



**MORNINGTON
PENINSULA**
Shire

ATTACHMENT BOOK 1
Planning Scheme Amendment
C219morn

COUNCIL MEETING

TUESDAY, 6 AUGUST 2024

10:00AM

MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD

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2022

Post-exhibition Changes to Amendment C219morn



Strategic Planning
Mornington Peninsula Shire
June 2022

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1 List of Recommendations

<p>R1: No change to the RDF unless there is merit in a site-specific request. There is only one site-specific request with merit (refer to Category VIII for details).</p>
<p>R2: Revise the strategy relating to investigation areas in the proposed new local policy under Clause 16.01-1L (Housing supply - Mornington Peninsula) as follows:</p> <ul style="list-style-type: none">• Ensure development in investigation areas <i>reflects respects</i> the <i>housing change category valued character</i> of surrounding residential areas <i>and is responsive to the environmental conditions and constraints, if any, of the site.</i>
<p>R3: Revise the built-form strategy relating to external finishes and roofing materials in the proposed new local policy under Clause 15.01-5L (Neighbourhood character - Mornington Peninsula) as follows:</p> <ul style="list-style-type: none">• Ensure new development utilises external finishes and roofing materials that <i>minimise glare have low reflectivity.</i>
<p>R4: Revise the built-form policy guideline relating to reflectivity of external finishes in the proposed new local policy under Clause 15.01-5L (Neighbourhood character - Mornington Peninsula) as follows:</p> <ul style="list-style-type: none">• Limiting the reflectivity of external finishes <i>above a tree canopy line through the use of natural materials and subdued tones that complement the landscape and roofing materials to 40 per cent or less to avoid glare when viewed from adjoining buildings, land or streets.</i>
<p>R5: Revise the fencing objective in the proposed new local policy under Clause 15.01-5L (Neighbourhood character - Mornington Peninsula) as follows:</p> <ul style="list-style-type: none">• To encourage fencing <i>choices design</i> that <i>are is</i> consistent with the open streetscape quality of the Mornington Peninsula's townships and villages.
<p>R6: Revise the decision guideline relating to fencing in relevant NRZ and DDO schedules as follows:</p> <ul style="list-style-type: none">• Whether the <i>choice design</i> of fencing ...
<p>R7: No change to the areas proposed to be rezoned to the NRZ.</p>
<p>R8: Facilitate greater housing diversity and housing affordability in substantial change areas.</p>
<p>R9: Facilitate greater housing diversity and housing affordability in incremental change areas around the major activity centre of Mornington and of Hastings.</p>
<p>R10: No change to the use of numerous schedules to the NRZ, LDRZ and DDO.</p>

<p>R11: Include an additional decision guideline on the siting and setback of buildings from the side and rear boundaries of a lot in relevant NRZ schedules as follows:</p> <ul style="list-style-type: none">• <u>Whether the siting and setback of buildings from the side and rear boundaries of a lot maintain the predominant backyard character of the area.</u>
<p>R12: Include an additional decision guideline on reducing side setback from one side boundary in relevant NRZ schedules as follows:</p> <ul style="list-style-type: none">• <u>Whether a reduced side setback from one side boundary is appropriate having regard to the building rhythm within the streetscape.</u>
<p>R13: Amend the first neighbourhood character objective in the proposed NRZ12 to provide for 1-2 storey dwellings in the Bush Coastal 1 precinct.</p>
<p>R14: No change to the areas where the NCO is proposed to apply.</p>
<p>R15: Remove the permit requirement relating to the demolition or removal of a building from the proposed NCO1 and NCO2, and revise the decision guidelines to remove consideration of demolition.</p>
<p>R16: In the walls on boundaries modified requirement under the proposed NCO1 and NCO2, amend the garage wall length exemption to 6.5 metres.</p>
<p>R17: Retain the existing building height trigger where it currently applies via the DDO.</p>
<p>R18: Revise the design objective relating to the skyline and existing tree canopy line in relevant DDO schedules as follows:</p> <ul style="list-style-type: none">• To ensure new <u>the form, siting, materials and tones of</u> buildings are designed and sited to avoid being visually obtrusive against a skyline or existing tree canopy line, ...
<p>R19: Revise the decision guideline relating to the skyline and existing tree canopy line in relevant DDO schedules as follows:</p> <ul style="list-style-type: none">• Whether the design and form, siting, <u>materials and tones</u> of a buildings detracts from views to the skyline and existing tree canopy line <u>when viewed from surrounding streets and properties.</u>
<p>R20: Retain the existing 'Ellerina Road' exemption to the mandatory maximum 8-metre building height requirement where it currently applies and redefine the boundary with accurate references to existing roads.</p>
<p>R21: Retain the existing 'building alteration or extension' exemption to the mandatory maximum building height requirement where it currently applies but amend the exemption as follows:</p> <ul style="list-style-type: none">• Alteration to or extension of a lawfully existing building but only if all of the following requirements are met:<ul style="list-style-type: none">— The existing building has a building height of more than 8 metres or contains 3 or more storeys above natural ground level.- The maximum building height of the existing building is not exceeded.— The external bulk of the existing building is not significantly increased.- The footprint of the upper storey, existing at the approval date <u>of 6 May 1999</u>, is not increased by more than 10 per cent.

<p>R22: Include an additional requirement that landscaping should be low-threat in all schedules that include the landscape plan application requirements as follows:</p> <ul style="list-style-type: none">• <u>If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2. of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas.</u>
<p>R23: Include an additional decision guideline on landscaping in all schedules that include the landscape plan application requirement as follows:</p> <ul style="list-style-type: none">• <u>Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.</u>
<p>R24: Retain the average subdivision area requirement via the DDO where it currently applies in areas proposed to be rezoned to the NRZ.</p>
<p>R25: In the exemptions to subdivision requirements, reword the exemption relating to realignment as follows:</p> <ul style="list-style-type: none">• a <u>re-subdivision</u> that realigns the boundary between <u>of</u> existing lots if no new lot or provided the number of lots is not increased and no additional subdivision potential is created.
<p>R26: Delete the subdivision exemption 'land set aside as common property'.</p>
<p>R27: Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.</p>
<p>R28: Do not include transitional provisions.</p>
<p>R29: Review and assess each request on its merit.</p>

2 Mapping

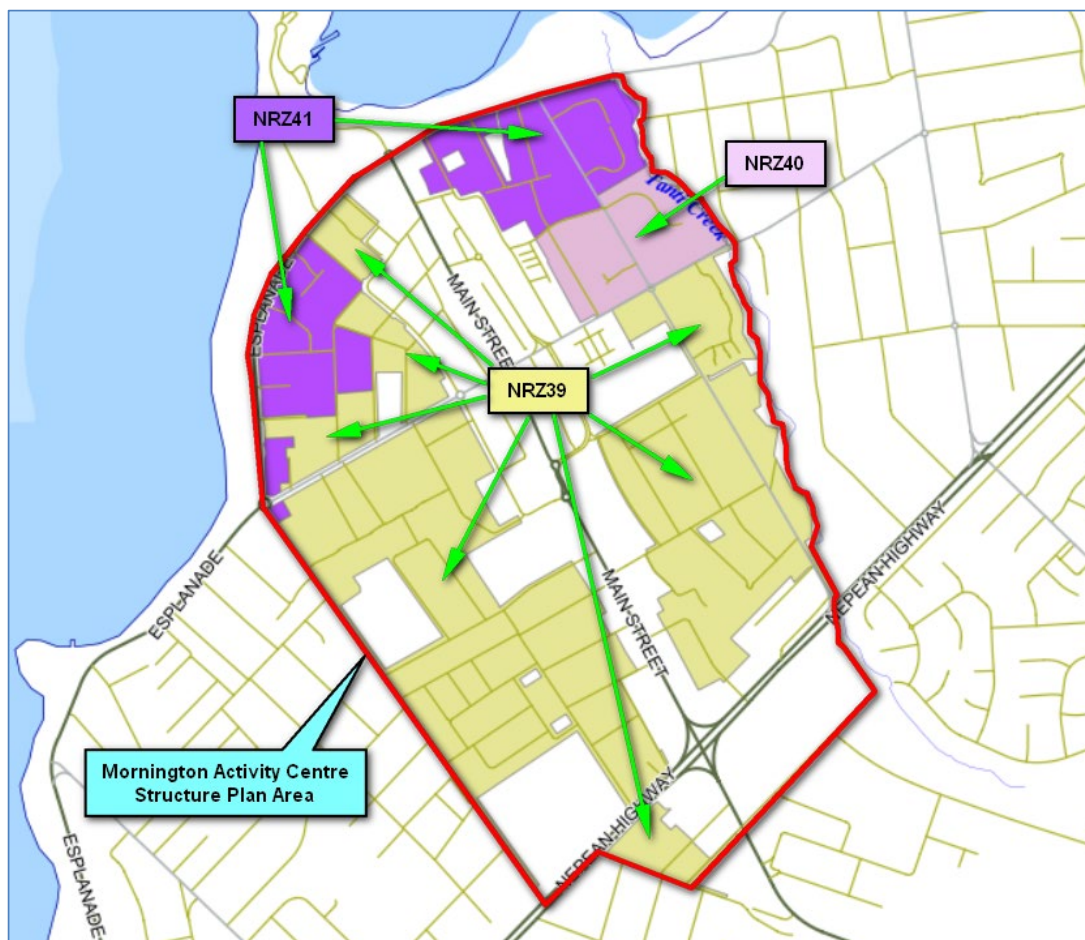
2.1 Zoning Maps

2.1.1 Mornington Activity Centre

In the Mornington Activity Centre structure plan area (Figure 1):

- Rezone the NRZ2 (Garden Residential 1) to the NRZ39 (Garden Residential Township Area)
- Rezone the NRZ6 (Garden Court 1) to the NRZ40 (Garden Court Township Area)
- Rezone the NRZ14 (Bush Coastal Contemporary 1) to the NRZ41 (Bush Coastal Contemporary Township Area)

Figure 1: New NRZ schedules in the Mornington Activity Centre structure plan area

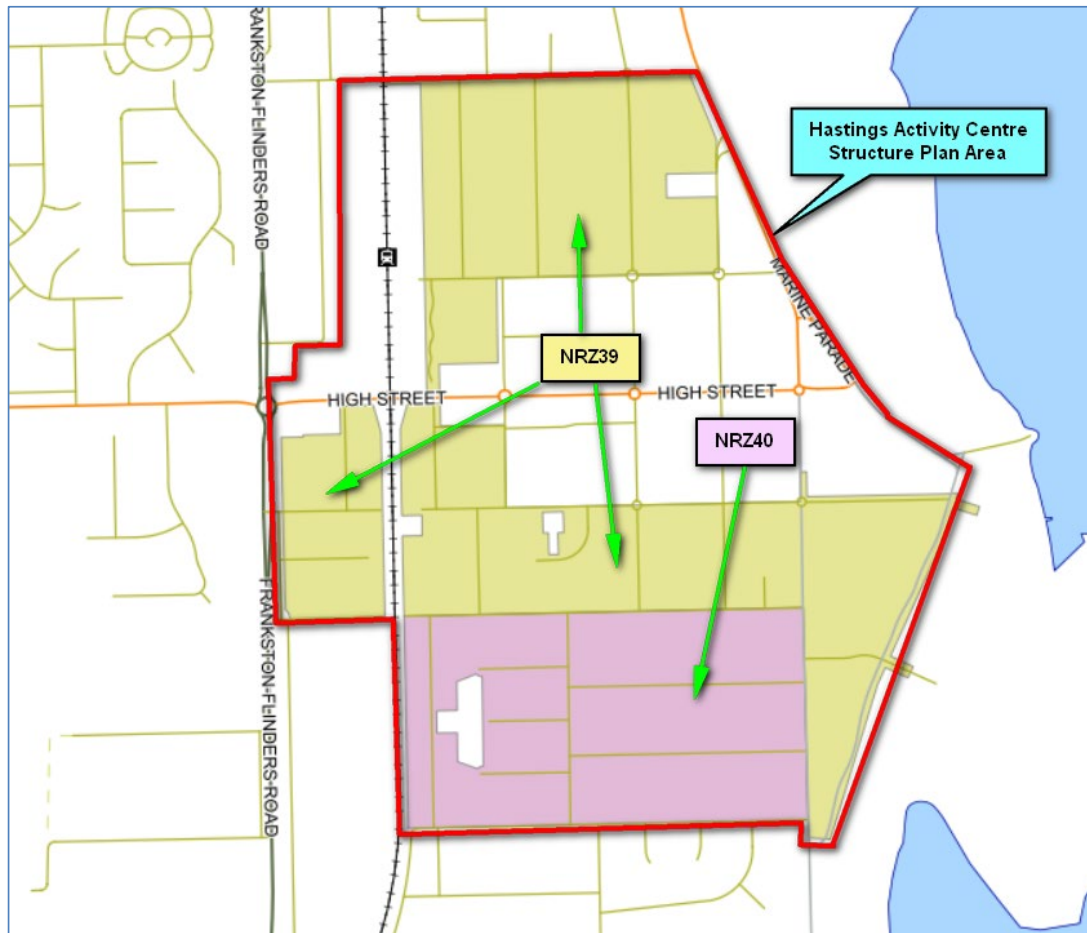


2.1.2 Hastings Activity Centre

In the Hastings Activity Centre structure plan area (Figure 2):

- Rezone the NR22 (Garden Residential 1) to the NRZ39 (Garden Residential Township Area)
- Rezone the NR6 (Garden Court 1) to the NRZ40 (Garden Court Township Area)

Figure 2: New NRZ schedules in the Hastings Activity Centre structure plan area



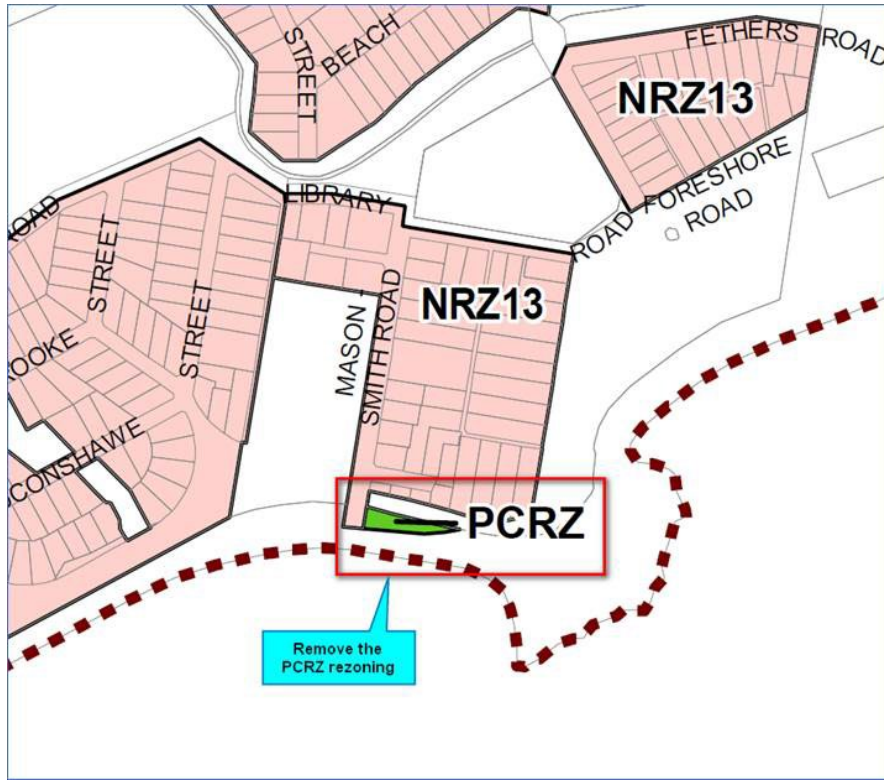
2.1.3 Rosebud Activity Centre

Rezone the GRZ2 in Rosebud to the GRZ1. (N.B. The proposed GRZ2 had been omitted from the exhibited maps due to clerical error.)

2.1.4 Public Conservation and Resource Zone (PCRZ)

Remove the proposed rezoning from the GRZ1 to the PCRZ of land that is part of the Balnarring Beach Foreshore (Figure 3) given the proposed rezoning has been undertaken via the gazetted amendment C267morn.

Figure 3: Removal of proposed rezoning to the PCRZ



2.2 DDO Deletion Maps

2.2.1 DDO1 in Rosebud and Somerville

Remove the DDO1 from the DDO Deletion maps except the GRZ areas around the Rosebud Activity Centre as shown in Figure 4 and the LDRZ area in Somerville as shown in Figure 5.

Figure 4: DDO1 areas around Rosebud Activity Centre to be deleted from the planning scheme

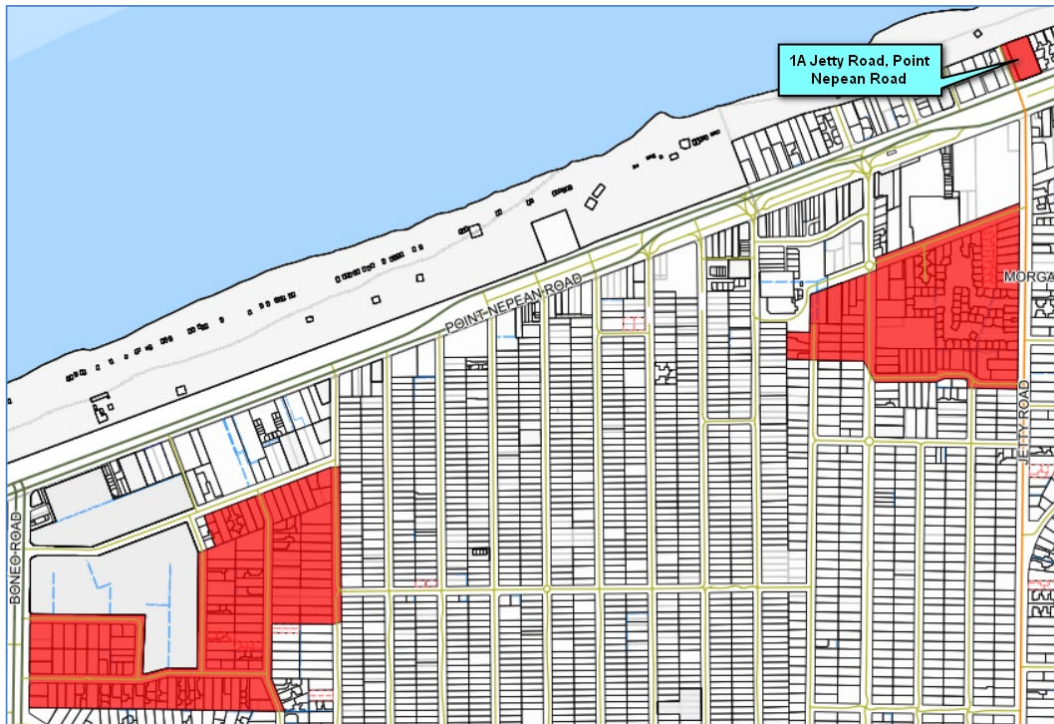
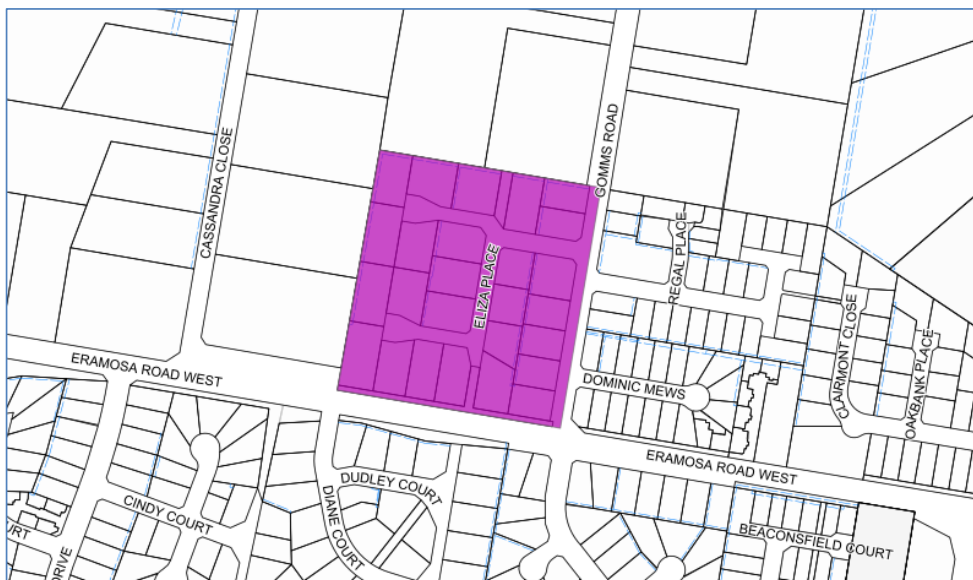


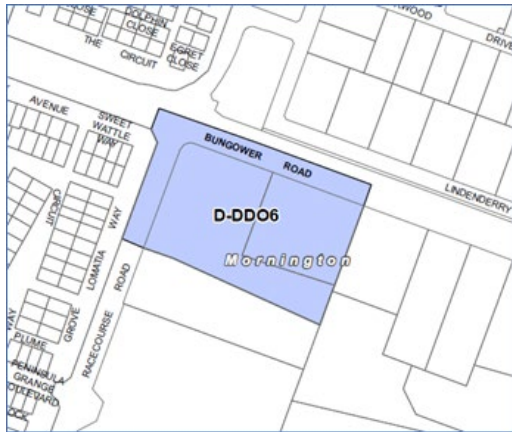
Figure 5: DDO1 area in Somerville to be deleted from the planning scheme



2.2.2 DDO6 in Mornington

Remove the property at 146-152 Bungower Road, Mornington and the adjoining roads currently affected by the DDO6 as shown in Figure 6 from the DDO Deletion maps given the overlay has already been removed via the gazetted amendment C228morn.

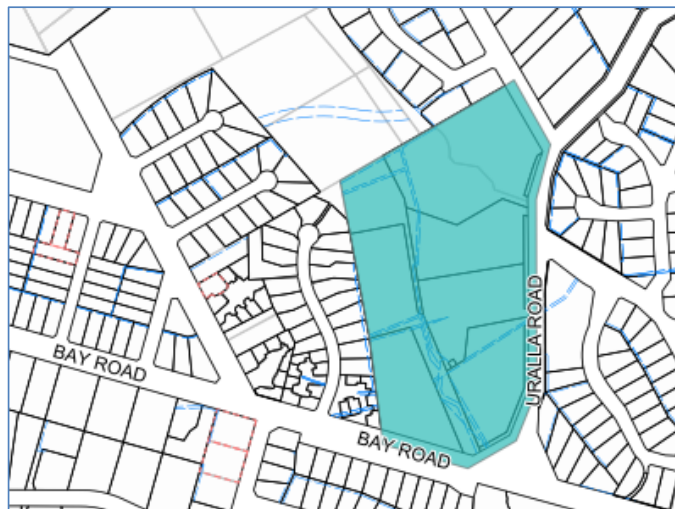
Figure 6: DDO6 removed from 146-152 Bungower Road, Mornington via C228morn



2.2.3 DDO6 in Mount Martha – clerical error

Add the LDRZ area currently affected by the DDO6 in Mount Martha as shown in Figure 7 to the DDO Deletion maps. The DDO6 is to be replaced with a new DDO schedule under C219morn.

Figure 7: Error affecting a LDRZ area currently affected by the DDO6 in Mount Martha



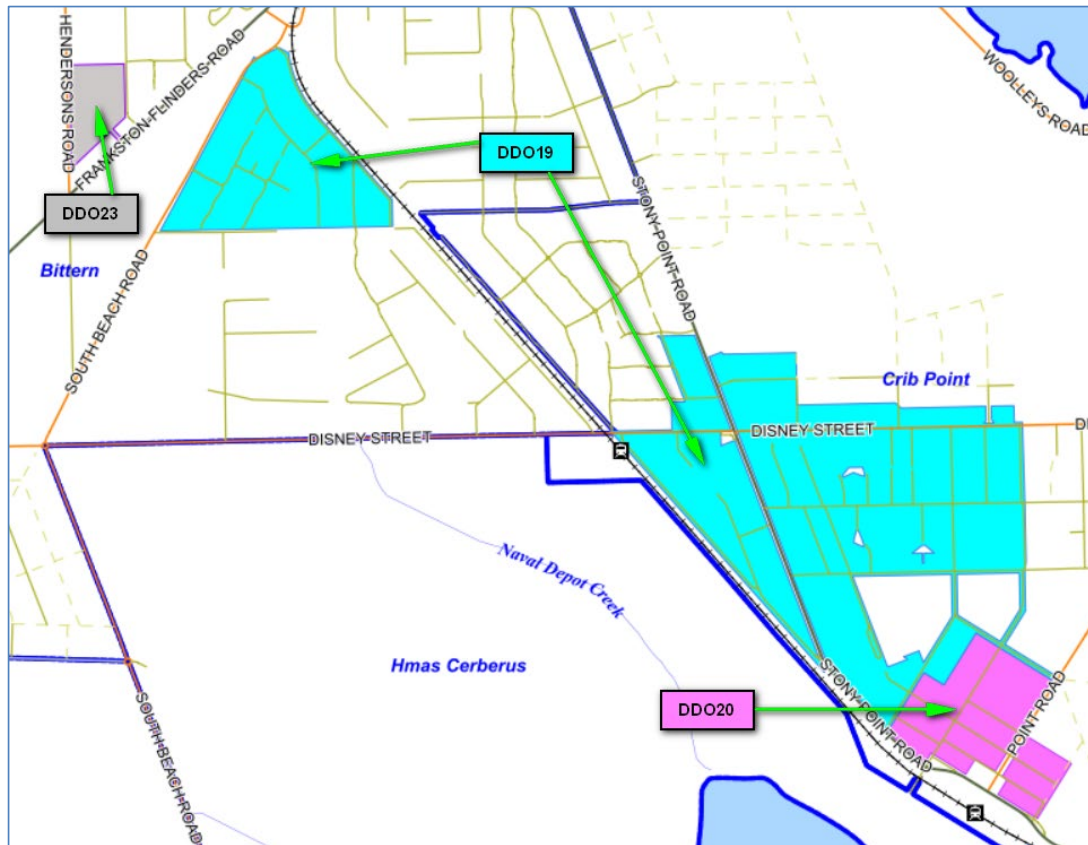
2.2.4 LDRZ areas affected by an existing DDO – clean up

Clean up the DDO Deletion maps to ensure all remaining LDRZ areas that are affected by one of Schedules 1 to 7 to the DDO but excluded from the mapping by accident, e.g. gaps around road reserves and the like, are included. Similarly, clean up the DDO maps to ensure they show the new DDO schedule that would replace the existing DDO schedule affecting these gaps.

2.2.5 DDO19, DDO20 and DDO23 in Bittern and Crib Point

Remove the DDO19, DDO20 and DDO23 from the DDO Deletion maps.

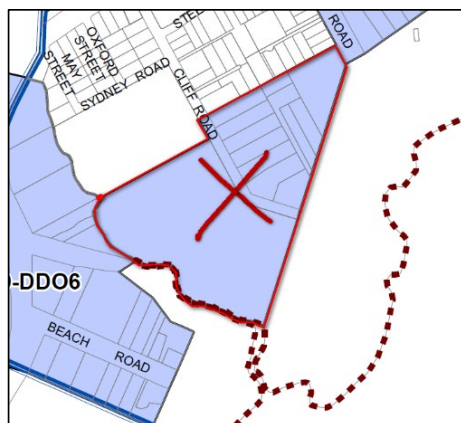
Figure 8: DDO19, DDO20 and DDO23 to be retained in the planning scheme



2.2.6 DDO3 in Shoreham – clerical error

Delete the enclosed area as shown in Figure 9 from the DDO Deletion maps. The DDO3 which currently applies to this GRZ area is to be retained in the planning scheme.

Figure 9: Error affecting GRZ land around Cliff Road, Shoreham

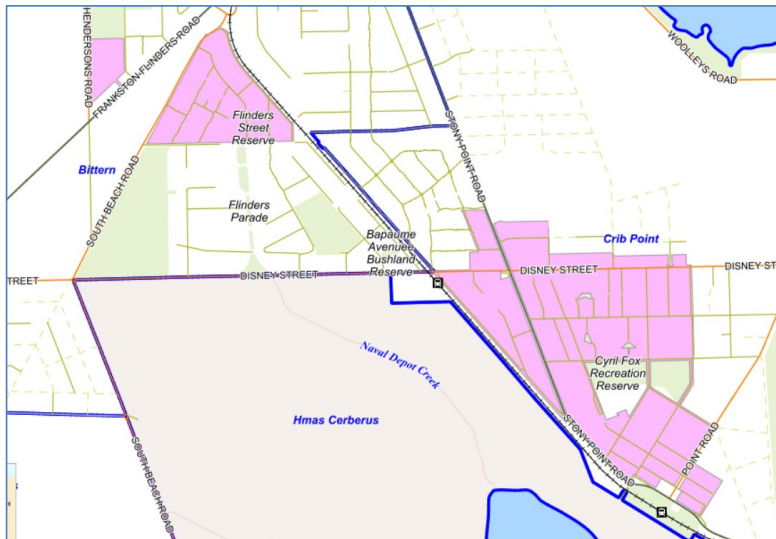


2.3 DDO Maps

2.3.1 DDO17 extended areas

Remove the DDO17 extended areas in Bittern and Crib Point as shown in Figure 10 from the DDO maps.

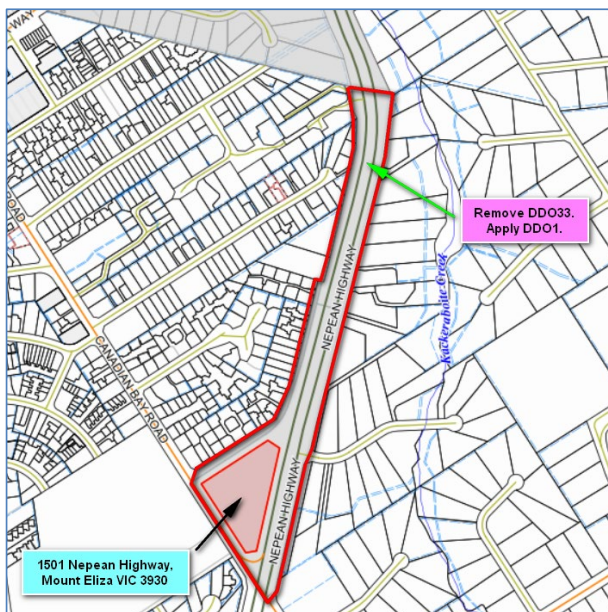
Figure 10: DDO17 extended areas in Bittern and Crib Point



2.3.2 1501 Nepean Highway, Mount Eliza

Remove the DDO33 and apply the DDO1 instead over the area enclosed by the red boundary as shown in Figure 11.

Figure 11: 1501 Nepean Highway, Mount Eliza and a section of Nepean Highway



3 Planning Policy Framework

3.1 Clause 15.01-5L Neighbourhood character – Mornington Peninsula

3.1.1 Built-form strategies

Amend the second strategy to focus on minimising glare rather than having low reflectivity.

3.1.2 Built-form policy guidelines

Amend the second policy guideline to focus on using natural materials and subdued tones that complement the landscape to limit the reflectivity of external finishes rather than using roofing materials with 40 per cent or less reflectivity.

3.1.3 Fencing objective

Rephrase 'fencing choices' to 'fencing design'.

3.1.4 Fencing policy guidelines

Amend the second policy guideline to refer to 'Transport Zone 2' rather than 'Road Zone, Category 1'.

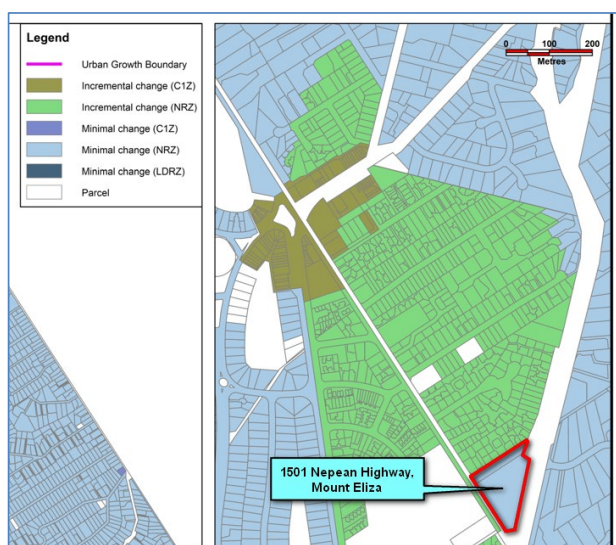
3.2 Clause 16.01-1L Housing supply – Mornington Peninsula

3.2.1 Strategies

Amend the second strategy to ensure development in investigation areas respects the valued character, rather than reflects the housing change category, of surrounding residential areas and is responsive to the environmental conditions and constraints, if any, of the site.

3.2.2 Housing change framework maps

Redesignate the site at 1501 Nepean Highway, Mount Eliza to 'Incremental change (NRZ)'.



4 GRZ Schedules

4.1 GRZ1 and GRZ2

Amend these schedules as follows:

- Delete the GRZ2.
- Rename the GRZ1 to 'Substantial Change Township Area'.
- Remove the exhibited minimum street setback, side and rear setbacks, and private open space requirements from the GRZ1.
- Amend the objectives and decision guidelines to better reflect the character and intensity of residential development anticipated for substantial change areas.

4.2 GRZ3

Amend the schedule as follows:

- Rename the schedule to 'Substantial Change Town Centre Area'.
- Remove the exhibited minimum street setback, side and rear setbacks, and private open space requirements.
- Amend the objectives and decision guidelines to better reflect the character and intensity of residential development anticipated for substantial change areas.
- Delete the 3-storey maximum building height requirement but retain the 14-metre maximum requirement given nearly all of the GRZ3 areas are currently affected by the DDO13, which supports 4 storeys where it applies in the GRZ3.

4.3 Changes across GRZ1, GRZ3 and GRZ4

Amend these schedules as follows:

- In the front fence height requirement, refer to 'Transport Zone 2' instead of 'Road Zone, Category 1'.
- In the application requirements for the Landscape Plan, include an additional requirement for a landscape plan to ensure landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
- In the decision guidelines:
 - remove 'design' where it is considered superfluous when the guideline already refers to form and siting.
 - Include an additional guideline that considers whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
 - rephrase 'choice of fencing' to 'design of fencing'.

5 NRZ Schedules

5.1 Decision guidelines regarding side and rear setbacks

5.1.1 Setback in the backyard

Include an additional decision guideline on the siting and setback of buildings from the side and rear boundaries of a lot to maintain the predominant backyard character in the area.

This only applies to schedules that specify a larger rear setback than the VPP, i.e. all proposed schedules except the NRZ19 to NRZ22, NRZ27 and NRZ37.

