appropriate scale and is aligned with the strategic directions of Planning Policy Framework.

The design and appearance of the building and its landscape and environmental impacts.

The proposed winery building (as per the without prejudice plans) is 242 square metres and contains an admin room, cool room, produce processing room, winery production room, kitchen and bathroom. It is located centrally on the site in an already cleared area, minimising the need for vegetation removal and allowing for a suitable area for wastewater treatment.

The building is a modest single storey construction, with a height of 4.9 metres at its highest point. Given the slope of the land, the building will be cut into the site along the southern elevation, thereby further reducing any visual impact as the height of the building above natural ground level would be reduced to approximately 3.4 metres. Colours and materials include a rammed earth wall and galvanised metal roofing and cladding; however, a condition of the permit will require this to be amended to a non-reflective finish to prevent any glare from the building and better respond to the landscape values of the area. Given the substantial setback from the frontage and the existence of vegetation patches on all sides of the building, it is unlikely to have any visual impact in the landscape. The location, design and construction of the winery building is compatible with the built form and landscape character of the surrounding area.

The proposal responds to the environmental values of the site by siting the building in an area of the site that requires minimal vegetation clearing, other than for defensible space, and minimal earthworks. The area of the proposed building previously had multiple greenhouses, as evidenced by historical aerial imagery. The proposed location also enables the use of the existing accessway which will be extended to provide access to the winery building. A condition of the permit will require replanting to the south of the defensible space to connect the patches of native vegetation from the east to the west which will enhance the environmental values of the site.

Other conditions to the permit will require an underground drainage system to be approved by the Shire's Development Engineering team and that the septic tank system must accord with Council's Wastewater Management Policy, to protect the site and surrounds from runoff and wastewater impacts.

Although a planning permit is not required under the Bushfire Management Overlay, the subject site is located within a designated bushfire prone area and therefore consideration has been given to the prioritisation and protection of human life and property. Risk assessment has been undertaken through the submitted Bushfire Planning Report and Bushfire Management Plan, effectively assessing its suitability as if the BMO were applicable. Both scrub and woodland vegetation is located within the 150 metre buffer of the proposed winery building, and some vegetation removal is required to ensure bushfire attack level construction standards can be achieved.

Appropriate bushfire protection measures have been adopted, including the building to be constructed to BAL-29, 10,000L static water supply with fire authority fittings, a passing bay and a turning area within the vehicle accessway. The bushfire protection measures have been shown on the without prejudice plans and documents which will be formalised via permit condition, ensuring that the winery suitably protects human life and property from bushfire risk.

Whether the extent of vegetation removal is appropriate.

The proposal seeks to remove 0.364 hectares of native vegetation within the accessway footprint, to provide clearance for defensible space, and to create additional horticultural

4.2 (Cont.)

areas. The siting of the winery building has been selected to have the least impact on native vegetation by utilising the existing accessway and area that was previously cleared for agricultural production.

Although some vegetation removal is required to create defensible space, this is necessary for the prioritisation of the protection of human life and property, and the application has minimised vegetation impacts through the retention of high-quality native vegetation.

Siting of agricultural areas is based on soil suitability and the necessary positioning of vines to maximise agricultural productivity. However, it is considered that the facilitation of agriculture should not come at the cost of higher retention value native vegetation that provides good habitat and biodiversity opportunities. Accordingly, the proposed conditions seek to ensure native vegetation patch G1 and H is retained, where not impacted by defensible space around the building and accessways. This would protect approximately 1,000 square metres of the proposed clearing of 3,640 square metres.

The condition of the remaining native vegetation to be removed is fragmented, disturbed and poor quality. Subject to the retention of Patch G1 and H, the extent of removing approximately 0.25 hectares is considered minor. The vegetation in the remnant areas was the common species from Moonah woodland, with no significant biodiversity. Further, based on the proposed use of the land for growing vines and market gardening, the removal of the vegetation is unlikely to cause any significant erosion or landslide.

The applicant has also submitted some details about weed management within the native vegetation areas of the site which will enhance and improve the quality of those patches over time. Further details will be required via a permit condition requesting weed management details, and this will be endorsed to form part of the permit.

The applicant would be required to secure offsets within the Port Phillip and Westernport CMA boundary or the Mornington Peninsula Shire municipal district and conditions of the permit will require offset evidence to be supplied to council. The Native Vegetation Assessment submitted by the applicant contains information demonstrating that suitable offsets are available. For all of the above reasons, it is considered acceptable having regard to the relevant provisions of the scheme.

Consideration of the matters raised in the objections.

Refer to Attachment 8 – Objections 1-28.

The matters raised in the objections are summarised and responded to as follows:

- **Traffic concerns including:**
 - *Safety for drivers, pedestrians and horses*
 - *Road degradation*
 - *Potential changes to the 'no through road' status as a result of increased traffic demand*

The application was amended to remove the independent cellar door building and has significantly reduced patron numbers (from 30 to 5) and associated offering from seasonal tasting menu to wine tasting and sales only. The reduced intensity of the land use would result in a significant reduction of traffic volume and is unlikely to change the amenity or character of the area. The land is located within the GWZ and therefore the horticulture operations are as-of-right. The applicant also advises that no primary produce sales are proposed to occur on the land.

The applicant has minimised the generation of traffic associated with the winery. The production of wine on-site ensures that produce will not need to be transported to and from the site for this purpose. The sale of alcohol occurs mainly online via wholesale, therefore greater quantities of wine will be transported from the site once sold rather than smaller quantities requiring a higher frequency of transportation. In addition, the winery is only proposed to be open one day per month for groups of up to five, for tastings only. This ensures that the impact of traffic from visitors to the winery remains minimal.

There were concerns about how patrons would be managed to avoid queuing of vehicles to enter the site given the limitation on patron numbers. This has been addressed by the applicant's proposal to manage all visitors to the site by booking only, and the removal of the sign on the street frontage.

- ***Amenity concerns including:***

- *Noise from the winery*
- *Alcohol related safety concerns*

The proposed winery is positioned centrally on the land, more than 100 metres from any dwelling in separate ownership and with stands of existing native vegetation between it and other properties. The red line associated with the winery is entirely contained within the building, and given that the patron limit is 5 people, it is unlikely there would be any unreasonable noise impacts to surrounding properties. In addition, the purpose of the winery is to provide for tastings and this is not expected to generate any alcohol related safety concerns.

- *Parking on naturestrips*

There will be ample space for patrons to park within the site and with the requirement to book prior to visiting the site, there would be no need for visitors to park on the roadside.

- *Potential expansion of the business offerings to include a restaurant, weddings and functions*

The applicant is not proposing a restaurant or place of assembly, and a condition of the permit will require that no food is to be served. Any further permit applications will require an assessment against the planning scheme on their own merits.

- *Spraying of chemicals*

Spraying of chemicals is not proposed as the vineyard is proposed to be organic; however, this is an as-of-right use and cannot be reasonably controlled through planning considerations.

- *Impacts to property value*

The impact to property value is not a relevant planning consideration, as it is not referenced in any of the underlying planning policies or within the *Planning and Environment Act 1987*. This has been established by a long line of Victorian Civil and Administrative Tribunal (VCAT) decisions.

- ***Inconsistency with GWZ including:***

4.2 (Cont.)

- *Setting a precedent*

The proposed winery will not create a precedent for other wineries in the immediate area as each planning permit application is assessed on its merits and future applications would be subject to their own assessment against the planning scheme. Furthermore, wineries are a section 2 use in the GWZ and they are a common part of the Green Wedge, not just in Mornington Peninsula but in other Green Wedge parts of the State of Victoria.

- *Incompatibility with rural residential area*

The proposed winery is considered to be compatible with the rural residential area. The Green Wedge Zone's purpose is to provide for the use of land for agriculture, and the winery has a very close, demonstrated link with agriculture (vineyard). The use is modest, being open one day per month for up to 5 patrons. It will not unreasonably impact on the amenity of the surrounding dwellings.

- *Concerns that the business and vineyard is not viable*

The business model has been detailed within the planning submission which demonstrates how the various elements of the farm will complement one another; with the wine production occurring on-site and the wholesale of the wine being supported by occasional tastings on-site; and both produce and flowers being sold to local retailers and at local markets bringing in additional income. However, business viability is not a relevant planning consideration.

- ***Environmental impacts including:***

- *Native vegetation removal*
- *Risk of weeds due to the growing of flowers*

Native vegetation removal is considered appropriate subject to conditions and has been discussed earlier in this report. Weed management will be conducted as part of the conservation of the native vegetation patches, and weed management is also a normal part of any horticultural land use as it is required to ensure that produce is not impacted.

CONCLUSION

The proposed winery demonstrates a clear link to agriculture and is of an appropriate scale to complement the agricultural productivity of the land without causing unreasonable amenity impacts to the surrounding area. The winery building has been well designed to minimise visual impacts and will blend with the landscape. The proposal has achieved a reasonable balance of agricultural, environmental and landscape objectives. It is therefore recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.3 Mornington Peninsula Planning Scheme Review Report 2023

Prepared By	Rachel Diamond, Principal Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12809824
Briefing Note Number	BN1859 – 12 March 2024
Attachment(s)	<ol style="list-style-type: none">1. Mornington Peninsula Planning Scheme Review No. 5 Report 20232. Appendix 1 - 2018 Planning Scheme Review - Implementation Plan - Audit3. Appendix 2 - List of Planning Scheme Amendments since 2018 Review4. Appendix 3 - Mornington Peninsula Planning Scheme 2023 Priority Implementation Plan

EXECUTIVE SUMMARY

The purpose of this report is to present the 2023 Mornington Peninsula Planning Scheme Review No.5 report (2023 Review) (Attachments 1-4) for adoption and recommend that Council submit the report to the Minister for Planning (Minister) by 30 April 2024 to fulfil its obligations under the *Planning and Environment Act 1987* (the P&E Act).

Council is required to formally review the Mornington Peninsula Planning Scheme (planning scheme) every four years and report its findings to the Minister without delay as per section 12B of the P&E Act. The purpose of the review is to assess the overall performance of the planning scheme in achieving State and local planning objectives for Victoria and the Mornington Peninsula.

The 2023 Review covers the period between the last planning scheme review in 2018 (2018 Review) up to the end of 2023. Council was originally required to deliver this latest review by October 2022, however, the Minister granted an extension until 30 April 2024 on account of the range of major strategic projects and planning scheme amendments that Council is currently progressing which will result in substantial updates to the planning scheme (if approved).

Overall, the 2023 Review confirms that Council has undertaken a significant program of strategic work in response to the actions identified in the previous 2018 Review. Significantly, seventy percent of the recommendations from the 2018 Review have either been completed or substantially progressed. The net result is a clear set of adopted strategic directives for the Mornington Peninsula Shire Council (Shire) concerning:

- Housing and settlement
- Neighbourhood and township character
- Protection and management of environmentally significant areas (Green Wedge, Tootgarook Wetland and Balcombe Estuary)
- Environmentally Sustainable Development (ESD)
- Heritage preservation
- Industrial land use and infrastructure

4.3 (Cont.)

- Parking Precinct Plans for major activity centres
- Township and activity centre planning.

In summary, the 2023 Review:

- Confirms that a total of 50 planning scheme amendments have been approved by the Minister since the 2018 Review.
- Found that the planning scheme generally remains strategically robust and operationally sound, primarily because of the Planning Policy Framework (PPF) translation (which occurred in 2021), progression of Amendment C219morn (which implements Council's adopted Housing and Settlement Strategy and Neighbourhood Character Study), and a range of other significant strategic work currently underway.
- Confirms that Council will need to continue to monitor, engage and advocate to other levels of Government to influence decision making outside the scope of local content within the planning scheme.
- Identifies a clear implementation program of strategic work to ensure the ongoing improvement of the planning scheme is conducted in a comprehensive and coordinated manner.
- Identifies several issues which Council should continue to advocate for State Government action on, including a State-wide approach to respond to sea level rise hazards, reform of bushfire planning controls to minimise unnecessary vegetation loss, stronger controls to protect the Shire's Green Wedge, elevated ESD standards to ensure new development is carbon neutral and resilient to climate change impacts, and the release of surplus land around the Port of Hastings for alternative use and development.