5.1.2 Reduced setback from one side boundary

Include an additional decision guideline on reducing side setback from one side boundary if it is appropriate while having regard to the building rhythm within the streetscape.

This only applies to schedules where a reduced setback from one side boundary is identified as a characteristic of the neighbourhood character precinct, i.e. the NRZ2, NRZ3, NRZ5, NRZ10, NRZ12, NRZ13, NRZ28 to NRZ31, NRZ33, NRZ35 and NRZ36.

5.2 NRZ12

Amend the first objective to provide for '1-2 storey dwellings' rather than 'single storey dwellings' given the neighbourhood character study has identified 1-2 storey dwellings as characteristic of this precinct.

5.3 NRZ14

Amend the side boundary setback requirement to 1 metre instead of 2 metres to rectify a clerical error.

5.4 Minimum subdivision area

Remove the minimum subdivision area requirement from the proposed NRZ23 to NRZ27 and NRZ29 to NRZ33 to retain the average subdivision area requirement in relevant DDO schedules.

5.5 NRZ39, NRZ40 and NRZ41

Remove the exhibited minimum street setback, side and rear setbacks, and private open space requirements (if any) from the NRZ2, NRZ6 and NRZ14 but only for the residential areas contained inside the structure plan area of Mornington Activity Centre (Figure 1) and of Hastings Activity Centre (Figure 2). Create three new schedules to enable associated changes to the objectives and decision guidelines to reflect the removal of these requirements. Name these new schedules as follows:

- NRZ2 → NRZ39 (Garden Residential Township Area)
- NRZ6 → NRZ40 (Garden Court Township Area)
- NRZ14 → NRZ41 (Bush Coastal Contemporary Township Area)

5.6 Changes across schedules

The changes below apply to a schedule, where applicable:

- In the front fence height requirement, refer to 'Transport Zone 2' instead of 'Road Zone, Category 1'.
- In the application requirements for the Landscape Plan, include an additional requirement for a landscape plan to ensure landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
- In the decision guidelines:
 - remove 'design' where it is considered superfluous when the guideline already refers to form and siting.
 - Include an additional guideline that considers whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
 - rephrase 'choice of fencing' to 'design of fencing'.

6 LDRZ Schedules

The changes below apply to all schedules:

- Delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.
- Include an additional subdivision exemption to provide for re-subdivision.
- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.

7 DDO Schedules

7.1 DDO1, DDO19, DDO20 and DDO23

Undelete DDO1, DDO19, DDO20 and DDO23, which were initially proposed to be deleted from the planning scheme. However, these schedules will be amended to remove unnecessary permit triggers and complexities.

7.1.1 DDO1

Amend the schedule as follows:

- Rename the schedule as 'Township Area'.
- Reduce the number of design objectives to five.
- Provide permit exemptions if all permit requirements are met but only for one dwelling on a lot.

- Remove all permit requirements except building height of 6 metres, 10-metre building setback from Nepean Highway with first 5 metres landscaped, and difference between finished and natural ground levels.
- Retain the mandatory 2-storey maximum building height requirement but remove the 10-metre maximum building height requirement.
- Retain all exemptions to the mandatory maximum building height requirement.
- Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.
- Revise the decision guidelines to achieve a better nexus with the objectives and permit requirements.

7.1.2 DDO19 and DDO20

Amend both schedules as follows:

- Remove 'Residential' from the schedule name.
- Reduce the number of objectives to five.
- Remove all permit requirements except building height of 6.5 metres and 1 storey, minimum street setback, difference between finished and natural ground levels, and access to a roof area.
- Retain the mandatory 8-metre and 2-storey maximum building height requirement.
- Retain all exemptions to the mandatory maximum building height requirement.
- Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement:
 - remove the second condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the third condition for clarity.
- Retain the mandatory maximum of one dwelling on a lot requirement.
- Retain the average subdivision area requirement and allow only land set aside as common property to be included in the calculation of the average area.
- Allow land to be transferred to Council as public open space contribution to be exempted from the subdivision requirement.
- Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption.

- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.
- Include an additional subdivision exemption for the purpose of creating a road, utility installation or other public purpose.
- Revise the decision guidelines to achieve a better nexus with the design objectives and permit requirements.
- Remove the transitional provisions.

7.1.3 DDO23

Amend the schedule as follows:

- Reduce the number of objectives to five.
- Remove all permit requirements except building height of 6.5 metres and 1 storey, minimum street setback, difference between finished and natural ground levels, and access to a roof area.
- Retain the mandatory 8-metre and 2-storey maximum building height requirement.
- Retain all exemptions to the mandatory maximum building height requirement.
- Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement, include a second condition to the exemption as follows:
 - *The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.*
- Retain the mandatory maximum of one dwelling on a lot requirement.
- Remove all subdivision provisions. (N.B. The minimum subdivision area of 900 square metres has been moved to the NRZ34.)
- Revise the decision guidelines to achieve a better nexus with the design objectives and permit requirements.

7.2 DD02, DD03, DD04, DD05

Amend these schedules as follows:

- Revise the design objective relating to the skyline and existing tree canopy line to consider the form, siting, materials and tones of buildings. This would provide clearer guidance when assessing a development that exceeds the building height trigger.
- Retain the existing building height trigger.
- Retain the existing 'Ellerina Road' exemption to the mandatory building height requirement and redefine the boundary with accurate references to existing roads. This only applies to schedules that currently provide for this exemption.
- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement; however:

- remove the first condition relating to the existing building height given it is superfluous.
- remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
- specify the approval date of 6 May 1999 in the fourth condition for clarity.
- Retain the average subdivision area requirement and allow land set aside as common property to be included in the calculation of the average area. This only applies to schedules that currently provide for average subdivision area, i.e. the DDO2 and DDO3.
- Delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.
- Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption.
- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.
- Revise the decision guidelines to achieve better nexus with the design objectives and permit requirements.

7.3 DD07

Amend the schedule as follows:

- Retain the existing building height trigger.
- Retain the average subdivision area requirement and allow land set aside as common property to be included in the calculation of the average area. This only applies to schedules that currently provide for average subdivision area.
- Delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.
- Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption.
- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.

7.4 DD06, DD011, DD032 and DD033

Amend these schedules as follows:

- Revise the design objective relating to the skyline and existing tree canopy line to consider the form, siting, materials and tones of buildings. This would provide clearer guidance when assessing a development that exceeds the building height trigger.
- Retain the existing building height trigger.

- Remove the mandatory 8-metre maximum building height requirement as it is redundant given the 'Ellerina Road' exemption is to be retained.
- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement in areas where the exemption currently applies; however:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.
- Retain the average subdivision area requirement and allow land set aside as common property to be included in the calculation of the average area. This only applies to areas where an average subdivision area requirement is currently provided, i.e. the DDO6, DDO11 and DDO32.
- Delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.
- Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption.
- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.
- Revise the decision guidelines to achieve better nexus with the design objectives and permit requirements.

7.5 DDO17

Amend the schedule as follows:

- Rename the schedule as 'Woodthorpe Estate, Capel Sound' given it would no longer apply over the extended areas in Bittern and Crib Point.
- Revise the design objective relating to the skyline and existing tree canopy line to consider the form, siting, materials and tones of buildings. This would provide clearer guidance when assessing a development that exceeds the building height trigger.
- Include additional provisions in the design objectives relating to earthworks and subdivision.
- Retain the existing building height trigger.
- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement; however:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.

- Retain the average subdivision area requirement and allow only land set aside as common property to be included in the calculation of the average area.
- Retain the subdivision exemption relating to a restructure plan or a development plan.
- Allow land to be transferred to Council as public open space contribution to be exempted from the subdivision requirement.
- Retain the subdivision exemption relating to realignment but reword the exemption to provide for re-subdivision to better reflect the original intention of this exemption.
- Retain the subdivision exemption relating to two or more dwellings that have lawfully existed but include the approval date of 6 May 1999.
- Retain the subdivision exemption relating to excising land for a road, utility installation or other public purpose.
- Revise the decision guidelines to achieve better nexus with the design objectives and permit requirements.

7.6 DDO18

Amend the schedule as follows:

- Revise the design objective relating to the skyline and existing tree canopy line to consider the form, siting, materials and tones of buildings. This would provide clearer guidance when assessing a development that exceeds the building height trigger.
- Retain the existing building height trigger.
- Remove the mandatory 8-metre maximum building height requirement as it is redundant given the 'Ellerina Road' exemption is to be retained.
- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement; however:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.
- Revise the decision guidelines to achieve better nexus with the design objectives and permit requirements.

7.7 DDO22

Amend the schedule as follows:

- In the application requirements for the Landscape Plan, include an additional requirement for a landscape plan to ensure landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
- In the decision guidelines, include an additional guideline that considers whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.

7.8 DDO24

Amend the schedule as follows:

- Revise the design objective relating to the skyline and existing tree canopy line to consider the form, siting, materials and tones of buildings. This would provide clearer guidance when assessing a development that exceeds the building height trigger.
- Retain the existing building height trigger.
- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement; however:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.
- Retain the average subdivision area requirement and allow land set aside as common property to be included in the calculation of the average area. Reword the provision to match the five precincts as per the proposed NRZ23 to NRZ27.
- Delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.
- Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption.
- Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date.
- Revise the decision guidelines to achieve better nexus with the design objectives and permit requirements.
- Add a new map that shows the five precincts as per the proposed NRZ23 to NRZ27.

7.9 DDO34 to DDO53

Amend these schedules as follows:

- Retain the existing building height trigger in the schedules where the trigger was initially proposed to be removed.
- Amend the side boundary setback requirement in the DDO46 to 1 metre instead of 2 metres to rectify a clerical error.
- In the permit requirement for a fence, refer to 'Transport Zone 2' instead of 'Road Zone, Category 1'.
- Remove the mandatory 8-metre building height requirement for areas north of the 'Ellerina Road' boundary, given the 'Ellerina Road' exemption is to be retained.

- Retain the 'building alteration or extension' exemption to the mandatory maximum building height requirement in areas where the exemption currently applies; however:
 - remove the first condition relating to the existing building height given it is superfluous.
 - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making.
 - specify the approval date of 6 May 1999 in the fourth condition for clarity.
- In the application requirements for the Landscape Plan, include an additional requirement for a landscape plan to ensure landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
- In the decision guidelines:
 - Include an additional guideline that considers whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.
 - rephrase 'choice of fencing' to 'design of fencing'.
- In the decision guidelines, rephrase 'choice of fencing' to 'design of fencing'.
- Include an additional decision guideline in the DDO40 to DDO42 about the design of fencing, which had been omitted due to clerical error.

8 NCO Schedules

The changes below apply to all schedules:

- Remove the permit requirement relating to the demolition or removal of a building.
- In the walls on boundaries standard, amend the garage wall length exemption to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres wall thickness front and rear.
- Revise the decision guidelines to remove consideration of demolition.

9 Editorial Changes

Changes to improve phrasing, or correct grammatical and spelling errors have been made, where necessary.

**Planning
Panels
Victoria**

Mornington Peninsula Planning Scheme Amendment
C219morn
Housing and Settlement Strategy Refresh 2020-36

Panel Report

Planning and Environment Act 1987

8 May 2023



How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.


Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Mornington Peninsula Planning Scheme Amendment C219morn

Housing and Settlement Strategy Refresh 2020-36

8 May 2023



Con Tsotsoros, Chair



Bill O'Neil, Member



Nicola Ward, Member

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Glossary and abbreviations

BMO	Bushfire Management Overlay
Capacity Peer Review	<i>Mornington Peninsula Planning Scheme Amendment C219morn – Capacity Analysis Peer Review</i> (SGS, January 2023)
CFA	Country Fire Authority
Council	Mornington Peninsula Shire Council
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning (now Department of Transport and Planning)
Ellerina Road area	Area north of a boundary defined by Ellerina Road West, Bruce Road, the Nepean Highway, Mornington-Flinders Road, Bittern- Dromana Road and Disney Street
GRZ	General Residential Zone
Heights Review Report	<i>Height controls on the Mornington Peninsula: A discussion paper in the context of Amendment C291</i> , February 2022 (Kinetica, 2022)
HSS	<i>Housing and Settlement Strategy: Refresh 2020-2036</i> (Mornington Peninsula Shire, 2020)
LDRZ	Low Density Residential Zone
NCSG	<i>Mornington Peninsula Neighbourhood Character Study and Guidelines</i> (Ethos Urban, 2019)
NRZ	Neighbourhood Residential Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Mornington Peninsula Planning Scheme
PUZ	Public Use Zone
Ranelagh CMP	<i>Ranelagh Conservation Management Plan</i> (Context, 2009)
SLO	Significant Landscape Overlay
VCAT	Victorian Civil and Administrative Tribunal
VPO	Vegetation Protection Overlay

Note: A number following a zone or overlay in this report is either a schedule number or map reference

Overview

Amendment summary	
The Amendment	Mornington Peninsula Planning Scheme Amendment C219morn
Common name	Housing and Settlement Strategy Refresh 2020-36
Brief description	Implements the Housing and Settlement Strategy: Refresh 2020-2036 and Neighbourhood Character Study and Guidelines by proposing to substantially change zone and overlay schedules and residential-related policies
Subject land	Land throughout the municipality: <ul style="list-style-type: none"> - in the General Residential Zone except those in concurrent amendments - in the Low Density Residential Zone - subject to Design and Development Overlay Schedules 1, 2, 3, 4, 5, 6, 7, 17, 18, 19, 20, 22, 23 and 24
Planning Authority	Mornington Peninsula Shire Council
Authorisation	19 May 2021
Exhibition	12 August to 29 October 2021
Submissions	317, as shown in Appendix A

Panel process	
The Panel	Con Tsotsoros (Chair), Bill O'Neil, Nicola Ward
Supported by	Chris Brennan, Senior Project Officer, PPV
Directions Hearing	Council Chambers, Mornington with online video, 21 November 2022
Panel Hearing	In person with online video: Council Chambers, Mornington on 14, 15, 16, 17, 20, 21, 22, 23, 28 February and 7 March 2023
Site inspections	Unaccompanied, 13 February 2023
Parties to the Hearing	See Appendix B
Citation	Mornington Peninsula PSA C219morn [2023] PPV
Date of this report	8 May 2023

Executive summary

Mornington Peninsula is located about 50 kilometres southeast of Melbourne's central city and has an area of about 720 square kilometres with over 190 kilometres of coastline. It is recognised for its natural features, attractions and significant landscapes. Most of these are located outside the Urban Growth Boundary and protected through Planning Scheme provisions such as the Significant Landscape Overlay.

Mornington Peninsula's population is expected to increase from 161,530 in 2016 to 200,360 in 2036. This will result in the need for 24,010 new dwellings (1200 dwellings each year) to accommodate the additional 38,830 people. It is currently not achieving this target. About 28,000 (or 31.3 per cent) of the municipality's total 89,116 dwellings are holiday homes or vacant.

In 2017, Mornington Peninsula Shire Council (Council) prepared its Housing and Settlement Strategy (HSS) which it sought to resolve late that year. In September 2019, the Minister for Planning asked Council to complete further work and resubmit the Amendment for reauthorisation. As part of its further work, Council:

- revised the HSS, titled Housing and Settlement Strategy: Refresh 2020-2036 (HSS) based on 2016 Census data
- engaged consultants to prepare the Neighbourhood Character Study and Guidelines (NCSG).

The HSS found that in March 2019, Mornington Peninsula had capacity for an additional 52,895 dwellings which includes 11,360 (21.5 per cent) in activity centres based on its existing zones and overlays. This means that 45.4 per cent of the municipality's capacity would have to be available and developed by 2036 to meet population demand.

The NCSG applies a clear and robust methodology but within this framework, it seeks to generally adopt existing neighbourhood character as the preferred character in most residential areas. The approach is consistent with community feedback which resisted notable change and based on the assumption that there was sufficient housing supply to accommodate Mornington Peninsula's population over the next 15 years. The unambitious NCSG did not explore how changing the neighbourhood character in certain residential areas could continue to achieve policy objectives for the Mornington Peninsula.

Mornington Peninsula Planning Scheme Amendment C219morn (the Amendment) seeks to implement the HSS and NCSG by changing zones and overlay schedules and policies affecting residential areas. This includes:

- replacing most of the General Residential Zone with the Neighbourhood Residential Zone
- retaining existing mandatory maximum building heights, most of which are less than the default zone heights
- retaining other existing provisions which restrict housing capacity including the single dwelling requirement
- applying more restrictive Clause 54 and 55 standard variations which seek, among other things, larger setbacks.

The Amendment was exhibited from 12 August to 29 October 2021, and Council received 317 submissions in response. Key issues raised in submissions include:

- the approach taken for the HSS and NCSG including change area categories and neighbourhood character objectives, the zone and overlay schedules, Vegetation Protection Overlay, building heights and investigation areas
- whether the zone and overlay schedule provisions are justified and appropriate, including the single dwelling requirement, building height permit trigger, building alteration and construction exemption, subdivision area requirement, Clauses 54 and 55 variations, Planning Scheme approval date, and transitional provisions
- specific area issues, affordable housing and bushfire risk.

Council appears to have met its obligations specified in the *Planning and Environment Act 1987* when exhibiting the Amendment.

Housing demand and supply

The Panel considers that it is unclear whether Morningson Peninsula can achieve State planning policy that seek municipalities to provide sufficient land supply for projected population growth over at least a 15 year period. Based on the data presented and tested during the Hearing, the Panel finds that Morningson Peninsula needs about 17,750 dwellings to accommodate its future population from 2021 to 2036. This would average about 1,183 dwellings each year which, based on the 2005 to 2016 dwelling construction rate, is unlikely to be met.

The uncertainty stems from the approach taken by the HSS to calculate housing supply. The Panel considers the HSS should have:

- assessed the potential impact of the provisions proposed by the Amendment rather than existing Planning Scheme provisions because the Amendment proposes more focussed neighbourhood character objectives combined with more restrictive provisions
- applied at least one, if not a few different likely take up figures, to differentiate between potential housing capacity and likely housing supply.

Based on expert evidence, if the Amendment is introduced in its exhibited form, Morningson Peninsula is likely to have capacity for less than about 26,960 dwellings, though a more exact estimate is unknown at this stage based on available information. It would need at least 66 per cent of these dwellings to be constructed from 2021 to 2036 to achieve 15 years housing supply. This uptake figure is optimistic.

Council should reassess its dwelling capacity to determine a more accurate estimated figure. It should estimate how much dwelling supply will be available to 2036 by assessing the likely take up of the estimated dwelling capacity before progressing the Amendment. If the estimated take up is less than 15 years supply, then Council should:

- review its Planning Scheme provisions to enable more housing supply, or
- explain why other planning policy objectives have been given greater weight than the Clause 11.02-1S objective which seeks at least 15 years housing supply.

Strategic justification

For the reasons set out in this report, the Panel concludes the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework, though it is unclear whether it can accommodate the projected population growth over at least 15 years, as sought by Clause 11.02-1S of the Morningson Peninsula Planning Scheme
- is generally consistent with the relevant Ministerial Directions and Practice Notes

- is founded on comprehensive strategic work, however, needs further clarification regarding housing supply to determine whether it is strategically justified
- should proceed subject to further necessary strategic work and addressing the more specific issues raised in submissions as discussed in the following chapters
- should be abandoned if further work recommended by the Panel for housing demand and supply is not satisfactorily completed.

Approach to change area categories and mapping

All land currently in General Residential Zone Schedule 1 and without an overlay should be designated for incremental change. In reaching this position, the Panel considers the Mornington Peninsula Shire cannot afford to lose any further capacity without robust evidence-based justification.

Planning Scheme overlay mapping, Bushfire Prone Areas and Melbourne Water flood mapping should not be used to determine capacity impacts without further assessment. These factors on their own, individually or collectively, should not be determinative in categorising land for minimal change without a review of each individual circumstance. Any land designated minimal change solely because it was in a Bushfire Prone Areas or subject to Melbourne Water flood mapping should be categorised as incremental change unless it is a major activity centre.

Approach to preferred neighbourhood character statements and objectives

The Panel considers all residential land in a major activity centre boundary should be categorised as substantial change. The part of The Avenues in Rosebud without a neighbourhood character designation should be extended to include all land in the Rosebud Activity Centre boundary.

Existing neighbourhood character, particularly those in incremental change areas, should not have been accepted at face value as preferred future character. There should be preferred character statements which enable some further evolution in the incremental change areas.

The misalignment between the change area designations proposed in Clause 16.01 and the preferred neighbourhood objectives in residential zone schedules is likely to result in confusion and delays during the planning permit application process. Accordingly, the Amendment documentation should be amended to reflect only be one change area category for each residential zone schedule.

Approach to applying zones and overlays

Neighbourhood Residential Zone

The Amendment's approach for applying the Neighbourhood Residential Zone responds to the NCSG which generally seeks to apply existing neighbourhood character as the preferred character in most residential areas. The zone would potentially have been applied on less land if the strategic work supporting the NCSG took a more fulsome review to determine which areas can change their neighbourhood character without compromising broader State and local planning policies. The approach is satisfactory even with its limitations, subject to adopting other Panel recommendations regarding the General Residential Zone.

General Residential Zone

The General Residential Zone should apply to all residential land in:

- the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each respective adopted structure plan

- the current General Residential Zone Schedule 1 where no overlay applies.

The zone should not apply to land outside the Hastings, Mornington and Rosebud activity centre boundaries, unless it currently applies unencumbered.

The exhibited neighbourhood character objectives proposed for General Residential Zone Schedule 1 are insufficiently justified and inappropriate because they do not reflect the development in a major activity centre or more areas with more robust character that can accommodate more growth. General Residential Zone Schedule 1 should be renamed to 'Substantial change area' to reflect its actual role.

Low Density Residential Zone

The Panel accepts that replacing the existing Low Density Residential Zone Schedule with 11 new schedules represents a policy neutral translation of minimum subdivision requirements from existing Design and Development Overlay schedule provisions and is generally supported. Council's proposed post-exhibition change to include a re-subdivision provision in each of the 11 schedules is appropriate.

A detailed review of the municipality's Low Density Residential Zone areas is warranted and should occur as a matter of priority following the adoption of the Amendment. The Panel supports the Council's Officer responses to Low Density Residential Zone submissions advanced at this time, other than its response to Penequine Enterprises Pty Ltd.

Neighbourhood Character Overlay

It is appropriate and justified to apply Neighbourhood Character Overlay Schedule 1 to the Ranelagh Estate, however there is insufficient justification to apply Neighbourhood Character Overlay Schedule 2 to The Avenues and parts of Tootgarook and Rye. There was no clear reason to demonstrate existing provisions could not achieve sought outcomes.

Vegetation Protection Overlay

The Vegetation Protection Overlay is the most suitable provision to protect vegetation where it is identified as an important feature of a character area. It is appropriate and justified to apply Vegetation Protection Overlay Schedule 1 to specific residential areas located in Dromana, Flinders, McCrae, and Mount Martha, as exhibited.

The presence of significant vegetation should not be used to determine housing capacity designation without detailed site-specific assessment.

Neighbourhood Residential Zone Schedules 12 (Bush Coastal 1), 13 (Bush Coastal 2) and 16 (Bush Coastal Contemporary 3) appropriately identify vegetation as an important element to the area's neighbourhood character.

Building heights

The exhibited maximum building heights proposed through Design and Development Overlay schedules which reflect current building heights are appropriate because they do not change anything. However, there is no clear justification to lower the maximum building height of 11 metres (3 storeys) on land currently in General Residential Zone Schedule 1 and without any overlays.

The current building height exemption for the Ellerina Road area (bounded by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana

Road, Frankston-Flinders Road and Disney Street) should be retained in Design and Development Overlay Schedules 2, 3 and 4.

Any maximum building height provision in a Design and Development Overlay schedule should be accompanied with the sloping site provision which allows an additional metre, as found in the Neighbourhood Residential Zone.

Adding a new statement in the Clause 74.01 Schedule will create transparency in Mornington Peninsula's approach to applying the Design and Development Overlay to residential land next to foreshore reserves to ensure a consistent approach to building heights and setbacks near the coast.

Investigation areas

The Panel considers the second strategy in Clause 16.01-1L should be revised to seek development in investigation areas to respect the valued character of surrounding residential areas and to respond to any environmental conditions and constraints of the site.

Further, the Mornington Residential Change Framework Plan should:

- not identify Precinct 6 as an area capable of potential substantial change because it is not appropriate to pre-empt the outcome of an investigation
- identify Precinct 3 as an investigation area, as recommended in Chapter 4.4.

Zone and overlay schedule provisions

DDO single dwelling requirement

The proposed mandatory 'single dwelling on a lot' provisions, which are largely based on the existing provisions, will likely negatively affect State and local strategic objectives to achieve more diverse housing, and will constrain housing supply.

Future work on the HSS should comprehensively review the necessity for the mandatory single dwelling on a lot provision to assess its impact on delivering housing diversity and housing supply across the residential zones, particularly in larger townships.

DDO building height permit trigger

It is appropriate and justified to:

- no longer delete Design and Development Overlay Schedules 1, 19, 20 and 23 and to apply the proposed revised permit trigger heights
- apply the revised permit trigger heights, proposed since exhibiting the Amendment, in other relevant Design and Development Overlay schedules.

The Residential Heights Review, proposed by Council to be conducted separate to the Amendment is the appropriate process to examine residential heights and height permit triggers. It should fully interrogate the appropriateness of heights, particularly those which are more restrictive than the default height specified in a residential zone.

DDO schedule alteration and construction exemption

It is appropriate and justified to exempt certain building alterations or construction from the maximum height specified in Table 2 of Design and Development Schedules 1, 2, 3, 4, 5, 6, 12, 18, 19, 20, 23, 24, 32, 33, 34, 35, 36, 39, 40, 41, 43, 44, 46, 47, 48 and 50, as proposed since the Amendment was exhibited.

Subdivision area requirement

An averaging provision for lot sizes instead of a minimum will support a site responsive subdivision that can reflect topography, environmental and landscape values. It is appropriate to:

- delete minimum subdivision area requirements in Neighbourhood Residential Zone Schedules 23 to 27 and 29 to 33
- apply average lot size subdivision area requirements in Design and Development Overlay Schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32.

Clauses 54 and 55 variations

The Clause 54 and 55 variations proposed through the General Residential Zone and Neighbourhood Residential Zone schedules are generally appropriate and justified, except for the following which were not derived from the NCSG:

- the rear boundary setback requirement in Neighbourhood Residential Zone Schedules 2 to 18
- the private open space requirement in Neighbourhood Residential Zone Schedules 2 to 8.

The rear boundary setback and private open space requirements in the other Neighbourhood Residential Zone schedules should remain where they exist in current Design and Development Overlay schedules for those areas.

It is not appropriate or justified to specify private open space requirements based on the number of bedrooms in a dwelling. There are sufficient provisions and guidance in the Planning Scheme and through those proposed through the Amendment to assess private open space based on each individual circumstance.

Planning Scheme approval date

It is appropriate to reference the Planning Scheme's approval and operation date of 6 May 1999 because it clarifies which future subdivisions or alterations and extensions are exempt from the specified provisions.

Proposed post-exhibition NRZ siting decision guidelines

There is no justification to include further decision guidelines regarding siting beyond what was exhibited. This because there are other similar existing and proposed decision guidelines that will achieve the same outcome. Further the notion of "*predominant backyard character of the area*" is not derived from the NCSG, does not appear to exist, and is unnecessary to achieve neighbourhood character objectives.

Transitional provisions

The Amendment should not include transitional provisions because the head provisions do not enable them. Irrespective, no submission persuaded the Panel that it would be unfair or inappropriate to not have transitional provisions. Future permit assessments should be based on the Planning Scheme's policies and provisions of the day rather than those found to no longer be appropriate.

Neighbourhood Residential Zone and Neighbourhood Character Overlay

The neighbourhood character objective for predominantly single storey dwellings in Neighbourhood Residential Zone Schedules 10 and 11 is unsupported by any strategic work and

inappropriate because it does not reflect actual circumstances. It should be deleted because 1 to 2 storey built form is reflected in the purpose of the parent zone.

The Neighbourhood Character Overlay Schedule 1 provisions are generally appropriate and justified subject to not requiring a permit to demolish or remove a building and to revising the garage wall length exemption to 6.5 metres.

The Neighbourhood Character Overlay Schedule 2 provisions are not justified for the intended land so should not be introduced into the Planning Scheme.

Specific area issues

Having considered submissions and evidence for individual properties in specific areas, the Panel maintains its conclusions in Chapter 4 regarding the approach to applying zones and overlays unless specified otherwise below.

Capel Sound, Dromana and Hastings

Planning provisions proposed for 4 Percival Street, Capel Sound should be applied as exhibited. The minimum 700-square-metre lot size for subdivision in Neighbourhood Residential Zone Schedule 29 should be replaced with 'None specified'.

The proposed provisions are appropriate and justified for 18-20 Harrison Street, 103-113, 105 and 299-301 Point Nepean Road and 8 Joan Avenue in Dromana.

As discussed in Chapter 3.3, the HSS approach to categorising change areas may be an overreach to guidance in Planning Practice Note 90. The practice note uses land subject to bushfire risk as an example of minimal change areas.

Mornington, Mount Eliza and Portsea

The urban block in Mornington bounded by Yuilles Road, Moomba Street, Nepean Highway and Tyabb Road should remain in the existing General Residential Zone Schedule 1 because the proposed Neighbourhood Residential Zone Schedule 2 provisions are unsuitable.

1501 Nepean Highway, Mount Eliza should be recategorised as an incremental change area to reflect its ability to accommodate a greater level of built form.

The planning provisions proposed for 183 and 185-217 Hotham Road, Portsea are appropriate and justified. These properties would benefit from a strategic approach to future subdivision but this would not be needed before rezoning them to the Neighbourhood Residential Zone.

Rosebud, Rye, Safety Beach and Sorrento

Planning provisions proposed for 141-143 and 231-233 Eastbourne Road, 97-99 Ninth Avenue and 870 Point Nepean Road in Rosebud should be applied as exhibited.

1475 Point Nepean Road, Rosebud should remain in General Residential Zone Schedule 1 because there is insufficient justification to categorise it to 'minimal change' and to rezone it to Neighbourhood Residential Zone Schedule 2.

There should be no further changes to planning provisions for 141-143 and 231-233 Eastbourne Road, 97-99 Ninth Avenue, and 870 and 1475 Point Nepean Road in Rye beyond what is proposed through the Amendment and the Panel's recommendations.

Neighbourhood Residential Zone Schedule 3 should apply to 59 Dromana Parade, Safety Beach, even though it is unclear why the maximum building height has been reduced from 10 to 9 metres.

The provisions proposed for 1 Hotham Road; 12 Hotham Road and 856 and 858 Melbourne Road; 31 Ivanhoe Street; and 149-151 Ocean Beach Road in Sorrento are appropriate and justified.

Other issues

Affordable housing

The Amendment is unlikely to assist with, or negatively affect, housing affordability in the Mornington Peninsula Shire.

Bushfire risk

The Amendment and Council's post-exhibition changes to zone and overlay schedules to address landscaping provision, appropriately respond to and address bushfire risk.

The bushfire application requirement and decision guideline proposed for General Residential Zone Schedules 3 and 4 since exhibition should only apply to land in a Bushfire Prone Area or subject to the Bushfire Management Overlay. The Country Fire Authority supports Council's proposed post-exhibition changes.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Mornington Peninsula Planning Scheme Amendment C219morn be adopted as exhibited subject to the following:

PRELIMINARY WORK

1. **Before implementing other recommendations, Mornington Peninsula Shire Council should:**
 - a) **demonstrate it can provide at least 15 years housing supply by determining the likely take-up of capacity enabled by the provisions proposed by Amendment C219morn, or**
 - b) **where 15 years supply cannot be met, explain why other planning policy objectives have been given greater weight than the Clause 11.02-1S objective which seeks at least 15 years of housing supply**
 - c) **review the neighbourhood character objectives and decision guidelines in all Neighbourhood Residential Zone schedules to improve their clarity and remove repetition**
 - d) **review Design and Development Overlay schedules to:**
 - **avoid or define unclear phrases or words such as 'formal garden setting' and 'hillside character'**
 - **improve clarity and remove repetition in the design objectives (Clause 1.0).**
 - e) **confirm the proposed post-exhibition inclusion of the new application requirement and decision guideline relating to landscaping is only applied to zone and overlay schedules affecting land that is either in a Bushfire Prone Area or subject to the Bushfire Management Overlay.**

BUSHFIRE

2. **Subject to Mornington Peninsula Shire Council confirming which schedules apply to land in a Bushfire Prone Area or Bushfire Management Overlay, General Residential Zone Schedule 1, Neighbourhood Residential Zone Schedules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,**

- 36, 37, 39 and 40, and Design and Development Overlay Schedules 22, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 should be revised to:
- a) in 'Application requirements', delete *"If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged"*
 - b) in 'Application requirements', add *"If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in Clause 2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas."*
 - c) in 'Decision guidelines', add *"Whether the landscaping is of a low-threat bushfire risk if the land is in a bushfire prone area."*

CLAUSES 15 AND 16

3. Amend Clause 16.01-1L to:
 - a) revise maps to:
 - reclassify land identified as minimal change solely because of an existing overlay, Bushfire Prone Area or Melbourne Water flood mapping to incremental change
 - reclassify all residential land in a major activity centre boundary to substantial change
 - reclassify 1501 Nepean Highway, Mount Eliza for incremental change
 - b) identify land in Precinct 3 of the 'Mornington Residential Change Framework Plan – housing change framework map' as an investigation area
 - c) revise the second strategy to *"ensure development in investigation areas respects the valued character of surrounding residential areas and is responsive to any environmental conditions and constraints, if any, of the site"*.

GENERAL RESIDENTIAL ZONE

4. Retain General Residential Zone Schedule 1, including its 11 metre (3 storey) height to:
 - a) land where this zone currently applies and has no overlay, including properties along Yuilles Road, Mornington
 - b) all residential land within the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each adopted structure plan.
5. Amend General Residential Zone Schedule 1 to:
 - a) revise the title from 'Garden residential township area' to 'Substantial change area'
 - b) delete the neighbourhood character objectives and replace them with 'None specified'.
6. Amend General Residential Zone Schedules 1, 2 and 3 to delete requirements in Clause 4.0 for minimum street setback, side and rear setbacks and private open space and replace them with 'None specified'.

NEIGHBOURHOOD RESIDENTIAL ZONE

7. Replicate the Neighbourhood Residential Zone Schedule 37 into a new Neighbourhood Residential Zone schedule and apply the neighbourhood character objectives and relevant decision guidelines from Neighbourhood Character Overlay Schedule 2 and apply it to land outside the Rosebud Activity Centre boundary intended for Neighbourhood Character Overlay Schedule 2.
8. Amend Neighbourhood Residential Zone schedules to:
 - a) delete the rear boundary setback requirement in Clause 4.0 (Standards A10 and B17) from Schedules 2 to 18
 - b) delete the private open space requirement in Clause 4.0 (Standards A17 and B28) and replace it with 'None specified' in Schedules 2, 3, 4, 5, 6, 7, 8, 35 and 36
 - c) delete the minimum subdivision area in Clause 2.0 and replace with 'None specified' in Schedules 23 to 27 and 29 to 33
 - d) delete any reference to 'predominantly single storey' in the neighbourhood character objectives of Schedules 10 and 11
 - e) replace the minimum subdivision area of 700 square metres with 'None specified' in Schedule 29.
9. Amend Neighbourhood Residential Zone schedules to:
 - a) delete reference to 1-2 storeys in the neighbourhood character objectives because this replicates the purpose of the head provision
 - b) revise relevant neighbourhood character objectives to refer to "*the prominence of car parking*" (rather than dominance) and "*car parking structures and access*"
 - c) delete in Clause 5.0 any reference to "*must not contain more than*" when referencing maximum building height
 - d) delete in Clause 6.0 (Application requirements) any reference to:

If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged.
 - e) reference Transport Zone 2 rather than Road Zone Category 1.

LOW DENSITY RESIDENTIAL ZONE

10. Amend Low Density Residential Zone Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 to:
 - a) revise the relevant exemption to reference 6 May 1999 as follows:
 - *two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling*
 - b) delete "*land set aside as common property*" under 'This does not apply to'
 - c) add as a new point "*a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created*" under 'This does not apply to'.

NEIGHBOURHOOD CHARACTER OVERLAY

11. Delete Neighbourhood Character Overlay Schedule 2 and do not apply it to The Avenues and parts of Tootgarook and Rye.

12. Amend Neighbourhood Character Overlay Schedule 1 to:
- a) revise relevant neighbourhood character objectives to refer to *“the prominence of car parking”* (rather than dominance) and *“car parking structures and access”*
 - b) revise the decision guidelines to:
 - delete any reference to *“area contained in this schedule”*
 - delete the requirement for a landscape plan
 - append to the fourth guideline *“that reflect the surrounding native landscape”*.
 - c) delete the permit requirement to demolish or remove a building and delete ‘demolished’ from the second decision guideline
 - d) in the Clause 4.0 walls on boundaries standard, revise the garage wall length exemption to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres front and rear wall thickness
 - e) delete the private open space requirement in Clause 4.0 (Standards A17 and B28) and replace it with ‘None specified’.

DESIGN AND DEVELOPMENT OVERLAY SCHEDULES

13. Retain Design and Development Overlay Schedules 1, 19, 20 and 23.
14. Amend Design and Development Overlay Schedules 2, 3, 4, 6, 7, 19, 20 and 24 to reinstate the current exemptions to a single dwelling on a lot requirement in ‘Number of dwellings’ in Table 2.
15. Amend Design and Development Overlay schedules to:
- a) revise the permit trigger threshold so that a permit is not required for a building that does not exceed a height of:
 - 5 metres (Schedules 5, 44, 48)
 - 6 metres (Schedules 1, 2, 3, 11, 18, 32, 33, 34, 35, 36, 39, 40, 43, 46, 47, 50)
 - 8 metres (Schedule 7)
 - 5 metres in specified area and 6 metres elsewhere (Schedules 4, 41)
 - 6 metres in specified areas and 8 metres elsewhere (Schedule 6)
 - 6.5 metres and no more than 1 storey (Schedules 19, 20, 23)
 - 7 metres and no more than 1 storey (Schedule 17)
 - 8 metres, or 9 metres on a slope of 2.5 per cent (Schedule 24)
 - b) rephrase design guidelines which are expressed as a requirement into an assessment guideline
 - c) delete a requirement for a section 173 agreement on land in multiple ownership
 - d) revise wording in Clause 2.0 to be consistent with the order of Clauses 54 and 55
 - e) revise the fencing decision guideline in Schedule 38 to *“Whether the design of fencing maintains the sense of openness to the streetscape”*
 - f) add, in schedules which specify maximum building heights:

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.
16. Amend Design and Development Overlay schedules to:

- a) revise Table 2 in Schedules 1, 2, 3, 4, 5, 6, 12, 18, 19, 20, 23, 24, 32, 33, 34, 35, 36, 39, 40, 41, 43, 44, 46, 47, 48 and 50 to introduce the following building height requirement exemptions:
- alteration to or extension of a lawfully existing building but only if all of the following requirements are met:
 - The maximum building height of the existing building is not exceeded.
 - The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent
- b) revise Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 32 and 33 under 'This does not apply to' in Clause 3.0 (Subdivision) to:
- delete "*land set aside as common property*"
 - add as a new point "*a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created*"
- c) apply the subdivision area in Clause 3.0 (Subdivision) of Schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32 as an average rather than a minimum, through the following provision:
- The average area of the lots created by the subdivision must be at least [number] metres. Land set aside as common property may be included in the calculation of the average area of the lots created by the subdivision*
- d) retain the current building height exemption for the Ellerina Road area (bounded by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street) in Schedules 2, 3 and 4
- e) revise the relevant requirement in Clause 3.0 (Subdivision) in Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 20, 24, 32, 33 to reference 6 May 1999 as follows:
- *two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling*
- f) revise the relevant requirement in Table 2 of Schedules 1, 2, 4, 5, 6, 17, 18, 19, 20, 23, 24, 32, 33, 35, 36, 39, 40, 41, 43, 44, 46, 48 and 50 to reference 6 May 1999 as:
- *The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.*

CLAUSE 74.01

17. Amend the Clause 74.01 Schedule:

- a) add "*The Design and Development Overlay to residential land adjacent to foreshore reserves to ensure a consistent approach to building heights and setbacks on land near the coast.*"
- b) delete "Apply the" from the beginning of each statement.

Further recommendations

The Panel makes the following further recommendations:

- 18. After adopting the Amendment, and separate to the Amendment, Council should review the Low Density Residential Zone areas as a matter of priority, to assess and identify areas that could accommodate an increase in development density without materially impacting amenity or the environment.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to implement the *Housing and Settlement Strategy: Refresh 2020-2036* (HSS) and *Neighbourhood Character Study and Guidelines* (NCSG) by changing zones and overlay schedules and policies affecting the Shire's residential areas.

Specifically, the Amendment proposes to:

Provisions

Policy

- insert a new strategic direction on housing in Clause 02.03-6
- insert a new local policy on neighbourhood character in Clause 15.01-5L, and a new local policy on housing supply in Clause 16.01-1L

Zone schedules

- delete the Low Density Residential Zone (LDRZ) Schedule
- insert new LDRZ Schedules 1 to 11 with requirements on minimum subdivision area and outbuildings
- amend General Residential Zone (GRZ) Schedules 1 and 3 to:
 - include neighbourhood character objectives
 - vary Clauses 54 and 55 requirements
 - require a landscape plan with the permit application
 - include decision guidelines
- insert new GRZ Schedules 2 and 4 which:
 - include neighbourhood character objectives
 - vary Clauses 54 and 55
 - require a landscape plan with the permit application
 - include decision guidelines
- insert new Neighbourhood Residential Zone (NRZ) Schedules 2 to 36 which:
 - include neighbourhood character objectives
 - vary Clauses 54 and 55 requirements
 - require a landscape plan with the permit application
 - include decision guidelines
- insert new NRZ Schedule 37 which:
 - will apply to special neighbourhood character areas
 - includes a neighbourhood character objective about vegetation around dwellings
 - requires a landscape plan with the permit application
 - includes decision guidelines

Overlay schedules

- delete Design and Development Overlay (DDO) Schedules 1, 19, 20 and 23 and move translatable character provisions and the minimum subdivision area in DDO Schedules 19, 20 and 23 to the relevant NRZ schedule
- amend DDO Schedules 2 to 7, 11, 17, 18 and 24 to:

- remove unnecessary permit triggers, redundant exemptions, and superfluous provisions and terminologies
- simplify complex requirements
- move translatable character provisions in Schedules 2, 17, 18 and 24 to the NRZ schedule
- move the minimum subdivision area from Schedules 17, 18, and 24 to the NRZ schedule
- minimise the use of sub-precincts so that each schedule contains the same permit triggers, provisions, and other requirements for the area to which it applies
- amend DDO Schedule 22 to include provisions on outbuildings and move minimum subdivision area to the LDRZ
- apply a new DDO Schedule 32 to 3 Clarkes Avenue, 4 and 6 Morrisons Avenue, and 113 to 163 Osborne Drive in Mount Martha to cater for a different minimum subdivision area to the amended DDO2
- apply a new DDO Schedule 33 to a precinct in Mount Eliza west of Nepean Highway to cater for a different minimum subdivision area to the amended DDO4
- apply new DDO Schedules 34 to 53 with neighbourhood character provisions to the LDRZ land except to:
 - land in the Kinfauns Estate in Bittern
 - land affected by DDO22
 - land affected by concurrent amendment C228morn such as 146-152 Bungower Road, Mornington
- introduce the Neighbourhood Character Overlay into the Planning Scheme
- apply new Neighbourhood Character Overlay Schedules 1 and 2 respectively to:
 - the Ranelagh Estate in Mount Eliza
 - The Avenues in Rosebud and parts of Tootgarook and Rye

Other provisions

- make associated changes to the Clause 72.03 Schedule, Clause 72.08 Schedule and Clause 74.01 Schedule

Planning Scheme maps

Zones

- rezone LDRZ land to one of the 11 proposed LDRZ schedules
- rezone part of the GRZ1 land in proximity to Rosebud activity centre designated for substantial change to the proposed GRZ2
- rezone the land at 866 Point Nepean Road, Rosebud from the GRZ3 to the proposed GRZ4
- rezone GRZ1 land designated for minimal or incremental change to one of the 36 proposed NRZ schedules such as NRZ2 to NRZ37
- correct zoning anomalies at:
 - four locations by rezoning them from the GRZ1 to either the Public Park and Recreation Zone or Public Conservation and Resource Zone
 - 6, 8, 10, 12, 14, 16 and 18 Hull Road in Mount Martha by rezoning the LDRZ part of the land to the NRZ15

Overlays

- delete DDO1, DDO19, DDO20 and DDO23
- apply DDO17 to the areas currently affected by DDO19, DDO20 and DDO23
- delete the existing DDO2 from, and apply the proposed DDO32 to, 3 Clarkes Avenue, 4 and 6 Morrisons Avenue, and 113 to 163 Osborne Drive in Mount Martha
- delete the existing DDO4 from, and apply the proposed DDO33 to, a precinct in Mount Eliza west of Nepean Highway
- delete existing DDO schedules from, and apply the proposed DDO34 to DDO53 to, land in the LDRZ
- apply the proposed Neighbourhood Character Overlay Schedule 1 to the Ranelagh Estate in Mount Eliza
- apply the proposed Neighbourhood Character Overlay Schedule 2 to The Avenues in Rosebud and parts of Tootgarook and Rye
- apply the Vegetation Protection Overlay Schedule 1 (VPO1) to four residential areas respectively in Dromana, Flinders, McCrae, and Mount Martha.

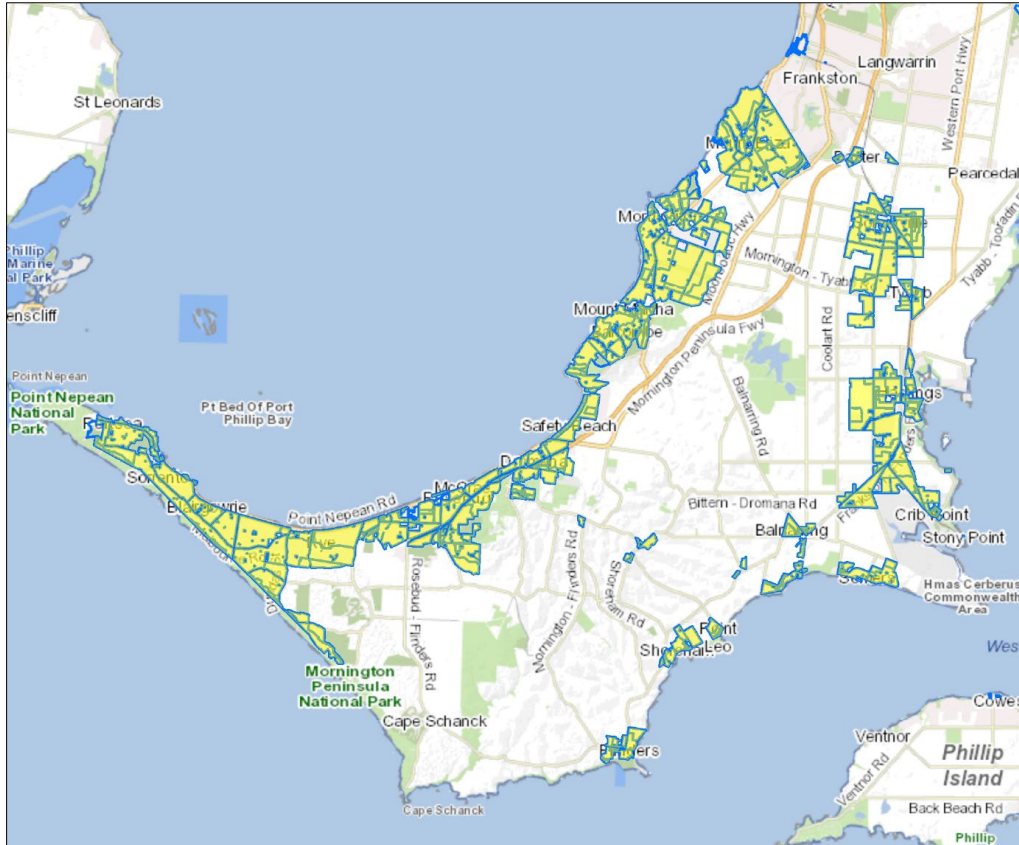
Appendix E explains key changes to the Amendment since it was exhibited.

(ii) The subject land

The Amendment applies to land throughout the municipality, as shown in Figure 1:

- in the General Residential Zone except those in concurrent amendments
- in the Low Density Residential Zone
- subject to Design and Development Overlay Schedules 1, 2, 3, 4, 5, 6, 7, 11, 17, 18, 19, 20, 22, 23 and 24.

Figure 1 Subject land



Source: VicPlan

1.2 Background

Table 1 Chronology of events

Date	Event
4 December 2017	Council resolved to adopt the HSS
5 February 2018	Council requested the Minister for Planning authorise it to prepare and exhibit an amendment to implement the HSS
2019	
18 September	Minister for Planning asked Council to complete further work and resubmit the amendment for reauthorisation
14 October	Council resolved to: <ul style="list-style-type: none"> - adopt the NCSG and its accompanying documents - prepare a planning scheme amendment which incorporates the HSS and NCSG
2020	
20 July	Council resolved to:

- adopt the HSS and a revised version of the Triple A Housing Plan 2020-2030
- request the Minister for Planning authorise the Amendment
- exhibition the Amendment after receiving authorisation from the Minister for Planning

2021

19 May Minister for Planning authorised the Amendment

12 August Amendment exhibition commenced

29 October Amendment exhibition ended

2022

18 July 2022 Council resolved the following before resolving to refer submissions to the Amendment to an independent planning panel:

- present case studies to Councillors that highlight the significant changes to both the planning and building process and permit controls
- seek feedback from internal and external stakeholders regarding the Amendment's effect on housing affordability on the Mornington Peninsula
- convene an in-person and recorded public forum to canvass community sentiment more widely
- prepare a 'Frequently Asked Questions' document to be accessed through Council's website

2023

January Council engaged SGS to peer review its capacity analysis

1.3 Procedural matters

(i) Parties no longer appearing

Since requesting to be heard, the following parties subsequently notified the Panel they no longer sought to appear at the Hearing:

- Andre Ferretto
- David Crowder
- Jiamei Xu
- John Riley and Robyn Croke
- Owners of 51 Field Street, Rye
- Peninsula Planning Consultants Pty Ltd
- Phillip Edwards.

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be

selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Through machinery of Victorian government change, the Planning Group within the Department of Environmental, Land, Water and Planning (DELWP) was incorporated into the new Department of Transport and Planning on 1 January 2023. This report refers to both department names.

1.5 Limitations

Council identified the following issues raised in submissions which it considers are outside the scope of the Amendment or beyond its power:

- amenity:
 - quarantine home-based businesses that generate noise
 - partying, noise, loud music, drunk people, swearing, and people sleeping in tents and cars
 - loss of views to Port Phillip Bay
- compliance:
 - improve compliance checking after development is completed
 - check landscaping to ensure they meet the approved landscape plan requirements
 - impact of non-compliance on vegetation, environment and neighbourhood character
 - establish a proactive and competent building and vegetation compliance team
- housing:
 - prohibit or require a permit for short term rentals through the NRZ
 - increase supply by implementing a vacant residential land tax
 - development levies and charges significantly affect housing affordability
 - fast track and apply some exemptions to National Disability Insurance Scheme housing and direct such housing near services
 - provide land for at-risk men, women and children
 - opportunity for young families and single parents to 'rent to buy'
 - explore alternative, creative approaches to providing housing
 - enable large enough properties to accommodate 'tiny houses on wheels'
 - Council should work with developers on listed hectare plus properties to plan preferred housing modules
 - housing policy is needed to address issues in Capel Sound
 - do not apply 'hard' urban growth boundaries around settlement areas because they will increase housing prices
 - Council should acquire golf courses for housing interspersed with nature reserves
- infrastructure:
 - whether sewerage and stormwater infrastructure will be upgraded to prevent future flash flooding in higher density residential areas
 - Council should lobby state government to duplicate train tracks between Tyabb and Hastings
 - local hospital is run down, understaff and has long waiting times
 - insufficient capacity at schools, sport venues struggle and medical facilities to support population increase
 - footpaths and lighting at a retirement village are ageing and should be maintained

- municipality:
 - realign the boundary to include all of Pearcedale in the municipality
 - rename to 'Mornington Peninsula Rural Shire Council'
- planning and building processes:
 - improve and streamline permit application process
 - assist Council planning staff with professional development
 - increased building applications through private building surveyors would lead to further inappropriate development
 - need to understand impact of additional demand on council resources
- public realm:
 - more trees and green areas along the foreshore
 - more street shade trees and other urban cooling vegetation
 - overcrowding and littering during holidays and summer period and at Mount Martha
 - illegal rubbish dumping in rural and semi-rural areas
 - remove the 'clothing optional' permission at the northern section of Sunnyside Beach
- traffic, transport and parking:
 - properties with large apartments to have reduced access to Rosebud Parade
 - long-term vehicle plan for Rye
 - more parking for beach users and at Rosebud Plaza
 - transport in Capel Sound for those who do not own a car
 - roads are congested
 - whether major roads will be improved to manage increase usage
- other matters:
 - conflict between retaining significant existing vegetation and the Bushfire Management Overlay
 - green wedge land and golf courses inside the Urban Growth Boundary
 - prepare a Planning Scheme amendment which reinstates overall settlement policies lost through Amendment C279 before considering the permit application for a retirement complex in Mount Eliza
 - amend an existing covenant to a specific property title
 - prohibit commercial uses such as accommodation, hotel and motel in Flinders through DDO2 where NRZ13 is proposed
 - impact on labour supply
 - loss of property value.

Having read all submissions, the Panel agrees these issues are either beyond the scope of the Amendment or beyond Council's power. They are not discussed further in this Report.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix D highlights key imperatives of relevant provisions and policies.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 2.03-1 (Settlement)
Planning Policy Framework	- Clause 11.02-1S (Supply of urban land) - Clause 11.03-5S (Distinctive areas and landscapes) - Clauses 15.01-1S (Urban design), 15.01-2S (Building design) - Clauses 15.01-6S (Design for rural areas), 15.01-5S (Neighbourhood character) - Clauses 16.01-1S (Integrated housing), 16.01-2S (Location of residential development), 16.01-3S (Housing diversity)
Other planning strategies and policies	State: - Plan Melbourne 2017-2050 - Homes for Victorians 2017 - Marine Coastal Policy 2020 - Mornington Peninsula Localised Planning Statement Local: - Our Peninsula (Council Plan) 2017-21 - Municipal Public Health and Wellbeing Plan - Activity Centres Strategy 2018 - Triple A Housing Plan 2020-2030 - Mornington Peninsula Social and Affordable Housing Policy 2020
Planning scheme provisions	- Zones: GRZ, NRZ, LDRZ - Overlays: DDO, Significant Landscape Overlay
Ministerial directions	- Ministerial Direction 7(5) (The Form and Content of Planning Schemes) ¹ - Ministerial Direction 9 (Metropolitan Planning Strategy) - Ministerial Direction 11 (Strategic Assessment of Amendments) - Ministerial Direction 17 (Localised Planning Statements)
Planning practice notes	- Planning Practice Note 46: Strategic Assessment Guidelines (DELWP, 2018) - Planning Practice Note 90: Planning for Housing (DELWP, 2019)

¹ The Panel refers to this numberless ministerial direction as Ministerial Direction 7(5) in this report

2.2 Supporting documents

(i) Mornington Peninsula Housing and Settlement Strategy Refresh

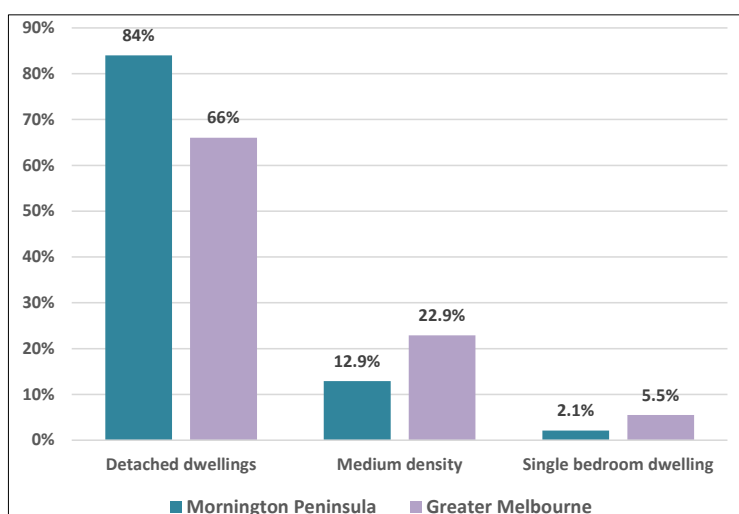
The HSS was prepared in July 2020 and outlines how future housing and population growth will be accommodated on the Mornington Peninsula over the next 16 years while protecting the Peninsula’s special values and character.

Trends and forecasts

Key trends and forecasts include:

- Mornington Peninsula’s population is expected to increase from 161,530 in 2016 to 200,360 (an additional 38,830 people)² in 2036
- 45-59 and 60-79 years is, and will continue to be, the largest age groups
- as shown in Figure 2, of all municipal dwelling stock:
 - 84 per cent is detached housing (compared to 66 per cent in Greater Melbourne)
 - 12.9 per cent is medium density (22.9 per cent in Greater Melbourne)
 - 2.1 per cent is single bedroom dwellings (5.5 per cent in Greater Melbourne)

Figure 2 Existing housing stock in Mornington Peninsula and Greater Melbourne



- of all 89,116 dwellings (occupied and vacant), 61,110 were resident households
- 31.3 per cent of all dwellings were holiday homes or vacant, compared to 9.6 per cent in Greater Melbourne
- about 56.6 per cent (38,244) of the municipality’s employed residents worked within the municipality
- more than 80 per cent of journey to work trips were by car.

Where should housing growth be located?

The HSS applied the following criteria for locating housing in response to demand:

- Criterion 1 (Strategic context)

² Victoria in Future 2019

- Criterion 2 (Environmental assets and hazards)
 - Environmental significance
 - Climate change
 - Coastal erosion and inundation
 - Bushfire
 - Urban heat island effect
- Criterion 3 (Connectivity) – closely linked with Plan Melbourne’s 20-minute neighbourhood concept
- Criterion 4 (Neighbourhood character) – the “*overall image and feel of a residential area*” between built development, vegetation and topography that makes a place distinctive.

Implications

The HSS identifies implications which include:

- 24,010 new dwellings (or 1200 new dwellings each year) are needed to accommodate the population increase
- couples without children and lone person households will remain the predominant household types
- more diverse housing including townhouse-style developments and villa units with gardens is needed as alternatives to traditional housing
- larger housing should be retained because couples with children make up over one-third of the municipal population
- small dwellings in sufficient supply can lead to more affordable housing for small households
- strong demand for second dwellings or holiday homes (especially on the Southern Peninsula and in smaller coastal townships) is expected to continue
- local employment opportunities need to be supported, though a large proportion of residents travel for work by car outside the municipality
- focus housing development in the Mornington, Hastings and Rosebud major activity centres which have the best access to shops and services
- preferred neighbourhood character needs to be respected when determining where to locate housing growth
- the existing limited public transport in the municipality needs to be considered when planning increased housing growth
- there is little opportunity for housing growth on land with the VPO, Significant Landscape Overlay (SLO) and Environmental Significance Overlay
- housing growth will not focus on areas subject to bushfire, coastal erosion and coastal inundation
- space is needed in residential gardens to retain existing, and plant new, vegetation and canopy trees to counteract the urban heat island effect.

Housing capacity based on existing zones

The HSS found the municipality has capacity for an additional 52,895 dwellings as of March 2019 based on existing zones, of which:

- 39,850 (75.3 per cent) would be in the GRZ
- 1685 (3.2 per cent) would be in the LDRZ
- 11,360 (21.5 per cent) would be apartments in an activity centre

- 33,863 (64 per cent) would be in Mornington (9719), Rosebud (9607), Somerville (5100), Mount Martha (4950) and Hastings (4487).

(ii) Mornington Peninsula Neighbourhood Character Study and Guidelines

The NCSG applies the six primary character types and 17 secondary types, as shown in Table 3.

Table 3 Primary and secondary neighbourhood character types

Character type	Precinct	Summary
Garden Residential	GR1, GR2, GR3, GR4	Consists of spacious residential areas with consistently sited dwellings in a garden setting and formal street pattern; generally modified grid and avenue style streets
Garden Court	GC1, GC2, GC3	Features spacious residential areas with sometimes informally sited dwellings in a garden setting and curvilinear street layout (courts / cul-de-sac), with a mix of flat and undulating topography.
Bush Residential	BR1, BR2, BR3	Defined by heavily vegetated residential areas with generally consistent sited dwellings in a bush setting and sometimes informal street pattern; generally modified grid and curvilinear style streets.
Bush Coastal	BC1, BC2	Typically consists of heavy coastal shrub and woodland dominated streetscapes, with dwellings often screened from view.
Bush Coastal Contemporary	BCC1, BCC2, BCC3	Defined by individually designed dwellings, often capitalising on topography to maximise water views, set within medium to large lots that in some areas contain substantial coastal vegetation.
Rural Settlement	RS1, RS2	Typically consists of ranch-style dwellings on large residential lots, set within rural areas of the Shire. Dwellings are generally single storey with large floor plates and inconsistently sited on curvilinear street patterns.

NCSG preferred character statements for each precinct were translated into the 5 neighbourhood character objectives. Zone and overlay schedules were then prepared for each precinct, as shown in Table 4.

Table 4 NCSG character precincts and corresponding NRZ schedules

Designation (Zone schedule)	Zone	DDO schedules																							
		1	2	3	4	5	6	7	10	11	12	13	17	18	19	20	22	23	24						
Garden Residential 1	NRZ2																								
Garden Residential 2	NRZ3																								
Garden Residential 3	NRZ4																								
Garden Residential 4	NRZ5																								
Garden Court 1	NRZ6																								
Garden Court 2	NRZ7																								
Garden Court 3	NRZ8																								
Bush Residential 1	NRZ9																								
Bush Residential 2	NRZ10																								
Bush Residential 3	NRZ11																								
Bush Coastal 1	NRZ12																								
Bush Coastal 2	NRZ13																								
Bush Coastal Contemporary 1	NRZ14																								
Bush Coastal Contemporary 2	NRZ15																								
Bush Coastal Contemporary 3	NRZ16																								
Rural Settlement 1	NRZ17																								
Rural Settlement 2	NRZ18																								

Source: NCSG Table 5

2.3 Housing demand and supply

(i) The issues

The issues are:

- whether housing demand and supply in Mornington Peninsula are known
- whether Mornington Peninsula can achieve at least 15 years housing supply, as sought by State planning policy, if the Amendment is implemented.

(ii) Evidence and submissions

Parties and experts agreed that Council needed to plan to accommodate projected population growth over at least a 15-year period, consistent with Clause 11.02-1S of the Planning Scheme. There was disagreement on how much capacity Mornington Peninsula had over the next 15 years, the method for calculating this figure, and whether there would be sufficient housing supply to meet demand after the Amendment was introduced.

Council considered the HSS demonstrates the Mornington Peninsula can accommodate projected population growth over a 15-year period as sought by State policy and reflected in Planning Practice Note 90.

Council called evidence on housing capacity from Mr Spencer of SGS Economics & Planning. Mr Spencer stated:

- the HSS approach to identifying residential land appears accurate, appropriate and robust
- 17,746 dwellings were needed from 2021 to 2036 to meet demand, averaging 1,183 dwellings each year

- the HSS municipal housing capacity estimate of 52,895 dwellings was overestimated because:
 - the minimum lot size of 300 square metres assumed for GRZ land is smaller than the average lot size of recent development in these areas
 - the assumptions for activity centres are optimistic, noting there are likely practical, political and financial barriers to Council car parks being developed for housing
 - Mornington Peninsula may have larger apartment sizes than the assumed 80 square metres referenced in the HSS from another study³
- existing Planning Scheme provisions were applied when asking “*will the amendment provide sufficient housing capacity?*”
- he understood the existing Planning Scheme and the Amendment had similar subdivision provisions
- municipal housing capacity was 26,921 at July 2021, based on:
 - existing Planning Scheme provisions
 - GRZ land without subdivision provisions having an assumed minimum lot size of 400 square metres rather than the 300 square metres in the HSS – resulting in 13,985 dwellings rather than 32,568
 - halving the housing capacity estimate for activity centres – resulting in 5,680 dwellings rather than 11,360
 - deducting 1,621 dwellings constructed in 2019 and 2020 from the estimated 28,542 dwelling capacity in March 2019.

Mr Spencer explained that when assessing housing capacity, he typically assesses:

- the land that is available for development
- the likely density or form of new development on that land
- the likely take up of that development.

Mr Spencer said the HSS and his evidence did not employ the third step.

At the Hearing, Mr Spencer acknowledged the estimated 1,661 new dwellings provided in Mornington Peninsula in 2019 and 2020 (averaging 810 dwellings each year) was below the average 1,183 dwellings needed each year until 2036. Council submitted these below average numbers were an outcome of the Covid-19 pandemic.

Prossor Town Planning Pty Ltd, Town Planning & Co. Pty Ltd and Urban Arc Pty Ltd (Submitter 271) called evidence on strategic planning from Mr Granger of Urbis. Mr Granger stated that Mornington Peninsula:

- is likely to return to pre-pandemic population growth levels that will go beyond 2036
- achieved the Victoria in Future 2021 population forecast 11 years earlier
- had less than 78 hectares of broadacre residential land equating to about 720 dwellings in 2019, according to DELWP’s Urban Development Program.

Mr Granger considered the HSS housing capacity estimates to be overstated because:

- potential dwelling capacity does not equally translate as dwelling supply, for example:
 - residential zoned land that can be subdivided does not mean it will be subdivided
 - Commercial 1 Zone or Council car park land may not be feasible or developed by 2036

³ Boroondara Housing Capacity Analysis - Technical Report (SGS Economics & Planning, July 2015)

- there is less than 2 years of broadacre land supply and no further land is planned to be included in the Urban Growth Boundary
- vacant lots which are favoured by developers are becoming scarcer
- redeveloping land for apartments is difficult to achieve because:
 - single dwelling projects continue to compete with multi-unit dwelling projects
 - Commercial 1 Zone and Council car park land is constrained in town centres.

Mr Granger suggested the 20 to 25 per cent of the HSS housing capacity estimate may overestimate what is supplied. He opined, the likely dwelling supply shortfall would:

- increase housing prices and rents
- reduce affordable housing because prospective providers compete with other developers
- force groups such as families, key workers and older people to move out of the Mornington Peninsula to find more affordable housing.

(iii) Discussion

There were mixed views regarding the appropriateness of the housing capacity methodology and the appropriateness of its capacity figure. This includes two expert witnesses, Mr Spencer and Mr Granger, who disagreed the municipality has a capacity of 52,895 dwellings.

The Capacity Peer Review states that when conducting housing capacity assessments, its author typically employs the following three-steps:

- an assessment of the land that is available for development
- an assessment of the likely density or form of new development on that land
- an assessment of the likely take up of that development.

The Panel explores the housing demand and supply broadly based on these steps.

Demand

How many dwellings will be needed in the municipality by 2036?

The Panel prefers the Capacity Peer Review dwellings estimate of 17,746 additional dwellings needed from 2021 to 2036 because it applies the more recent Victoria in Future 2019 population projections. The HSS estimate of 24,101 additional dwellings needed from 2016 to 2031 appears to have been correct during the HSS preparation stage, again using Victoria in Future population projections.

Land available for development and likely density or form of new development

Which planning provisions should have been assessed?

The HSS and Capacity Peer Review should have assessed the provisions proposed by the exhibited Amendment to understand the impact the Amendment would have on housing capacity. This is irrespective of whether the existing provisions have the same minimum subdivision lot area requirements. Applying existing provisions:

- creates the impression that the Amendment's impact has not be assessed and raises questions about why the proposed provisions were not considered
- has resulted in limitations, as discussed below.

How much dwelling capacity is available?

The Panel prefers the Capacity Peer Review's adjusted estimate of 26,921 dwellings for reasons explained in that report. While preferred, there is likely to be moderately less capacity because,

like the HSS, the Capacity Peer Review considered existing planning provisions. The proposed zone and overlay schedules have more focussed and directive neighbourhood character objectives than those in existing DDO schedules. GRZ1 and GRZ3 have no objectives.

While the HSS has applied a sound methodology, the Panel agrees with Mr Spencer that:

- all identified car parks are unlikely to be developed for housing by 2036
- apartments in numerous activity centres are likely to be larger than 80 square metres to respond to market demand
- an assumed minimum 400 square metres should be applied because it better reflects actual circumstances.

The Panel therefore considers there is capacity for close to approximately 26,900 dwellings in Mornington Peninsula.

Does dwelling capacity equate to available housing supply?

Clause 11.02-1S seeks to ensure a sufficient supply of land is available for residential uses. A strategy to achieve this includes planning to “accommodate projected population growth over at least a 15 year period”. For Mornington Peninsula, this can only be met if approximately 17,750 additional dwellings are available from 2021 to 2036. Dwelling capacity is the theoretical supply if all identified land was developed to achieve the development opportunities. This is highly unlikely to eventuate for many reasons. This includes property owners without development aspirations and properties not developed until after 2036.