The 2023 Review identifies 12 new actions for completion in the coming years in response to key issues, noting that a further 42 actions previously identified in the 2018 Review are currently underway or yet to commence.

Shire officers recommend that Council inform the community about the findings and recommendations of the 2023 Review and encourage the community to support the key advocacy initiatives identified in the review.

RECOMMENDATION

That Council:

- 1. Adopts the 2023 Mornington Peninsula Planning Scheme Review (Attachments 1, 2, 3 & 4)**
- 2. Submits the 2023 Mornington Peninsula Planning Scheme Review to the Minister for Planning without delay as required under section 12b of the *Planning and Environment Act 1987*.**
- 3. Publishes the findings and recommendations of the 2023 Review and encourages the community to support Council's advocacy initiatives as identified in the review.**

4.3 (Cont.)**COUNCIL & WELLBEING PLAN**

This aligns with the Council and Wellbeing Plan, in particular:

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.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles A, C and H which are:

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.

RELEVANT COUNCIL DECISIONS AND POLICIES

- 19 November 2018 – Council resolved to adopt the 2018 Mornington Peninsula Planning Scheme Review and forward it to the Minister for Planning.

DISCUSSION**Purpose**

The purpose of this report is to present the 2023 Review (as at Attachments 1 - 4) for adoption and recommend that Council submit the review to the Minister without delay to satisfy its obligations under section 12b of the P&E Act.

Background

Council is required to formally review the Mornington Peninsula Planning Scheme every four years as a mandatory requirement under the P&E Act. A significant amount of strategic work and planning scheme amendments have been completed since the previous 2018 Review which has resulted in the ongoing monitoring and continuous improvement of the planning scheme.

The 2023 Review covers the period between the last planning scheme review in 2018 (2018 Review) up to the end of 2023.

The 2023 Review provides an analysis of what is working well and what areas of the planning scheme could be improved. It also explores changes, issues and emerging trends at both a State and local level that have occurred since the 2018 Review and their associated implications for the operation and content of the planning scheme. In doing so, the 2023 Review provides Council with a recommended program of strategic work including planning scheme amendments and strategic projects – that are required to ensure the planning scheme is efficient and effective in achieving State and local planning objectives.

The 2023 Review has been structured into the following key components:

4.3 (Cont.)

- An overview of the nature, scope and methodology of the review, including the regulatory requirements set out by the P&E Act
- A review of the main drivers of change and summary of major planning issues facing the Mornington Peninsula
- An audit of Council's progress in implementing the various recommendations of the 2018 Review
- An assessment of planning permit activity and service performance
- A review of both the State and local strategic context, including details of any recent significant policy changes
- A review of lessons learnt from recent reports from independent Planning Panels, and decisions of the Victorian Civil and Administrative Tribunal (VCAT)
- A summary of key issues and further strategic work
- Overall conclusions and recommendations, including an Implementation Plan.

Overall, the majority of recommendations arising from the 2023 Review are either already being addressed by planning scheme amendments or strategic work currently underway or will be addressed by further strategic work and associated future amendments being programmed by the Shire.

Summary of key findings

Significant completed amendments include:

- Amendment C242morn: Extended the expiry date of the existing interim Design and Development Overlay (Ocean Beach Road Sorrento Commercial Precinct) to 31 July 2023. Amendment C299morn subsequently extended the expiry date further to 31 July 2024.
- Amendment C214morn: Implemented the findings of the Mornington Peninsula Shire Heritage Review, Area 2 Volume 2 and introduced permanent Heritage Overlays to heritage places in Arthurs Seat, Capel Sound, Dromana, Fingal, Hastings, Main Ridge, McCrae, Red Hill, Rosebud, Rye, and Somerville.
- Amendment C262morn Part 1 and Part 2: Implemented the Mornington Peninsula Shire Heritage Review, Stage 3, by applying the Heritage Overlay to places of local heritage significance.
- Amendment C267morn: Corrected various ordinance and mapping anomalies, removed redundant provisions.
- Amendment C281morn: Implemented Council's adopted Parking Precinct Plans for Mornington, Rosebud and Hastings.
- Amendment C282morn: Implemented the recommendations from the Crib Point Township Plan and Western Port Coastal Villages and Surrounding Settlements Strategy.
- Amendment C190morn: Implemented the Hastings Town Centre Structure Plan, October 2017.

4.3 (Cont.)

- Amendment C206morn: Implemented the Rosebud Activity Centre Structure Plan.
- Amendment C224morn: Implemented the Dromana Township Project Report.
- Amendment C227morn: Implemented the recommendations of the Tootgarook Wetland Management Plan.
- Amendment C269morn: Implemented the Baxter and Somerville Structure Plans.
- Amendment C232morn: introduced a Local Planning Policy to provide policy guidance for Environmentally Sustainable Development (ESD).
- Amendment C270morn: rezoned specific sites outside the Urban Growth Boundary (UGB) from the Special Use Zone Schedule 2 (SUZ2) to either Green Wedge Zone Schedule 3 (GWZ3), Public Conservation and Resource Zone (PCRZ) or Public Park and Recreation Zone (PPRZ).
- Amendment C275morn: implemented the Rye Urban Design Guidelines and Rye Township Plan.

In addition to the above amendments – and perhaps the most significant – was Amendment C279morn which translated all planning policy within the planning scheme into the new Planning Policy Framework (PPF). The amendment saw the replacement of the former Local Planning Policy Framework (LPPF) and Municipal Strategic Statement (MSS) with the new PPF and Municipal Planning Strategy (MPS). It involved meticulous analysis and review to realign the expression of policy into succinct State, regional and local content in accordance with strict rules set down by the State Government. The translation also importantly integrated the key strategic directions of the Mornington Peninsula Localised Planning Statement (MPLPS) into the PPF, including those which seek to maintain the UGB and to protect green wedge land from inappropriate development. The amendment amounted to a major refresh of policy expression that – significantly – resulted in the completion of 78 of the 236 recommendations made in the 2018 Planning Scheme Review.

The following additional amendments are currently underway:

- Amendment C241morn which seeks to implement Council's adopted Balcombe Estuary and Associated Reserves: Ecological and Planning Study (Biosis, 2022).
- Amendment C271morn which seeks to implement the strategic directives of Council's adopted Western Port Coastal Villages and Surrounding Strategy (Ethos Urban, 2019).
- Amendment C286morn which seeks to apply a permanent Design and Development Overlay to the Ocean Beach Road Commercial Precinct in Sorrento.
- Amendment C246morn which seeks to introduce a new Particular Provision to facilitate zero carbon development through strengthened ESD requirements.
- Amendment C247morn which seeks to create a new residential precinct at Woodbyne Crescent and Albany Way, Mornington.
- Amendment C249morn which seeks to create a new residential precinct at Boundary and Collins Roads, Dromana.
- Amendment C243morn which seeks to create a new industrial, technology and business park at 83 and 79 Bungower Road, Somerville.

4.3 (Cont.)

- Amendment C256morn which seeks to facilitate subdivision of land in Bundara Crescent, Mt Eliza.
- Amendment C293morn which seeks to rezone land near the Somerville Railway Station for commercial purposes.
- Amendment C295morn which seeks to introduce a revised Development Contributions Plan for recently rezoned residential land in Creswell Street, Crib Point and associated Amendment C300morn which seeks to extend the expiry date of the existing Development Contributions Plan.

The most significant amendment currently underway is Amendment C219morn which seeks to implement Council's adopted Housing and Settlement Strategy: Refresh 2020-2036 (2020) and Neighbourhood Character Study & Guidelines (2019). This amendment proposes significant changes to zones, overlays and policy affecting all residential areas across the Shire to ensure future housing growth is directed to the right locations (near services, shops and employment areas) whilst ensuring new development respects preferred neighbourhood character. A major planning initiative several years in the making, the amendment will address numerous recommendations from the 2018 Review relating to managing housing growth and neighbourhood character as well as simplifying planning controls where possible.

Notwithstanding Council's considerable progress, several important initiatives arising from the 2018 Review are either yet to be completed or require further work. These actions remain pertinent to the overall improvement of the planning scheme and have therefore been integrated into the implementation plan resulting from this 2023 Review. In summary, the following key areas of work remain outstanding:

- Reviewing existing residential height planning permit triggers based on detailed landscape character analysis.
- Protecting places of heritage significance through completion of the Shire's municipal wide heritage review.
- Strengthening natural systems and vegetation provisions through the implementation of Council's adopted Biodiversity Conservation Plan (2019) and review of relevant overlays.
- Continuing to address climate change and environmental risks, especially sea level rising, erosion and flooding with associated advocacy for State Government intervention.
- Continuing to support the provision of affordable housing through the introduction of a new policy or mechanism to collect contributions to help meet escalating demand for such housing within the Shire.
- Reviewing advertising signage policy and/or controls to better protect township amenity.
- Strengthening the mitigation of landslip risk through the review of susceptibility data and modelling and associated application of the Erosion Management Overlay.
- Considering the feasibility of, and developing a comprehensive and coordinated framework for infrastructure provision and management (especially for open space, drainage and sewerage) with the establishment of a staged Shire-wide Development Contributions Plan.

4.3 (Cont.)

- Implementing the key strategic directions from Council's adopted Activity Centres Strategy (2018) and Industrial Areas Strategy (2018).
- Applying the Special Building Overlay (SBO) to flood prone land in partnership with Melbourne Water following the completion of catchment modelling across the Shire.
- Completing the audit, testing and review of potentially contaminated land and applying the Environmental Audit Overlay (EAO) to sites as required.
- Undertake a landscape character assessment of the Green Wedge to ensure future built form maintains the special amenity and scenic value of distinctive landscapes.
- Implementing Council's adopted master plan for The Briars.
- Continuing to lobby State Government for a confirmed future role for the Port of Hastings and the release of surplus land for a range of alternative use and development including housing, industrial, open space and conservation purposes.

The 2023 Review identifies the following new strategic planning work and includes these projects in the implementation plan at Appendix 3:

- Undertake a strategic review of the Low Density Residential Zone (LDRZ) areas to simplify the application of the LDRZ across the municipality
- Prepare an Urban Design Assessment of all small townships, local centres and convenience centres on the Port Phillip Bay side of the Mornington Peninsula that do not currently have specific built form controls.
- Undertake a review of the Heritage Design Guidelines: Sorrento Historic Precinct Incorporated Document.
- Continue to advocate for the State Government to review and revise existing bushfire planning provisions (including as-of-right vegetation removal exemptions) to minimise unnecessary vegetation loss on private land within the Shire.
- Continue to advocate for the State Government to elevate ESD targets to achieve carbon neutral and climate change resilient development.
- Implement the key strategic directions and recommendations of the following projects and strategies currently underway into the planning scheme through revised local policies and provisions as required:
 - Mornington Peninsula Open Space Strategy
 - Our Coast Our Future Coastal Strategy
 - Integrated Transport Strategy
 - Economic Development and Tourism Strategy
 - Affordable Housing Development Contributions Strategy
 - Review of Residential Height Planning Controls.

Lessons learnt from planning permit decisions made by the Victorian Civil and Administrative Tribunal (VCAT), include the importance of not placing too much weight on adopted Council policies or strategies in decision-making where these documents are yet to become

4.3 (Cont.)

“seriously entertained” planning proposals. (That is, base decisions on existing planning provisions instead of relying on documents that are not yet integrated into the planning scheme or have undergone rigorous independent review as part of the planning scheme amendment process). This lesson is particularly relevant to Council’s adopted Housing and Settlement Strategy: Refresh 2020-2036 (2020) and Neighbourhood Character Study & Guidelines (2019), emphasising the need to finalise Amendment C219morn to ensure the key strategic directions of these documents are imbedded in the planning scheme to legitimately influence development outcomes.

Recent VCAT cases also demonstrate the need to continually monitor the application of local policy in decision-making following the PPF translation, and to seek to strengthen local policy where required – particularly in relation to out-of-centre development and linear development of coastal land. The outcomes of such cases also highlight the need to continue to advocate to the State Government for stronger and clearer policy and controls for green wedge land to ensure greater consistency in decision-making.