Dwelling capacity therefore does not automatically translate into housing supply.

Likely take up of that development

The difference between dwelling capacity and available housing supply is the likely take up of identified development opportunities. The likely take up of existing capacity relies on a property owner willing to sell and someone willing to develop the housing.

The Panel agrees with Mr Spencer and Mr Granger that the take up of existing capacity should be considered with housing supply. This important step will determine the most likely housing supply outcome leading to 2036.

(iv) Conclusions and recommendations

The Panel concludes:

- Approximately 17,750 dwellings will be needed from 2021 to 2036 to meet demand, averaging about 1,180 dwellings each year.
- The Housing and Settlement Strategy should have assessed the potential impact of the provisions proposed by the Amendment rather than existing Planning Scheme provisions.
- If the Amendment is introduced in its exhibited form, Mornington Peninsula is likely to have capacity for less than 26,960 dwellings, though a more exact estimate is unknown at this stage based on available information.
- A take-up of just under 66 per cent of the approximately 26,960 dwellings would be needed to provide the estimated 15 year demand for 17,750 dwellings from 2021 to 2036. Based on the 2005 to 2016 dwelling construction rate, this uptake is unlikely.
- Mornington Peninsula Shire Council should reassess its dwelling capacity to determine a more accurate estimated figure.

- Mornington Peninsula Shire Council should estimate how much dwelling supply will be available to 2036 by assessing the likely take up of the estimated dwelling capacity before progressing the Amendment.
- If the estimated take up is less than 15 years supply, then Mornington Peninsula Shire Council should:
 - review its provisions to enable more housing supply, or
 - explain why achieving certain State policy objectives overrides the need to meet State policy on housing supply.

The Panel recommends:

Before adopting Mornington Peninsula Amendment C219morn, Mornington Peninsula Shire Council should:

- a) demonstrate it can provide at least 15 years housing supply by determining the likely take-up of capacity enabled by the provisions proposed by Amendment C219morn, or**
- b) where 15 years supply cannot be met, explain why other planning policy objectives have been given greater weight than the Clause 11.02-15 objective which seeks at least 15 years housing supply.**

2.4 Strategic justification

(i) The issue

The issue is whether the Amendment has sufficient strategic justification to proceed.

(ii) Evidence and submissions

Council responded to the Strategic Assessment Guidelines in the Amendment's explanatory report which considers the Amendment complies with:

- Ministerial Directions 7(5), 9, 11 and 17
- Plan Melbourne Directions 2.2, 2.5, 4.4, 5.1, 6.2 and 6.4.

It also considers the Amendment supports or gives effect to the Planning Policy Framework by:

- ensuring enough urban land supply is available to accommodate the projected population in 2036
- encouraging residential development primarily in areas designated for substantial change followed by areas designated for incremental change
- giving effect to key strategic directives of the Localised Planning Statement, including a robust land-use planning framework which provides certainty to property owners and the community
- relying on GRZ and NRZ schedules to guide development and only using a DDO schedule to regulate buildings and works that are beyond the residential zone schedule
- protecting and enhancing the valued attributes of an identified distinctive area and landscape (Clause 11.03-05S)
- directing population growth:
 - towards activity centres to protect small coastal townships, rural villages, and areas of environmental, landscape, agricultural or residential significance (Clause 02.03-1)
 - away from land constrained by environmental risk or significance, or landscape value (Clause 02.03-3)

- ensuring new development:
 - reflects the preferred character of an area (Clause 02.03-5)
 - has access to reticulated sewerage or an alternative (Clause 02.03-9)
- including new content with supports the strategic directions for housing (Clause 02.03-6).

In July 2021, Council prepared a desktop review of its strategic work which supported the Amendment.

Council called evidence on planning from Mr Milner of Milner Planning Advisory. Mr Milner considered the Amendment appropriately balances competing perspectives, having regard to and giving appropriate weight to the broader Planning Policy Framework. He referred to Planning Practice Note 90 which states:

When planning to accommodate projected population and housing change, planning authorities are required to effectively plan for this change by considering relevant environmental, social and economic factors and where conflict arises balance competing objectives in favour of net community benefit and sustainable development.

Mr Milner added, the threshold test is the Amendment ensuring sufficient supply of residential land and housing while protecting the objectives of the Localised Planning Statement. He considered the Amendment should “fail or be revisited” if the outcome from further reduced and constrained residential development could not assure 15 years housing supply. This is unless the state housing supply policy is changed for the Mornington Peninsula.

In his report, Mr Milner stated:

The planning scheme’s zone provisions do not fully reflect the reforms to residential zones in Victoria and its design and development overlays reflect the evolution of planning provisions agglomerated over decades, creating a complex, confusing and inefficient regime of control.

Mr Milner added:

- the exhibited Amendment advanced a residential development and change framework consistent with current planning practice
- Mornington Peninsula has been identified as a special area warranting protection and conservation with limitations on urban growth development:
 - since the 1970s
 - through State planning policy which categorises the Mornington Peninsula as a distinctive area and landscape
 - through the Mornington Peninsula Localised Planning Statement.

Mr Milner considered the Amendment properly responds to:

- Planning Practice Notes 90 and 91
- Plan Melbourne by concentrating growth on higher order activity centres
- the HSS and NCSG which support a framework for distinguishing between areas of substantial, incremental and minimal change.

There were submissions which questioned the Amendment’s strategic basis. They considered the Amendment:

- is not supported by the comprehensive strategic work in the Rosebud Activity Centre Structure Plan Report 2017 or by relevant Planning Scheme policies
- did not balance competing state planning policy objectives to deliver housing supply with local objectives to protect character and landscapes

- did not appropriately consider policies regarding urban consolidation, 20-minute neighbourhoods and housing supply because it did not consider the Morrington Peninsula as part of Metropolitan Melbourne
- would further complicate an already complicated Planning Scheme
- would restrict growth and affect the development industry
- proposes the most significant changes since the Planning Scheme was introduced in 1999 so the work should be thorough and provide the desired framework
- would not minimise Council's workload because it would transfer work from the planning department to the building department
- should not progress until Council:
 - reviews the HSS to reconsider population and housing projections in the strategic context since the Covid-19 pandemic
 - redrafts Clauses 02.03-6 (Housing) and 16.01-1L (Housing supply – Morrington Peninsula) to acknowledge the role of 'investigation areas' in delivering potential substantial change
 - explores and understands how the Amendment would affect their resources, including the building department.

One submission considered the additional dwelling capacity figure for Shoreham in the HSS to be exaggerated and unrealistic.

Mr Granger stated the Amendment is based on flawed strategic work. He explained the HSS:

- strongly focuses on ensuring new housing appropriately responds to identified environmental constraints
- does not apply the same rigour to adequately planning for population growth.

Mr Granger considered the HSS and exhibited provisions do not achieve the objective of appropriately planning for growth. He added:

- there is no readily available analysis of future dwelling supply opportunities and constraints
- there is no independent review to validate the HSS and Residential Change Framework Plan
- Council's desktop review of its own strategic work summarised the HSS findings rather than thoroughly evaluate the capacity analysis before exhibiting the Amendment.

For these reasons, Mr Granger found the Amendment did not meet:

- the objectives of the PE Act, particularly:
 - (a) to provide for the fair, orderly, economic and sustainable use, and development of land
 - (g) to balance the present and future interests of all Victorians.
- Ministerial Direction 11 (Strategic assessment of amendments).

Mr Granger recommended the Amendment be abandoned, and that Council:

- reapproach the methodology of the HSS to provide a more accurate estimate of future dwelling supply for the municipality, including a detailed assessment of the major townships
- provide further detail on expected changes to the composition of Morrington Peninsula's population and whether it is compatible with the profile of current dwelling stock
- reassess the identification and extent of change areas throughout the municipality

- assess the development potential of, and propose an appropriate zone for, nominated investigation areas and substantial change areas with zoning designated 'TBD'
- have an independent review of the revised HSS to confirm the validity of the approach.

(iii) Discussion

Broadly, the Amendment seeks to:

- implement the HSS recommendations which directs where growth should occur
- implement the NCSG recommendations by identifying change areas and by applying relevant provisions for each one through policy, zone and overlay provisions
- simplify existing provisions and remove the need for a permit for certain development.

The Amendment responds to Planning Scheme policy regarding settlement and neighbourhood character, consistent with guidance in Planning Practice Notes 90 and 91. As referenced by Mr Milner, Planning Practice Note 90 advises a planning authority to effectively plan for accommodate projected population and housing change by considering environmental, social and economic factors. Competing objectives need to be balanced in favour of net community benefit and sustainable development.

For reasons explained in this report, the Amendment appears to be seeking to address competing policy objectives. State planning policies seek at least 15 years of municipal housing supply while seeking to protect Mornington Peninsula's special landscape and maintain *"the existing valued character of each town or settlement, or supports a change to a preferred character that is clearly established through community consultation"*.⁴

It is unclear whether the Amendment has appropriately considered these competing policy objectives because, as found in Chapter 2.3, it is uncertain whether Mornington Peninsula can provide at least 15 years of housing supply if the Amendment is introduced.

The NCSG captures community aspirations through extensive consultation and sets out its preferred character. However, Council and the community may have assumed that its preferred character could achieve at least 15 years supply. A neighbourhood character study is helpful when the preferred character enables enough supply to house Mornington Peninsula's future population by 2036. Where the latter cannot be achieved:

- Planning Scheme provisions may need to be further reviewed to find more housing opportunities, or
- Mornington Peninsula may need to explain why other planning policy objectives have been given greater weight than the Clause 11.02-1S objective which seeks at least 15 years housing supply.

At this stage, further work is needed to determine whether there is sufficient housing supply.

This is further complicated by Mornington Peninsula being a predominantly car dependent municipality. Any further concentration of housing around its activity centres, in line with State policy, needs to be carefully managed because it is likely to increase traffic volumes because there is insufficient public transport to encourage people to avoid using their car.

⁴ Mornington Peninsula Localised Planning Statement, p6

(iv) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is generally supported by, and implements, the relevant sections of the Planning Policy Framework, though it is unclear whether it can accommodate the projected population growth over at least 15 years, as sought by Clause 11.02-1S of the Mornington Peninsula Planning Scheme
- is generally consistent with the relevant Ministerial Directions and Practice Notes
- is founded on comprehensive strategic work, however, needs further clarification regarding housing supply to determine whether it is strategically justified
- should proceed subject to further necessary strategic work and addressing the more specific issues raised in submissions as discussed in the following chapters
- should be abandoned if the further recommended work identified by the Panel that is needed before the Amendment is adopted is not satisfactorily completed.

3 Amendment approach

Chapter 3 considers the Amendment's approach to change area categories, preferred character statements and objectives, building heights, zone and overlay application and investigation areas. The Panel's conclusions in Chapters 3 to 7 apply to all land referred to in submissions unless stated otherwise.

3.1 Consultation and exhibited Amendment

(i) The issue

The issue relates to Council's statutory obligations specified in the *Planning and Environment Act 1987* when exhibiting the Amendment.

(ii) Background

Ministerial Authorisation

On 19 May 2021, DELWP under delegation from the Minister for Planning wrote to Council to authorise the preparation of the Amendment subject to the following conditions:

- update the Residential Change Framework Plan – Housing Change Framework Maps to ensure that land identified for minimal change is subject to an identified constraint or special characteristic as per the parameters in the HSS
- identify non-standard residential areas within the Urban Growth Boundary
- identify 197A Hendersons Road, Hastings as an investigation area
- ensure that designation of change areas is consistent with concurrent planning scheme amendments, and make any other necessary changes
- undertake a desktop review of the strategic work underpinning the Amendment and how it justifies the proposed changes to the Planning Scheme
- ensure that all Planning Scheme ordinance is drafted in accordance with the Ministerial Direction 7(5)
- integrate the proposed changes to the Planning Policy Framework and Municipal Strategic Statement into the new format Planning Policy Framework before exhibition
- update the proposed Planning Scheme Maps to address various matters such as including DDO deletion maps, not showing the application of the GRZ1 and GRZ3 to areas where those provisions already apply, applying the NRZ rather than the GRZ to land designated as minimal change at 834-932 Point Nepean Road, Rosebud (excluding 866 Point Nepean Road), amendments to ensure consistency with Amendment C228morn and other changes specified elsewhere
- make any other consequential changes to the Amendment documents.

In addition to, and separate to the above authorisation conditions, DELWP's May 2021 authorisation letter 'encouraged' Council to consider:

- improving the analysis of population trends and housing capacity in the HSS in accordance with the comments provided by DELWP officers by email on 14 December 2020
- reviewing the existing application of the Environmental Significance Overlay Schedule 17 and consider a separate planning scheme amendment to remove, where redundant

- undertaking strategic work on the Mornington Major Activity Centre, including preparation of a structure plan
- undertaking a strategic review of LDRZ areas
- undertaking a further review of the DDO Schedules, particularly subdivision requirements, to consolidate provisions and improve consistency across the municipality.

(iii) Evidence and submissions

Council submitted:

- the Amendment was exhibited from 12 August to 29 October 2021
- the standard period was extended by five weeks due to State government Covid-19 restrictions.
- notice of the Amendment was in accordance with section 19 of the Act.

Council explained that notice included direct notice to:

- four prescribed Ministers, the Minister for Housing, the Minister for Suburban Development, public authorities, and the two neighbouring municipal councils
- affected property owners and occupiers by mail, including an explanatory brochure
- other key stakeholders such as building surveyors, community groups, environmental organisations, historical trusts and societies, planning consultants, and real estate agents.

Notice also included:

- publication in local newspapers – Western Port News, Mornington News, Southern Peninsula News; on Council’s website and in the Victorian Government Gazette
- social media campaigns; online webinars with the ability to ask questions.

In July 2022, Council resolved to defer consideration of the Amendment and conduct further consultation. An in-person community forum was held on 14 September 2022. Council received supplementary and late submissions.

In December 2022, notice was provided to property owners and occupiers in Hastings of further proposed post-exhibition changes which sought to rectify a sea level rise mapping error. Further submissions were received.

Some submissions were concerned about a lack of transparency with the Amendment, a lack of rationale for removing permit triggers, poor timing due to Covid-19 lockdown restrictions and inadequate consultation. One submission considered the Amendment should be delayed to enable proper consultation or be abandoned.

Mr Milner acknowledged the Amendment “*is a major and complex amendment with implications for each residentially zoned property*”.

(iv) Discussion

The scale and nature of the Amendment and changes proposed by Council since its exhibition are large and complicated. It is not surprising that members of the community were challenged when seeking to understand the Amendment’s rationale, interpret the proposed changes or understand the Amendment’s potential impacts.

Notwithstanding the Amendment’s complex scale and nature combined with the Covid-19 restrictions, Council has gone to great lengths to engage with the community and explain the Amendment. The Panel is satisfied Council has met its obligations set out in the PE Act.

(v) Conclusions

The Panel concludes:

- There is a statutory review process (outside the Panel process) available to a submitter who believes that a council has not conducted an amendment process appropriately.
- Mornington Peninsula Shire Council appears to have met its obligations specified in the *Planning and Environment Act 1987* when exhibiting the Amendment.

3.2 Changes proposed since exhibition

Council proposed changes to the Amendment in response to submissions and to correct clerical and map errors as set out in its Part A submission. Some changes are minor drafting changes to terms and guidelines to improve clarity. The key post-exhibition changes explained in Table 11 in Appendix E affect:

- Clauses 15.01-5L and 16.01-1L including housing change framework plan maps
- GRZ1, GRZ2 and GRZ3
- NRZ schedules affecting Bittern, Capel Sound, Cribb Point, Hastings, Mornington
- LDRZ schedules
- DDO schedules including the reinstatement of DDO1, DDO19, DDO20 and DDO23
- Neighbourhood Character Overlay to delete the demolition permit trigger
- Zone and overlay schedules affecting land in a Bushfire Prone Area to add bushfire related provisions
- Planning Scheme maps following Amendment C267morn being introduced.

3.3 Change area categories and mapping

Chapter 3.3 considers the Amendment's approach to change area categories and its associated mapping proposed in Clause 16.01-1L (Housing supply – Mornington Peninsula). The Panel's conclusions apply to all land referred to in submissions unless stated otherwise in subsequent chapters.

3.3.1 The issues

The issues are:

- whether the proposed change area categories are justified and appropriate to implement through Clauses 15.01-5L and 16.01-1L
- whether policies in Clauses 15.01-5L and 16.01-1L associated with area categories are appropriate and justified.

3.3.2 Background

The HSS applies Minimal, Incremental and Substantial change area categories to identified residential, low density residential and Commercial 1 Zone land shown in housing change framework maps. It also identifies investigation areas on the same maps. The HSS sets out key characteristics for each area:

Minimal change areas:

- have special characteristics that distinguish them from other parts of the municipality or surrounding areas.

- have special neighbourhood, heritage, environmental or landscape characteristics identified in the Localised Planning Statement, neighbourhood character studies, heritage studies and any other relevant studies
- are identified in a housing strategy, or in the planning scheme, as unsuitable for providing future housing growth
- tend to have overlays that reflect neighbourhood, heritage, environmental or landscape characteristics or other physical constraints which may impact their capacity for change.

Incremental change areas:

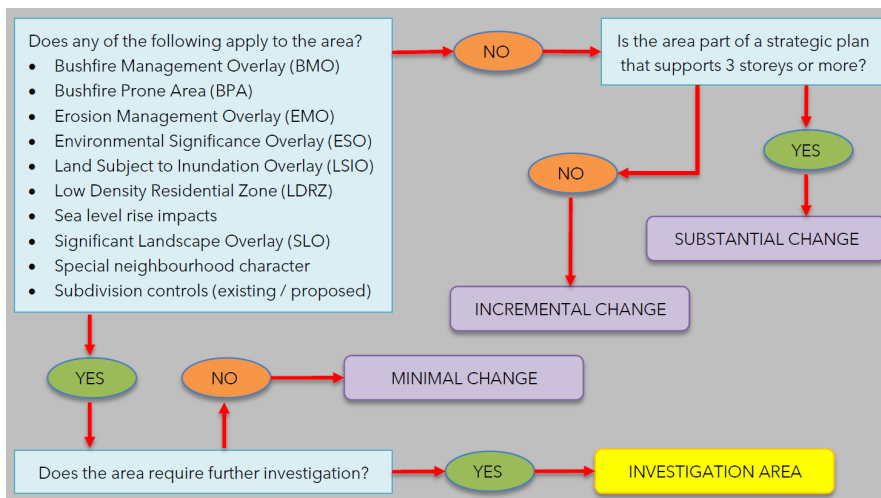
- have capacity for housing growth and more diverse types of housing.
- are where new development should respect existing valued neighbourhood character attributes.
- are where existing neighbourhood character will evolve and change over time with reference to the key identified neighbourhood attributes.

Substantial change areas:

- are close to jobs, services, facilities or public transport
- facilitate housing growth that takes advantage of their proximity to jobs, services, and public transport
- make the most of strategic development areas or opportunity sites that either exist or are identified from time to time.
- promote housing diversity
- result in a new built form and neighbourhood character.

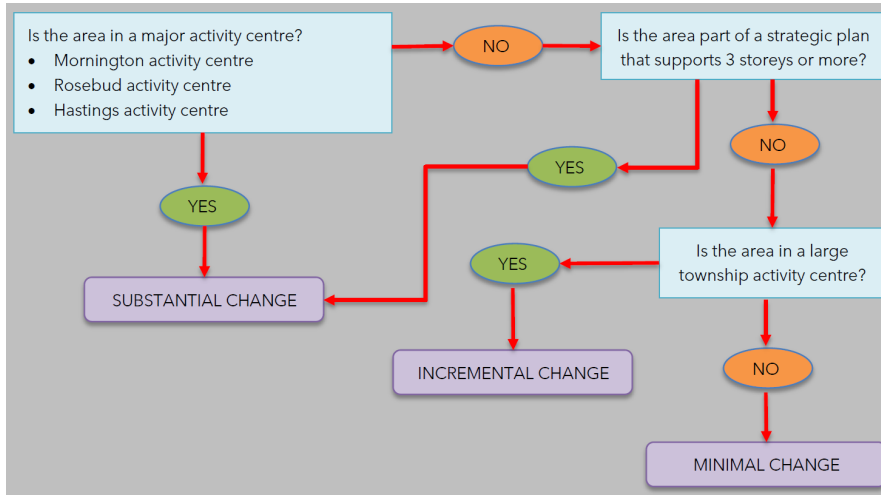
The HSS applies the following methodology for categorising change areas:

Figure 3 How the change area categories for areas in a residential zone are determined



Source: Desktop Review of the Strategic Work Underpinning Amendment C219morn, p4

Figure 4 How change area categories for areas in the Commercial 1 Zone are determined



Source: Desktop Review of the Strategic Work Underpinning Amendment C219morn, p5

3.3.3 Overarching issues

(i) Evidence and submissions

There were conflicting submissions about how areas were categorised for change in Clauses 15.01-5L and 16.01-1L. Submissions seeking more development opportunity considered the approach to applying change area categories:

- would restrict growth opportunities needed near the Mornington, Rosebud and Hastings town centres, as supported by the 20-minute neighbourhood in Plan Melbourne
- has mapped categories too broadly in the GRZ, NRZ and LDRZ, and therefore does not recognise the character nuances in specific areas
- has applied the minimal change category too broadly
- focuses on achieving development that reflects existing character rather than recognises that built form and landscape character in areas designated for incremental change and substantial change will need to change over time
- would limit growth and infill development near activity centres because there was a limited application of the Significant Change Areas around activity centres
- would limit 1 crossover for each site frontage and require a multi-unit development to present as one dwelling to the street
- may prejudice intensive development if the guidelines are applied prescriptively.

Submissions seeking more restrictive change areas requested that:

- all substantial and incremental change areas from Clarkes Avenue, Mornington to Portsea become minimal change
- all substantial change areas in Mornington become incremental
- all substantial change areas in Hastings become incremental.

3.3.4 Bushfire prone areas

Alesci Investments (Alesci) adopted the Linfox Property Group Pty Ltd and Fox Shelf No 1 Pty Ltd (Linfox Group) submission which stated Council did not commission a detailed bushfire assessment to determine which Bushfire Prone Areas needed to be minimal change.

Council called expert evidence on bushfire risk from Mr Hazell of Kevin Hazell Bushfire Planning. Mr Hazell attached two bushfire reports, both prepared in May 2022 to assess municipal-wide strategic bushfire issues and to analyse the Amendment according to Planning Scheme strategic and locational policies.

Mr Hazell found the change areas give effect to locational policies in Clause 13.02-1S because they direct:

- substantial change to low or no risk area
- direct incremental change to mostly low or no risk locations
- minimal change to areas with bushfire risks.

Mr Hazell considered the Amendment is unlikely to increase bushfire risk, except where all the following apply:

- the Bushfire Management Overlay does not apply so it cannot provide mitigation
- Landscape type 2 or 3 is assessed so there is some landscape risk
- lots are larger than 1800 square metres, where there may be potential to introduce hazards because new development could accommodate extensive vegetation.

Mr Hazell stated:

Areas for incremental change can be favourably assessed against locational policies in c13.02-1S Bushfire Planning as they avoid Bushfire Management Overlay, mostly avoid the Bushfire Prone Area, and mostly avoid Landscape type 2 and 3 areas. The incremental change areas have been selected and optimised based on bushfire factors.

There are three small areas of incremental change areas within a bushfire prone area and Landscape type 2. Two comprise commercial land in Baxter and Hastings with high site coverages and immediate access to low fuel areas within the areas themselves. The other comprises non-developable land in Balharring. In the context of incremental change areas, these locations are lower risk.

Areas for minimal change include many areas in the Bushfire Management Overlay, Bushfire Prone Area and areas within Landscape type 2 and 3. These areas to different extents have bushfire risks. The minimal change areas are applied to areas of bushfire risk and does not therefore emphasise significant change in these areas. This is favourable from a bushfire perspective.

3.3.5 Sea level rise and flooding

Council submitted that DELWP, as a condition of authorisation, required Council to update the Residential Change Management Plan in Clause 16.01-1L to ensure land identified for minimal change was subject to an identified constraint or special characteristic.

Alesci, which owns 1475 Point Nepean Road, Rosebud, submitted the HSS approach to sea level rise is:

- broad-brush
- inconsistent because 1461-1465 Point Nepean Road in the Rosebud Activity Centre is identified for sea level rise inundation and categorised as substantial change while 1475 Point Nepean Road has less identified area and categorised as minimal change

Alesci added that sea level mapping (identified as being provided by Melbourne Water) relied on to justify the minimal change category:

- did not form part of the Amendment
- has not been independently verified but would be if there was a planning scheme amendment to introduce a flooding provision.

Alesci explained that Council did not call evidence to support land being categorised minimal change and zoned NRZ because of sea level rise. Alesci provided a link to the publicly accessible online mapping data which the HSS relied on to identify flood prone areas.

In response to Alesci's submission, Council explained:

- the coastal sea level rise mapping, and Planning Practice Notes 90 and 91 were released after the Rosebud Activity Centre Structure Plan was prepared and adopted
- 1475 Point Nepean Road was designated minimal change rather than substantial change because there was identified sea level rise hazard.

Council's closing submission added:

- Sea level rise mapping is publicly available via Council's website: <https://www.mornpen.vic.gov.au/About-Us/About-Our-Region/Mapping-GIS>
- To access the mapping, under 'Online Maps', click 'Planning Information', enter the relevant property address into the search bar and then under 'layers', select the layer for sea level rise of 0.8 metres by 2100.
- The mapped data – for sea level rise of 0.8 metres by 2100 – is from a Melbourne Water dataset and the Victorian Coastal Inundation Dataset (VCID);
- The Council notes the pending release of the State Government's Port Phillip Bay Coastal Hazard Assessment (PPBCHA). The data from the PPBCHA is expected to replace the Melbourne Water and VCID datasets as the contemporary data source for sea level rise impacts. It is noted that the PPBCHA was originally due for release in 2020 but is still yet to be published;¹⁶ and
- The mapped data has been available on Council's website since mid-2021.

3.3.6 The Avenues, Rosebud

Numerous submissions considered:

- the Amendment is seeking to continue to significantly constraint development in most residential areas, which will challenge Morrington Peninsula's housing supply
- The Avenues within the Rosebud Activity Centre should be designated substantial change because it is one of the few residential areas which is currently not constrained by restrictive DDO schedules
- further development opportunity should be enabled through the existing GRZ1, particularly where lots are consolidated.

3.3.7 Discussion

Overarching issues

The Morrington Peninsula is not designated as a growth area. Based on the Panel's discussion in Chapter 2.3, it will need to accommodate an additional 17,750 dwellings by 2036 to achieve the State planning policy objective of accommodating at least 15 years dwelling supply. Most of this growth will need to be infill development in existing urban areas because the Urban Growth Boundary restricts greenfield expansion. The HSS achieves this planning policy ambition by directing where growth will be accommodated.

The HSS change area methodology envisages a hierarchy of change, depending on the nature and location of land. However, the key characteristic differences between a minimal and incremental change area are relatively modest. Most of the substantial change areas, which are limited to a relatively low number of locations throughout the municipality, would provide mostly up to 3 storey built form. Three storeys and up to 11 metres is the default maximum building height in the GRZ.

Any land currently in General Residential Zone Schedule 1 and without any overlays should be designated for incremental change. No supporting evidence or submissions demonstrated there was an issue with this degree of change in such areas. An example of such areas is around Yuilles Road in Mornington where there is too much difference between the preferred and existing character to practically achieve the neighbourhood character objectives.

The HSS has applied change area characteristics generally consistent with Planning Practice Note 90. Planning Practice Note 90:

- states that minimal change areas tend to reflect neighbourhood, heritage, environmental or landscape characteristics or other physical constraints which may impact their capacity for change
- explains that minimal change areas tend to include land with physical constraints which may impact their capacity for change
- refers to overlays as a means of identifying land with constraints
- does not advise that all land with such overlays should be designated as minimal change.

The Panel considers the HSS approach to categorising land for minimal change solely because it is in a Bushfire Prone Area, flood mapping or an overlay is an overreach because it pre-determines they have physical constraints to change before assessing actual circumstances. A deeper and more nuanced assessment is needed to understand whether they will seriously affect the capacity for change.

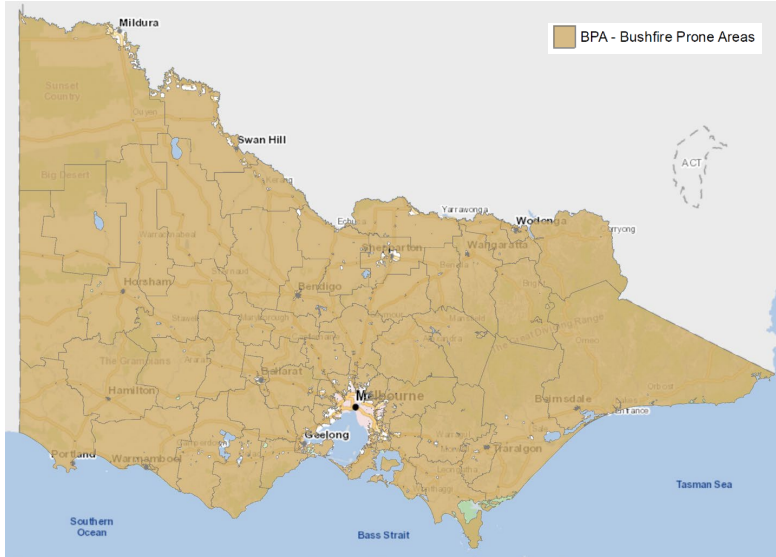
The Panel considers there may be properties in the Bushfire Prone Area, identified by the flood mapping or with an overlay such as the Environmental Significance Overlay that can accommodate growth without negatively affecting the ability to achieve the respective objectives. Accordingly, land should not be categorised as a minimal change area simply because these categories or overlays exist.

Bushfire Prone Areas, sea level rise and flooding are discussed in more detail in the following sections.

Bushfire prone areas

As discussed at the Hearing, the Bushfire Prone Area applies to most of Victoria, as shown in Figure 5. According to the HSS approach, most of Victoria would be designated for minimal growth. However, State policy through Clause 13.02 seeks to strengthen resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. It enables growth where it achieves this objective. The clause envisages applications for further development including accommodation and subdivisions of more than 10 lots.

Figure 5 Victoria's bushfire prone areas



Source: mapshare.vic.gov.au/vicplan/

The Panel accepts Mr Hazell's evidence that bushfire risk would increase if a property larger than 1800 square metres with landscape risk was not subject to the Bushfire Management Overlay to ensure mitigation. However, the Amendment:

- did not apply this refined and relevant assessment criteria
- proposes to designate a property as minimal change simply because it is in a Bushfire Prone Area.

In summary, the Panel considers the HSS did not assess the Bushfire Prone Area comprehensively enough to:

- understand whether minimal, incremental or substantial change was possible
- justify categorising all Bushfire Prone Area land for minimal change.

Sea level rise and flooding

Clause 13.01-2S:

- seeks to plan for and manage coastal hazard and climate change impacts
- includes a strategy to plan for sea level rise of not less than 0.8 metres by 2100 and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.

HSS refers to land subject to flooding without explanation, so the Panel appreciates Council confirming its data source through its closing submission. It is acknowledged the data has been on-site since 2021, however someone reading the HSS would not be aware of this. While Alesci's submission provided a link to Council's online GIS maps, there are two sets of flooding maps which is confusing. As explained by Council, it was referring to sea level rise of 0.8 metres by 2100 flood mapping accessible through a 'planning information' link which differs and is excluded from mapping accessed through the 'View Online Maps'.

The sea level rise mapping applied by Council:

- has not been introduced into the Planning Scheme in form of the Flood Zone, Floodway Overlay or Land Subject to Inundation Overlay
- significantly exceeds the modest extent of the Flood Zone and Land Subject to Inundation Overlay area in the municipality which would have been thoroughly assessed before being introduced into the Planning Scheme (there appears to be no flood related zone or overlay on residential land near or along any of the municipality's coastline).

A next phase of this mapping or existing Flood Zone and Land Subject to Inundation Overlay mapping would have been a better baseline for investigating whether an area should be categorised as minimal change. Planning Practice Note 53 advises that areas such as these are designated as minimal change areas. It does not direct Council to automatically apply this designation to identified areas. This is because there may be instances where:

- State or local government upgrades drainage or coastal infrastructure in response to planning for and managing coastal hazard and climate change impacts, resulting in reduced flooding
- land can be developed beyond minimal change while ensuring it can minimise flood damage through design such as setting a higher floor level in consultation with the relevant floodplain management authority.

Unless Council can justify through evidence-based information that the extent of inundation will restrict development to a minimum, it should assess each permit application on its merits.

Activity centres

An activity centre is where substantial change is expected and planned. Even for the Mornington Peninsula, the extent of development capacity enabled through the proposed provisions cannot be regarded as substantial change. All residential land identified through a structure plan as being in a major activity centre boundary should be categorised for substantial change. Recategorising properties to substantial change would not result in a notable impact because based on what the Amendment proposes, this would result in an additional storey.

Any potential land constraints would be assessed by Council during the permit application process.

The Avenues

Clause 71.02-3 requires a planning authority to make integrated decisions when there are policy conflicts. This means prioritising one objective over another. The Panel considers The Avenues area within the Rosebud Activity Centre boundary should enable more development than what is proposed, to achieve activity centre and housing policies over existing neighbourhood character.

3.3.8 Conclusions and recommendations

The Panel concludes:

- All land currently in General Residential Zone Schedule 1 and without an overlay should be designated for incremental change.
- Mapping for Planning Scheme overlays, Bushfire Prone Areas and Melbourne Water flood mapping cannot be used to determine capacity impacts without further assessment and are not appropriate to categorise land for minimal change.
- Any land designated minimal change solely because it was in a Bushfire Prone Area or Melbourne Water flood mapping should be categorised as incremental change unless it is a major activity centre.

- All residential land in a major activity centre boundary should be categorised as substantial change.

The Panel recommends:

Amend Clause 16.01-1L to revise maps to:

- a) **reclassify land identified as minimal change solely because of an existing overlay, Bushfire Prone Area or Melbourne Water flood mapping to incremental change**
- b) **reclassify all residential land in a major activity centre boundary to substantial change.**

3.4 Preferred character statements and objectives

Chapter 3.4 considers the Amendment's approach to preferred character statements and objectives. The Panel's conclusions apply to all land referred to in submissions unless stated otherwise in subsequent chapters.

(i) The issue

The issue is whether the preferred character statements in the NCSG are generally justified and appropriate for informing the objectives in each NRZ schedule.

(ii) Evidence and submissions

Numerous submissions considered:

- the Amendment does not adequately acknowledge the differences in the municipality's residential areas and identified character areas do not have homogenous neighbourhood character
- the NCSG design objectives and design responses:
 - are too prescriptive
 - refer to character elements that should be respected rather than detailing the method for designing future development, with flexibility, when responding to a site's surrounding context
- 'preferred character' is vague, a subjective concept which could mean anything, and suggests existing neighbourhood character no longer has the status it has had until now.

There were submissions which disagreed with the relevant preferred character statement because it did not align with the development expectation of their property or area.

Ms Hill stated the preferred character statements:

- were "*prepared based on the analysis of the existing character and the outcomes of community consultation*" at a broader neighbourhood scale (not site-by-site)
- were prepared and identified using a methodology which aligns with:
 - Planning Practice Note 43 (Understanding Neighbourhood Character)
 - Planning Practice Note 90, though this practice note was released after the NCSG was completed
- aim to increase clarity regarding character identification and protection
- need to be achieved through the identified design guidelines proposed in zone schedules, as recommended by the NCSG

- have been informed by strategic priorities and can be re-evaluated through future planning scheme amendments.

In response to submissions which suggested the proposed provisions seek to protect existing character, Council stated:

Ms Hill confirmed that the preferred character statements in the Neighbourhood Character Study are based on an analysis of both existing character (including emerging character) and the valued attributes of an area, which were identified via an extensive community consultation process. The neighbourhood character provisions proposed by way of the Amendment are derived from this process, and therefore respond to both existing and preferred neighbourhood character based on the findings of the Neighbourhood Character Study.

Council submitted that it accurately and faithfully implemented the NCSG findings and has appropriately balanced maintaining existing character with achieving valued attributes identified through community consultation.

(iii) Discussion

Mornington Peninsula's rural and green wedge character is protected through an Urban Growth Boundary, rural zones, expansive Significant Landscape Overlay and considerable multi-layered planning policy including its Localised Planning Statement.

For more than 20 years, the Planning Scheme has had DDO schedules and other provisions which have generally conserved neighbourhood character in virtually all residential areas by not enabling built form taller than 2 storeys (6 or 8 metres).⁵ Irrespective of this restrictive planning regime, the community sought⁶:

- further restrictions which allow minimal or no fencing, allow room to plant more trees, and protect vegetation
- to protect coastal character, though there was little explanation what this meant
- measures on public land such as less or more footpaths, keeping roads unmade, and retaining trees on public nature strips and open spaces.

The NCSG describes character as *"an area is a synthesis of public and private domain characteristics which can be summarised as built development, vegetation and topography."* It adds:

Fundamentally we aim to answer the question: How do buildings and landscape interact? Built form, vegetation and topographical characteristics are the physical manifestation of neighbourhood character.

Regarding preferred character, the NCSG states:

Descriptions of existing characteristics are an important part of the process of identifying the 'starting point', but the desired character needs to be evaluated and considered in the context of other policy priorities. It may be that some areas should be encouraged to develop a new character, just as there may be some areas where critical elements need to be protected or reflected in all new development.

The NCSG is unclear how future preferred neighbourhood character statements, which were later translated into schedule objectives, considered the HSS and other policy priorities. In her evidence and at the Hearing, Ms Hill was unable to provide further explanation other than to say there was

⁵ Planning Scheme histories (planning.vic.gov.au)

⁶ NCSG pp23-28

extensive community consultation which sought existing neighbourhood character as its preferred neighbourhood character.

The preferred character statements appear to consider every existing neighbourhood to be special enough to generally retain their character. Though the statements refer to new development and reflecting rather than preserving character, the extent of enabled change is relatively modest. It is possible for neighbourhood character in some areas to change without negatively impacting on the Mornington Peninsula's overall character. This is assured through existing Planning Scheme policies and provisions which seek to protect its identified special areas. Within this context, the Panel considers there should be preferred character statements which enable some further evolution in the incremental change areas.

The Panel can understand why there were submissions which believed the preferred character statements and objectives broadly reflect existing neighbourhood character.

Existing neighbourhood character, particularly those in incremental change areas, should not have been accepted at face value as the preferred future character. This was a missed opportunity to explore more thoroughly with the community an evolved character which achieves broad State and local planning policy objectives. The Panel does not accept that allowing more evolved neighbourhood character with greater development will transform the Mornington Peninsula into metropolitan Melbourne. Mornington Peninsula could have achieved this while meeting State and local planning policy objectives to protect its valued attributes through:

- focussed and guided planning policy, particularly along coastal areas
- carefully drafted neighbourhood character statements
- built form design provisions unique to the Mornington Peninsula.

What further complicates the Amendment, and potentially affects the ability to implement the NCSG, is the misalignment between the preferred character statements and the change area categories in the HSS. For example, in Capel Sound where NRZ3 (Garden Residential 2) is proposed, the same preferred character is sought in an area designated partly for minimal change and partly for incremental change. This approach is likely to result in confusion and the inability to implement aspects of the HSS. In this instance, the Panel considers incremental change is unlikely to be achieved in the NRZ3 area at Capel Sound if the preferred character prevails.

The Avenues

There is a conflict between existing activity centre policy objectives and the preferred character objectives sought for The Avenues. The HSS designates it as a minimal change area. The NCSG does not designate the part of The Avenues in the Rosebud Activity Centre boundary with a neighbourhood character or associated statement. The Avenues outside the activity centre is designated Garden Residential 4.

Based on information in submissions and at the Hearing, The Avenues' most striking neighbourhood character is its undulating land and vegetation on public land. The existing low rise built form is likely the outcome of the relatively smaller properties rather than the current GRZ1 provisions. The Panel considers The Avenues area within the Rosebud Activity Centre does not warrant a special neighbourhood character response because it:

- has an incohesive mix of housing styles and ages, roof types and properties with varying extent and type of vegetation
- interfaces with a commercial area within the activity centre (where substantial growth is expected), and not with the more sensitive coastal foreshore.

(iv) Conclusions

The Panel concludes:

- Existing neighbourhood character, particularly those in incremental change areas, should not have been accepted at face value as preferred future character.
- There should be preferred character statements which enable some further evolution in the incremental change areas.
- The part of The Avenues in Rosebud without a neighbourhood character designation should be extended to include all land in the Rosebud Activity Centre boundary.
- The misalignment between the change area designations proposed in Clause 16.01 and the preferred neighbourhood objectives in residential zone schedules is likely to result in confusion and delays during the planning permit application process.
- There should only be one change area category for each residential zone schedule.

4 Approach to applying zones and overlays

This chapter discusses the Amendment's approach to apply the proposed zone and overlay schedules. Chapter 5 discusses the appropriateness of provisions proposed for the zone and overlay schedules.

4.1 Background

Planning Practice Note 91 advises:

- **NRZ:** Applied to areas where there is no anticipated change to the predominantly single and double storey character. Also to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area.
- **GRZ:** Applied to areas where housing development of three storeys exists or is planned for in locations offering good access to services and transport.

Planning Practice Note 91 also advises:

- NRZ can be applied to minimal change areas
- NRZ, GRZ and Residential Growth Zone can be applied to incremental change areas
- GRZ and Residential Growth Zone can be applied to substantial change areas.

The HSS and the Amendment applied the GRZ to substantial change areas and the NRZ to incremental and minimal change areas.

The Neighbourhood Character Overlay is proposed to three locations through two schedules:

- Ranelagh Estate, Mount Eliza (Neighbourhood Character Overlay Schedule 1)
- The Avenues, Rosebud and parts of Tootgarook and Rye (Neighbourhood Character Overlay Schedule 2).

Council relied on detailed strategic work in the HSS and NCSG to guide the proposed application of residential zones.

Numerous submissions objected to the approach the zones and overlays are proposed to be applied across the municipality. They submitted the approach:

- is fundamentally flawed and does not consider the nuances for smaller areas in restricted zone areas
- to applying the NRZ to limited and incremental growth areas, and the GRZ to substantial change areas, is unnecessarily restrictive
- applies too many zone and overlay schedules, including 37 NRZ schedules
- would essentially prohibit development opportunities
- is overly burdensome on residential land close to commercial areas where housing growth makes strategic sense
- would add layers of planning provisions and further complicate the Planning Scheme where multiple overlays already exist on land
- is not clearly explained.

The Heights Review Report appended to Mr Milner's evidence states:

- the Amendment takes a conservative approach in residential areas by applying:
 - GRZ rather than the Residential Growth Zone to substantial change areas
 - NRZ to areas expected to experience either incremental or minimal change

- applying the NRZ with that approach would mean that most areas with DDO schedules are limited to a mandatory maximum height of predominantly 8 metres (2 storeys).

4.2 Neighbourhood Residential Zone

(i) The issue

The issue is whether the approach to applying the NRZ is appropriate and justified.

(ii) Evidence and submissions

Council submitted the NRZ:

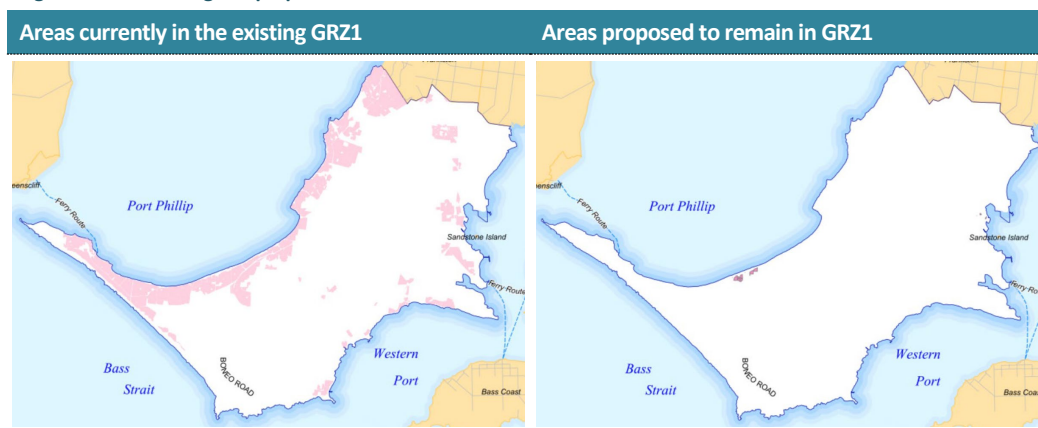
- is proposed to incremental change areas which have been identified as having specific neighbourhood, environmental or landscape values, or where there is no anticipated change to the predominantly single and double storey character
- is critical to achieving State and local planning policy and guidance in Planning Practice Note 91.

It referred to the HSS which states:

...settlements that do not have the identified constraints of the 'minimal change areas', but where housing growth is expected to occur within the context of existing or preferred neighbourhood character. In these areas' development will be restricted to 2 storeys, with no subdivision controls.

Council provided maps showing the impact of applying the NRZ to existing GRZ1 areas (Figure 7).

Figure 6 Existing and proposed GRZ1 areas



Submissions considered the NRZ had been applied inappropriately because:

- it relies on neighbourhood character statements that cover a broad area which is not relevant or meaningful to certain properties
- is not consistent with Planning Practice Note 91 which requires land to have “values that distinguish the land from other parts of the municipality”
- the Amendment does not demonstrate how land proposed for the NRZ has distinguishing values.

They objected to the NRZ being applied broadly across the municipality because the approach:

- is not logically justified through planning policy

- does not reflect nuances within the municipality
- is based on the misguided assumption that modest growth in townships would detract from character where existing evidence suggests otherwise
- would reduce opportunities for medium density housing, including areas near activity centres
- would making it challenging to reach the HSS target of 24,010 additional dwellings by 2036
- does not account for the significant housing demand since the start of the Covid-19 pandemic which was underestimated in the HSS
- would leave little GRZ in the municipality and proposes no Residential Growth Zone
- will place unnecessary planning restrictions on all urban land, including land that can provide modest residential growth, without adequately planning for needed housing supply
- should have applied GRZ more liberally, particularly near Mornington, Rosebud and Hastings activity centres and neighbourhood activity precincts including Mount Eliza.

Aranday Pty Ltd explained the Amendment would further complicate 10-60 Cliff Road, Shoreham which currently has 8 different overlays including 11 separate schedules⁷.

Regarding preferred approaches, there were submissions which sought to:

- individualise overlay and policy provisions to identify and protect a local area's value and characteristics
- identify areas where substantial, incremental and limited changes should reasonably occur, having regard to activity centres, walkability, employment nodes and public transport
- apply reasonable locational criteria and parameters which designate 'change levels' near activity centres, such as an 800-metre walking distance
- apply the residential zones in a similar approach to other municipalities where the Mixed Use Zone and Residential Growth Zone were also applied
- apply GRZ to all land within a 20-minute walk of an activity centre.

Various submissions opposed the NRZ schedule provisions because they considered:

- it would reduce the maximum mandatory building height from 11 metres (3 storeys) to 9 metres (2 storeys)
- the varied Clause 54 and 55 requirements:
 - would be more restrictive and significantly reduce infill developments and innovation because of increased setbacks, increased permeability, decreased site cover, and increased private open space
 - are not justified on land within 20-minute walk of an activity centre and would restrict the ability to achieve this policy outcome
 - are unnecessary
- reducing infill development opportunities would negatively impact housing diversity and affordability sought by the HSS.

⁷ VicPlan mapping shows Bushfire Management Overlay, DDO2, DDO3, Environmental Significance Overlay Schedules 17 and 20, ESO28, LSI01, SLO2, SLO4 and VPO1

(iii) Discussion

The NRZ schedules are proposed to be applied generally consistent with the preferred character objectives but were not reconciled with the change area category boundaries. In certain instances:

- the boundaries between an NRZ schedule area boundary do not align with a change area boundary
- there are multiple change area categories in an area with one NRZ schedule.

Therefore, the same NRZ schedule objectives would apply to a neighbourhood with different change area categories.

There were comprehensive submissions and evidence supporting and opposing the Amendment's approach to applying the zones and overlays.

At first glance, the extent of the existing GRZ1 throughout the municipality creates the perception that development of up to 11 metres (3 storeys) may be permitted under the existing Planning Scheme provisions. Ministerial Direction 7(5) does not enable a GRZ schedule to specify a height lower than this. However, Mornington Peninsula has legacy mandatory maximum building heights specified in DDO schedules which were introduced decades ago, during a different planning regime. In many areas, these heights are more restrictive than the default maximum height of 9 metres (2 storeys) specified in NRZ.

The Panel considers that Mornington Peninsula's current restrictive planning provisions have made it very difficult to accommodate considerable growth and have been the key influence in the municipality's predominantly single and double storey character.

Planning Practice Note 91 advises the NRZ can be applied to:

- two types of areas:
 - where there is no anticipated change to the predominantly single and double storey character, or
 - where there is identified specific values that distinguish it from land in other parts of the municipality or surrounding area
- minimal and incremental change areas.

The Panel accepts the Amendment is generally consistent with Planning Practice Note 91 because it proposes to apply the NRZ to areas of predominantly single and double storey character.

Planning Practice Note 91 does not say an area also needs to have specific or distinguishing values.

As discussed in Chapter 3.4, there is limited explanation why existing character in most residential areas should be the preferred character. This has resulted in existing mandatory maximum heights of two storeys being retained in DDO schedules.

While the Panel considers the NCSG could have been ambitious with its preferred neighbourhood character statements, based on advice in Planning Practice Note 91, the Panel accepts it is appropriate to apply the NRZ to all areas where Council seeks to respect the existing single and double storey character of an area. For Mornington Peninsula, that is everywhere except substantial change areas. Specifically, Planning Practice Note 91 advises "*it is inappropriate to apply the General Residential Zone to areas where a planning authority seeks to respect the existing single and double storey character of an area*".

There is no strategic work to support the GRZ in areas where mandatory provisions have restricted residential areas to no more than two storeys. Applying the GRZ to an area predominantly single and double storey would:

- be inconsistent with Planning Practice Note 91 which:
 - directs the GRZ to an area with existing or planned housing development of 3 storeys which offers good access to services and transport
 - advises not to apply the GRZ where single and double storey character needs to be respected
- contradict Ministerial Direction 7(5) which does not enable the GRZ schedule to specify a height lower than the default maximum height of 11 metres (3 storeys) – applying a lower height through a DDO schedule may be seen as means of bypassing this direction.

(iv) Conclusion

The Panel concludes the approach for applying the Neighbourhood Residential Zone:

- responds to the Neighbourhood Character Strategy and Guidelines which generally seeks to apply existing neighbourhood character as the preferred character in most residential areas
- is generally appropriate, subject to adopting other Panel recommendations regarding the General Residential Zone.

4.3 General Residential Zone

(i) The issue

The issue is whether the approach to applying the General Residential Zone is appropriate and justified.

(ii) Evidence and submissions

Council submitted:

- the current GRZ was introduced to most residential land in 2014⁸ as a default ‘holding position’ until a housing strategy and neighbourhood character study was prepared
- GRZ is proposed to apply in substantial change areas
- Mornington Peninsula is not a designated growth area so the Residential Growth Zone would be inappropriate in substantial change areas
- overarching principles and policy such as Clause 02.03-1 are primarily directing:
 - housing and population growth to three major activity centres – Mornington, Rosebud and Hastings
 - limited growth in neighbourhood activity centres.

Mr Milner supported the proposed application of the GRZ. He attached a matrix of change area categories and zone responses by activity centre in his evidence. From the matrix, he observed the GRZ application is consistent with:

- the 3 storeys (11 metres) built form intent sought for the Mornington and Rosebud activity centres in local policy

⁸ Through Mornington Peninsula Amendment C179

- advice in Planning Practice Note 91.

Based on finding no strategic support for taller heights and there being adequate identified municipal land supply, Mr Milner considered the GRZ to be appropriate to:

Protect the distinctive sense of place of the Mornington Activity Centre, its low scale coastal ambience, its integral connection to the foreshore and its backdrop of Arthur's Seat.

Mr Milner added the built form limit in substantial change areas is clarified by not applying the Residential Growth Zone to substantial change areas.⁹ He noted there were similar policy objectives for the Rosebud and Hastings activity centres.

There were submissions which considered the GRZ:

- would be unnecessarily restrictive in substantial growth areas
- should be applied to incremental change areas, which is a more conventional approach
- should be applied to more areas, particularly near major activity centres and neighbourhood activity centres.

In response, Council submitted it would be inappropriate to apply the GRZ to incremental areas, when having regard to State and local policy (including Clauses 11.02-1S and 11.03-5S) and guidance in Planning Practice Note 91. Council referred to the Localised Planning Statement which states:

The Mornington Peninsula will not accommodate major population growth and the existing Urban Growth Boundary and Green Wedge rural area will be maintained.

...

The establishment of a strong and consistent overall policy framework for future land use and development is essential, including the use of mandatory controls and standards where necessary, due to the particular pressures on the Peninsula's rural landscapes, coasts, towns and villages, and the risk of unintended and unplanned change through cumulative impacts.

(iii) Discussion

Though the Amendment may be described as one seeking to remove unnecessary permits, overall, it will result in a moderately more restrictive planning framework for most residential areas than what currently exists.

Figure 7 shows the Amendment would remove most GRZ land from the Mornington Peninsula. The GRZ will become the most important residential zone for delivering housing growth over the next 15 years because:

- there is uncertainty whether Mornington Peninsula can achieve at least 15 years housing supply
- the current restrictive DDO provisions will continue to apply to most residential areas through the same, revised or new schedules.

Elsewhere in the report, the Panel found no justification to change the designation or building height for land currently in General Residential Zone Schedule 1 where no overlay applies. Council did not demonstrate a failure with the existing regime to justify rezoning such land to further restrict development potential and capacity. To the contrary, the Yuilles Road development in

⁹ Planning Scheme Clause 02.03 referenced in Mr Milner's evidence

Mornington discussed in Chapter 6.4 demonstrates how 3 storey form can respect a 1 to 2 storey neighbourhood character.

The Panel considers it important that all residential land in a defined major activity centre boundary, as identified in an adopted structure plan, have an unrestricted GRZ, except where it has an identified sensitivity. Unrestricted in this context means not applying provisions more restrictive than those enabled by the head provisions. This includes the exhibited and post-exhibition proposed version of the GRZ1 neighbourhood character objectives. Such objectives would generally be found in low density residential neighbourhoods rather than in a major activity centre. Accordingly, GRZ1 should continue to not specify neighbourhood character objectives, consistent with the current zone schedule in the Planning Scheme.

For reasons outlined above, the Panel agrees with Council's direction regarding its post-exhibition change to revise GRZ1 from 'Garden residential township area' to Substantial change township area'. The name should be simply changed to 'Substantial change area' to reflect its actual purpose.

It is acknowledged that much of the residential land in the Rosebud Activity Centre is not subject to the Amendment and will remain as GRZ1. Properties north of Point Nepean Road should be NRZ because they have a sensitive interface with the coastal foreshore.

There were submissions which sought to rezone properties north of Point Nepean Road in Rosebud to GRZ, consistent with provisions for 866 Point Nepean Road. To consider these submissions, the Panel explored the strategic direction and provisions for 866 Point Nepean Road.

The HSS designates all land north of Point Nepean Road as minimal change and its abutting interface with the foreshore makes it a sensitive coastal location. The NCSG does not designate it with a neighbourhood character.

Extraordinarily, the Amendment proposes to apply a specific GRZ schedule (GRZ4) to recognise the existing built form and enable a residential building of up to 13.5 metres. This is an example where Council should have questioned existing circumstances and applied provisions which more appropriately reflect the property's settings and community aspirations. The Panel makes no recommendation regarding 866 Point Nepean Road because its provisions were not opposed through submissions or raised during the Hearing.

For these reasons, the Panel does not support submissions seeking to apply the GRZ to properties north of Point Nepean Road in Rosebud.

After the Amendment is introduced, if Mornington Peninsula cannot meet 15 years housing supply, the Panel considers Council should investigate whether certain lower order activity centres can accommodate further growth through the GRZ, where such an outcome would be consistent with the Localised Planning Statement.

(iv) Conclusions and recommendations

The Panel concludes:

- The General Residential Zone should:
 - apply to all residential land in the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each respective adopted structure plan
 - apply to all land in the current General Residential Zone Schedule 1 where no overlay applies

- not apply to land outside the Hastings, Mornington and Rosebud activity centre boundaries unless it currently applies unencumbered.
- The exhibited neighbourhood character objectives proposed for General Residential Zone Schedule 1 are insufficiently justified and inappropriate because they do not reflect the development in a major activity centre or areas with more robust character that can accommodate more growth.
- General Residential Zone Schedule 1 should be renamed to ‘Substantial change area’ to reflect its actual role.

The Panel recommends:

Retain General Residential Zone Schedule 1 to:

- a) land which currently has no overlay
- b) all residential land within the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each adopted structure plan.

Amend General Residential Zone Schedule 1 to:

- a) revise the title from ‘Garden residential township area’ to ‘Substantial change area’
- b) delete the neighbourhood character objectives and replace them with ‘None specified’.

4.4 Low Density Residential Zone

(i) The issue

The issue is whether the LDRZ schedule provisions are appropriate and justified.

(ii) Evidence and submissions

Council presented a table (reproduced in Table 5) which outlines the minimum subdivision areas proposed in the new 11 LDRZ schedules and explains where the metric on the minimum subdivision area has been derived.

Table 5 Where the proposed LDRZ schedule requirements are derived from

Schedule	Minimum subdivision area	Applies to areas currently affected by
LDRZ1	0.2 hectares	DDO1, or DDO22 and not located in the ‘Bungower Road’ or ‘Baldock Road’ sub-precinct of the DDO22
LDRZ2	0.25 hectares	DDO4
LDRZ3	0.3 hectares	DDO22 and located in the ‘Bungower Road’ sub-precinct of the overlay
LDRZ4	0.4 hectares	DDO3
LDRZ5	0.5 hectares	DDO5
LDRZ6	0.6 hectares	DDO22 and located in the ‘Baldock Road’ sub-precinct of the overlay
LDRZ7	1 hectare	DDO6, or the DPO7 except the Kinfauns Estate in Bittern

Schedule	Minimum subdivision area	Applies to areas currently affected by
LDRZ8	2 hectares	DDO7 and not located in the Mornington or Bittern sub-precinct of the overlay
LDRZ9	4 hectares	DDO7 and located in the Mornington sub-precinct of the overlay
LDRZ10	8 hectares	DDO7 and located in the Bittern sub-precinct of the overlay
LDRZ11	1 hectare	DPO7 and located in the Kinfauns Estate in Bittern

Council submitted:

- the current DDO6, DDO7 and DPO7 contain average subdivision area requirements
- the proposed new LDRZ schedules have converted the ‘average’ subdivision area requirements to ‘minimum’ subdivision requirements
- the rationale for the change was because the LDRZ head provisions do not enable a schedule to specify average subdivision areas.

Mr Milner observed the municipality’s existing subdivision provisions include a permit trigger for subdivision required by the applicable residential zone and a minimum lot area specified in the LDRZ. He noted the Amendment includes minimum subdivision requirements in 11 new local LDRZ schedules.

Mr and Ms Redfern supported the proposed changes to the LDRZ areas and the DDO schedules as they would protect and maintain the areas by not being able to be subdivided into smaller lots or allow multiple dwellings. Council acknowledged this support.

Mr Proctor objected to the overuse of multiple LDRZ zones, each with “*unreasonable and often unsupported restrictions*”. In response, Council submitted:

DELWP has advised to implement character controls primarily through the residential zone schedules and only resort to an overlay for controls that are beyond the scope of the zone schedules. Hence, the varied subdivision controls in the existing DDO schedules affecting the LDRZ have been translated into new schedules to the LDRZ.

Mornington

Mr Akehurst requested the minimum subdivision size of 1 hectare in the existing DDO6, which was translated into the proposed LDRZ7, be removed and replaced by a minimum subdivision size of 0.4 hectares, consistent with the LDRZ standard provisions for sites without reticulated sewerage. Council did not support this request and submitted:

- the land is designated for minimal change because it is in a Bushfire Prone Area so it is unsuitable to accommodate more housing in the area
- it is required to direct future housing away from locations with natural hazards, consistent with guidance in Planning Practice Note 90
- enabling subdivision at such a density will significantly erode the existing character and natural landscape of the area.

Penequine Enterprises Pty Ltd considered:

- the planning provisions proposed for Precinct 3 on the eastern side of Racecourse Road in the Mornington North Outline Development Plan will not materially affect the current planning provisions

- the existing and proposed provisions are excessively and needlessly restrictive and should be revisited.

They requested that Precinct 3 be identified as an ‘investigation area’ rather than a minimal change area to align with Precinct 6 because they have much in common.

Council did not specifically address the Penequine Enterprises request but submitted the proposed provisions *“will ensure that Precinct 3 is maintained as part of the “soft edge” (or buffer) between the more urban areas to the west”*.

Tango Property Group and four owners of 11 Mornington properties submitted:

- the Amendment does not propose to rezone 4 to 10 Woodbyne Crescent
- their land should be identified as an ‘investigation area’ in DDO53, and existing Planning Scheme policies relating to the Mornington North Outline Development Plan Area, consistent with the HSS
- Precinct 6 in the Mornington North Policy Area where the LDRZ, DDO6 and VPO1 currently apply should:
 - be rezoned to GRZ1 to facilitate immediate opportunities for housing growth
 - have a site-specific Development Plan Overlay schedule to acknowledge the precinct will experience substantial change and respect nearby context and character
- DDO53 should be deleted or amended to acknowledge that Precinct 6 is identified as an investigation area and may be subject to substantial change.

In response, Council submitted:

retaining the site (and Precinct 6 more broadly) in the LDRZ as part of this Amendment is appropriate, given that a combined permit application and planning scheme amendment request is currently underway – the appropriate housing change area and site-specific planning controls will be determined as part of that process, not this Amendment. Until such time as that process is complete, Council submits that it is appropriate for the site to be designated as an investigation area, zoned LDRZ7 and the DDO6 removed and replaced with the DDO53, to achieve the relevant neighbourhood character outcomes identified in the Neighbourhood Character Study.

Mount Martha

Owners of properties in Hopetoun Avenue requested the east side of the road be rezoned from LDRZ to GRZ to enable subdivision to match other smaller properties on the west side of the road and in the area. They considered Mount Martha can manage more people because it has excellent services and resources.

Council did not support the request and submitted:

- given the land is in a Bushfire Prone Area and designated for minimal change, it is not suitable to accommodate more housing at a similar density to the west side of Hopetoun Avenue
- enabling subdivision at such a density will significantly erode the existing character and natural landscape of the area
- Planning Practice Note 90 requires it to direct future housing away from natural hazards.

Shoreham

Shoreham Community Association submitted that existing General Residential Zone land bounded by Buxton Lane, Nelson Street and Howard Street, and land bounded by Sydney Road through to Prout Webb Road, the Foreshore and Stony Creek should be rezoned to the proposed LDRZ4

rather than the proposed NRZ12 given that they “contain mostly larger properties that best fit the LDRZ criteria and are on three sides contiguous with LDRZ areas”. Mr McMahon sought to rezone the foreshore and bottom of Cliff Road to the LDRZ.

Council did not support the request and submitted:

- the HSS has not identified any characteristics in both areas that warrant a low-density residential development designation given the purpose of the LDRZ is “To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater”
- rezoning both areas to the proposed LDRZ4 would:
 - not aid in protecting their character given the LDRZ4 does not contain neighbourhood character objectives or provisions
 - reduce Shoreham’s housing capacity
 - contradict the HSS vision to ensure adequate housing supply in the municipality which meets the State Government’s projected population and housing growth while protecting the valued character of its residential areas.

Somers

The owner of 38 Kennedy Road, Somers explained their land is currently zoned Green Wedge Zone Schedule 2 and abuts the Urban Growth Boundary. They requested their property be included in a minimal change area and be rezoned to LDRZ given:

- it is on the edge of the area, not large enough to sustainably maintain productive agricultural use and too large to maintain a single rural living lot
- there is no potential to further subdivide the land into more manageable lot sizes
- the surrounding lots of the same zone to the north and west are smaller than 38 Kennedy Road and generally inconsistent with the zone purpose
- the property and the surrounding lots are more appropriately suited to a zone that reflects the prevalent lot sizes
- there is an opportunity for well-considered low density housing which is consistent with the immediately surrounding land uses
- land could be developed consistent with the prevailing and preferred character of the Bush Coastal 2 area and could assist with vegetating the otherwise generally bare land
- the property is accessible by public transport as it is less than 600 metres from the nearest bus stop.

Council did not support the request and submitted:

- what is sought by the owner of 38 Kennedy Road is not consistent with State planning policies that seek to protect the green wedge by maintaining the Urban Growth Boundary and the Green Wedge Zone
- the submission is beyond the scope of the Amendment because the land is not in a ‘residential area’.

Somerville

The owners of 357 Coolart Road, 176 and 182 Jones Road and 261 Bungower Road opposed the planning provisions proposed to these properties. The property at 357 Coolart Road is subject to the LDRZ, DDO7 and VPO1 and is in a Bushfire Prone Area.

The owners of 357 Coolart Road and 261 Bungower Road opposed the minimal change area designation and sought more intensive subdivision on land south of Bungower Road between Coolart and Jones Road. They submitted:

- the LDRZ area in Bungower Road from Coolart Road to Frankston-Flinders Road and Jones Road from Bungower Road to Tyabb-Mornington Road already had subdivisions and allotments of 0.4 and 1 hectare
- properties opposite 357 Coolart Road (north side of Bungower Road) are 0.4 hectares
- it is illogical to have a 0.4 hectare minimum lot size in the zone with a minimum 2 hectares in the overlay
- allowing more housing in the LDRZ would:
 - help population growth anticipated over the next 15 years
 - reduce demand for rural residential or rural lifestyle dwellings in other locations
- more intense development on this land would protect the nearby Green Wedge Zone land.

The 176 and 182 Jones Road owners submitted:

- the existing LDRZ minimum submission lot area of 0.4 hectares is reasonable
- the minimum 2-hectare average lot area proposed through DDO7 is blunt, restrictive and unjustified and does not reflect actual circumstances because the paddocks do not have vegetation
- requiring a 50-metre setback without justification is not proper and orderly planning
- the DDO53 provisions are overly prescriptive, particularly the landscape plan requirement
- the deletion of DDO7 is supported but it should not be replaced with DDO53.

In response, Council submitted:

- the properties are designated for minimal change because they are in a Bushfire Prone Area
- the minimum subdivision area of 2 hectares is from the existing DDO7
- neighbourhood character outcomes cannot be achieved through the LDRZ schedule
- the landscape plan requirement:
 - is appropriate and needed to ensure new development reflects the preferred neighbourhood character of the Rural Settlement 2 precinct
 - would not be overly burdensome
- the 50-metre minimum street setback from the south side of Bungower Road:
 - has been translated from DDO6 and DDO7 and are required to maintain the existing open landscape of the LDRZ areas on the periphery of a township to create a sense of transition between green wedge, rural and urban landscapes
 - does not relate to any potential future road widening
- Mornington Peninsula can meet the State Government's projected population and housing growth while retaining the LDRZ subdivision provisions
- Planning Practice Note 90 requires the Shire to direct future housing away from natural hazards.

(iii) Discussion

The existing LDRZ Schedule specifies a default 0.4 hectares as the minimum subdivision size, consistent with the zone default. It does not specify any outbuilding requirements. The

Amendment proposes to replace the existing LDRZ Schedule with 11 new schedules. Each schedule specifies a minimum subdivision area requirement and dimensions for an outbuilding above which a permit is required.

The Amendment does not introduce any additional Low Density Residential areas through rezoning. On the contrary, the Amendment rezones a small area of land from the LDRZ to NRZ15 to correct a zoning anomaly at 6, 8, 10, 12, 14, 16 and 18 Hull Road, Mount Martha.

The Panel has reviewed each of the existing DDO schedules referred to in Table 5 and considers it significant that the minimum subdivision requirements in each DDO schedule has mandatory provisions by including:

These requirements cannot be varied with a permit unless any of the following requirements are met:

- The subdivision realigns the boundary between existing lots, provided no new lot or additional subdivision potential is created.
- Two or more dwellings have lawfully existed on a lot since the approval date and the subdivision proposes to create separate lots for each dwelling.
- The subdivision excises land for a road, utility installation or other public purpose.

Given the mandatory nature of the subdivision clauses in each existing DDO schedule, the proposed new minimum subdivision areas specified in the proposed 11 LDRZ schedules represent a policy neutral translation of existing provisions. Accordingly, the Panel does not oppose the 11 schedules or their minimum subdivision areas.

It is acknowledged that Council proposes a post-exhibition change to each of the 11 LDRZ schedules to include a provision regarding subdivision as follows:

All land encumbered by this schedule. This does not apply to:

- a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created.

The rationale for the proposed change as advised by Council is that the exemption currently exists through existing DDO schedules. Given that subdivision in the LDRZ areas will now be managed through an LDRZ schedule, it is appropriate to include the exemption in the LDRZ schedules.