Lessons learnt from recommendations made by Planning Panels Victoria (PPV) about planning scheme amendments included the need to:

- ensure the planning scheme is providing for a 15-year housing supply (and the associated need investigate the potential for Low Density Residential Zone areas to accommodate a higher level of housing growth without compromising the landscape or character of these areas)
- provide comprehensive and robust strategic justification to successfully support any proposed mandatory building height or setback controls in activity centres, and
- consider using the Activity Centre Zone for the Shire’s activity centres in future.

A review of Community Satisfaction Rates for planning for the last four years show that the Mornington Peninsula Shire Council is on par with other interface Councils for general town planning and planning and building permits performance.

Finally, the review recommends that Council continue to monitor, provide feedback on, and respond to new State Government policy or provision changes that may have an impact on the planning scheme going forward. These may include changes relating to:

- implementing the State Government’s recently released Housing Statement
- the pending release of the State Government’s new Plan for Victoria
- the mitigation of climate change and sea level rise impacts
- the State Government’s Environmentally Sustainable Development of Buildings and Subdivisions: Roadmap Part Two
- Green Wedge reforms
- policy interpretation by the Victorian Civil and Administrative Tribunal (VCAT)
- legislative reforms
- land use planning and the role of the Port of Hastings.

New strategic planning work that has been identified will form the basis of the strategic planning work program the Council will progress over the coming years, subject to budget and resourcing requirements. The recommendations requiring further strategic work will be

4.3 (Cont.)

the subject of subsequent, strategically justified planning scheme amendments that will include community consultation.

It is noted that a planning scheme amendment is not considered necessary to implement the findings of this review as all identified actions are either captured by current amendments or will form part of further strategic assessment and future amendments.

Timeframe

Section 12B of P&E Act requires a review to be carried out within one year of the approval of the Council Plan under Section 125 of the *Local Government Act 1989* (i.e. effectively every four years) and submitted to the Minister without delay, unless a longer period is determined by the Minister. As such, the current Review was originally due on 20 October 2022. However, upon Council's request, the Minister granted Council an extension until 30 April 2024. The extension was granted recognising the significant number of major planning scheme amendments and strategic projects being delivered by the Shire's Strategic Planning team. Many of these (such as Amendment C219morn), will result in substantive changes to the planning scheme if approved.

In addition, the State Government has made significant policy changes and reform throughout the review period which has resulted in major changes to the Victorian Planning Provisions (VPPs) and provisions within the planning scheme. The number and nature of these amendments and new policy initiatives, as well as the relatively rapid pace at which they have occurred (particularly towards the end of 2023), have made it challenging to understand their full impact on the operation of the planning scheme and ultimately the findings of the 2023 Review.

The 2023 Review is now required to be submitted to the Minister for Planning by 30 April 2024 to comply with the requirements of the P&E Act.

Options for consideration***Option 1 – Adopt the 2023 Review and submit it to the Minister by 30 April 2024***

This option is recommended for the reasons outlined in this report, noting that failure to do so could result in Council being in breach of its obligations under section 12B of the P&E Act.

Option 2 – Delay adoption and submission of the 2023 Review to undertake community consultation

This option is not recommended for the reasons noted above and outlined in the following section of this report.

It is noted that, if Council wants to pursue Option 2, it would need to seek approval from the Minister to extend the 30 April 2024 deadline as per section 12B(1)(a)(b) of the P&E Act. Shire officers consider that such an extension is unlikely to be approved given the Minister has already granted Council an extension of one year and five months to the original October 2022 deadline to submit the review.

ENGAGEMENT

The P&E Act does not prescribe any formal consultation process for the review of a planning scheme. In preparing the 2023 Review, consultation was undertaken with a broad range of Shire officers, both those who administer and use the planning scheme daily and others who intermittently interact with it as needed.

Shire officers also sought feedback from the following external agencies, however no responses were received:

4.3 (Cont.)

- APA Group Limited (formerly Australian Pipeline Limited)
- Country Fire Authority
- Department of Energy, Environment and Climate Action
- Department of Transport and Planning (both Transport and Planning divisions)
- Environment Protection Authority (Southern Metro)
- Heritage Victoria
- Melbourne Water
- Parks Victoria
- Port of Hastings Corporation
- South East Water
- United Energy
- Victoria Police
- Victorian Marine and Coastal Council
- VicTrack.

Broader community consultation regarding the 2023 Review is not considered necessary because of the extent of community consultation that has already occurred for various strategic projects, planning scheme amendments and other strategic documents adopted by Council during the review period. Key examples include:

- Mornington Peninsula Green Wedge Management Plan (2019)
- Shire-wide Neighbourhood Character Study & Guidelines (2019)
- Biodiversity Conservation Plan (2019)
- Westernport Coastal Villages & Surrounding Settlements Strategy (2019)
- Various township and structure plans (Amendment C190morn – Hastings Town Centre Structure Plan, Amendment C206morn – Rosebud Activity Centre Structure Plan, Amendment C224morn – Dromana Township Project, Amendment C269morn – Baxter and Somerville Structure Plans)
- Amendment C219morn (Housing Strategy and Neighbourhood Character)
- Amendment C232morn (ESD Policy)
- Amendment C271morn (Western Port Coastal Villages and Surrounding Settlements Strategy)
- Amendment C241morn (Balcombe Estuary Ecological and Planning Study)
- Amendment C275morn (Rye Urban Design Guidelines and Rye Township Plan)

4.3 (Cont.)

- Amendment C281morn (Mornington, Rosebud and Hastings Parking Precinct Plans)
- Amendment C286morn (Ocean Beach Road Commercial Precinct, Sorrento)
- Amendment C270morn (Rezoning of sites outside the Urban Growth Boundary to the Green Wedge Zone)
- Balcombe Estuary & Associated Reserves Ecological and Planning Study (2022) and associated Amendment C241morn
- Municipal Heritage Review:
 - Area 2 (Flinders, Merricks Beach, Mornington, Mount Eliza, Mount Martha, Portsea, Shoreham, Somers and Sorrento) and associated Amendment C214morn
 - Area 3 (Rosebud, Somers and Somerville) and associated Amendment C262morn
 - Area 4 (Western Port Region and Hinterland).
- Climate Emergency Plan – Ensuring Our Future: Our Climate Emergency Response (2020)
- Triple A Housing Plan 2020-2030 and Social and Affordable Housing Policy 2020
- Industrial Land Use & Infrastructure Assessment and Rezoning Strategy (2020)
- Council and Wellbeing Plan 2021-2025
- Annual Budget.

In addition to the above, preparation of the previous 2018 Review included extensive community consultation with much of the feedback received incorporated into the final version of the 2018 Review and acted upon through work completed during the review period or recently commenced.

Finally, all future strategic projects and planning scheme amendments identified by the 2023 Review will include separate community consultation both informally, and as part of the formal public exhibition phase of each amendment. Key initiatives to undergo this process include:

- Mornington Peninsula Open Space Strategy
- Our Coast Our Future Coastal Strategy
- Integrated Transport Strategy
- Economic Development & Tourism Strategy
- Affordable Housing Development Contributions Strategy
- Review of Residential Height Planning Controls.

Given the above, Shire officers recommend that – if Council adopts the 2023 Review as recommended – the findings and recommendations of the review be published to inform the community about:

4.3 (Cont.)

- The significant amount of strategic work and planning scheme amendments which Council has completed since 2018.
- The range of strategic projects and amendments that Council is currently progressing.
- The future work identified in the Implementation Plan (Appendix 3 to the Review).

Shire officers also recommend that Council encourage the community to support the key advocacy initiatives identified in the 2023 Review, including seeking State Government action for:

- a state-wide approach to respond to sea level rise hazards
- reform of bushfire planning controls to minimise unnecessary vegetation loss
- stronger controls to protect the Shire's Green Wedge
- elevated ESD standards to ensure new development is carbon neutral and resilient to climate change impacts, and
- the release of surplus land around the Port of Hastings for alternative use and development.

COMMUNICATIONS PLAN

If adopted, the 2023 Review report will be uploaded to the Shire website and an associated media release will be issued to inform the community of the findings and recommendations of the review.

As above, Shire officers recommend that Council also encourage the community to support the advocacy initiatives identified in the review by writing to the Minister for Planning and local members of parliament. Details on how to do this will be provided on the Shire website.

LEGAL AND REGULATORY FRAMEWORK

Council is required to formally review the Mornington Peninsula Planning Scheme every four years as per section 12B of the P&E Act. The 2023 Review is due to be submitted to the Minister by 30 April 2024 to satisfy these requirements of the P&E Act.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

The 2023 Review confirms that significant progress has been made to address climate change impacts in the planning scheme through strengthened ESD provisions (Amendment C232morn), improved protection and management of environmentally significant areas (including the Green Wedge, Tootgarook Wetland and Balcombe Estuary) and the introduction of new and updated planning controls along the Westernport Bay coastline to respond to sea level rise hazards of erosion and inundation (pending approval of Amendment C271morn).

The 2023 Review also recommends that Council continue to advocate for the State Government to elevate ESD targets to achieve carbon neutral and climate change resilient development and deliver a State-wide approach to respond to sea level rise hazards.

Finally, the planned future review of all environmental overlays to better protect and enhance the biodiversity is identified in the Review as necessary to continue implementation of Council's adopted Mornington Peninsula Biodiversity Plan (2019).

4.3 (Cont.)**FINANCIAL CONSIDERATIONS**

The 2023 Review was prepared by Shire officers. No fees or costs will be incurred by Council to submit the review to the Minister under section 12B of the P&E Act.

Completion of strategic planning projects and planning scheme amendments currently underway (as identified in the 2023 Review) will occur using existing committed Council budgets.

Any additional resources or funding required to undertake new strategic planning work identified in the review (including strategic projects and planning scheme amendments) will be considered as part of Council's future annual budget process, as required.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.4 New land use planning regulations for animal production - submission to Agriculture Victoria

Prepared By	Louis Beanland, Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12964302
Briefing Note Number	Not applicable
Attachment(s)	<ol style="list-style-type: none">1. Proposed Clause 53.AA - Animal production2. Submission to Agriculture Victoria's consultation on proposed new land use planning regulations for animal production (Clause 53.AA)3. Technical Requirements - Animal Production Separation Distance Requirements

EXECUTIVE SUMMARY

The purpose of this report is to present and seek retrospective adoption of a recommended submission to Agriculture Victoria's proposed new land use planning regulations for animal production – known as 'Clause 53.AA Animal production'. The submission was prepared by Mornington Peninsula Shire (Shire) officers and lodged by the 22 April 2024 due date.

The new clause is proposed to be incorporated into the Victoria Planning Provisions (VPPs) to provide a risk based, simplified approach to planning for animal production. It would govern the location, design, and management principles of animal production facilities in line with national and international standards. The regulations also aim to protect neighbouring landholders and the environment, while providing confidence and certainty for investment.

Importantly, the clause is limited to intensive animal production, including pig, poultry, poultry hatchery, intensive dairy, cattle feedlot, sheep and goat (feedlot and intensive dairy) industries. It does not apply to Grazing Animal Production. The clause will include an exemption from third party notice and review for developments which are deemed low risk, and a more consistent approach to determining separation distances for animal production facilities in Victoria.

Shire officers have reviewed the proposed clause and found that while the changes will have a relatively small impact on Mornington Peninsula (as there is limited non-grazing animal production within the Shire compared to other regions of Victoria), the clause will improve planning outcomes and processes for animal industries by streamlining the planning process, updating requirements in line with current best-practice, and minimising regulatory burden on existing animal industries and small animal production facilities.

The recommended submission (Attachment 2) is based on the strategic directions of Council's adopted Green Wedge Management Plan (2019), Food Economy and Agroecology Strategy (2022) and submission to Planning for Sustainable Animal Industries Reform (2017). It requests that the Victorian Government provide support to councils assessing complex animal production planning applications and recommends drafting changes to help improve the clarity and operation of the proposed new clause.

4.4 (Cont.)