There was no submission regarding each LDRZ schedule requiring a permit to construct an outbuilding above 80 square metres. The Panel has no concern with including this permit trigger threshold.

The Panel supports Council's proposed post-exhibition change to replace the average subdivision area requirements in LDRZ schedules with minimum subdivision requirements. The LDRZ head provisions do not enable average subdivision areas.

While the 11 LDRZ schedules are supported at this time, the Panel considers it is important that Council comprehensively and critically review the LDRZ areas, including the new schedule provisions, in the short term. This should occur separately to avoid delaying the Amendment.

The Panel shares concerns outlined in the Amendment's authorisation letter which "*strongly encouraged*" Council to:

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

The Panel raised this matter at the Directions Hearing and directed Council to provide a response to how Council has addressed that item¹⁰. In response, Council submitted:

An assessment of minimum lot sizes for land in the LDRZ is outside the scope of this Amendment. The timing for this piece of work will be determined as part of the next Planning Scheme Review, which Council has received an extension of time to prepare (due December 2023). (Panel Emphasis)

The Panel shares the Department's expressed view that there does not appear to be any clear reason why certain LDRZ areas have larger minimum lot sizes than others. There appears to be the ability to accommodate denser development in LDRZ areas without compromising amenity or character.

In response to a question from the Panel, Council could not definitively explain the origin of the LDRZ schedule lot sizes. Ms Hill explained that the character assessments undertaken were largely a reflection of existing built form that has emerged from the application of existing planning provisions – as opposed to a critical review of 'preferred' outcomes.

Many of the LDRZ areas have minimum lot sizes that are more in line with those expected of Rural Living. For example, LDRZ7 & LDRZ11 – 1 hectare; LDRZ8 – 2 hectares; LDRZ9 – 4 hectares; LDRZ 10 – 8 hectares. They are considerably more than the default 0.2 hectares (with reticulated sewer) and 0.4 hectares (without reticulated sewer) areas referenced in Planning Practice Note 91. The Panel considers it is important to investigate and determine which of these areas have the potential to be further subdivided at the default LDRZ density of 0.4 hectares, or even at conventional residential densities, without creating adverse impacts.

The Panel has outlined in Chapter 2.3 that Council's dwelling yield projections that informed the Amendment are likely to be overly ambitious. The projection is predicated on the wholesale subdivision of all land in the LDRZ (and GRZ). This assumption is flawed. Just because a lot can potentially be subdivided, does not necessarily mean it will be subdivided. In this regard, it is highly unlikely that all owners will seek to maximise their yield. Having noted this, the Panel's review of material submitted by Council is that most LDRZ areas are already subdivided at capacity.

As noted above, there are many LDRZ areas that could accommodate appropriate and sympathetic development at a higher density than the current subdivision provisions allow. Advancing this outcome through a comprehensive LDRZ review could assist Council in addressing its likely shortfall in housing supply.

Council advised it would determine the timing of a review of its LDRZ areas in its next Planning Scheme Review. Council should prioritise this review to help reduce pressure to rezone Green Wedge Land or intensify development in established general residential areas. The review should critically assess all LDRZ areas in the municipality, including properties subject to the submissions outlined above.

Having reviewed all submissions regarding LDRZ land, the Panel supports Council's response to each submission at this time (other than in response to the Penequine Enterprises submission). The proposed provisions are a neutral translation of existing provisions, and Council has accepted that a review of the LDRZ areas is warranted (Refer to Table 6).

¹⁰ Direction 11, issued 24 November 2022

The Penequine Enterprises submission persuaded the Panel that Precinct 3 is worthy to be designated an investigation area. The balance of Precinct 3 which has not yet been developed, including the submitter's land, has many of the same characteristics as land in Precinct 6 and accordingly should be investigated further for its potential to accommodate a more intense form of residential development than the existing and proposed provisions would enable.

Table 6 Panel's response to specific LDRZ issues

Submission from:	Panel response to officer recommendation
Kim Redfern	Noted
38 Kennedy Road Somers owner	Panel supports Officer Response. No further investigation required.
Shoreham Community Association	Panel supports Officer Response at this time. Review as part of future Shire wide LDRZ review.
Jeff Akehurst	Panel supports Officer Response at this time. Review as part of future Shire wide LDRZ review.
Penequine Enterprises Pty Ltd	Panel <u>does not</u> support Officer Response. Panel agrees with the submitter that Precinct 3 of the Mornington North Development Plan (April 2010) has many similar characteristics to that of Precinct 6 and it would be appropriate for the Precinct to be reclassified as an Investigation Area through the Amendment.
Tango Property Group and Tango Development No. 6 Pty Ltd; and four owners of 11 Mornington properties	Panel supports Officer Response at this time. It is appropriate for the provisions to be reviewed as part of the combined permit application and a planning scheme amendment request is currently underway.
Lyle and Sue Ridout	Panel supports Officer Response at this time. Review as part of future Shire wide LDRZ review.
Mr and Mrs Bontorno; David Proctor; Mr and Mrs Shepherd; and M Schneider	Panel supports Officer Response at this time. Review as part of future Shire wide LDRZ review.
Barry and Diane Manning	Panel supports Officer Response at this time. Review as part of future Shire wide LDRZ review.
David Proctor	Panel supports Officer Response.

(iv) Conclusions and recommendations

The Panel concludes:

- Replacing the existing Low Density Residential Zone schedule with 11 new Low Density Residential Zone schedules represents a policy neutral translation of minimum subdivision requirements from existing Design and Development Overlay schedule provisions and is generally supported.
- A detailed review of the municipality's Low Density Residential Zone areas is warranted and should occur as a matter of priority following the adoption of the Amendment. The Panel supports the Council's Officer responses to Low Density Residential Zone submissions advanced at this time, other than its response to Penequine Enterprises.

- Council’s proposed post-exhibition change to each of the 11 Low Density Residential Zone schedules to include a re-subdivision provision is appropriate.

The Panel recommends:

Amend Clause 16.01-1L to identify land in Precinct 3 of the ‘Mornington Residential Change Framework Plan – housing change framework map’ as an investigation area.

The Panel further recommends:

After adopting the Amendment, Council should review the Low Density Residential Zone areas as a matter of priority, to assess and identify areas that could accommodate an increase in development density without materially impacting amenity or the environment.

4.5 Neighbourhood Character Overlay

(i) The issue

The issue is whether the approach to applying the Neighbourhood Character Overlay is appropriate and justified.

(ii) Evidence and submissions

Council explained:

- Neighbourhood Character Overlay Schedules 1 and 2 are proposed for special character areas – the Ranelagh Estate in Mount Eliza and The Avenues in Rosebud and parts of Tootgarook and Rye
- the areas have a notably different housing style to the rest of the municipality which warrants a specific neighbourhood character approach, consistent with guidance in Planning Practice Note 91
- the Neighbourhood Character Overlay is needed to give effect to preferred built form outcomes which could not be fully achieved through the residential zone.

Numerous submissions objected to Neighbourhood Character Overlay Schedules 1 and 2 being applied extensively across the municipality. They submitted:

- there is little strategic basis for applying the Neighbourhood Character Overlay, particularly on a wide geographic basis
- the NCSG does not provide a sound strategic basis for applying the Neighbourhood Character Overlay
- applying the Neighbourhood Character Overlay to areas of special character is an *“inappropriate heavy-handed approach”*
- the NRZ already addresses the importance of neighbourhood character considerations
- Neighbourhood Character Overlay Schedule 1 will introduce onerous permit requirements which departs from the Amendment’s intent to remove permit triggers
- Council should reconsider applying Neighbourhood Character Overlay Schedules 1 and 2 and explore the recommendations in the Ranelagh Conservation Management Plan 2009.

Council did not support a submission seeking to apply the Neighbourhood Character Overlay to Shoreham because it said the area was not identified as needing protection.

In response, Council submitted the NCSG found the proposed Neighbourhood Character Overlay areas have special character values that strategically justify greater protection through the Neighbourhood Character Overlay rather than relying on the NRZ. Council referred to the NCSG precinct description for Garden Residential 4 (Rosebud) which states:

The character of this precinct is attributed to an abundance of older housing stock from the post war and early modern architectural eras. Dwelling materials consist primarily of weatherboard and fibro, with both hipped and flat metal roofs.

Ms Hill and Mr Milner supported the Neighbourhood Character Overlay being applied to the identified areas. Ms Hill stated:

- the Neighbourhood Character Overlay is proposed:
 - to areas identified as having special character and where the NRZ37 is proposed
 - consistent with the NCSG recommendations for Garden Residential 4 Character Areas
- the Ranelagh Estate is listed on the Victorian Heritage Register due to its unique Walter Burley Griffin designed layout
- the Neighbourhood Character Overlay will require a permit for all buildings and ensure their siting and style are consistent with the existing character.

Mr Milner stated:

- Ms Hill's evidence provided the merits of applying the Neighbourhood Character Overlay to the identified areas
- the overlay is proposed to a small extent of land and the additional permit triggers are unlikely to notably increase administrative burden.

(iii) Discussion

If applied as exhibited, Neighbourhood Character Overlay Schedules 1 and 2 would:

- apply to areas identified with special character so it cannot be described as a 'blanket' provision across the municipality
- require a permit only for an outbuilding, demolition and removing a coastal tree.

Consistent with advice in Planning Practice Note 91, the Neighbourhood Character Overlay is appropriate and justified for the Ranelagh Estate because:

- it exhibits existing characteristics that need to be protected, noting the Ranelagh Estate is of State heritage significance and in the Victorian Heritage Register
- it requires a specific approach to neighbourhood character compared to the rest of the municipality.

The Panel agrees with Council that The Avenues and parts of Tootgarook and Rye are different to the rest of the municipality. The Avenues has relatively smaller lots and identified parts of Tootgarook and Rye do not have a visual differentiation between the private lot and vegetated public road reserves. However, different does not necessarily mean special. The difference is not special enough to differentiate them as neighbourhoods requiring a specific planning response above other neighbourhoods in the municipality. These areas have generally single storey built form with some double storey houses, resulting from decades of mandatory restrictive maximum building heights and associated provisions.

Regarding the Neighbourhood Character Overlay Schedule 2 character objectives:

- it would be difficult to respect key elements of existing buildings from the very broad ranging 'Post-war and Modern eras' because there is no overall consistent housing style or form within this broad 70-year development period

- there is a notable proportion of brick veneer houses, particularly in some Tootgarook and Rye streets where brick veneer is more dominant
- the final three objectives are generally being sought through many proposed NRZ schedules.

There is no apparent reason why planning provisions beyond those proposed through NRZ37 are needed to manage development and neighbourhood character in The Avenues and parts of Tootgarook and Rye. Much of the vegetation visible from the public realm is along public road reserves and public open spaces.

Development on private land can be managed through NRZ37 without negatively impacting the preferred neighbourhood character of these areas. One of the Neighbourhood Character Overlay Schedule 2 objectives is to “*maintain and strengthen the vegetated setting of dwellings*”. The neighbourhood character objectives proposed in Neighbourhood Character Overlay Schedule 2 can be equally applied as NRZ schedule objectives.

(iv) Conclusions and recommendations

The Panel concludes:

- It is appropriate and justified to apply Neighbourhood Character Overlay Schedule 1 to the Ranelagh Estate.
- There is insufficient justification to apply Neighbourhood Character Overlay Schedule 2 to The Avenues and parts of Tootgarook and Rye.

The Panel recommends:

Delete Neighbourhood Character Overlay Schedule 2 and do not apply it to The Avenues and parts of Tootgarook and Rye.

Replicate the Neighbourhood Residential Zone Schedule 37 into a new Neighbourhood Residential Zone schedule and apply the neighbourhood character objectives and relevant decision guidelines from Neighbourhood Character Overlay Schedule 2.

Apply the new Neighbourhood Residential Zone schedule to land outside the Rosebud Activity Centre boundary intended for Neighbourhood Character Overlay Schedule 2.

4.6 Vegetation Protection Overlay

(i) The issue

The Amendment proposes to apply the Vegetation Protection Overlay Schedule 1 (VPO1) to specific residential areas located in Dromana, Flinders, McCrae, and Mount Martha.

The issue is whether the approach to applying the VPO1 is appropriate and justified.

(ii) Evidence and submissions

Mr Granger gave evidence that there may be an opportunity to consider reclassifying areas of minimal change to incremental change in order to effectively address the housing supply challenge. He noted in this regard that he agrees with the pre-authorisation commentary provided to Council by DELWP officers (DELWP email 14 Dec 2020) that the presence of VPO1 should not necessarily trigger a minimum change area designation.

DELWP's email of 18 March 2021 questioned: *How the application of the VPO1 to new areas is justified?* and noted that *there does not appear to be any evidence in the amendment documentation to support its application in the new areas.*

Council's response, dated 25 March 2021, stated:

The strategic justification for applying the VPO1 to the four new areas is based on the recommendation in the Ethos Urban neighbourhood character study to apply the SLO. On page 102, the study recommends that the SLO be applied to areas identified as "heavily vegetated" that will "require a permit for removal of native vegetation and trees identified in the design guidelines and reflect the minimum site coverage and permeability requirements of the Zone Schedule".

However, as most of these areas are already affected by VPO1, we believe we can achieve similar outcomes with the existing VPO1 without complicating the planning scheme unnecessarily. By comparing the areas where a new SLO is recommended (see page 103) with the areas currently affected by the VPO1, we found four areas that are not affected by the VPO1 but recommended to be included in the SLO. The new NRZ schedules proposed for these four areas, i.e. NRZ12 (Bush Coastal 1), NRZ13 (Bush Coastal 2) and NRZ16 (Bush Coastal Contemporary 3), all identify vegetation as an important element to the area's neighbourhood character.

Council submitted the VPO1:

- has been applied where vegetation is a significant contributory element to the neighbourhood character of a residential area
- has been applied to give effect to preferred built form outcomes where the residential zone does not fully achieve the identified housing or neighbourhood character objectives for that area
- is used to recognise and protect areas of significant vegetation, to ensure that development minimises loss of vegetation, to preserve existing trees and other vegetation, to recognise vegetation protection areas in locations of special significance, natural beauty, interest and importance, consistent with the purpose of the VPO head clause.

Council noted that the proposed provisions, and the proposed application of VPO1 to particular sites, are appropriate, and generally consistent with the findings of the Neighbourhood Character Study. It submitted that Planning Practice Note 7 (Vegetation Protection in Urban Areas) confirms the VPO is the appropriate tool for identifying and protecting significant native and exotic vegetation in urban and rural environments, whereas the SLO has broader applicability and is designed to identify and conserve the character of a significant landscape.

In respect of the findings of the Neighbourhood Character Study, Council acknowledged that it recommended the use of the Significant Landscape Overlay (SLO) where extensive vegetation was identified as an important feature of a particular character area. However, as part of its implementation of the Neighbourhood Character Study, Council determined that the VPO was the more appropriate planning tool, on the basis that it already applies to various areas across the municipality (including character areas where extensive vegetation was identified as an important feature) and it can be used to achieve similar planning outcomes as the SLO, without unnecessarily complicating the Planning Scheme. In providing her evidence on urban design and neighbourhood character Ms Hill confirmed that she supported Council's approach in respect of the application of the VPO in preference to the SLO.

Council further submitted that VPO1 will ensure the necessary protection of vegetation by requiring a permit for vegetation removal (subject to exemptions), and in contrast to the SLO, it does not require a permit for buildings and works.

No party expressly opposed the application of the VPO1.

There were however a limited number of submissions concerning the application of the VPO.

Shoreham Community Association noted that increased clearing of trees and vegetation for development is occurring in Shoreham and surrounding villages. It submitted whilst landscaping is encouraged, there should be emphasis on planting of trees and that neighbourhood character would be further protected by strengthening vegetation provisions in response to climate change in the VPO, SLO and Environmental Significance Overlay.

Submitter 271 expressed concern that township vegetation could be impacted where the DDO does not trigger planning consideration, noting the broad exemption contained in VPO1 when a planning permit is not required for a single dwelling. Town Planning & Co expressed similar concerns, noting that there appears to be a lack of consideration of how the DDO schedules and VPO1 work together to protect township vegetation and landscape character. At the Hearing, Submitter 271 noted that the issue had been satisfactorily addressed by the post-exhibition changes which Council proposed, namely:

the sought after connectivity between the permit triggers in the Design and Development Schedules and the Vegetation Protection Overlay has (for) now been addressed given that Council intends to retain the current building height triggers in Design and Development Overlays.

CFA submitted:

CFA recognises that bushfire has been considered in the development of the amendment and its background material. This includes references to bushfire, such as in the Explanatory report and some supporting documents to avoiding changes to areas in either the Bushfire Prone Area (SPA) or Bushfire Management Overlay (BMO).

However, there are a number of other more nuanced links that have not been fully investigated. For example, the impacts of introducing the VPO in locations like Flinders and Dromana on vegetation removal and management of bushfire risks or how changes to various DDO's may influence growth or the ability to implement bushfire protection measures or vegetation management for defensible space purposes.

CFA subsequently advised by letter dated 15 September 2022 that it appreciates the efforts Council has made to address bushfire policy in response to its submission dated 27 August 2021, including involving CFA in the development and preparations of the bushfire considerations and that it is *"now of the view that the proposed planning scheme amendment has adequately responded to bushfire policy at Clause 13.02-1S."*

(iii) Discussion

Consistent with the discussion and findings of the Panel outlined in Chapter 3.3, the Panel does not consider that the presence of significant vegetation should necessarily result in the designation of the area as minimal change. In this regard, the Panel agrees with the evidence of Mr Granger. That said, the Panel notes that no party expressly sought to remove the VPO, nor sought to justify a change in housing capacity designation (such as from minimal change to incremental change) solely based on vegetation protection considerations.

The Panel is satisfied that Council has adequately responded to DELWP's question of 18 March 2021 regarding how the application of VPO1 to new areas is justified.

The Panel agrees with Council’s observation that Planning Practice Note 7 (Vegetation Protection in Urban Areas, August 1999) confirms:

- the VPO is the appropriate tool for identifying and protecting significant native and exotic vegetation in urban and rural environments
- the SLO has a broader applicability and is intended to identify and conserve the character of a significant landscape.

Further, the Panel agrees with Council’s submission, that it is the role of the residential zones, the DDO and the Neighbourhood Character Overlay to identify and ensure the protection of neighbourhood character values and that it would be overly complex and a duplication of provisions to apply the SLO for the sole purpose of protecting vegetation.

The Panel is satisfied that the apparent disconnect between the DDO and VPO provisions has been satisfactorily resolved through Council’s post-exhibition position to retain the current building height triggers in the DDO schedules.

(iv) Conclusions

The Panel concludes:

- The Vegetation Protection Overlay is the most suitable provision to protect vegetation where it is identified as an important feature of a character area.
- It is appropriate and justified to apply Vegetation Protection Overlay Schedule 1 to specific residential areas located in Dromana, Flinders, McCrae, and Mount Martha, as exhibited.
- The presence of significant vegetation should not be used to determine housing capacity designation without detailed site-specific assessment.
- Neighbourhood Residential Zone Schedules 12 (Bush Coastal 1), 13 (Bush Coastal 2) and 16 (Bush Coastal Contemporary 3) appropriately identify vegetation as an important element to the area’s neighbourhood character.

4.7 Building heights

(i) The issue

The issue is whether the approach to determining building heights is appropriate for justifying maximum heights in each change area.

(ii) Background

Table 7 Existing and exhibited maximum building heights

Max height	Existing zones and overlays	Exhibited zones and overlays
2 storeys	DDO11, DDO18	DDO1, DDO6, DDO11
6 metres	DPO15 (within 7.5m of western boundary)	
8 metres	DPO4	
8 metres (2 storeys)	DDO2, DDO3, DDO4, DDO5, DDO10 & DDO28 (Ocean Beach Road Commercial Precinct), DDO16, DDO17, DDO19, DDO20, DDO23, DPO12, DPO22, DPO23	DDO2, DDO3, DDO4, DDO5, DDO17, DDO18, DDO32, DDO33, DDO34, DDO35, DDO36, DDO39, DDO40, DDO41, DDO43, DDO44, DDO46, DDO48, DDO50
8.5 metres (2 storeys)	DDO14, DDO15, DDO21	
9 metres (2 storeys)	NRZ1 ^B , DDO22, DDO31, DDO58 (Rye Town Centre)	NRZ schedules ^B , DDO22

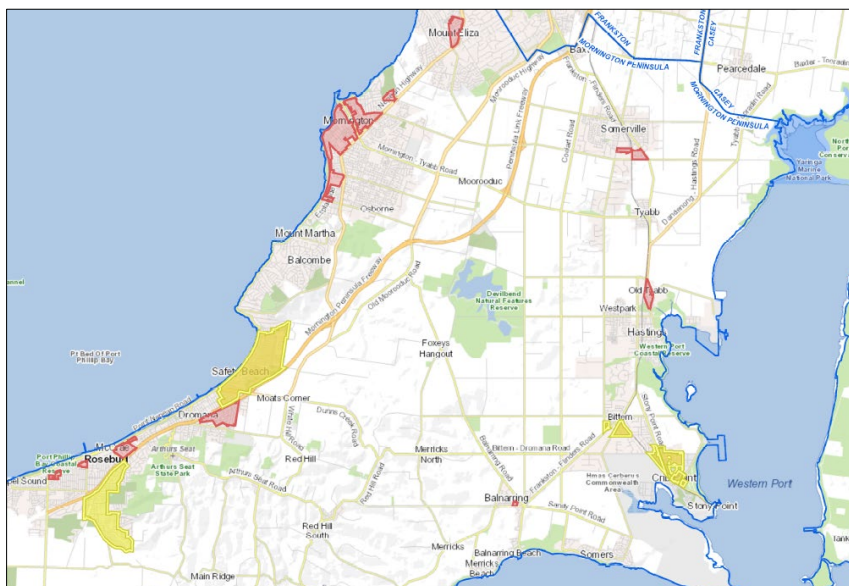
Max height	Existing zones and overlays	Exhibited zones and overlays
11 metres (3 storeys)	GRZ1 ^B , DDO29, DDO30	GRZ1 ^B , GRZ2 ^B
10 metres	DPO9	
10 metres (2 storeys)	DDO1, DDO12, DDO24	DDO24
11 metres (3 storeys)	DDO13 (Mornington Activity Centre), DDO25, DDO26 (Rosebud Activity Centre), DDO27, DDO28 (Ocean Beach Road Commercial Precinct)	
11.5 metres (3 storeys)	DDO58 (part of Rye Town Centre)	
12 metres	DDO10	
13.5 metres (3 storeys)	DPO17, DPO18	GRZ4 ^C
14 metres	GRZ3	
14 metres (3 storeys)		GRZ3
14 metres (4 storeys)	DDO13 (Mornington Activity Centre), DDO26 (Rosebud Activity Centre)	

Notes:

- A. Most existing and proposed GRZ land has DDO schedules which further restrict height
- B. Height is specified in the zone's head provisions rather than the schedule
- C. Applies to 1 property
- D. LDRZ, Neighbourhood Character Overlay and their schedules do not specify maximum building heights.
- E. Additional metre for land slope
- F. Land bounded by Truemans Road, the proposed Mornington Peninsula Freeway, Melbourne Road, Hotham Road, Back Beach Road, London Bridge Road and the boundary of the Mornington Peninsula National Park.

Since exhibiting the Amendment, Council proposed to retain existing DDO1, DDO19, DDO20 and DDO23 which would retain the maximum building height of 8 metres (2 storeys) on affected land shown in Figure 8.

Figure 7 DDO1, DDO19, DDO20 and DDO23 areas



Source: mapshare.vic.gov.au/vicplan | Note: Revised DDO areas shown in red and yellow

(iii) Evidence and submissions

Submissions regarding building height considered:

- a maximum building height of 8 metres would negatively impact township character and view sharing, particularly in areas such as Mount Martha where shared coast views are significant
- maximum building heights in DDO schedules should be consistent with those in the zone schedules and should not trigger a planning permit
- apartment buildings of 3 or more storeys in substantial change areas will negatively impact the village atmosphere and coastal views
- a maximum building height of 2 storeys in minimal and incremental change areas will limit new housing supply
- the NRZ maximum building height of 9 metres will limit opportunities for higher non-residential development.

There were submissions that:

- DDO2, DDO3 and DDO4 exempt a building from the maximum mandatory building height of 8 metres (2 storeys) in the “*area located to the north of a boundary defined by Ellerina Road West, Bruce Road, the Nepean Highway, Mornington-Flinders Road, Bittern-Dromana Road and Disney Street*” but only if the building is 2 storeys or less above natural ground level”
- the Amendment proposes to no longer exempt this land
- there is no justification to remove the Ellerina Road area exemption from DDO2, DDO3 and DDO4.

Following exhibition, Council engaged Kinetica to review height provisions proposed by the Amendment and issues raised in submissions. Mr Milner was the author of a subsequent report – *Height controls on the Mornington Peninsula: A discussion paper in the context of Amendment C291*, February 2022 (Heights Review Report). This report was appended to Mr Milner’s evidence.

The Heights Review Report:

- stated the proposed broad approach of 8 metres (2 storeys) is sourced from the same requirement in existing DDO schedules
- explained the 8-metre requirement is 1 metre less than the mandatory 9 metres in the NRZ and does not provide any variation in height depending on land steepness
- found the 8 metres can restrict various styles of 2 storey dwellings, depending on site characteristics, the preferred floor to ceiling heights and roof style
- concluded the proposed height provisions would:
 - achieve desirable planning and administrative objectives
 - be insensitive to planning issues and outcomes sought in some locations and where view sharing is important
- recommended:
 - a discretionary and mandatory overall height apply in sensitive locations – discretion set at 6 metres and the maximum mandatory height set by the zone
 - wall heights not be referenced (there is no need for them)
 - a discretionary height be applied where sight line protection is the only consideration – discretion set at 7 metres and the maximum mandatory height set by the zone
 - replace the 8-metre maximum height in the Ellerina Road area exemption with the height provisions in the relevant zone.

Mr Milner could not find strategic built form policy support, except for GRZ3 and GRZ4, to support four or more storeys, or heights greater than 11 metres, in major activity centres.

Based on advice in the Heights Review Report, Council proposed to:

- retain existing building height triggers in current Planning Scheme DDO schedules (DDO1, DDO19, DDO20 and DDO23)
- remove DDO1 from substantial change areas around the Rosebud Activity Centre structure plan area to avoid conflicting maximum building height provisions
- revise the DDO schedule objective and guideline for skyline and existing tree canopy line to better guide on considerations if the building height in the permit trigger is exceeded
- retain the Ellerina Road area exemption in DDO2, DDO3 and DDO4, noting any intrusion will be minimised through the mandatory maximum building height reducing from 11 metres in the GRZ to 9 metres in the NRZ
- retain the existing building alteration or extension exemption to the mandatory maximum building height requirement where it already applies
- add a new statement in the Clause 74.01 (Application of zones, overlays and provisions) Schedule:

Apply the Design and Development Overlay to residential land adjacent to foreshore reserves to ensure a consistent approach to building heights and setbacks on land near the coast.

(iv) Discussion

The Panel accepts that Mornington Peninsula is different from other parts of Melbourne. The differences include its scenic landscapes, sensitive coastal areas and identified vegetation, including those in public open spaces and on nature strips which help define the streetscapes. Mornington Peninsula's special character is protected through layers of planning policy including the Localised Planning Statement, the SLO which applies to a considerable proportion of the municipality and the Urban Growth Boundary which restricts further urban expansion.

There is a direct relationship between these natural characteristics and built form, including building heights. The natural characteristics are striking and dominate the Mornington Peninsula so increased building height may not necessarily negatively affect this relationship.

Mornington Peninsula's building heights in DDO schedules existed:

- when Victoria's residential zones had default discretionary maximum building heights
- before Victoria reformed its residential zones by introducing default mandatory maximum building heights of 9 metres (2 storeys) and 11 metres (3 storeys) to 2 new residential zones – NRZ and GRZ respectively
- before Ministerial Direction 7(5) restricted a schedule to the NRZ or GRZ from specifying a height lower than the zone's default height.

After several decades, the Panel considers the Amendment should have reviewed existing building heights rather than accepting them at face value as still being appropriate. This is particularly because the maximum building heights would not have complied with Ministerial Direction 7(5) if they were specified in an NRZ schedule. A more rounded review would have helped to:

- explain 1 or 2 storey areas should remain as an area of up to 2 storeys
- explain why retaining an existing height (which is 1 metre less than the default maximum height of 9 metres in the NRZ) in non-sensitive areas is necessary to achieve neighbourhood character objectives

- determine whether policy objectives could be met through different building heights
- confirm whether existing building heights are overly restrictive in achieving policy objectives.

It is appropriate to apply lower maximum building heights in sensitive areas identified in the Heights Review Report. However, Ministerial Direction 7(5) directs that NRZ land enable residential building heights of up to 9 metres (2 storeys) unless there is justifiable reason to apply lower heights through a DDO schedule. The NCSG was an opportunity to critically review the appropriateness of the existing maximum building heights of up to 8 metres. The NCSG nor any other document explains why the existing heights are appropriate and necessary in non-sensitive areas.

The closest explanation came from Ms Hill who said the community sought to adopt the existing neighbourhood character as their preferred future neighbourhood character. However, it is questionable whether this approach balances present interests with the interests of future generations.

The Panel is not persuaded there is justification to have the mandatory maximum building height of 8 metres rather than the default NRZ 9-metre height:

- in virtually all urban residential land
- on properties well away from the coast and the rural interface, particularly those with vegetation along the property frontage of equal or greater height.

Enabling a maximum of 9 metres (2 storeys) through the NRZ does not mean that all properties could achieve it because they would have to meet zone and overlay objectives, including neighbourhood character statements, and an exhaustive number of other Planning Scheme provisions and policies.

However, it would be inappropriate for the Panel to recommend increasing maximum building heights beyond what has been applied for many years until there is a more in-depth strategic review of building heights.

Accordingly, the Panel has formed the view that, until strategic work concludes otherwise, any land in General Residential Zone Schedule 1 and without an overlay should retain the maximum building height of 11 metres (3 storeys). None of the significant volume of information presented through submissions and evidence provides clear justification to reduce the maximum building height in these areas.

Permit trigger threshold

The Panel supports exempting buildings from the need for a permit if it is lower than a specified height from the need for a permit. This is because it:

- removes the need to assess buildings which are unlikely to have offsite impacts
- enable such proposals to apply directly through the building permit process if there are no other permit triggers affecting that property elsewhere in the Planning Scheme.

Sloping properties

The NRZ and GRZ enable a building to exceed the maximum height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees. To support an appropriately designed two storey building of

up to 8 metres on a sloping property, this flexibility should be replicated in any schedule which specifies a maximum building height.

Clause 74.01

The Panel supports Council's post-exhibition proposal to explain in the Clause 74.01 Schedule that the DDO will be applied to residential land adjacent to foreshore reserves to ensure a consistent approach to building heights and setbacks on land near the coast. The words "*Apply the*" should be deleted from the existing and proposed statement because it is unnecessary (already referenced in the parent statement) and it would bring the Mornington Peninsula Planning Scheme in line with other planning schemes.

(v) Conclusions and recommendations

The Panel concludes:

- The exhibited maximum building heights proposed through Design and Development Overlay schedules which reflect current building heights are appropriate because they do not change existing provisions and are generally acceptable.
- The current building height exemption for the Ellerina Road area (bounded by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street) should be retained in Design and Development Overlay Schedules 2, 3 and 4.
- There is no clear justification to lower the maximum building height of 11 metres (3 storeys) on land currently in General Residential Zone Schedule 1 and without any overlays.
- Any maximum building height provision in Design and Development Overlay schedule should be accompanied with the sloping site provision which allows an additional metre, as found in the Neighbourhood Residential Zone.
- Adding a new statement in the Clause 74.01 Schedule will create transparency in Mornington Peninsula's approach to applying the Design and Development Overlay to residential land next to foreshore reserves to ensure a consistent approach to building heights and setbacks near the coast.

The Panel recommends:

Retain General Residential Zone Schedule 1 and its 11 metre (3 storey) height to all land where this zone applies without any overlay.

Amend Design and Development Overlay Schedules 2, 3 and 4 to retain the current building height exemption for the Ellerina Road area (bounded by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street).

Amend the Design and Development Overlay schedules which specify maximum building heights to add:

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Amend the Clause 74.01 Schedule:

- a) add *“The Design and Development Overlay to residential land adjacent to foreshore reserves to ensure a consistent approach to building heights and setbacks on land near the coast.”*
- b) delete *“Apply the”* from the beginning of each statement.

4.8 Investigation areas

Chapter 4.4 considers the Amendment’s approach to defining and identifying investigation areas. The Panel’s conclusions apply to all land referred to in submissions unless stated otherwise in subsequent chapters.

(i) The issues

The issues are:

- whether the Amendment has appropriately defined and identified an investigation area
- whether Clause 02.03-6, Clause 16.01-1L and DDO53 should be revised to acknowledge the HSS identifies Precinct 6 of the Mornington North Outline Development Plan as an investigation area.

(ii) Background

The HSS states that areas to be further investigated to determine their appropriate level of housing growth generally comprise:

Areas within a Low Density Residential Zone that are undeveloped or relatively isolated and where redevelopment would not compromise the landscape breaks between townships or the objectives of landscape protection and environmental conservation.

The HSS explains that these areas are highlighted in the Residential Change Framework Plan but have not been given a change category at this stage due to the need for further investigation.

(iii) Evidence and submissions

Council submitted that investigation areas:

- have been designated according to the methodology in the Updated Desktop Review
- are strategic investigation areas that need to be further investigated for potential best use and housing opportunities on an individual basis.

Housing Industry Association submitted that Commercial 1 Zone land which is not part of a strategic plan that supports three storeys and not in a large township activity centre:

- should be identified as an investigation area
- should not be categorised as a minimal change area because the HSS seeks to maintain detached dwellings in such areas.

Housing Industry Association requested the relevant strategic direction in Clause 02.03-6 (Housing) be revised to recognise that areas with constraints for further residential growth can be either a minimal change area or investigation area.

In response, Council submitted:

- policy proposed through Clause 16.01-1L for maintaining detached dwellings in minimal change areas is not a requirement

- Planning Scheme Clause 71.02-2 (Operation) explains that a responsible authority needs to take into account, but not necessarily give effect to, a policy guideline
- it is inappropriate to identify areas with constraints that limit their capacity for further residential development as investigation areas.

Mr Milner supported Clause 16.01-1L being revised so that an investigation area respect (rather than reflect) the valued character of surrounding residential areas. He considered it inappropriate and premature to change the role and intent of an investigation area when the investigation has not been conducted.

Since exhibiting the Amendment, Council:

- supported the submission regarding development respecting, rather than reflecting, the valued character
- proposed to revise Clause 16.01-1L to:
Ensure development in investigation areas ~~reflects~~ respects the housing change category valued character of surrounding residential areas and is responsive to the environmental conditions and constraints, if any, of the site.¹¹

Mornington North Outline Development Plan area

Owners of land in Mornington North Outline Development Plan Precinct 3 submitted that Precinct 3 should be identified as a strategic investigation area. Precinct 3 comprises 6 properties totalling 8.25 hectares with a 430-metre frontage along Racecourse Road.

Tango Property Group, which owns land with a combined area of 11.33 hectares in Precinct 6 submitted:

- the HSS specifically identifies Precinct 6 as an investigation area
- the merits of rezoning Precinct 6 to a potential GRZ are known to Council through previous investigations so it should be assessed on merit as part of the Amendment (at the Hearing, it requested that the HSS apply, or be investigated to apply, the GRZ through a future Planning Scheme amendment)
- Clause 02.03-6 and Clause 16.01-1L should be redrafted to acknowledge the role of an investigation area is to deliver potential substantial change, the supply of significant new housing, and diverse dwelling outcomes, while respecting (but not replicating) the valued character of adjoining land
- Acknowledge in the HSS that Precinct 6 is identified as an investigation area capable of potential substantial change in the HSS through:
 - Clause 11.03-6L (Regional and local places – Mornington North)
 - DDO53, if it remains on land in Precinct 6.

(iv) Discussion

The HSS has appropriately identified investigation areas in the Residential Change Framework Plan maps. Each area's change category should be determined through this investigation. The Panel therefore does not support Tango Property Group's submission to identify Precinct 6 as an area capable of potential substantial change.

¹¹ Addition shown in underline and deletion in strikeout

The Panel agrees with submitters, Mr Milner and Council that Clause 16.01-1L should be revised to ensure development in an investigation area:

- respects the valued character of the surrounding residential areas because it does not make sense to respect a housing change category
- responds to any environmental conditions and constraints which would be identified during the investigation.

The Panel discusses Precinct 3 of the Mornington North Outline Development Plan in Chapter 4.4 (Low Density Residential Zone) and concludes it should be identified as an investigation area.

(v) Conclusion and recommendation

The Panel concludes:

- The second strategy in Clause 16.01-1L should be revised to seek development in investigation areas to respect the valued character of surrounding residential areas and to respond to any environmental conditions and constraints of the site.
- Regarding the Mornington Residential Change Framework Plan:
 - Precinct 6 should not be identified as an area capable of potential substantial change because it is not appropriate to pre-empt the outcome of an investigation.
 - Precinct 3 should be identified as an investigation area, as recommended in Chapter 4.4.

The Panel recommends:

Amend Clause 16.01-1L to revise the second strategy to “ensure development in investigation areas respects the valued character of surrounding residential areas and is responsive to any environmental conditions and constraints, if any, of the site”.

5 Zone and overlay schedule provisions

This chapter discusses the appropriateness of provisions proposed for the zone and overlay schedules, including the potential impact on individual properties and areas.

5.1 DDO single dwelling requirement

(i) The issue

The issue is whether the mandatory single dwelling requirement proposed for Table 2 in the DDO schedules is appropriate and justified.

(ii) Background

Current DDO schedule provisions

The current DDO2 specifies:

No more than one dwelling, excluding a dependent person's unit, may be constructed on a lot. This does not apply to dwellings that are in accordance with an approved development plan under Clause 43.04. A permit to vary the requirement that no more than one dwelling be constructed on a lot must meet the following requirements:

- The proposal involves no more than two dwellings for every 1300 square metres of site area.
- Applications for approval must include a site analysis and site development plan that responds to the design objectives of this schedule.
- This provision has not been previously applied to any of the land involved in the application.

The current DDO3 specifies:

A lot must not contain any more than one dwelling. This does not apply to any of the following:

- A lot that has potential for subdivision in accordance with the minimum subdivision area specified in this Schedule where the number of dwellings to be contained by the lot would not exceed the number of lots that may be so created.
- An application that meets all of the following requirements:
 - The lot must be at least 2,600 square metres in area.
 - The lot must contain only two dwellings, including any existing or proposed dwellings.
 - One of the dwellings must have a floor area of 100 square metres or less.
 - The two dwellings must be substantially attached and designed to appear as if they were only one dwelling on the lot.
 - The two dwellings must share a single crossover.
 - The total site coverage of all buildings, including garages and other outbuildings, must not exceed 15 percent of the total lot area for any lot located in precinct 1 or 2, or 20 percent of the total lot area for any lot in precinct 3 or 4.
 - This provision must not have been previously applied to any of the land involved in the application.
 - A section 173 Agreement must be created to prevent the subdivision of the subject land. The agreement must be registered on title.

These requirements cannot be varied with a permit.

The current DDO19 specifies:

No more than one dwelling for every 650sqm of site area, excluding a dependant person's unit, may be constructed on a lot of less than 1,950sqm.

The current DDO20 specifies:

No more than one dwelling for every 550sqm of site area, excluding a dependent person's unit, may be constructed on a lot of more than 1,950sqm in area.

The variations in the amended DDO schedules are broadly summarised in Table 8.

Table 8 Existing and exhibited single dwelling on a lot provisions

DDO	Current dwellings limits	Exhibited DDO
DDO1 Township	Nil	DDO1 Township. Nil
DDO2 Bayside and Village	<p>1 dwelling with exemptions.</p> <ul style="list-style-type: none"> • In accordance with an approved development plan. • A permit to vary the requirement that no more than one dwelling be constructed on a lot must meet the following requirements: <ul style="list-style-type: none"> - The proposal involves no more than two dwellings for every 1300m² of site area. - Applications for approval must include a site analysis and site development plan that responds to the design objectives of this schedule. - This provision has not been previously applied to any of the land involved in the application. 	Mandatory. Dwellings on a lot must not exceed 1. Minimum subdivision size of 650m ²
DDO3 Coast and Landscape	<p>1 dwelling. Exemption:</p> <ul style="list-style-type: none"> • A lot that has potential for subdivision in accordance with the minimum subdivision area specified in this Schedule where the number of dwellings to be contained by the lot would not exceed the number of lots that may be so created. • An application that meets all the following requirements: <ul style="list-style-type: none"> - the lot must be at least 2,600m² in area. - the lot must contain only two dwellings, including any existing or proposed dwellings. - one of the dwellings must have a floor area of 100m² or less. - the two dwellings must be substantially attached and designed to appear as if they were only one dwelling on the lot. - a section 173 Agreement must be created to prevent the subdivision of the subject land. 	Coastal and Landscape. Mandatory. Dwellings on a lot must not exceed 1
DDO4 Environmental	<p>1 dwelling except for land:</p> <ul style="list-style-type: none"> - between Jacksons Road and Williams Road, west of Watts Parade, Mt Eliza (no more than one dwelling per 2600m²) - east of Canadian Bay Road, Mt Eliza (except the above and no more than two dwellings per 2600m²) - west of Truemans Road and north of the proposed Mornington Peninsula Freeway in Rye (no more than one dwelling per 2000m²) 	Bush/Garden Environment Mandatory. Dwellings on a lot must not exceed 1
DDO5 Low Density Wild Coast Protection	1 dwelling	Sandy Road, St Andrew Beach Dwellings on a lot must not exceed 1
DDO6 Low Density - Landscape	<p>1 dwelling except:</p> <ul style="list-style-type: none"> • The extension or alteration of a lawfully existing dwelling. • The replacement of an existing dwelling with another if the existing dwelling is removed or altered (so it can no longer be used as a dwelling) within one month of the occupation 	Rural Landscape Mandatory. Dwellings on a lot must not exceed 1
DDO7 – Low Density Environment	Nil	Hodgins Road, Hastings Mandatory. Dwellings on a lot must not exceed 1
DDO11 Mt Eliza nth of Tower Rd	1 dwelling	Dwellings on a lot must not exceed 1

DDO	Current dwellings limits	Exhibited DDO
DDO17 Woodthorpe Estate, Rosebud	1 dwelling, except through development plan	Similar to current
DDO18 Mt Eliza Woodland	1 dwelling with exemptions for 2 dwellings for lots at least 2600m ² with limits	Similar to current
DDO19 Bittern and Crib Point Township	For lots less than 1950m ² , no more than 1 dwelling for every 650m ² For lots more than 1950m ² , no more than 1 dwelling for every 550m ²	Mandatory. Dwellings on a lot must not exceed 1 Translated to 650m ² average lot size or otherwise exempt if two dwellings exist and purpose is to create separate lots for each dwelling. (post exhibition reinstatement and changes)
DDO20 Crib Point Town Centre	No more than one dwelling for every 500m ² of site area, excluding a dependent person's unit, may be constructed on a lot.	Mandatory. Dwellings on a lot must not exceed 1. Translated to at least 600m ² average lot size or otherwise exempt if two dwellings exist and purpose is to create separate lots for each dwelling. (post exhibition reinstatement and changes)
DDO22 Mornington North Development Plan precinct 1B	1 dwelling	1 dwelling
DDO23 Hendersons-Creswell, Bittern	1 dwelling	1 dwelling (post exhibition reinstatement and changes)
DDO24 Beleura Hill	Precinct 1 - no more than one dwelling for every 700m ² of the total area of the lot. Precinct 2 - no more than one dwelling for every 500m ² of the total area of the lot. Precinct 3 - no more than one dwelling for every 400m ² of the total area of the lot.	Mandatory. Dwellings on a lot must not exceed 1. Translated to average lot sizes in Subdivision requirements in different precincts, or otherwise doesn't apply if two or more dwellings exist and purpose is to create separate lots for each dwelling.

The Mornington Peninsula Housing policy and strategy is relevant and summarised in Appendix D:2. The HSS, as summarised in Chapter 2.2, seeks the need for more housing supply and diversity throughout the municipality.

(iii) Evidence and submissions

Council explained that the Amendment:

- retains the single dwelling requirement in the amended DDO2 to DDO7, DDO11, DDO17, DDO18, DDO19, DDO20 and DDO22-DDO24
- translates the single dwelling requirement from the DDO2 and DDO4 to the new DDO32 and DDO33
- translates the single dwelling requirement from existing DDO Schedules to the new DDO35, DDO36, DDO39-DDO53.

The single dwelling requirement is proposed to be applied to:

- the new NRZ18 area in Tootgarook and Rye, through the amended DDO6
- the new NRZ17 area at Hodgins Road, Hastings through the amended DDO7.

Generally, the exhibited DDO schedules include a new design objective:

- To maintain and strengthen the predominant 'single dwelling per lot' character of the rural landscape area.

Submissions opposed the single dwelling requirement and design objectives as:

- contrary to state policy where change should include a role to play with respect to urban consolidation objectives of housing supply, diversity and affordability
- an attempt to stymie discretion in the NRZ to consider medium density development.

L and J DiFabio and Colli Investments Pty Ltd submitted:

The design objective in DDO2 to encourage development densities that are compatible with the environmental, infrastructure and service capacities of the area are contradictory to the design objective to maintain a single dwelling per lot character.

Bilal Suleman Pty Ltd has a parcel of land previously subdivided with a larger balance lot affected by the proposed DDO2 and:

- supported the dwelling ratio of one dwelling per 650 square metres, but
- sought to retain the exemption that allows two dwellings on a lot, and
- requested the third criterion "*the provision has not been previously applied to any of the land involved in the application*" be deleted.

The Housing Industry Association opposed the mandatory requirement in the DDO schedules:

the Table 2 requirement which prohibits more than one dwelling on a lot and cannot be varied with a permit is considered too restrictive and is not supported. Each site should be assessed on merit to determine an appropriate number of dwellings.

Council submitted that, except for the two new NRZ areas, the Single Dwelling Requirement is not a new requirement. It sought to retain existing density provisions which, in its view, remain appropriate and necessary to achieve the design objectives and built form outcomes sought by the relevant DDO schedules including:

- retention of existing subdivision patterns
- ensuring new subdivision provides sufficient space to accommodate a dwelling
- existing vegetation cover
- new landscaping and private open space, and
- maintaining and strengthening the predominant 'single dwelling per lot' character of particular areas.

Regarding DDO2, Council submitted:

- the requirement in the current DDO2 single dwelling provision is a mandatory requirement which cannot be varied with a permit
- the Amendment proposes to translate the existing single dwelling requirement in the DDO2 to a simple mandatory single dwelling requirement with an average subdivision area requirement of 650 square metres and without the exemption.
- the proposed approach is an appropriate and justified translation because the design objectives of the single dwelling requirement is necessary to achieve the built form outcomes sought by the relevant DDO schedules.
- it is not appropriate to retain the DDO2 exemption that would allow a permit to be granted for two dwellings on a lot without subdivision.

Mr Milner stated:

if accommodating enhanced growth was a priority for Council, then a requirement to limit one dwelling to each lot would be a barrier to that outcome. However, with the MPLPS¹² vision for the Peninsula being upon differentiating it from the metropolis on housing growth

¹² Morningside Peninsula Localised Planning Statement

and prioritising upon landscape, environmental and special township values there is strategic justification and merit upon retaining this legacy feature of land subdivision.

(iv) Discussion

The mandatory maximum single dwelling on each lot acts like a restrictive covenant. It removes any discretion Council might have to consider circumstances, for example, that of a property owner who does not wish to subdivide but could contribute to housing supply. The Panel agrees with the Housing Industry Association that *“each site should be assessed on its merit”*.

The single dwelling requirement has shaped much of the character of the Morningson Peninsula but Council’s *Triple A Housing Plan*, adopted in 2020:

- sets clear direction and objectives for more diverse housing in the Morningson Peninsula
- recognises the importance of character but identifies the need for housing to evolve to respond to a shortfall of housing and a lack of housing diversity.

The mandatory requirement of a single dwelling on a lot applied across the DDO schedules, although with a strong planning heritage in Morningson Peninsula, works against Council’s contemporary diverse housing objectives. It does this by retaining and strengthening a dwelling provision, without capacity for discretion. Council justifies this on the basis that the restriction is needed to preserve character and the existing subdivision pattern. The Panel does not share this view. The mandatory single dwelling provision comes at the expense of the identified need for diverse and affordable housing options throughout the municipality including in larger towns and adjacent to smaller activity centres. Council does not appear to have revisited the single dwelling requirement in light of the strategic directions of the *Triple A Housing Plan*.

Analysis of the exemptions in the current DDO schedules with the exhibited DDO schedules in Table 8 suggests Council’s conclusion that *“except for the two new NRZ areas, the Single Dwelling Requirement is not a new requirement”* is a simplification of what is proposed. In fact, the amendment tightens the single dwelling requirement across DDO schedules where there are currently exemptions.

Although not explored in depth at the Hearing, the Amendment removes consideration of a property to deliver more than one dwelling without subdivision. This type of development outcome is envisaged in the current DDO2, DDO3, DDO6, DDO7, DDO18, DDO19, DDO20 and DDO24 schedules, though in defined circumstances where there are large lots that might accommodate an additional dwelling or dwellings. An exemption from the mandatory requirement may be considered through a Development Plan (DDO2, DDO3), but a Development Plan contemplates a denser use, such as a retirement village. This is a different scenario to where the owner of a large block might seek to build an additional dwelling on the block.

The Panel does not agree with Mr Milner that there is strategic justification for retaining the ‘legacy feature’ of land subdivision, even with Council’s prioritisation of landscape, environmental and township values. The Amendment’s provisions have been drafted to express and protect character. This does not mean a blanket restriction on the number of dwellings on a lot is warranted without capacity for Council to assess the merits of a development proposal.

The Amendment does not strike the right balance between the need for the Planning Scheme to encourage diverse housing including social and affordable housing options throughout the municipality and the desire for preferred neighbourhood character that closely emulates existing character. Further work is required to underpin where that balance lies.

Larger lots in many areas of the Mornington Peninsula where sewerage is available might be able to support additional moderate dwellings. The Panel agrees with the Housing Industry Association. These sites should be able to be assessed on their merit to determine whether additional dwellings can be provided while still achieving the neighbourhood character objectives expressed through other provisions. Any genuine constraints of a site would be assessed through a permit process. This appears to be what is envisaged in the current provisions in some DDO schedules and what is expressly sought in the Triple A Housing Plan.

Similarly, there are housing typologies that support more than one dwelling in a conventionally presented suburban house, whether single or double storey. These typologies would be entirely appropriate for areas zoned NRZ, particularly Incremental Change areas in and adjacent to the smaller activity centres and townships. Council has in part addressed concerns raised by submissions to better support housing diversity with its post exhibition changes to modify the GRZ schedules and NRZ schedules (NRZ39, NRZ40 and NRZ41) in Incremental Change areas in Mornington and Hastings.

It is important that the Mornington Peninsula does not lose diverse housing options because of a broad application of the single dwelling requirement where a moderate supply of dwellings on some lots might be able to be supported without having to subdivide, and without impacting on neighbourhood character and environmental values.

The HSS identifies changing demographics, likely demand for smaller homes and the need for housing diversity. Restricting new development to one dwelling on a lot and requiring subdivision to occur encourages development to produce the type of housing that is already common on the Mornington Peninsula, though on smaller lots. This outcome does not align with Council's strategic objectives for more diverse and affordable housing.

(v) Conclusions and recommendation

The Panel concludes:

- The proposed mandatory 'single dwelling on a lot' provisions, which are largely based on the existing provisions, will likely negatively affect State and local strategic objectives to achieve more diverse housing, and will constrain housing supply.
- Future work on the Mornington Peninsula Housing and Settlement Strategy should comprehensively review the necessity for the mandatory single dwelling on a lot provision to assess its impact on delivering housing diversity and housing supply across the residential zones, particularly in larger townships.

The Panel recommends:

Amend Design and Development Overlay Schedules 2, 3, 4, 6, 7, 19, 20 and 24 to reinstate the current exemptions to a single dwelling on a lot requirement in 'Number of dwellings' in Table 2.

5.2 DDO building height permit trigger

(i) The issue

The issue is whether the building height permit trigger thresholds proposed in DDO schedules are appropriate and justified.

(ii) Background

The following table summarises the current permit threshold, the exhibited threshold and Council's proposed post exhibition changes.

Table 9 Existing and exhibited permit trigger threshold

Existing threshold	Exhibited threshold	Post exhibition changes
5 metres	DDO4 [*] , DDO5	DDO4, DDO5, DDO41 (for land in Rye), DDO44, DDO48
6 metres	DDO1 [*] , DDO2, DDO4, DDO11, DDO18	DDO1, DDO2, DDO3, DDO4, DDO6 (for Bittern or Cribb Point), DDO11, DDO18, DDO32, DDO33, DDO34, DDO35, DDO36, DDO39, DDO40, DDO41 (for land in Mt Martha), DDO43, DDO46, DDO47, DDO50
6.5 metres (1 storey)	DDO19 [*] , DDO20 [*] , DDO23 [*]	DDO19, DDO20, DDO23
7 metres (1 storey)	DDO17	DDO17
8 metres	DDO24	DDO7
8 metres (2 storeys)	DDO6, DDO7	DDO2, DDO3, DDO4, DDO5, DDO6, DDO7, DDO11, DDO17, DDO18, DDO32, DDO33, DDO34, DDO35, DDO36, DDO37, DDO38, DDO39, DDO40, DDO41, DDO42, DDO43, DDO44, DDO45, DDO46, DDO47, DDO48, DDO49, DDO50, DDO51, DDO53
9 metres (2 storeys)	DDO22	DDO22
10 metres (2 storeys)		DDO24

^{*} current DDO4 has 5 metres height for specific areas, otherwise 6 metres

^{*} DDO1, DDO19, DDO20, DDO23 were not exhibited as they were proposed to be deleted.

^{*} Post exhibition changes allow 9 metres on a slope of 2.5 per cent

NB. In some current DDO schedules there is no specific permit trigger for height but permits are triggered through mandatory clause 54 provisions.

As shown in Table 9, the Amendment proposes to:

- delete Schedules 1, 19, 20 and 23
- amend DDO Schedules 2 to 7, 11, 17-18 and 24 to remove permit height triggers below the maximum building height
- insert new DDO Schedules 32 to 53 with a threshold for a permit of 8 metres (2 storeys).

(iii) Evidence and submissions

There were submissions which considered:

- a maximum, as-of-right, building height of 8 metres will:
 - fundamentally alter the unique and distinctive character of townships
 - negatively impact view sharing, particularly in areas such as Mount Martha where shared views to the coast are significant
- three or more storey apartment developments in substantial change areas will negatively impact features such as the village atmosphere and coastal views which are characteristic of many townships
- permits should be required for all dwellings on all properties including single dwellings

- the building height trigger in the existing DDO2 and DDO4 should be retained
- relaxed height provisions are welcome subject to protecting shared views
- there will be impacts on existing properties that have met current height provisions
- the removal of height permit triggers means Council and neighbours have limited opportunity to review proposals
- mandatory building height requirements in the DDO Schedules should:
 - be consistent with those in the zone schedules
 - not trigger a planning permit requirement for lesser heights.

Submission 271 requested:

- the general building height requirement in the DDO schedules be revised to 7 metres to be consistent with many other municipalities which will remove some planning permit triggers but also ensure any new dwelling built between 7 to 8 metres in height is suitably designed to respond to neighbourhood character
- remove the requirement for Clause 54 consideration in the DDO schedules where there is no building height consideration, or retain the requirement for Clause 54 consideration in the schedules where there is a building height consideration
- further consideration be given to the implications of reduced permit triggers and the subsequent inability to achieve policy outcomes such as the draft Environmentally Sustainable Development policy.

At the Hearing, Submitter 271 accepted Council's proposed post-exhibition changes to retain height triggers at this time.

In response to other submissions, Council proposed to:

- retain the building height permit triggers in the current DDO schedules
- reinstate DDO1, DDO19, DDO20 and DDO23 which were proposed to be deleted by the Amendment
- revise the design objective and decision guideline relating to the skyline and existing tree canopy line in relevant DDO schedules to provide clearer guidance on the matters to be considered when assessing a proposed development that exceeds the building height permit trigger.

Specifically, Council proposed the following changes to the current DDO1:

2.0 Buildings and works

No permit required

A permit is not required to construct a building or construct or carry out works for one dwelling on a lot if all the requirements in Table 1 are met.

Table 1

Requirement	
Building height	A building does not exceed a height of 6 metres
Nepean Highway setback	A building is set back at least 10 metres from Nepean Highway and the first 5 metres from the boundary is landscaped to the satisfaction of the responsible authority.
Difference between finished and natural ground levels	The difference between finished ground level and natural ground level as a result of excavation and filling does not exceed 1 metre.

Council proposed post-exhibition changes to the current DDO19, DDO20 and DDO23:

2.0 Buildings and works

No permit required

A permit is not required to construct a building or construct or carry out works for one dwelling on a lot if all the requirements in Table 1 are met.

Table 1

Requirement	
Building height	A building does not exceed a height of 6.5 metres and does not contain more than 1 storey.
Minimum street setback	<p>Walls of buildings are set back from the front street at least:</p> <ul style="list-style-type: none"> ▪ 7.5 metres, if there is no existing building on any abutting allotment facing the front street. ▪ the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 7.5 metres, whichever is the greater, if only one abutting allotment facing the front street has an existing building. ▪ the average distance as the setbacks of the front walls of the existing buildings on both abutting allotments facing the front street or 7.5 metres, whichever is the greater, if both abutting allotments facing the front street have an existing building. <p>If the site is on a corner, walls of buildings are set back from a side street at least 3 metres.</p>
Difference between finished and natural ground levels	The difference between finished ground level and natural ground level as a result of excavation and filling does not exceed 1 metre.
Access to a roof area	A building containing more than one storey does not provide access to a roof area, deck, verandah or the like which has a level higher than the floor level of the upper storey.

Council's proposed post-exhibition changes seek to reduce the exhibited building height permit thresholds to:

- 5 metres in DDO4, DDO5, DDO41 (for land in Rye), DDO44, DDO48
- 6 metres in DDO2, DDO3, DDO4, DDO6 (for Bittern or Cribb Point), DDO11, DDO18, DDO32, DDO33, DDO34, DDO35, DDO36, DDO39, DDO40, DDO41 (for land in Mount Martha), DDO43, DDO46, DDO47, DDO50
- 7 metres in DDO17
- 8 metres in DDO6 (for Rye or Tootgarook) and DDO24 (or 9 metres on a slope of 2.5 per cent).

Council proposed to retain exhibited building height permit thresholds in DDO1, DDO2, DDO4, DDO5, DDO7, DDO11, DDO17, DDO18, DDO22, DDO24, DDO37, DDO38, DDO42, DDO45, DDO49, DDO51, DDO53.

Council foreshadowed its Residential Heights Review would enable it to review existing building heights and permit triggers.

In his evidence, Mr Milner observed:

- the building height permit trigger has historically been responsible for the most planning permit applications for the construction and extension of a single dwelling on a lot on the Mornington Peninsula, and further
- historically the height controls applied on the Peninsula have been established and framed around the protection of character, amenity and view sharing. It is the potential threat to these attributes that has motivated many submissions.

Having reviewed Council's proposed post-exhibition changes, Mr Milner, stated that retaining the building height permit trigger will address concerns raised in submissions. Concerns include:

- protecting and enhancing neighbourhood character through the permit application process
- notice of permit applications and third-party appeal rights
- Council's decision-making processes.

Mr Milner concluded:

The Council's post exhibition revision to the DDOs and intended process towards strategically justifying revised height controls is an appropriate response in which a range of relevant considerations and options should be evaluated including whether the maximum height controls in the relevant residential zones might apply in some areas without the need for a height control in a DDO.

(iv) Discussion

Council has sought to address direction from the Minister for Planning and DELWP to reduce permit triggers through the Amendment. Some submissions welcomed the removal of certain height permit triggers while others were concerned with:

- the potential loss of Council and public review of a proposed development
- potential impact of development on views with no ability to consider shared views, as enabled through the current provisions
- general issues of transparency around development outcomes.

The Panel agrees with Council's post-exhibition changes to the DDO schedules including to reinstate DDO1, DDO19, DDO20 and DDO23 with revisions. The retained or reduced height trigger provisions will enable the review and assessment of building proposals where height might impact the amenity of neighbours, shared views and built form above a tree canopy line.

The Panel notes Mr Milner's evidence that the building height trigger has historically been responsible for most planning permit applications to construct and extend a single dwelling. The reinstatement of existing building height permit triggers will likely work against the objective of reducing the number of permit applications.

Nevertheless, Council's proposed Residential Heights Review process will be an opportunity to fully interrogate the appropriateness of existing heights and permit triggers. The Panel supports a considered approach outside the Amendment. The Panel agrees with Mr Milner that Council's post-exhibition revision to the DDO schedules and intended process towards strategically justifying revised height provisions are an appropriate response.

Although Council proposes reinstating height triggers in sensitive areas, it has sought to remove other unnecessary permit triggers. The height provisions are specified clearly in each relevant DDO schedule and provide more transparency for development applications and the community on the height permit trigger and decision guidelines.

(v) Conclusions and recommendations

The Panel concludes:

- It is appropriate and justified to no longer delete Design and Development Overlay Schedules 1, 19, 20 and 23 and to apply the proposed revised permit trigger heights.

- It is appropriate and justified to apply the revised permit trigger heights, proposed since exhibiting the Amendment, in other relevant Design and Development Overlay schedules.
- The Residential Heights Review, proposed by Council to be conducted separate to the Amendment:
 - is the appropriate process to examine residential heights and height permit triggers
 - should fully interrogate the appropriateness of heights, particularly those which are more restrictive than the default height specified in a residential zone.

The Panel recommends:

Abandon the deletion of Design and Development Overlay Schedules 1, 19, 20 and 23.

Amend Design and Development Overlay schedules to revise the permit trigger threshold so that a permit is not required for a building that does not exceed a height of:

- a) 5 metres (Schedules 5, 44, 48)
- b) 6 metres (Schedules 1, 2, 3, 11, 18, 32, 33, 34, 35, 36, 39, 40, 43, 46, 47, 50)
- c) 8 metres (Schedule 7)
- d) 5 metres in specified area and 6 metres elsewhere (Schedules 4, 41)
- e) 6 metres in specified areas and 8 metres elsewhere (Schedule 6)
- f) 6.5 metres and no more than 1 storey (Schedules 19, 20, 23)
- g) 7 metres and no more than 1 storey (Schedule 17)
- h) 8 metres, or 9 metres on a slope of 2.5 per cent (Schedule 24).

5.3 DDO schedule building alteration and construction exemptions

(i) The issue

The issue is whether exempting certain building alteration or construction from the maximum height specified in Table 2 of the DDO schedules, as proposed since the Amendment was exhibited, is appropriate and justified.

(ii) Evidence and submissions

One submission sought to retain the DDO3 exemption that allows the footprint of the upper storey of a dwelling to be increased without a permit, subject to not increasing the area by more than 10 per cent.

Another submission requested the existing DDO3 exemption from the mandatory height that allows a permit to be granted for reconstruction, alteration or extension to the same height of existing buildings be retained to:

- support modernising the current building to meet changing building regulation requirements and amenity standards
- prevent creating or perpetuating non-conforming development
- avoid confusion and costly disputes with respect to future planning applications.

The submission explained:

- an existing a residential apartment complex exceeds the maximum building height specified in DDO3
- the apartment complex requires modernising and there is concern whether the provisions will allow this work.

In response to submissions, Council supported retaining the existing 'building alteration or extension' exemption to the mandatory maximum building height where it currently applies, subject to minor changes to improve clarity noting minor buildings and works on the upper level of existing lawfully constructed buildings should be permissible. Council proposed post exhibition changes to Table 2 Building Heights in multiple DDO schedules to reflect this position:

A building must not exceed a height of (specified) metres. This does not apply to:

- Alteration to or extension of a lawfully existing building but only if all of the following requirements are met:
 - The maximum building height of the existing building is not exceeded
 - The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.

Mr Milner considered that exempting minor extensions and alterations from the height provisions in circumstances where the height of existing building would not exceed the maximum height would result in a reasonable outcome.

(iii) Discussion

The Panel agrees with Mr Milner that exempting minor extensions and alterations from the height provisions in circumstances where the existing building height would not exceed the maximum height would result in a reasonable outcome.

Existing buildings that exceed the maximum height control should be permitted to make alterations or extensions without raising concerns about non-conforming development. Council's response to submissions to retain the existing exemptions in the DDO schedules is appropriate. The exemption will provide flexibility where non-compliance is an issue and will enable minor extensions or alterations to be undertaken to existing dwellings that meet height limits without the need to obtain a permit. This is appropriate and justified and will reduce the number of permit applications without compromising character objectives.

(iv) Conclusions and recommendations

The Panel concludes that it is appropriate and justified to exempt certain building alterations or construction from the maximum height specified in Table 2 of Design and Development Schedules 1, 2, 3, 4, 5, 6, 12,18, 19, 20, 23, 24, 32, 33, 34, 35,36, 39, 40, 41, 43, 44, 46, 47, 48 and 50, as proposed since the Amendment was exhibited.

The Panel recommends:

Amend Design and Development Overlay Schedules 1, 2, 3, 4, 5, 6, 12,18, 19, 20, 23, 24, 32, 33, 34, 35,36, 39, 40, 41, 43, 44, 46, 47, 48 and 50 to revise Table 2 to introduce the following building height requirement exemptions:

- ***alteration to or extension of a lawfully existing building but only if all of the following requirements are met:***
 - ***The maximum building height of the existing building is not exceeded.***
 - ***The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.***

5.4 Subdivision area requirements

(i) The issues

The issues are:

- whether a minimum or average subdivision area requirement should be applied in the zone and overlay schedules
- whether the minimum subdivision area should apply to land set aside as common property and to a re-subdivision of existing lots which do not increase the number of lots or ability to subdivide further.

(ii) Background

Council has applied different approaches in different parts of the municipality reflecting existing subdivision patterns and provisions and some new minimum subdivision requirements.

The Amendment exhibited minimum subdivision requirements in:

- LDRZ1, LDRZ2, LDRZ3, LDRZ4, LDRZ5, LDRZ6, LDRZ7, LDRZ8, LDRZ9, LDRZ10, LDRZ11
- NRZ19, NRZ20, NRZ21, NRZ22, NRZ23, NRZ24, NRZ25, NRZ26, NRZ27, NRZ29, NRZ30, NRZ31, NRZ32, NRZ33, NRZ34, NRZ36
- DDO2, DDO3, DDO4, DDO5, DDO6, DDO7, DDO11.

(iii) Evidence and submissions

Council explained the exhibited Amendment translates existing subdivision requirements to LDRZ, NRZ and DDO schedules. NRZ36 and LDRZ Schedules 1 to 11 include minimum subdivision area requirements.

Submissions objected to the exhibited minimum lot sizes in the LDRZ and areas to be zoned NRZ rather than average lot sizes, on the basis average lot sizes provide more flexibility to cater for site-specific constraints such as irregular lot shapes, vegetation and slopes.

One submitter requested the average lot size subdivision requirement in DDO2 and DDO3, which apply to their land, should be retained so that:

some flexibility is available for the application of development and subdivision controls to enable site responsive design outcomes to be applied under circumstances where land is subject to complex layers of environmental and landscape ordinance exist (such as the subject site).

Council consequently proposed post-exhibition changes to generally retain average subdivision area requirements which currently apply through the DDO schedules in areas proposed to be rezoned NRZ.

Council proposed to delete the minimum subdivision area requirement from the new NRZ23-NRZ27 and NRZ29-NRZ33, and in general, retain the average subdivision area requirement in DDO2, DDO3, DDO6, DDO7, DDO11, DDO17, DDO19, DDO20, DDO24 and DDO32.

Specifically, Council's changes proposed since exhibition seek to:

- retain a minimum lot size of at least 10,000 square metres in DDO6 for land in Bittern or Crib Point and amends the exhibited DDO6 to an average area of 10,000 square metres for land in Rye or Tootgarook.
- introduce a new requirement in DDO17 that was not exhibited:
The average area of the lots created by the subdivision must be at least 700 square metres.

- include in the reinstated DDO19 and DDO20 an average subdivision requirement.
- introduce requirements in DDO24 that:
 - the average area of the lots created by the subdivision must be at least:
 - 700 square metres, for land in the Esplanade Precinct or Northeast Precinct.
 - 500 square metres, for land in the Southeast and West Precinct or Creek Precinct.
 - 400 square metres, for land in the Beleura Hill Road (South) Precinct.

In LDRZ areas, Council proposed to retain the minimum subdivision area requirements in the new LDRZ Schedules and explained:

- the head provision of the LDRZ does not enable average subdivision area requirements to be specified in a Schedule to the LDRZ, and
- large lots in LDRZ areas are unlikely to be subject to the same constraints as smaller lots in NRZ areas (such as vegetation, existing buildings and topography) and therefore the same degree of flexibility is not required.