RECOMMENDATION**That Council:**

1. **Adopts the Shire officer submission to Agriculture Victoria's proposed new land use planning regulations for animal production (known as 'Clause 53.AA Animal production') contained in Attachment 2 to this report.**
2. **Notifies Agriculture Victoria that the submission has been adopted by Council.**

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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

- Strategic Objective 1.1: An accessible and unique natural environment that helps our community to be healthy and well.
- Strategic Objective 1.2: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles B, C, E, F, and H which are:

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- E. Innovation and continuous improvement is to be pursued.
- F. Collaboration with other Councils and Governments and statutory bodies is to be sought.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Mornington Peninsula Green Wedge Management Plan, 2019
- Mornington Peninsula Shire Council submission to *Planning for Sustainable Animal Industries Reform*, 8 November 2017
- Mornington Peninsula Shire Food Economy and Agroecology Strategy, 2022-2028.

DISCUSSION**Purpose**

The purpose of this report is to present and seek retrospective adoption of a recommended submission to Agriculture Victoria's proposed new land use planning regulations for animal

4.4 (Cont.)

production – known as ‘Clause 53.AA Animal production’. The submission was prepared by Shire officers and submitted by the 22 April 2024 due date.

Background

Agriculture Victoria, which sits within the Department of Energy, Environment, and Climate Action (DEECA), has drafted a new clause for all planning schemes in Victoria which sets out requirements for the use and development of land for Animal Production (excluding Grazing Animal Production). The clause is known as ‘Clause 53.AA Animal production’. Agriculture Victoria is now seeking feedback from stakeholders including local government through a public consultation process via Engage Victoria. The State Government intends to implement the new clause into all planning schemes later in 2024, following a review of submissions.

Agriculture Victoria’s current consultation on proposed new land use planning regulations for animal production is part of a long-term process of regulation review for animal industries. In 2015, the Victorian Government appointed the Animal Industries Advisory Committee (AIAC) to make recommendations to improve land use planning for animal industries. The Victorian Government committed to implementing many of the recommendations made by AIAC in its October 2016 response, ‘Planning for Sustainable Animal Industries’. Council provided a submission to this State Government initiative in 2017.

Since this time, the Victorian Government has reviewed consultation feedback and continued to implement the AIAC’s recommendations, including changes to all planning schemes to revise land use planning terms for animal industries through the state-wide planning scheme amendment VC150 in September 2018.

This current consultation deals with two remaining actions from Planning for Sustainable Animal Industries’ which are:

- Action 8: Develop a new general Code of Practice for animal industries complemented by industry-specific technical guidelines; and,
- Action 9: Develop a more consistent approach to determining separation distances for various animal industries and production systems.

Existing requirements in the Mornington Peninsula Planning Scheme

Currently, the Mornington Peninsula Planning Scheme (the planning scheme) contains three sub-clauses under Clause 53 (General requirements and performance standards) outlining requirements for the following three specific types of animal production facilities:

- Clause 53.08 – Cattle feedlot
- Clause 53.09 – Poultry farm
- Clause 53.16 – Pig farm.

In turn, these existing clauses refer to the following technical documents which outline further specific requirements and which are incorporated into the planning scheme under Clause 72.04 – Incorporated documents:

- Victorian Code for Broiler Farms 2009 - plus 2018 amendments (Department of Primary Industries, 1999)
- Victorian Code for Cattle Feedlots (Department of Agriculture, Energy and Minerals, August 1995)

4.4 (Cont.)

- Victorian Low Density Mobile Outdoor Poultry Farm Planning Permit Guidelines (Department of Economic Development, Jobs, Transport and Resources, June 2018)
- Victorian Low Density Mobile Outdoor Pig Farm Planning Permit Guidelines (Department of Economic Development, Jobs, Transport and Resources, June 2018).

The existing regulations do not provide a general code for the regulation of animal production that is not a cattle feedlot, poultry farm, or pig farm.

Proposed Clause 53.AA (Animal Production)

The proposed new provision (Clause 53.AA: Animal production) provides a more streamlined and updated planning process for planning permit applications for animal production.

'Animal production' is defined in the planning scheme as land used to keep or breed farm animals for the production of livestock, eggs, fibre, meat, milk or other animal products.

The proposed new provision seeks to address outdated guidance and bring Victorian codes into alignment with national and international standards. It also includes new requirements that seek to protect against the degradation of land and water from animal production systems and ensure the amenity of properties near land used for animal production is protected.

Agriculture Victoria has identified that the proposed clause and associated technical requirements have been developed by the State Government in collaboration with the animal production industry, community, consultants, technical experts, and government agency partners.

The proposed new provision seeks to address the following outcomes:

- Victoria's animal industries continue to grow in a sustainable manner.
- Environmental and amenity impacts are well-managed.
- Local government is supported to make well-informed, faster planning decisions.
- The market, community, and investors have confidence in Victoria's animal industries.
- Clearer, fit-for-purpose regulation, rather than increased regulation.

A copy of the proposed provision, Clause 53.AA (Animal Production) is included at Attachment 1 to this report.

Land uses that will require a permit under proposed Clause 53.AA (Animal Production)

Clause 53.AA is proposed to apply to an application to use land, or to construct a building or construct or carry out works, for animal production – except for grazing animal production.

The clause would not apply retrospectively to established animal production land-uses. However, if an existing animal production facility seeks to expand its operation, construct a building, or carry out works, a planning permit will generally be required.

Notably the proposed clause does not apply to the use for 'Grazing animal production' which is defined within the planning scheme as land used for animal production where the animals' food is obtained by directly grazing, browsing or foraging plants growing on the land. It also includes emergency, seasonal, and supplementary feeding. (For clarity, Figure 1 shows the groups of land use that will and will not be subject to the requirements of the proposed new provision).

The majority of land used for animal production on the Mornington Peninsula is for grazing animal production. Exempting grazing animal production from proposed Clause 53.AA will therefore limit the number of future planning permit applications received by the Shire that will trigger the requirements of Clause 53.AA.

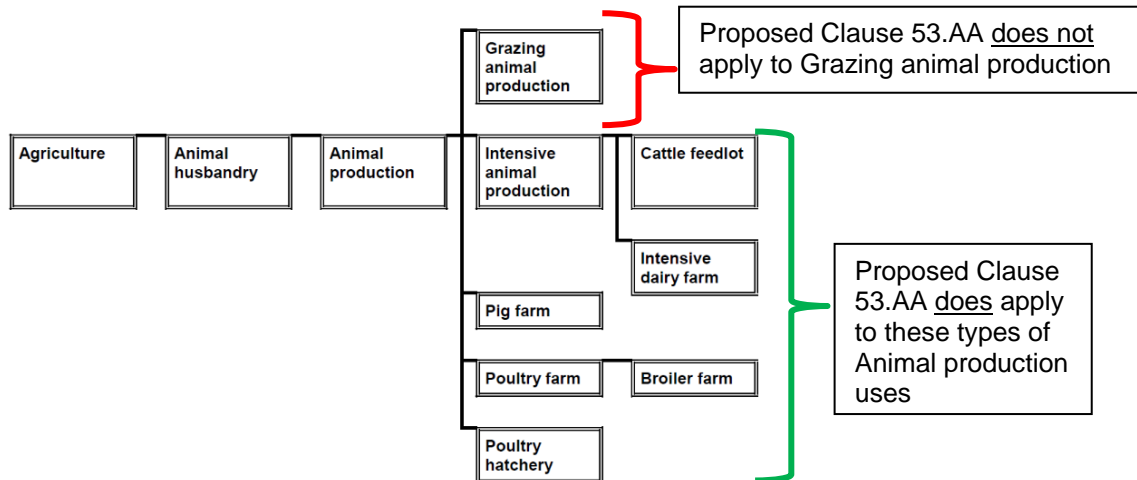


Figure 1 – Proposed application of Clause 53.AA by Animal production sub-group land uses

Scope of proposed Clause 53.AA (Animal Production)

The proposed new Clause 53.AA streamlines the planning permit application process for animal production by combining the existing clauses for cattle feedlots (Clause 53.08), poultry farms (53.09), and pig farms (53.16) into one clause. Most notably, a new 'general animal' production code is included at Clause 53.AA-5.

- 53.AA-2 – Pig farm – Low density outdoor pig farm
- 53.AA-3 – Poultry farm – Low density mobile outdoor poultry farm
- 53.AA-4 – Broiler farm
- 53.AA-5 – Animal production code.

The existing requirements for poultry farm and pig farm are mostly unchanged in their corresponding new subclauses within the proposed Clause 53.AA. The technical codes referenced for broiler farms, low density mobile outdoor poultry farms, and low density mobile outdoor pig farms are all maintained. These codes, dating from 2018, remain current as they were produced or updated as part of the broader review of animal industries carried out by the Victorian Government.

Where the requirements set out for pig and poultry farms are not met, the requirements of the general animal production code apply instead. The general animal production code also applies to all other non-grazing animal production land uses, such as cattle feedlots and other forms of intensive animal production, where animal feed is imported from outside the farm.

The animal production code sets out objectives for:

- the amenity of the surrounding area
- the visual amenity of the environmental and landscape character of the area
- soil

4.4 (Cont.)

- surface water
- groundwater
- access and parking.

Each objective has a set of approved measures and decision guidelines. If all approved measures are met, the objective is deemed to be met.

DEECA has produced a further five technical documents that assist with the operation of Clause 53.AA, which are referenced within the Clause, and are as follows:

- Animal production separation distance requirements
- Impermeable lining design requirements
- Operation and environmental management plan for animal production requirements
- Surface water and groundwater requirements
- Vegetated filter strip design in animal production requirements.

Managing amenity issues through specified separation distances

The separation distances for animal production (the distance between the animal production facility and surrounding sensitive land uses, such as dwellings) are mandatory, except for low density pig and poultry farms that meet the specified separation distance requirements.

As detailed in the Technical Requirement Document – Animal Production Separation Distances Requirements (Attachment 3), the purpose of the separation distances is to minimise the potential for nuisance from odour, dust and noise. Separation distances are established via a three-tiered, risk-based approach as outlined in Table 1. Table 2 sets out how the separation distances are measured.

4.4 (Cont.)

Tier	Application to the following proposals	Application to industry
1 - Fixed separation distances	All proposals regardless of animal numbers must meet the minimum fixed separation distances. Applicable to animal production facilities and range areas.	<u>Applies to all industries.</u>
2 - Variable separation distances	Proposals that exceed the maximum animal numbers allowable under Tier 1. Applicable to animal production facilities.	Industry specific variable separation distance formula applies to: <ul style="list-style-type: none"> • <u>Cattle feedlots</u> • <u>Pig farms</u> • <u>Poultry farms - Eggs</u> • <u>Victorian multi-species variable separation distance formula</u> applies to: <ul style="list-style-type: none"> o <u>Intensive animal production</u> o <u>Intensive dairies</u> o <u>Intensive sheep or goat, dairies or feedlots.</u>
3 - Environmental risk assessment	Proposals where a separation distance is not met using Tier 2, or when other factors will impact on the acceptability of a separation distance. Applications where a more detailed, site-specific assessment may demonstrate that a proposal can minimise risks to amenity while operating with smaller separation distances than Tier 2.	<u>Applies to all industries.</u>

Table 1 – Three-tier, risk-based approach for separation distances application to industry (Source: Draft Animal Production Separation Distances Requirements, 2024, p.5)

Tier	Measure from	Measure to <i>In the Farming Zone, Rural Activity Zone, Rural Conservation Zone, Rural Living Zone, Green Wedge Zone or Green Wedge A Zone</i>	Measure to <i>In Industrial Zones, Commercial Zones, Special Purpose Zones and Residential Zones</i>
Tier 1 (Fixed separation distances)	The edge of the animal production facility and any range area	The nearest edge of the buildings and works used for the sensitive use	The property boundary of the nearest sensitive use
Tier 2 (Variable separation distances)	The edge of the animal production facility	The nearest edge of the buildings and works used for the sensitive use	The property boundary of the nearest sensitive use

Table 2 – Three-tier, risk-based approach for separation distances application to industry (Source: Draft Animal Production Separation Distances Requirements, 2024, p.5)

Fixed separation distances provide a simple screening assessment for animal production facilities with less than the maximum animal numbers for Tier 1 (as specified in the Technical Requirements). The animal production facility and range areas must provide separation distances of at least:

- 250 metres to a sensitive use

4.4 (Cont.)

- 500 metres to a rural living areas
- 750 metres to residential zones.

Animal production facilities that do not exceed the maximum number of animal units specified in the Technical Requirements do not need to proceed beyond Tier 1. Animal production facilities with more than the maximum number of animal units for Tier 1 (i.e. Tier 2) must apply industry specific variable separation distance formulas to determine and demonstrate sufficient separation from sensitive uses to prevent risks to the environment and community amenity. Various factors, including size, design and management, and location features affect the required separation distance required to protect community amenity.

Notice and review rights

Planning permit applications for low density pig, poultry, and broiler farms are exempt from third party notice and review when the requirements are met. This is unchanged from the current provisions for these land uses. For all other planning permit applications for non-grazing animal production that are assessed against the animal production code (Clause 53.AA-5), the application is exempt from notice and review when the separation distance is contained entirely within the property boundary.

Zones and overlays

There are no changes to existing zones or overlays. That is, proposed new Clause 53.AA does not change the 'as-of-right', 'permit required', or 'prohibited' status of any land uses, and any proposed development may still trigger planning permit requirements of other overlays or particular provisions.

Impact of the new provision on the Mornington Peninsula

Overall, the impact of the new regulations for the Mornington Peninsula is expected to be minimal. This is because there is limited non-grazing animal production occurring on the Mornington Peninsula. Indeed, the Shire's *Food and Agroecology Strategy 2022-2028* notes that the Mornington Peninsula's most productive agricultural land uses are for vineyards, orchards, and horticulture, which are outside of the scope of the proposed clause. The strategy also notes that the productivity of grazing animal production (beef and sheep), which takes up a significant amount of land, has continued to decline due to fragmented land uses and a transition towards equine land uses.

Where land is used for non-grazing animal production, it is almost entirely for poultry production. Analysis of internal planning permit data dating back approximately 20 years shows only 15 planning permits issued for intensive animal production, and only one of these was not associated with poultry, being a pig farm. Many of these permits were also for development not directly related to the use of the land for a poultry farm, or would not result in an increase in the operational scope of the poultry farm, which would otherwise exempt them from the requirements of the proposed new clause.

Because the new clauses for low density mobile outdoor poultry farm and broiler farm are mostly unchanged from the existing equivalent regulations, the application process and assessment for any new applications or increase the scope of an existing small farm, will be essentially unchanged.

The limited extent of land used for animal production is demonstrated in Figures 2 and 3 below. These figures are based on land use information supplied with valuations data to provide an indication of the general geographic spread and prevalence of different agricultural land use types across the Mornington Peninsula.

4.4 (Cont.)

Figure 2 demonstrates five of the most common types of agricultural land uses. Importantly, the proposed new Clause 53.AA would not be applicable to any of these five types of agricultural production.

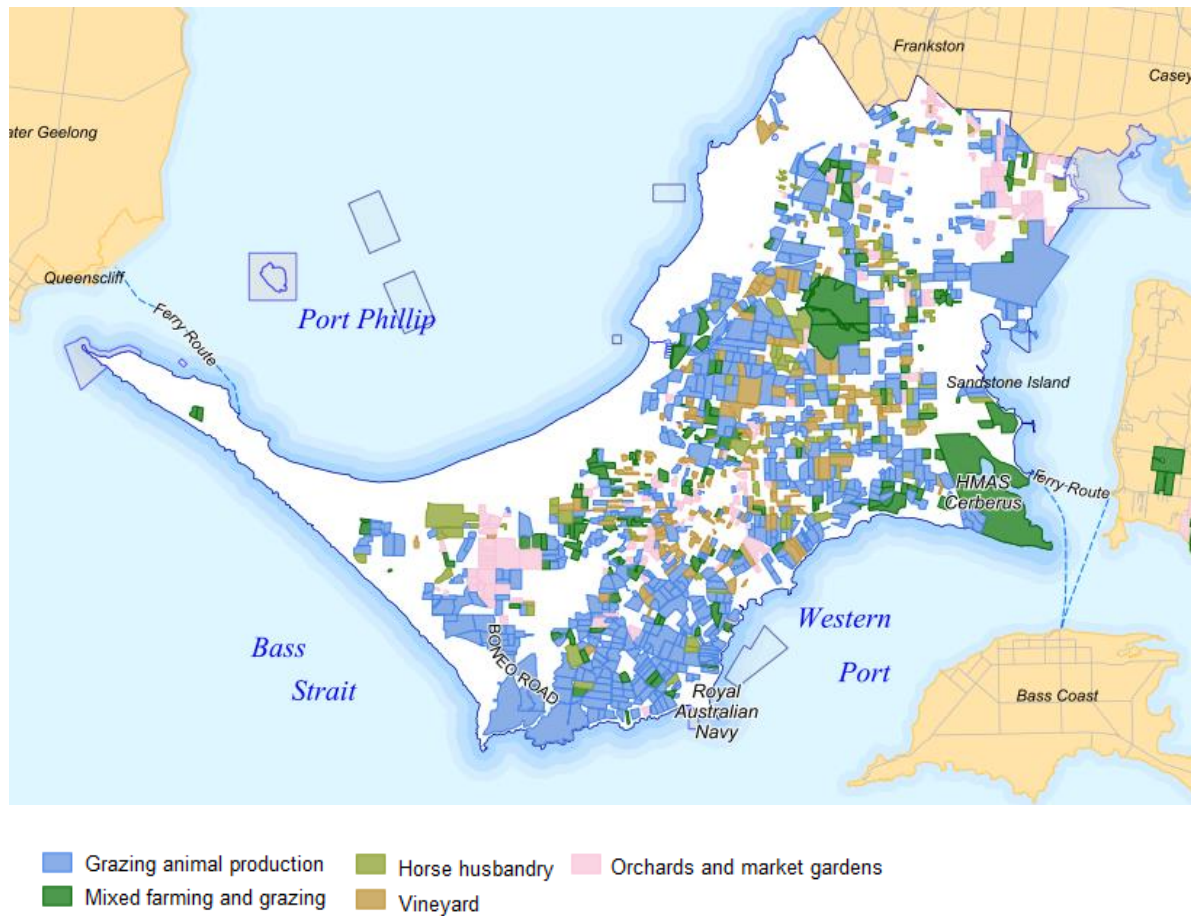


Figure 2 – Common agricultural land uses across the Mornington Peninsula which are outside the scope of Clause 53.AA (Source: 2023 valuation data provided to MPS by the Victorian Government)

Using the same data source, Figure 3 shows land used for poultry (including for meat and egg production), to which the proposed new Clause 53.AA is applicable if an application is received to expand the operation of these farms.

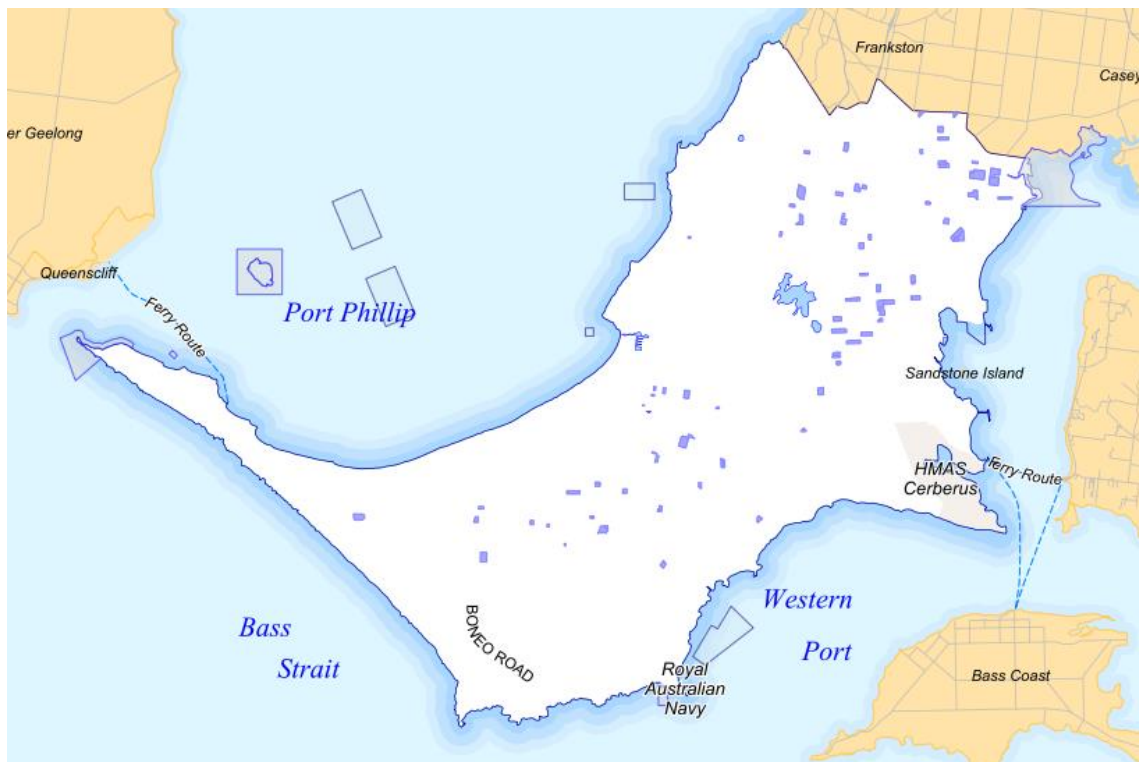


Figure 3 – Land used for poultry farming (including egg production and broiler chickens) across the Mornington Peninsula (Source: 2023 valuation data provided to MPS by the Victorian Government)

While the proposed new clause 53.AA is not expected to be frequently triggered on the Mornington Peninsula, in the instances where it is applied, it will offer several important benefits to farmers, neighbours, planners, and the environment.

Firstly, the general animal production code (Clause 53.AA-5) fills an important regulatory gap. Currently, the Green Wedge Zone (GWZ) requires planning permission for the use of land for animal production, without providing clear objectives, approved measures, and decision guidelines to assist planners in assessing or deciding an application. The introduction of the clause provides clarity for both applicants and planners about the requirements and likelihood of an application for animal production to be approved.

Secondly, as the proposed clause has been developed in consultation with the appropriate stakeholders and authorities, it also represents best-practice outcomes as defined by Agriculture Victoria, the EPA, and water authorities. Planning officers currently have no powers to implement best practice for general animal production land uses.

Finally, properties next to or nearby animal production facilities will benefit from the inclusion of formalised separation distances between a sensitive use (such as residential land, dwelling and populated areas) and animal production facilities.

Shire officer's submission to Agriculture Victoria

A copy of the Shire officer's submission is included at Attachment 2 to this report.

Broadly, Shire officers support the introduction of the proposed new provision. While it is expected to be rarely applied across the Mornington Peninsula, the proposed new provision is beneficial as it:

- Streamlines the assessment of applications for non-grazing animal production by locating them in one place in the planning scheme.

4.4 (Cont.)

- Provides a general, best-practice framework for assessing non-grazing animal production that is not a poultry farm or a pig farm.
- Has been developed with input from farmers, community, consultants, and technical experts.
- Does not detrimentally affect any existing animal production facilities on the Mornington Peninsula or require them to act.
- Protects neighbouring properties from the amenity impacts of animal industries by formalising separation distance requirements.

Shire officers have prepared a submission that supports the introduction of the new provision while recommending several minor changes to the drafting of the clause to improve its clarity and operation.

The submission also requests assurances that ongoing technical assistance is provided by Agriculture Victoria and available to local government planners for complex animal production applications.

Options for consideration

- Option A – Adopt the officer submission and notify Agriculture Victoria

Shire officers recommend this option as it provides Council with an opportunity for continued involvement in updating planning controls that balance the interests of agricultural industries and protecting the amenity of sensitive land uses in agricultural areas.

- Option B – Do not adopt the submission and withdraw it

This option is not recommended as it would be a lost opportunity to provide feedback to Agriculture Victoria on the development of VPP tools that can enhance clarity, transparency and certainty for assessing and determining applications for animal production facilities on the Mornington Peninsula.

ENGAGEMENT

Community consultation on the proposed submission to on Agriculture Victoria's proposed new land use planning regulations for animal production (Attachment 2) has not occurred due to the limited timeframe of the engagement period.

However, the proposed submission reflects the strategic directions outlined in Council's adopted Green Wedge Management Plan (2019), Food Economy and Agroecology Strategy (2022) and submission to Planning for Sustainable Animal Industries Reform (2017).

Finally, consultation on proposed new regulations was open to all community members, stakeholders and agencies through Engage Victoria, providing an opportunity for community members to make their own submissions.

COMMUNICATIONS PLAN

If adopted, the submission contained in Attachment 2 and sent to Engage Victoria will be published on the Shire's webpage: www.mornpen.vic.gov.au/Building-Planning/Strategic-Planning/Submissions-to-the-State-Government.

4.4 (Cont.)**LEGAL AND REGULATORY FRAMEWORK**

Following the review of submissions, the proposed new provision will be implemented into all planning schemes in accordance with the *Planning and Environment Act 1987*. Council does not have any legal or regulatory obligations in regards to this submission.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

The submission provides general support for the proposed new provision and addresses technical aspects of the new clause. The proposed new provision will improve the sustainability of animal production facilities by incorporating new requirements that seek to minimise the degradation of land and waters affected by animal production.

FINANCIAL CONSIDERATIONS

There are no budget implications resulting from adopting or not adopting the submission as recommended.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.5 Register of Public Roads Policy and Protocol

Prepared By	Cintia Rodriguez, Coordinator - Asset Strategy
Authorised By	Director - Planning and Infrastructure
Document ID	A12944404
Briefing Note Number	BN1778 – 12 September 2023
Attachment(s)	<ol style="list-style-type: none"> 1. Register of Public Roads Policy (Option 1 wording of Section 5.2.2) 2. Register of Public Roads Protocol (Option 1 wording of Section 5.2.2) 3. Register of Public Roads Policy and Protocol - Public Consultation Responses (confidential)

EXECUTIVE SUMMARY

The Mornington Peninsula Shire's (Shire) Register of Public Roads Policy (Policy) and Protocol provide a framework for making consistent, structured, and justifiable decisions on whether a road should be added to the Shire's Register of Public Roads.

The *Road Management Act 2004* (Act) requires a Council, as a road authority, to have a Register of Public Roads. This is a list of municipal roads for which Council has the responsibility for operational functions such as on-going inspection, maintenance, and repair of the road, and the risks associated with these functions. The Policy is required to be reviewed and amended every four years.

RECOMMENDATION

That Council adopts the Register of Public Roads Policy (Attachment 1) and the associated Protocol (Attachment 2).

Part B

That Council resolves that Attachment 3 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information of residents .

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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.
- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles A, B, C, D, E, F, G, H and I which are:

4.5 (Cont.)

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- D. The municipal community is to be engaged in strategic planning and strategic decision making.
- E. Innovation and continuous improvement is to be pursued.
- F. Collaboration with other Councils and Governments and statutory bodies is to be sought.
- G. The ongoing financial viability of the Council is to be ensured.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

The current Register of Public Roads Policy was adopted by Council on 28 November 2017.

At the Council Meeting on 17 October 2023, Council endorsed the draft Register of Public Roads Policy and Protocol to go to public consultation for a period of 28 days concluding on 11 December 2023.

The below is a list of relevant policies and strategies considered as part of the Policy review as they govern the Register of Public Roads Policy update:

- Mornington Peninsula Shire Road Management Plan 2022
- Mornington Peninsula Shire Asset Management Policy 2020
- Mornington Peninsula Shire Asset Management Strategy 2020
- Mornington Peninsula Shire Unmade Roads Construction Strategy 2006.

DISCUSSION**Purpose**

The purpose of this report is to present the Register of Public Roads Policy and associated Protocol to Council for adoption.

Background

The Register of Public Roads contains information about the roads which Council has responsibility for under the *Road Management Act 2004*. The current Register of Public Roads Policy was adopted by Council on 28 November 2017. The Policy is required to be reviewed and amended every four years.

4.5 (Cont.)

The Policy provides a framework for making consistent and structured decisions as to whether a road or area of land should be added to the Council's Register of Public Roads.

The Register of Public Roads Policy and Protocol went through an extensive internal review where no major changes were made. The draft Policy and Protocol were presented to Council on 17 October 2023 for endorsement to go to public consultation.

At the meeting on 17 October 2023, a motion to change the wording of section 5.2.2 of the Policy was supported at an updated version of the Policy was placed on public exhibition. The motion changed the wording from:

In order to be considered "reasonably required for general public use," a road must fulfill all of the following criteria:"

To:

In order to be considered "reasonably required for general public use," a road must fulfill most of the following criteria if there are extenuating circumstances involving access to a property or properties:"

A public consultation process was undertaken for 28 days, where feedback on the Policy with the amended wording of must to most was sought. The feedback received is outlined in the Engagement section of this report.

It is important to note that the endorsed copy of the Policy, which required only "most" criteria to be met, presents a potential grey area that allows for misinterpretation and inconsistency. Changing the criteria to 'most' could lead to acceptance of undesirable situations such as:

- Maintaining roads that are not on Shire or controlled land.
- Assuming responsibility for inadequately constructed roadways that would require upgrade works to bring them to Shire standards.
- Dealing with roads requiring excessive maintenance costs.
- Providing maintenance for roads serving only a single property.
- Maintaining roads with restricted access.
- Maintaining roads not required by the general public.
- Including roads which do not form the broader network of Public Roads.

To prevent these potential issues and to minimize any additional financial burden on the Shire, the amended Policy is being presented to Council for adoption incorporating two options, as detailed below.

Options for consideration

There are two options for the wording of section 5.2.2. of the Policy:

Option 1 (recommended option)

Original wording from existing Policy.

5.2.2 In order to be considered "reasonably required for general public use," a road must fulfill all of the following criteria:

4.5 (Cont.)**Option 2**

Amended wording from Motion on 31 October 2023.

5.2.2 In order to be considered "reasonably required for general public use," a road must fulfill most of the following criteria if there are extenuating circumstances involving access to a property or properties:"

Option 1 is recommended as it provides clear and concise requirements for both the community and Shire officers to follow when determining if a Road meets all the requirements to be added to the Register of Public Roads. In addition, Option 1 has no anticipated additional costs to Council.

ENGAGEMENT

As endorsed by Council on October 17, 2023, the Policy and Protocol were placed on public exhibition. Seven responses were received during the consultation process for this Policy as outlined in Register of Public Roads Policy and Protocol - Public Consultation Responses (Attachment 3).

The seven responses did not relate to the Policy or Protocol and did not suggest any amendments. The feedback was general related to repairing potholes or difficulty accessing the website.

All seven respondents have been contacted and provided with an individual response to their concerns.

No major changes are proposed to be made to the existing decision-making process. The two amended documents do however incorporate some enhancements to improve the understanding of the process by re-wording and including illustrative diagrams and additional examples to clarify the decision-making process.

COMMUNICATIONS PLAN

The community was informed of the consultation via the following channels:

- Advertisement in the local newspapers.
- Promotion on the Shire's website via the Shape platform.
- A period of 28 days was given to receive public submissions.

LEGAL AND REGULATORY FRAMEWORK

The Shire's Register of Public Roads contains information about the municipal roads for which the Shire has responsibilities under the Road Management Act 2004.

According to the *Road Management Act 2004*, to be included on a road authority's Register of Public Roads, a road must be "reasonably required for general public use." To determine which roads are included on its Register, the Shire has developed a Register of Public Roads Policy and Protocol to ascertain if a road is reasonably required for public use.

The Register of Public Roads Policy ensures that Council meet their legislative requirements under:

- *Road Management Act 2004*

4.5 (Cont.)

- *Road Management Act 2004* – Code of Practice “Operational Responsibility for Public Roads”
- *Subdivision Act 1988*
- *Local Government Act 1989*
- *Local Government Act 2020*

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

The recommendation before Council is accommodated within the adopted budget.

If Option 2 as outlined in the Options for Consideration section of this report is adopted, there is a financial impact to Council, however it is unable to be determined at this point in time specifically what the additional costs to Council’s maintenance and renewals budgets would be. It is anticipated that should Option 2 be supported that the number of roads that the Shire needs to maintain would increase even if the roads were not currently used by the general public.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.6 CN2642 Cleaning Services Tender Recommendation

Prepared By	Tom Haines-Sutherland, Future Maintenance Services Strategy Manager
Authorised By	Director - Planning and Infrastructure
Document ID	A12994074
Briefing Note Number	
Attachment(s)	1. CN2642 Tender Evaluation Report (confidential) 2. CN2642 Asset Growth Allowance (confidential) 3. CN2642 Probity Advisory Report (confidential)

EXECUTIVE SUMMARY

This report recommends the acceptance of the recommended proposal for the CN2642 – Cleaning Services contract. This contract will provide the cleaning of Council's buildings, public toilets, barbecues, and litter collection in high profile precincts for up to seven years from 1 July 2024.

RECOMMENDATION**That Council:**

- 1. Having considered all tender submissions, hereby accepts the tender submission received from Tenderer 11 for the annual contract sum of \$XXX plus \$XXX GST being for CN2642 – Cleaning Services contract.**
- 2. Approves further expenditure under the contract up to the annual growth allowance identified within Attachment 2 of this report.**
- 3. Delegates authority to the Chief Executive Officer pursuant to section 11 of the *Local Government Act 2020*:**
 - A. to execute the Contract for the awarded tender, and**
 - B. to vary the contract sum within the terms and conditions of the Contract.**
- 4. Receives a report on the Contractor's performance as part of the decision-making process for the granting or otherwise of any contract extensions.**

Part B

- 1. That Council resolves that Attachments 1, 2 and 3 to this report be retained as confidential items pursuant to section 3 (1) (g) (ii) of the Local Government Act 2020 as they contain private commercial information that if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.**
- 2. That Council resolves that the contract sum and identity of the successful tenderer be retained as confidential pursuant to section 3 (1) (g) (ii) of the Local Government Act 2020 until such time as the contract has been executed and unsuccessful tenderers notified.**

4.6 (Cont.)**COUNCIL & WELLBEING PLAN**

CN2642 Cleaning Services aligns with the Council and Wellbeing Plan, in particular:

Theme 2: A robust, innovative and diverse economy.

Theme 3: A flourishing, healthy and connected community.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles B, E, G and I which are:

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- E. Innovation and continuous improvement is to be pursued.
- G. The ongoing financial viability of the Council is to be ensured.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

CN2642 Cleaning Services will assist Council to deliver on a number of its strategy and policy commitments as well as legislated requirements. This includes the Mornington Peninsula Shire's (Shire) Asset Management Strategy.

The Contract sets out a number of Council policies that the Contractor must follow. These include:

- Council and Wellbeing Plan 2021-2025
- Asset Management Strategy
- Asset Plan 2022-2032
- Climate Emergency Plan
- Carbon Neutral Policy
- Community Engagement Policy
- Supplier Code of Conduct.

DISCUSSION**Purpose**

The purpose of this report is to recommend the acceptance of the preferred proposal for the CN2642 Cleaning Services contract.

Background

CN2642 Cleaning Services provides for the cleaning of Shire's buildings, facilities, public toilets, foreshore camping amenity blocks, public barbecues, high visibility and litter collection

4.6 (Cont.)

services in high profile precincts. It includes scheduled, periodic, on demand and reactive cleaning services for these assets and areas.

These services will ensure that Council’s buildings, public toilets, barbecues and high-profile precincts are in a clean, presentable, and well-preserved state, for the safety and enjoyment of its community, staff and visitors. Other key objectives include the optimisation of the life spans of surfaces of buildings, community use of facilities without unnecessary interruption or intrusion, and a value for money service to the Mornington Peninsula Shire Community.

The contract scope and specification documents were developed to be very clear on the requirements for each service at each site. This was to minimise the likelihood of under-pricing and under-payment of contractors’ staff, by requesting the time allocated to cleaning each site and including this in the evaluation of tenderers’ Methodology. This approach also increases the ability of the contract manager to ensure the delivery of value for money services that meet community needs.

This contract is scheduled to commence on 1 July 2024. The services to be provided under CN2642 are currently delivered via the CN1743 SIMS2 Building Services (cleaning of buildings) and CN2328 Cleansing and Drainage (cleaning of public and camping toilets and high-profile precincts) contracts, which are due to expire on 30 June 2024.

Tender Invitation

The tender for CN2642 was released to the market on 4 November 2023 via The Age newspaper, the Shire’s website and Tenderlink, and closed on 20 December 2023. Twelve submissions were received.

Tender Evaluation

Evaluation was guided by an approved evaluation and probity plan. The evaluation process is detailed in Attachment 1 CN2642 – Tender Evaluation Report.

Criteria	Weighting
1. Compliance	
Response appears materially complete	Pass/fail
Willingness to undergo Supplier Verification	Pass/fail
ABN and company details current and correct	Pass/fail
2. Mandatory Criteria	
Tenderer declaration	Pass/fail
Confirmation of insurances (or willingness to obtain) – Public and Products Liability and WorkCover	Pass/fail
Confirmation of required licences	Pass/fail
Provision of an Occupational Health and Safety System	Pass/fail
3. Non Mandatory Criteria	
Conflict of interest declaration	Qualitative assessment
Qualifications, Exceptions and Assumptions	Qualitative assessment
Confirmation of insurances (or willingness to obtain) – Motor Vehicle, Property Loss of Plant and Equipment, Cyber Security	Qualitative assessment

4.6 (Cont.)

Criteria	Weighting
Financial soundness and capacity – provision of last two Annual Reports	Qualitative assessment
Satisfactory Referee Checks	Qualitative assessment
Agreement with the Council Policies and Strategies	Qualitative assessment
4. Capacity	12%
5. Capability	10%
6. Methodology	15%
7. Management and Systems	13%
8. Local Content, Sustainability and Social Procurement	10%
9. Price	40%

Following the evaluation, three tenderers were shortlisted to an interview stage.

The evaluation panel then objectively considered both price and non-price scoring to complete a final value for money assessment, considering both qualitative and quantitative factors (such as risk) to identify a preferred proposal.

Probity Attestation

Independent Probity oversight was provided throughout the procurement process by Baron Consulting. Baron Consulting have provided a report that confirms that:

- the process was conducted in accordance with the relevant probity requirements, and
- the recommendations of the Evaluation Panel are based on relevant information and are not biased or prejudicial in relation to any tenderer.

The detailed probity report is provided in Attachment 3 CN2642 – Probity Advisory Report.

Contract Sum

The annual contract sum comprises a lump sum and schedule of rates for on demand and reactive cleaning, as well as consumables such as toilet paper, towels and hand soap.

The Contract includes mechanisms for varying the contract sum, including for the purposes of indexation and for asset inventory changes. Under the indexation mechanisms of the contract, the contract values relating to each activity will be increased annually in accordance with the Consumer Price Index.

In addition to the contract sum, it is proposed that Council approve an annual allowance for asset inventory growth as detailed in Attachment 2 CN2642 – Asset Growth Allowance. This amount represents an annual allowance for cleaning required for buildings constructed or extended through Council's Capital Works Program, or where service level increases are required.

Funding for CN2642 of \$4.4 million per year (plus indexation) has been factored into future budgets. The cost of the recommended tender is less than this budget allowance.

4.6 (Cont.)**Term of Contract**

The contract has been tendered for an initial term of three years, with two two-year extensions that may be granted at Council's discretion.

DELEGATED AUTHORITY ASSESSMENT

Yes/No	Instrument of Delegation Conditions
Yes	The full amount is within budget
No	That the recommended Tenderer is the lowest cost tender
Yes	That the recommended Tender is NOT the lowest cost tender and is >\$200,000.01 therefore Council determination required.

OFFICER DIRECT OR INDIRECT INTEREST

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

OFFICE OF THE CEO

4.7 Maintenance Contract - Depot Lease - 140 Watt Road, Mornington

Prepared By	Aimee Murphy, Senior Property Officer
Authorised By	Acting Manager - Property and Commercial Services
Document ID	A12972277
Briefing Note Number	BN1861 – 12 March 2024
Attachment(s)	Nil

EXECUTIVE SUMMARY

This report recommends that Council enters into a lease agreement with Citywide for the property critical to the provision of Community Asset Maintenance Services. Council has fulfilled its statutory obligations under the *Local Government Act 2020* (the Act) and its Community Engagement Policy, enabling deliberation on the proposed leases.

The proposed lease aligns with existing Open Spaces contract (CN2639) and is designed to support the operational needs required to deliver Community Asset Maintenance Services.

Consideration has been given to the terms of the lease, encompassing rental amount, duration, and associated responsibilities, ensuring adherence to legal and regulatory frameworks while addressing financial considerations.

RECOMMENDATION

That Council:

- 1. Enters into a lease with Citywide for the premises at 140 Watt Road Mornington, in line with the Open Spaces contract (CN2639), for a term of six years, commencing on 1 July 2024.**
- 2. Applies a market rent review at the expiry of the term.**
- 3. Requires the tenant to be responsible for all outgoings, including rates, taxes, Fire Services Property Levy, building insurance, and public liability insurance to the value of \$20,000,000.**
- 4. Requires a security bond equivalent to three months rent.**
- 5. Authorises the affixing of the Common Seal of the Mornington Peninsula Shire Council where necessary and relevant documents signed by an authorised officer.**

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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

4.7 (Cont.)

- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

Theme 3: A flourishing, healthy and connected community.

- Strategic Objective 1.3: A sustainable built environment that respects the natural environment and protects the community from the impacts of the climate emergency.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles E, G and I which are:

- E. Innovation and continuous improvement is to be pursued.
- G. The ongoing financial viability of the Council is to be ensured.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

The Council decision 12 December 2023, which resolved to award the Open Spaces contract to Citywide, underpins the strategic and policy commitments as well as legislated requirements of the Council, including:

- Biodiversity Conservation Plan
- Carbon Neutral Plan
- *Road Management Act 2004*
- The Mornington Peninsula Shire's (Shire) Road Management Plan
- Asset Management Strategy
- The Shire's Climate Emergency Plan.

DISCUSSION**Purpose**

The purpose of this report is to seek Council approval for the execution of a lease agreement with Citywide for the provision of Open Spaces contract, in support of the Community Asset Maintenance Services.

Specifically, the report aims to:

Secure Council approval for a lease agreement with Citywide for the premises located at 140 Watt Road, Mornington. The proposed lease term spans six years, commencing on 1 July 2024, and aligns with the maintenance contract's end date of 30 June 2030. The initial rental amount is set at \$298,850 + GST, with adjustments based on the Consumer Price Index (CPI) annually. While the lease does not include a formal renewal option, considerations for two additional terms of three years each are contingent upon the extension of the maintenance contract.

By seeking approval of the lease agreement, Council aims to fulfill its operational requirements, uphold regulatory standards, and ensure the efficient delivery of Community Asset Maintenance Services across various service areas, including Open Spaces.

SES Hastings

In line with the Council's commitment to supporting community initiatives and enhancing community safety, we are proposing to include an agreement with the SES Hastings for the storage of their vehicles in Mornington. This initiative aims to support the operational requirements of the SES and ensure timely access to emergency vehicles across the Mornington Peninsula. The SES has proposed utilising approximately 340m² of space at the Mornington depot site for vehicle storage, building upon their current unofficial occupancy under an arrangement with Ventia.

Formalising this agreement will ensure operational continuity for SES, enhancing emergency response capabilities across the Mornington Peninsula.

This initiative underscores Council's commitment to fostering collaborative partnerships and bolstering community resilience.

Background

The proposed lease agreement for the depot at 140 Watt Road, Mornington, is established by the historical significance of these sites and their pivotal roles in supporting essential maintenance services. Ventia currently occupies areas at the Mornington Operations Centre as part of the conditions in the previous maintenance contracts.

SES Hastings currently occupies 2144 Frankston Flinders Road, Hastings, and utilises the Mornington depot under an unofficial agreement with the tenant, Ventia, for additional operational support, including vehicle storage. To support these arrangements, Council is proposing a formal agreement to ensure continuity of SES operations and enhance emergency response capabilities across the Mornington Peninsula.

Lease area

The figure below shows the lease area:



Options for consideration

Not applicable.

ENGAGEMENT

Community engagement, as mandated by Section 115 of the Act, has been diligently carried out for the proposed agreement at 140 Watt Road, Mornington. This section of the Act requires Council to undertake a community engagement process for proposed leases where certain criteria are met, including leases with annual rents of \$100,000 or more.

COMMUNICATIONS PLAN

Council invited community feedback via various consultation methods, including newspaper advertisements, the Council website, and direct mailouts. The engagement process spanned four weeks, in accordance with the requirements outlined in the Act. No submissions were received during the public notice period.

LEGAL AND REGULATORY FRAMEWORK

The proposed lease agreement is governed by the Act which outlines the powers and responsibilities of local councils in leasing land.

Section 115 of the Act imposes certain requirements on councils regarding community engagement before entering into leases. These requirements include:

- Community engagement is mandatory for leases:
 - Lasting one year or more.
 - With a rent of \$100,000 or more per year.
 - Involving land with a current market rental value of \$100,000 or more per year.
 - Extending for 10 years or more.

Community engagement must align with Council's community engagement policy.

The engagement process for the proposed lease with Citywide adhered to the Act's requirements, including a four-week public notice period and opportunities for community feedback.

The legal framework also ensures transparency and accountability in council decisions, safeguarding the interests of both the council and the community.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

The lease with Citywide includes strict environmental provisions, ensuring compliance with regulations and best practices. This includes managing hazardous materials and adhering to environmental legislation. These measures align with Council's sustainability goals, promoting responsible environmental practices.

FINANCIAL CONSIDERATIONS

The market rent for the proposed leases has been determined by a qualified valuer. The annual rent for the premises at 140 Watt Road, Mornington, is set at \$298,850 plus GST. Rent adjustments will be made annually based on the Consumer Price Index (CPI), with a market review scheduled at the end of the sixth year for both leases.

4.7 (Cont.)

Additionally, both tenants will be responsible for various outgoings, including rates, taxes, insurance, and maintenance, as outlined in the respective lease agreements.

These financial arrangements aim to ensure transparency, accountability, and financial sustainability for the Council and its stakeholder.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.8 Instruments of Appointment and Authorisation

Prepared By	Diana Harris, Governance Officer
Authorised By	Chief Executive Officer
Document ID	A13023254
Briefing Note Number	Not applicable
Attachment(s)	1. Attachment 1 - Instruments of Appointment and Authorisation

EXECUTIVE SUMMARY

To allow for practical, efficient and effective delivery of services, a council can delegate or authorise staff and others, to undertake functions or exercise powers on its behalf. Council is granted these powers through the Delegations (clause 11) of the *Local Government Act 2020* and Authorised Officers (clause 224 (1)) clauses of the *Local Government Act 1989*.

The attached Instruments of Appointment and Authorisation (Attachment 1) has been prepared to ensure the relevant Mornington Peninsula Shire (Shire) officers are properly authorised under the legislation.

It is recommended that Council appoints the relevant Shire officer as an Authorised Person under the *Planning and Environment Act 1987*.

RECOMMENDATION

1. **That Council in the exercise of the powers conferred by section 224 of the *Local Government Act 1989* and the other legislation referred to in the attached Instruments of Appointment and Authorisation, Council resolves that:**
 - A. **The members of Council staff referred to in Attachment 1 be appointed under the *Planning and Environment Act 1987*.**
 - B. **The Instruments come into force upon the resolution of Council.**

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

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

Theme 2: A robust, innovative and diverse economy.

Theme 3: A flourishing, healthy and connected community.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles A and I which are:

4.8 (Cont.)

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

The Appointment of Authorised Officers by Council occurs regularly to ensure new employees or employees changing roles are appointed in a timely manner. The previous report was presented to Council for endorsement on 19 March 2024.

DISCUSSION**Purpose**

The purpose of this report is to authorise the Shire officer listed for the purposes of enforcing the *Planning and Environment Act 1987*. Appointments are formally made by a signed Instrument of Appointment and Authorisation (Attachment 1).

Planning and Environment Act 1987

When Shire officers enter a property, make observations, or gather evidence, if the matter were to proceed to enforcement, their entry, observations and gathering of evidence is only lawful if the Shire officer is an Authorised Officer under the particular Act.

In addition, there is a requirement for some administration staff to be Authorised Officers if they have a role in the issuing or review of Planning Infringement Notices issued pursuant to the *Planning and Environment Act 1987*.

The extent of authorisation is limited by the position description and operating procedure for each team.

The Instrument of Appointment provides for Council to appoint Shire officers by a resolution, pursuant to section 147 (4) of the *Planning and Environment Act 1987*. This report recommends the following Shire officers be appointed and authorised under the *Planning and Environment Act 1987*:

- Joanne Burrett – Infringement Oversight Officer - change to role
- Joanne Gleeson – Infringement Review Administration Officer – change to role

Background

Delegations involve a council giving its powers to staff, who then act on behalf of Council. When Council authorises an individual, that person has the power of the statutory position, i.e. they are not acting as delegates or on behalf of Council.

When Shire officers enter a property, make observations, or gather evidence, if the matter were to proceed to enforcement, their entry, observations and gathering of evidence is only lawful if the Shire officer is an Authorised Officer under the particular Act.

In addition, there is a requirement for some administration staff to be Authorised Officers if they have a role in the issuing or review of Planning Infringement Notices issued pursuant to the *Planning and Environment Act 1987*.

The extent of authorisation is limited by the position description and operating procedure for each team.

4.8 (Cont.)

Options for consideration

Not applicable.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Not applicable.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

Not applicable.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 NOTICES OF MOTION

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

5.1 Notice of Motion 443 (Cr O'Connor) - Increased traffic on Hopetoun Avenue, Mount Martha

Cr Despi O'Connor has given notice of her intention to move the following motion at the meeting.

1. *That the Council calls for a report outlining the impacts of increased traffic on Hopetoun Avenue, Mount Martha.*
2. *That the report considers:*
 - A. *The current impacts of increased traffic, including the cost of increased grading and dust suppression treatments.*
 - B. *All possibilities to alleviate traffic safety issues and dust suppression, including road closure, paving the road, installing traffic calming devices, implementing local traffic only signage, and/or reducing speed limits.*
 - C. *The impact of the upgrade to Nepean Highway and Forest Drive and determines the best outcome for Hopetoun Avenue.*

Background

Hopetoun Avenue serves as a crucial link between the Nepean Highway/Forest Drive intersection and Dominion Road in Mount Martha. Google Maps routes traffic through Hopetoun Avenue for travel to and from Mount Martha Village and the Nepean Highway. Despite being an unsealed road, it experiences high traffic volumes from residents and visitors, serving as one of only five exit routes from Mount Martha.

Officer Comment Prepared by	Brett Whitwam, Team Leader – Traffic and Transport
Authorised by	Mike McIntosh, Director – Planning and Infrastructure

OFFICER COMMENT

Hopetoun Avenue is an unsealed local residential road approximately 1.8 kilometres in length with a default speed limit of 50 kilometres per hour. Unsealed roads are subject to constant change, and it is important for drivers to drive to the current conditions of the road. Council receives periodic requests for additional maintenance and dust suppression. Hopetoun Avenue is currently on a five-week grading schedule as part of the Mornington Peninsula Shire's (the Shire) Grading Program.

Each year the Shire undertakes the evaluation, facilitation and funding of an annual dust suppression program initiative, targeting a specific set of unsealed roads. Hopetoun Avenue is included in the Shire funded annual Dust Suppression Program, with works carried out in December each year. This ensures there is no negative impact from spring rain and it ensures the product is still performing through to the end of the summer months.

5.1 (Cont.)

The costs of both the grading and dust suppression are captured as part of the lump sum monthly service charge in our maintenance contract.

In 2007 Council resolved its intention to declare a special charge scheme for the construction of Hopetoun Avenue, Mount Martha. Property owners were invited to make submissions to the proposal, with 49% of owners within the scheme indicating they were opposed to it. A Section 223 Submission Committee Hearing was conducted, after which Council resolved to abandon the special charge scheme proposal. Hopetoun Avenue has since been maintained as an unsealed road.

Traffic volume data for Hopetoun Avenue shown in Table 1 below demonstrates an incremental increase over a 25+ year period.

Location	Date	Volume
Property #10	March 1997	141
	September 2007	258
Between Essex Road and Norfolk Road	February 1998	90
	September 2007	129
Between Norfolk Road and Nepean Highway	February 1998	294
	January to February 2001	334
	2002	347
	September 2004	344
	May 2005	298
	September 2007	330
	September to October 2010	317
	July 2011	249
	April 2018	584

Table 1: Shire Traffic Survey data for Hopetoun Avenue

Traffic volumes have incrementally increased over the entire road network due to a number of factors including population growth and visitation to the region, increases in car ownership and general development of areas. Regardless of these increases the volume is well within the categorisation and function of a local unmade access road which services a number of properties with direct access and provides access to other residential areas within Mount Martha.

There have been no recorded crashes on Hopetoun Avenue in the last five years. With no crash record and the relatively low traffic volume, it is not considered to have significant safety concerns.

Hopetoun Avenue is a long section of local road, which provides access to many properties, if a closure was proposed this would result in significant impacts to many residents living in the street and access for emergency services in the event of an incident. Alternative routes in and out of the area would be very indirect and may also result in increased traffic volumes in other surrounding roads.

Traffic calming treatments such as raised platforms, speed cushions or slow points are not able to be installed on unsealed roads and require kerb and channel, drainage and asphalt

5.1 (Cont.)

on the approaches. If the road were proposed to be sealed traffic calming treatments could be considered and installed as part of the construction.

Hopetoun Avenue remains a high priority for construction within the Unmade Roads Construction Strategy 2006. That strategy's priority matrix lists Hopetoun Avenue within the top five roads for construction after taking into account road projects that have been completed since. Funding the construction of the road would again require a special charge scheme, and sufficient time has passed such that there is no policy impediment to attempting a new scheme. Assuming there are no changes to road construction priorities, it is anticipated that Hopetoun Avenue may be considered for a Council initiated special charge scheme.

To improve safety and access for all users the Department of Transport and Planning is installing new traffic lights at the Forest Drive and Nepean Highway intersection. As part of the upgrade Forest Drive is being widened to have dedicated right and left turn lanes. Sections of Nepean Highway, Forest Drive and Hopetoun Avenue at the intersection will be reconstructed and resurfaced. Hopetoun Avenue is proposed to have the first 80 metres from Forest Drive sealed as part of these works. This will improve the safety of the Forest Drive and Hopetoun intersection and to ensure that any gravel run off from the unsealed section does not impact the safety and operation of the Forest Drive and Nepean Highway intersection. Safety barriers are also being installed at the intersection including in Hopetoun Ave to prevent run-off road crashes.

It is not anticipated that these works to signalise Forest Drive and Nepean Highway will result in significant changes to the traffic volumes especially in Hopetoun Avenue. However, following the completion of the signals a review traffic behaviours in the area including collecting further traffic data, Shire officers will be able to assess pre and post signal construction traffic volume data for Hopetoun Avenue.

Shire officers will prepare a report for Council outlining options for future sealing of Hopetoun Avenue based on the Unmade Roads Construction Strategy 2006 and revised traffic data which will take 60 days to obtain.

Legal Implications

Nil.

Financial and Resourcing Implications

Nil.

Potential Alternative Wording

Nil.

5.2 Notice of Motion 444 (Cr Gill) - Wildlife road safety program

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

1. *That Shire officers continue with advocacy and report back to Council in May 2024, after discussion with relevant authorities, about the growing number of wildlife deaths on our major arterial roads and tollway with regard to the background information below and with possible solutions to the problem.*
2. *That Council refers the allocation of a budget sum to start a Wildlife Road Safety program for discussion as part of public budget considerations.*
3. *That the State Government be asked to reconsider their lack of a Wildlife Road Protection program as part of their biodiversity and wildlife protection programs.*

Background

The Mornington Peninsula Koala Conservation group and Save Kangaroos on the Mornington Peninsula group are concerned as to the number of incidents involving kangaroos and koalas being hit on the freeways and tollway.

They would like assistance to see if a meeting could be held with Peninsula Link operators, a private company and VicRoads.

Other topics may include discussion about the exclusion fencing, which is apparent in farming areas and on Peninsula Link.

The area near Loders Road has been a road kill hot spot along with arterial roads near Mount Martha and elsewhere.

This matter was raised some time ago when Peninsula Link was being created and wildlife crossings were put forward for consideration. Unfortunately they were not included.

Also, it seems that there is no intention to continue with the accident preventing virtual road ‘fencing’ wildlife trial or purchasing further digital wildlife warning signs which have been successfully used around the Peninsula despite very limited portable signs being available.

There has been mention of permanent digital wildlife signage but there appears to be no budget allocation as yet.

Officer Comment Prepared by	James Rose, Team Leader – Natural Systems
Authorised by	Mike McIntosh, Director – Planning & Infrastructure

Late Report – To be circulated separately

5.3 Notice of Motion 445 (Cr Gill) - Hearing of called in planning applications before Caretaker period

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

1. *That Council schedule all Town Planning application call-ins to date to be decided by Council before the election caretaker period commences and if necessary holds unscheduled public Council Meetings to ensure timely decision making on behalf of Town Planning applicants and our community, except due to extenuating planning circumstances beyond our control.*
2. *All other planning applications that Shire officers plan to bring to a public Council Meeting also be dealt with as soon as possible.*

Officer Comment Prepared by	David Simon, Manager – Development Services
Authorised by	Mike McIntosh, Director Planning & Infrastructure

Late Report – To be circulated separately

5.4 Notice of Motion 446 (Cr Gill) - Public Transparency Policy review

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

That an urgent review of Council's Public Transparency Policy due for review last December be undertaken to explore making all briefing and workshop information publicly available - where possible under the Local Government Act 2020, with the report brought to Council on 28 May 2024.

Background

[Public Transparency Policy - Mornington Peninsula Shire \(mornpen.vic.gov.au\)](http://mornpen.vic.gov.au)

Officer Comment Prepared by	Pamela Vercoe, Acting Manager - Governance
Authorised by	John Baker, Chief Executive Officer

Late Report – To be circulated separately

6 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.

7 CONFIDENTIAL ITEMS

Advice to the Public

All reports, information and recommendations contained in 'Section 7 – Confidential Items' of this Agenda have been designated by the Chief Executive Officer as confidential pursuant to section 66 (2) (a) of the *Local Government Act 2020*.

MEETING CLOSED TO THE PUBLIC

The Council may resolve that the meeting be closed to members of the public in accordance with section 66 (5) (a) of the *Local Government Act 2020* if the meeting is discussing any of the following:

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.
- (b) Security information, being information that if released is likely to endanger the security of Council property or the safety of any person.
- (c) Land use planning information, being information that if prematurely released is likely to encourage speculation in land values.
- (d) Law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.
- (e) Legal privileged information, being information to which legal professional privilege or client legal privilege applies.
- (f) Personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.
- (g) Private commercial information, being information provided by a business, commercial or financial undertaking that:
 - (i) Relates to trade secrets.
 - (ii) If released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
- (h) Confidential meeting information, being the records of meetings closed to the public under section 66 (2) (a).
- (i) Internal arbitration information, being information specified in section 145.
- (j) Councillor Conduct Panel confidential information, being information specified in section 169.
- (k) Information prescribed by the regulations to be confidential information for the purposes of this definition.
- (l) Information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*.

RECOMMENDATION

That Council considers the confidential report listed below in a meeting closed to the public in accordance with section 66 (2) (a) of the *Local Government Act 2020*:

7.1 Community Care Reform

This matter is considered to be confidential under Section 3 (1) (a) and (g) (ii) of the *Local Government Act 2020* as it contains information in relation to Council business information and (g) (ii) private commercial information, being information if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.