At the Hearing, Appletree Sorrento Pty Ltd submitted that Council's post-exhibition change to average lots sizes *"is a step in the right direction"* and specifically on DDO3 said:

- future subdivisions that are prohibited by one criteria may result in poor planning outcomes across the Bush Coastal 1 precinct when land may not meet the 1500 square metre requirement.
- a Decision Guideline could be inserted into the DDO3 rather than the mandatory requirement at Clause 3 (which should be amended to be discretionary).
- the Decision Guideline would be to a similar effect as the proposed amendment to the subdivision objective except that the responsible authority must consider whether the proposed subdivision would provide sufficient space to accommodate a dwelling, retain existing vegetation (where possible) and provide opportunities for new landscaping and sufficient open space.

Mr Milner's evidence was:

The ability to use the greater flexibility inherent in a lot size averaging provision enables boundaries and areas to be set that work with the topography, landscape and valued vegetation and for building envelopes to be established that will avoid sky and ridge lines and minimise cut and fill as sought by many DDO provisions.

Mr Milner considered that because the minimum lot size in the LDRZ is larger, there is unlikely to be the same constraints such as vegetation and topography and existing buildings, and he supported Council's approach.

In response to Appletree Sorrento Pty Ltd, Council submitted it did not support the proposed changes to the design objectives. It explained, the proposed design objective in DDO3 to retain the existing subdivision pattern aligns with State policy under Clause 15.01-5S (Neighbourhood character), which seeks to:

Ensure that development responds to its context and reinforces a sense of place, and responds to the valued features and characteristics of the local environment and place, by respecting the:

- Pattern of local urban structure and subdivision;
- Underlying natural landscape character and significant vegetation; and
- Neighbourhood character values and built form that reflect community identity

(iv) Discussion

The ability to design subdivision around topography, environmental and landscape values of a site will support site responsive planning outcomes.

The Panel agrees with Mr Milner and submissions that a lot size averaging provision instead of a minimum will support site responsive subdivision. Flexibility to set boundaries and areas for building envelopes supports development to better avoid sky and ridge lines, and vegetation aligns with Council's broader objectives around neighbourhood character and development that is sensitive to its surroundings.

Council has recognised this is the case and the Panel supports Council's post-exhibition changes to NRZ and DDO schedules. Council has generally reverted to an average rather than a minimum subdivision lot size in multiple schedules and added some nuance to DDO6, DDO7 and DDO24.

The Panel does not agree with the suggestion that a decision guideline be inserted in DDO3 rather than the mandatory requirement at Clause 3.0. Council's response to submissions introducing flexibility through an averaging requirement rather than a minimum is a satisfactory response to concerns raised by submitters. The exhibited decision guidelines deal with design and siting of buildings to protect environmental and landscape values, minimise the need for site excavation, and consider existing views to the coastline and public areas.

The Panel considers it appropriate to exempt the minimum subdivision area in an LDRZ schedule for a re-subdivision that does not increase the number of lots and does not enable additional subdivision potential. This would help avoid anomalous circumstances. The minimum subdivision area should not apply to land set aside as common property.

(v) Conclusions and recommendations

The Panel concludes:

- An averaging provision for lot sizes instead of a minimum will support a site responsive subdivision that can reflect topography, environmental and landscape values.
- It is appropriate to delete minimum subdivision area requirements in Neighbourhood Residential Zone Schedules 23 to 27 and 29 to 33.
- It is appropriate to apply average lot size subdivision area requirements in Design and Development Overlay Schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32.
- It is appropriate to exempt certain re-subdivisions but not land set aside as common property in Low Density Residential Zone Schedules 1 to 11.

The Panel recommends:

Amend the exhibited Neighbourhood Residential Zone Schedules 23 to 27 and 29 to 33 to delete the minimum subdivision area in Clause 2.0 and replace with 'None specified'.

Amend Low Density Residential Zone Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 under 'This does not apply to' to:

- a) delete "*land set aside as common property*"
- b) add as a new point "*a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created*".

Amend Design and Development Overlay Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 32 and 33 in Clause 3.0 (Subdivision) under 'This does not apply to' to:

- a) delete "*land set aside as common property*"
- b) add as a new point "*a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created*".

Amend Design and Development Overlay Schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32 to apply the subdivision area in Clause 3.0 (Subdivision) as an average rather than a minimum, through the following provision:

The average area of the lots created by the subdivision must be at least [number] metres. Land set aside as common property may be included in the calculation of the average area of the lots created by the subdivision.

5.5 Clauses 54 and 55 variations

(i) The issue

The issue is whether the Clause 54 and 55 variations proposed through the GRZ and NRZ schedules are appropriate and justified.

(ii) Evidence and submissions

Council submitted that the Clause 54 and 55 variations:

- were derived from both the HSS and the NCSG
- were required to protect and enhance Mornington Peninsula's valued characteristics
- would not prohibit development on small lots or render such development unviable.

Numerous submissions opposed the NRZ schedule provisions because they considered the varied Clause 54 and 55 requirements:

- would be more restrictive and significantly reduce infill developments and innovation because of increased setbacks, increased permeability, decreased site cover, and increased private open space
- are not justified on land within 20-minute walk of an activity centre and would restrict the ability to achieve this policy outcome
- are unnecessary
- should only be applied where necessary and justified.

Submitter 271 cautioned against the overuse of variations in significant change areas, arguing that this would undermine the objective of achieving substantial change and broader state policy for 20-minute neighbourhoods. In his evidence, Mr Granger:

- considered the variations would further impact dwelling yield in incremental change areas
- acknowledged the variations sought to achieve neighbourhood character objectives but considered that the opportunity cost from lost future yield had not been assessed.

Mr Milner stated that most of the proposed Clause 54 and 55 variations have been informed by the NCSG recommendations.

Mr Milner noted that a dwelling on a lot less than 300 square metres requires a planning permit regardless of variations to the requirements of Clause 54 and 55, and that the NRZ would retain discretions allowing for outcomes that respect the design objective even if the nominated standard cannot be met. He referred to the case studies attached to Council's October 2022 Officer report in acknowledging that the variations would necessitate design changes and reduce multi-dwelling yield in some instances. Mr Milner considered some proposals to be overly ambitious and may not have been approved under the current Planning Scheme provisions either.

Mr Milner stated:

- the presence of spaciousness is a defining characteristic of residential development on the Mornington Peninsula
- the NCSG did not explicitly reference a 5-metre setback or the need for secluded private open space to have a minimum dimension of 5 metres but considered them necessary to protect Mornington Peninsula's special character, noting that such variations feature in other middle and outer ring municipalities.

In her evidence, Ms Hill acknowledged the following Clause 54 and 55 variations in NRZ schedules 2 to 18 were not NCSG recommendations:

- side setback requirements for NRZ11, NRZ15, NRZ16, NRZ17 and NRZ18 where the wording 'from a side boundary' has been used rather than the NCSG recommended wording 'from both boundaries'
- requirement for a landscaped front setback with minimum dimensions of 5 metres by 5 metres and at least one canopy tree in NRZ3 and NRZ7
- requirement for a rear setback in NRZ schedules 2 to 18
- requirement for private open space for two or more dwellings in NRZ schedules 2 to 8.

During cross-examination, Ms Hill acknowledged the proposed variation requiring additional ground floor private open space for dwellings with more than two bedrooms was not a NCSG recommendation.¹³

In response to submissions from the Housing Industry Association, Council proposed to:

- remove tailored GRZ schedule variations except for front fences
- apply three new NRZ schedules in the Mornington and Hastings activity centres with no tailored requirements for setbacks and private open space.

In closing, Council submitted:

- its case studies and urban design sketches demonstrate the need for improved built form and private open space outcomes
- the variations would not be prohibitive, but rather would result in a better built form and open space balance, and more sympathetic architectural expression.

Council clarified that variations to the landscaping requirement in front setbacks for NRZ3 and NRZ27 were from the NCSG and Beleura Hill Neighbourhood Character Study respectively and further noted that these requirements would be discretionary.

(iii) Discussion

The Panel agrees with Council that Clause 54 and 55 may be varied through schedules to the residential zones, however such variations need to be sufficiently justified. Council submitted that the variations are derived from both the HSS and the NCSG, but as Mr Milner noted, most variations are drawn from the NCSG.

The Panel does not support variations to the private open space requirements for Schedules 2 to 8 because:

- they are not supported by strategic work through the NCSG and its origins are unclear
- the default provisions for private open space in Clauses 54 and 55 do not account for number of bedrooms.

¹³ Document 111 paras 59-60

Planning Practice Note 91 specifies that variations to the key siting and amenity standards of the residential zones can be varied, where it can be strategically justified. The Panel supports a number of the variations proposed by Council but considers there is insufficient justification in the Amendment for the proposed variations to ground floor private open space and additional rear setbacks as applicable to NRZ schedules 2 to 18. The default requirements of Clause 54 and 55 provide a suitable baseline for assessing those aspects of a permit application.

Variations to rear setbacks and private open space requirements will be maintained in other NRZ schedules as a result of translating existing DDO schedule requirements for those areas. While the purpose of these requirements is unclear, the Panel accepts that they already exist in the Planning Scheme.

The Panel supports all proposed landscaping requirements for front setbacks as these have been demonstrated to be consistent with relevant character studies. It also supports Council's proposed:

- drafting of requirements for side setbacks to be based on 'a side boundary'
- deletion of the Clause 54 and 55 variations for minimum street setback, side and rear setbacks and private open space in GRZ1, GRZ2 and GRZ3.

(iv) Conclusions and recommendations

The Panel concludes:

- The Clause 54 and 55 variations proposed through the General Residential Zone and Neighbourhood Residential Zone schedules are generally appropriate and justified, except for the following which were not derived from the Neighbourhood Character Study and Guidelines:
 - the rear boundary setback requirement in Neighbourhood Residential Zone Schedules 2 to 18
 - the private open space requirement in Neighbourhood Residential Zone Schedules 2 to 8.
- The rear boundary setback and private open space requirements in the other Neighbourhood Residential Zone schedules should remain where they exist in current Design and Development Overlay schedules for those areas.
- It is not appropriate not justified to specify private open space requirements based on the number of bedrooms in a dwelling.
- There are sufficient provisions and guidance in the Planning Scheme and through those proposed through the Amendment to assess private open space based on each individual circumstance.

The Panel recommends:

Amend Neighbourhood Residential Zone Schedules 2 to 18 to delete the rear boundary setback requirement in Clause 4.0 (Standards A10 and B17).

Amend Neighbourhood Residential Zone Schedules 2, 3, 4, 5, 6, 7, 8, 35 and 36 and Neighbourhood Character Overlay Schedule 1 to delete the private open space requirement in Clause 4.0 (Standards A17 and B28) and replace it with 'None specified'.

Amend General Residential Zone Schedules 1, 2 and 3 to delete requirements in Clause 4.0 for minimum street setback, side and rear setbacks and private open space and replace them with 'None specified'.

5.6 Planning Scheme approval date

(i) The issue

The issue is whether LDRZ schedules and DDO schedules should reference the date the Planning Scheme was approved and came into operation, being 6 May 1999.

(ii) Background

Since exhibiting the Amendment, Council proposed to reference 6 May in DDO schedules as follows:

A permit to subdivide land must meet the following requirements:

- two or more dwellings that have lawfully existed on a lot at the approval date of **6 May 1999** and the subdivision proposes to create a separate lot for each dwelling.

A building must not exceed a height of 8 metres and must not contain more than 2 storeys. This does not apply to:

- alteration to or extension of a lawfully existing building but only if all of the following requirements are met:
 - The footprint of the upper storey, existing at the approval date of **6 May 1999**, is not increased by more than 10 per cent.

For the LDRZ schedules, it proposed to add in the minimum subdivision area provisions:

All land encumbered by this schedule. This does not apply to:

- two or more dwellings that have lawfully existed on a lot at the approval date of **6 May 1999** and the subdivision proposes to create a separate lot for each dwelling.

(iii) Evidence and submissions

Council submitted that since exhibiting the Amendment, it proposed to specify the Planning Scheme approval and operation date of 6 May 1999 in:

- LDRZ and DDO schedules to recognise lawfully approved dwellings at that time
- DDO schedules to recognise the existing upper storey footprint at that time.

Mr Milner supported the proposed change, noting it would clarify the approval date.

(iv) Discussion, conclusion and recommendations

There does not appear to be a submission since exhibition which objected to specifying the Planning Scheme approval date in the LDRZ and DDO schedules. Specifying the Planning Scheme introduction date would clarify which built form a proposed extension should measure from.

The Panel concludes it is appropriate to reference the Planning Scheme's approval and operation date of 6 May 1999 because it clarifies which future subdivisions or alterations and extensions are exempt from the specified provisions.

The Panel recommends:

Amend Low Density Residential Zone Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 to revise the relevant exemption to reference 6 May 1999 as follows:

- ***two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling.***

Amend Design and Development Overlay Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 20, 24, 32, 33 to revise the relevant requirement in Clause 3.0 (Subdivision) to reference 6 May 1999 as follows:

- *two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling.*

Amend Design and Development Overlay Schedules 1, 2, 4, 5, 6, 17, 18, 19, 20, 23, 24, 32, 33, 35, 36, 39, 40, 41, 43, 44, 46, 48 and 50 to revise the relevant requirement in Table 2 to reference 6 May 1999 as follows:

- *The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.*

5.7 Proposed post-exhibition NRZ siting decision guidelines

(i) The issue

The issue is whether the following siting decision guidelines proposed by Council to be included in 30 NRZ schedules since exhibiting the Amendment are appropriate and justified:

Whether the siting and setback of buildings from the side and rear boundaries of a lot maintain the predominant backyard character of the area.

Whether a reduced side setback from one side boundary is appropriate having regard to the building rhythm within the streetscape.

(ii) Evidence and submissions

Council submitted that, since exhibiting the Amendment, it proposed to add a decision guideline which seeks to consider whether siting and setback of buildings from side and rear boundaries maintain the predominant backyard character of the area.

Ms Hill did not respond to the post-exhibition NRZ siting decision guidelines in her evidence. In his discussion regarding Clauses 54 and 55 variations, Mr Milner opined:

The use of a rear setback and minimum dimension of 5 metres for open spaces talks to the presence and importance of a 'backyard' character, the better protection and ability to plant and support canopy trees and established vegetation and also the functionality of the space for private recreation.

Within this context, Mr Milner considered the proposed decision guidelines to be sensible and add clarity to the scope of decision making.

(iii) Discussion

The NCSG does not refer to the notion of an area's 'backyard character' nor does it provide justification for introducing provisions to support such a respond. It therefore does not agree with Mr Milner's evidence.

The Panel considers there are sufficient existing policies, provisions and guidelines to assess the siting of buildings and associated setbacks without the need for further decision guidelines. As discussed in Chapter 8.2, Council should review such unnecessary decision guidelines with the intent of deleting them.

(iv) Conclusion

The Panel concludes there is no justification to include further decision guidelines regarding siting beyond what was exhibited because:

- there are other similar existing and proposed decision guidelines that will achieve the same outcome
- the notion of 'predominant backyard character of the area' is not derived from the Neighbourhood Character Study and Guidelines, does not appear to exist, and is unnecessary to achieve neighbourhood character objectives.

5.8 Transitional provisions

(i) The issue

The issue is whether the Amendment should include transitional provisions.

(ii) Evidence and submissions

In its 'Submissions review and officers response' Council noted:

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

Officers and DELWP (*refer email from Statutory Planning Services of DELWP dated 16 May 2022*) do not support including transitional provisions and consider the exhibition period for the amendment as providing sufficient notice to landowners of impending planning scheme changes.

Consistent with the above position, Council formally resolved to not include transitional provisions at its 24 October 2022 meeting. Council's Part A and B submissions reflected this position.

Mr Milner acknowledged that Council relied on advice and guidance from DELWP to not include transitional provisions for permit applications lodged or permits issued from the Amendment gazettal date. He deferred to that advice.

Submitter 271, Shane Smith and Alexandra Colliver requested the Amendment include transitional provisions in zone schedules which enable:

- current permit applications to be assessed based on existing provisions rather than those introduced by the Amendment
- more time for existing planning permits which may conflict with changes introduced by the Amendment
- additions and alternations to an existing dwelling constructed before the Amendment being gazetted.

Numerous submissions considered:

- proposed GRZ1, NRZ3 and NRZ6 should include transitional provisions
- future development potential of properties with valid planning permits, or planning applications, may be prejudiced without transitional provisions
- the lack of transitional provisions was unfair and would unreasonably prejudice applications submitted before the Amendment is introduced into the Planning Scheme.

(iii) Discussion

The omission of transitional provisions from Amendment C219 is consistent with the advice from Statutory Planning Services of DELWP dated 16 May 2022. It advised that head clauses such as the GRZ, NRZ, LDRZ, DDO and Neighbourhood Character Overlay do not provide for transitional provisions and that the exhibition period was sufficient notice of the proposed changes to the Planning Scheme. Irrespective, no submission persuaded the Panel that it would be unfair or inappropriate to not have transitional provisions. Future permit assessments should be based on the Planning Scheme's policies and provisions of the day rather than those found to no longer be appropriate.

The Panel supports Council's adoption of this advice.

(iv) Conclusion

The Panel concludes the Amendment should not include transitional provisions.

5.9 Neighbourhood Residential Zone Schedules 10 and 11

(i) The issue

The issue is whether the neighbourhood character objective for predominantly single storey dwellings in NRZ Schedules 10 and 11 is appropriate and justified.

(ii) Evidence and submissions

Ms Hill acknowledged in her evidence that the reference to 'predominantly single storey dwellings' in the NRZ11 objectives was not consistent with the recommendation of the NCSG, and that the schedule should therefore reference '1-2 storeys'. Appletree Sorrento Pty Ltd requested the same change be made to NRZ12 which Council reflected in the post-exhibition version of the schedule.

Council noted in closing that some submitters questioned whether the NCSG and proposed provisions were premised on respecting existing neighbourhood character or achieving a preferred neighbourhood character. Council submitted:

it has accurately and faithfully implemented the findings of the Neighbourhood Character Study, as confirmed by the expert evidence of Ms Hill, and in that regard, it has struck an appropriate balance between maintaining existing character and achieving valued attributes identified via community consultation.

(iii) Discussion

The NRZ schedule objectives should reflect the recommendations and preferred character statements of the NCSG.

Council updated NRZ12 in response to Appletree Sorrento Pty Ltd but NRZ10 and NRZ11 maintain the same inconsistent reference to 'predominantly single storey dwellings'. This is not a faithful translation of the NCSG, nor does it reflect the head NRZ provision or reality that there may be an emerging one to two storey character in these areas. It is inconsistent with the associated DDO schedules which enable up to 2 storeys and contradicts Ministerial Direction 7(5) which states that a schedule cannot specify a lower height than the head provision.

It is an inherent function of zones to enable new development which respects rather than conserves existing character. This can include built form taller than single storey.

(iv) Conclusion and recommendation

The Panel concludes the neighbourhood character objective for predominantly single storey dwellings in Neighbourhood Residential Zone Schedules 10 and 11 is:

- unsupported by any strategic work and inappropriate because it does not reflect actual circumstances
- should be deleted because 1 to 2 storey built form is reflected in the purpose of the parent zone.

The Panel recommends:

Amend Neighbourhood Residential Zone Schedules 10 and 11 to delete any reference to 'predominantly single storey' in the neighbourhood character objectives.

5.10 Neighbourhood Character Overlay Schedules 1 and 2

(i) The issue

The issue is whether changes proposed to Neighbourhood Character Overlay Schedules 1 and 2 since the Amendment was exhibited are appropriate and justified.

(ii) Evidence and submissions

There were submissions which opposed Neighbourhood Character Overlay Schedules 1 and 2 and considered:

- Neighbourhood Character Overlay Schedule 1 departs from the recommendations in the Conservation Management Plan, and it is flawed to rely on unique neighbourhood character.
- Neighbourhood Character Overlay Schedule 2:
 - would limit infill opportunities in areas suitable for infill development.
 - is complex and confusing
 - would introduce the requirement for a permit to demolish a dwelling, remove vegetation and to construct a dwelling and outbuildings
 - would add red tape
 - contradicts the Amendment's intent to reduce cost and time, remove unnecessary permit triggers, redundant exemptions, and superfluous provisions and terminologies, and to simplify complex requirements.

One submission opposed the Clauses 54 and 55 standards variations through Neighbourhood Character Overlay Schedule 2 because they would:

- allow a building footprint of 7.7 metres by 24.5 metres (on a 10.7 metre by 37 metre lot) which would exclude medium density housing unless it was apartment style with basement parking
- result in single dwelling lots which contradict state policy regarding urban consolidation, housing supply, diversity and affordability.

Since exhibiting the Amendment, Council proposed to revise Neighbourhood Character Overlay Schedules 1 and 2 to:

- remove the permit requirement to demolish or remove a building

- in the walls on boundaries standard, amend the garage wall length exemption to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres wall thickness front and rear
- revise the decision guidelines to remove consideration of demolition.

Ms Hill and Mr Milner supported Council's proposed changes. Ms Hill stated:

- the NCSG did not recommend the demolition trigger in the Neighbourhood Character Overlay schedules
- it is appropriate to delete the trigger because the Neighbourhood Character Overlay requirements are generally sufficient to ensure future development respects identified special area character.

(iii) Discussion

The Panel has already concluded that revise Neighbourhood Character Overlay Schedule 2 should not be introduced into the Planning Scheme.

Neighbourhood Character Overlay Schedule 1 and its head provisions have sufficient requirements to manage future development without the need for a permit to demolish or remove a building. The Panel supports Council's proposal to delete this permit requirement and associated decision guideline content. A standard garage should have at least 6 metres of internal wall length to better accommodate vehicles and storage.

(iv) Conclusions and recommendations

The Panel concludes:

- The Neighbourhood Character Overlay Schedule 1 provisions are generally appropriate and justified subject to not requiring a permit to demolish or remove a building and to revising the garage wall length exemption to 6.5 metres.
- The Neighbourhood Character Overlay Schedule 2 provisions are not justified for the intended land so should not be introduced into the Mornington Peninsula Planning Scheme.

The Panel recommends:

Amend Neighbourhood Character Overlay Schedule 1 to:

- a) delete the permit requirement to demolish or remove a building and delete 'demolished' from the second decision guideline
- b) in the Clause 4.0 walls on boundaries standard, revise the garage wall length exemption to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres front and rear wall thickness.

6 Specific area issues

Chapters 3, 4 and 6 discuss broader-scale issues affecting multiple locations across the municipality which may apply to properties identified in this chapter. This discussion is not repeated here.

This chapter does not refer to specific properties if all relevant issues have been responded to in earlier chapters and the Panel has no further comment.

6.1 Capel Sound

(i) The issue

The issue is whether the proposed provisions are appropriate and justified for properties in Capel Sound, including the Woodthorpe Estate and 4 Percival Street.

(ii) Evidence and submissions

The owners of 4 Percival Street objected to the property being rezoned from GRZ1 to NRZ3 (Garden Residential 2). They submitted:

- the property can accommodate diverse and affordable housing supply because it is 100 metres from the foreshore, 1 kilometre from Rosebud Plaza and 300 metres from Capel Sound shops
- Capel Sound is suitable for additional housing growth, given there are no DDO or VPO provisions to most residential properties
- housing in the area is predominantly single and 2 storeys but recent multi-dwelling developments are on subdivided lots of 150 to 400 square metres
- the preferred 'bushy garden setting' does not resemble the existing conditions.

The owners objected to the modified Clauses 54 and 55 requirements proposed through NRZ3 which would *"stifle any opportunity for redevelopment currently afforded to our property and will take away opportunities to accommodate housing growth"*. They considered this was not consistent with the property's incremental growth designation.

Council did not support the owners' request and submitted GRZ1 is not appropriate given 4 Percival Street is not part of a structure plan that supports three or more storeys. It referred to:

- Planning Practice Note 91 which states *"All residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist"* and advises the NRZ is suitable for incremental change areas
- Planning Practice Note 90 which seeks councils to ensure development contributes to existing or preferred neighbourhood character
- the NCSG which defined neighbourhood character based on the attributes of a broader area rather than individual streets.

Ms Hill and Mr Milner did not specifically respond to this submission.

(iii) Discussion

Having considered submissions and evidence for individual properties in Capel Sound, the Panel maintains its conclusions in Chapter 4 regarding the approach to applying zones and overlays.

The Panel has no concern regarding Council's post-exhibition proposal to no longer specify the minimum 700-square-metre lot size for subdivision in NRZ29.

(iv) Conclusions and recommendation

The Panel concludes:

- As no overlay currently applies to 4 Percival Street, Capel Sound, consistent with Recommendation 4, the existing General Residential Zone should remain on the property.
- The minimum 700-square-metre lot size for subdivision in Neighbourhood Residential Zone Schedule 29 should be replaced with 'None specified'.

The Panel recommends:

Amend Neighbourhood Residential Zone Schedule 29 to replace the minimum subdivision area of 700 square metres with 'None specified'.

6.2 Dromana

(i) The issues

The issues are whether the proposed provisions are appropriate and justified for 18-20 Harrison Street, 103-113, 105 and 299-301 Point Nepean Road and 8 Joan Avenue.

(ii) Background

NRZ35 (Dromana Township Area) and NRZ36 (Dromana Hillside Area) apply to Dromana.

(iii) Evidence and submissions

18-20 Harrison Street

The owner of 18-20 Harrison Street objected to the property being rezoned from GRZ1 to NRZ35 and submitted:

- the proposed Clause 16.01-1L nominates the property for incremental change
- the current zone supports the property being in a substantial change area.

105-113 Point Nepean Road and 8 Joan Avenue

Two separate submissions, claiming to be the owner, referred to the same property. Ormanda Pty Ltd referred to the irregularly shaped 18,370 square metre property as 105-113 Point Nepean Road and 8 Joan Avenue while Burbank Urban (Burbank) referred to it as 105 Point Nepean Road.

They submitted it was inappropriate to:

- designate the property as minimal change area and partial incremental change area
- rezone the property from GRZ1 to NRZ2 and NRZ35 because it is inconsistent with policy which seeks moderate housing growth in Dromana Activity Centre, located about 200 metres away.

They considered NRZ contradicts this direction by seeking:

- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

Burbank explained the designations and proposed zoning ignored the area's existing built form character and the property's physical context and cadastral makeup. It referred to neighbouring properties along Point Nepean Road and Carrigg Street which had 2 and 3 storey build form.

In response, Council considered NRZ2 and NRZ35 to be appropriate for the property and maintained its approach to designating housing change areas and application of residential zones. Council submitted NRZ35:

- is a hybrid schedule which combines character provisions from the Dromana Residential Areas Investigation Report
- has objectives and provisions consistent with the findings in the NCSG and Dromana Residential Areas Investigation Report
- reflects the Dromana Township Area's neighbourhood character objectives regarding sharing of coastline views and colours and materials with fit in with the vegetated coastal landscape.

Ms Hill and Mr Milner did not specifically respond to this submission.

299-301 Point Nepean Road

Zuccala Property Group objected to 299-301 and 303-313 Point Nepean Road, totalling about 7,000 square metres being in a Minimal Change Area and being rezoned from GRZ1 to NRZ2. NRZ2 would introduce a mandatory maximum building height of 9 metres (2 storeys). It submitted GRZ1 should remain on the property because it:

- abuts the commercial component of the Dromana Activity Centre, where policy seeks to direct growth in and around activity centres
- has dual road frontages and abuts a major road (Point Nepean Road) with large traffic volumes and multiple bus services
- is opposite a major recreational facility (Port Phillip Bay)
- is partly affected by Environmental Significance Overlay Schedule 25 and the Heritage Overlay (HO168) but not affected by any other environmental or built form overlay or subject to bushfire risk, flooding or erosion
- has no special characteristics to distinguish it from other parts of the municipality or surrounding areas.

In response, Council maintained its approach to designating housing change areas and application of residential zones. Ms Hill and Mr Milner did not specifically respond to this submission.

(iv) Discussion and conclusion

Having considered submissions and evidence for individual properties in Dromana, the Panel maintains its conclusions in Chapter 4 regarding the approach to applying zones and overlays.

The Panel concludes:

- The proposed provisions are appropriate and justified for 103-113, 105 and 299-301 Point Nepean Road.
- As no overlay applies to 18-20 Harrison Street and 8 Joan Avenue in Dromana, consistent with Recommendation 4, the existing General Residential Zone should remain on each property.

6.3 Hastings

(i) The issue

The issue is whether the proposed provisions are appropriate and justified for 4 Carpenters Lane North, Hastings.

(ii) Evidence and submissions

The owner of 4 Carpenters Lane North objected to the DDO53 provisions proposed for the property. She submitted:

- the property has development potential through its 2.2 hectares and 161-metre frontage
- the existing LDRZ minimum submission lot area of 0.4 hectares is reasonable
- the minimum 2-hectare average lot area proposed through DDO7 is blunt, restrictive and unjustified.

Ms Hill explained that 4 Carpenters Lane North has been designated Rural Settlement 2 which largely includes existing DDO7 provisions and those recommended in the NCSG.

Council maintained its approach to designating housing change areas and application of residential zones. It noted the property is in a Bushfire Prone Area and it is necessary to direct housing away from natural hazards, consistent with guidance in Planning Practice Note 90.

(iii) Discussion and conclusion

As discussed in Chapter 3.3, the HSS approach to categorising change areas may be an overreach to guidance in Planning Practice Note 90. The practice note uses land subject to bushfire risk as an example of minimal change areas.

6.4 Mornington

(i) The issues

The issues are whether the proposed provisions are appropriate and justified for 3 Yuilles Road, Mornington.

(ii) Evidence and submissions

The owner of 3 Yuilles Road objected to the property being rezoned from GRZ1 to NRZ2 (Garden Residential 1). The owner submitted the property:

- is within 50 metres of Mornington's Activity Centre Highway Precinct
- is identified for incremental change in the HSS
- does not have any special characteristics, is not a heritage place, is not in a bushfire prone area and is not affected by any vegetation or environmental protection overlay.

The owner provided a photo of a three storey residential development at 7-9 Yuilles Road. She did not believe her property had the same character as Mount Martha, Rosebud, Rye or Somerville where Garden Residential Precinct 1 was also being applied. The owner considered the NRZ2 provisions, including the 2-metre building setback, to be inappropriate for her property.

The owner compared existing and proposed provisions for 3 Yuille Road (existing GRZ1 with no overlays) with 35 Dundas Street, Rye (existing GRZ1 with DDO4 and VPO1) to demonstrate why

the exhibited provisions were appropriate for the Rye property but inappropriate for hers. The Amendment proposes to rezone both properties to NRZ2.

Submitter 271 presented a map¹⁴ which showed how rezoning the area which includes Yuilles Road from GRZ1 to NRZ2 would reduce the maximum mandatory building height from 11 metres (3 storeys) to 9 metres (2 storeys).

(iii) Discussion

The urban block bounded by Yuilles Road, Moomba Street, Nepean Highway and Tyabb Road:

- has a robust interface with concrete slab commercial buildings, medium density housing and a large, vegetated park opposite the Yuilles Road properties
- is saturated with medium density housing.

Yuilles Road does not have a consistent or prevailing neighbourhood character to work from. Rather, it is evolving to a medium density environment, consistent with 7-9 Yuilles Road and other properties in the block. The development at 7-9 Yuilles Road demonstrates that three storey built form can seamlessly blend with a predominantly one to two storey residential neighbourhood. There is no justification to reduce the maximum building height by one storey in this location.

Yuilles Road properties are opposite a large open space area (Flinders Park) with considerable vegetation along its boundary. It is unclear why this significant garden-like setting needs to be extended into these private properties through NRZ2 provisions.

The neighbourhood character aspirations in NRZ2 are so distinctly different to the existing Yuilles Road character, it is unlikely to achieve its intended outcomes. If anything, it would discourage future investment.

Council and Ms Hill responded to this issue at a broader level without specifically referencing Yuilles Road.

(iv) Conclusion and recommendation

The Panel concludes the urban block in Mornington bounded by Yuilles Road, Moomba Street, Nepean Highway and Tyabb Road should remain in the existing General Residential Zone Schedule 1 because the proposed Neighbourhood Residential Zone Schedule 2 provisions are unsuitable.

The Panel recommends:

Retain General Residential Zone Schedule 1 to properties along Yuilles Road, Mornington.

6.5 Mount Eliza

(i) The issue

The issue is whether the proposed provisions are appropriate and justified for 1501 Nepean Highway, Mount Eliza.

¹⁴ Document 45

(ii) Evidence and submissions

Thunderbirds Are Go Pty Ltd which owns 1501 Nepean Highway objected to NRZ8 and DDO33 being applied to the property. It submitted:

- the property is dislocated from the remainder of the DDO33 area
- the property should be designated as an incremental change area because it is near the Mount Eliza Township and there is higher density developing occurring to the west
- the NRZ8 provisions conflict with those in DDO33 and would result in an ambiguous planning outcome so the provision proposed to the west of Nepean Highway should also be applied to 1501 Nepean Highway.

At its 24 October 2022 meeting, Council resolved to redesignate 1501 Nepean Highway for incremental change rather than minimal change, and to apply DDO1 rather than DDO33.

Ms Hill and Mr Milner did not specifically respond to this submission.

(iii) Discussion

The Panel considers that 1501 Nepean Highway is visually and locationally disconnected from the remaining DDO33 area. The property certainly does not have the attributes to achieve the DDO33 design objectives. Its size and main road location gives it development potential beyond what is sought through the exhibited provisions.

The property should be categorised for incremental change because its size and robust interfaces enable it to accommodate greater built form.

(iv) Conclusion and recommendation

The Panel concludes that 1501 Nepean Highway, Mount Eliza should be recategorised as an incremental change area to reflect its ability to accommodate a greater level of built form.

The Panel recommends:

Amend Clause 16.01-1L to revise the relevant map to recategorise 1501 Nepean Highway, Mount Eliza for incremental change.

6.6 Portsea

(i) The issues

The issues are:

- whether the proposed provisions proposed for 183 and 185-217 Hotham Road are appropriate and justified
- whether 183 and 185-217 Hotham Road need a masterplan before they are rezoned to NRZ.

(ii) Evidence and submissions

MIDGM Pty Ltd and another submitter each objected to rezoning 183 and 185-217 Hotham Road from GRZ1 and LDRZ to NRZ16 and LDRZ5. They noted the southern part of 183 Hotham Road (13.5 acres zoned LDRZ) has been subdivided since 2021. MIDGM Pty Ltd objected to the rezoning because:

- there is no masterplan for using and developing the land so incremental and piecemeal subdivision may occur, resulting in poor planning outcomes
- the proposed zones are inconsistent with the recent planning permit for a winery on 183 Hotham Road and associated vineyard on 185 Hotham Road because these uses which include agricultural chemicals will contaminate the soil and adversely impact the health of future residents.

MIDGM Pty Ltd requested the rezoning not proceed until Council has developed a masterplan for the land and resolved the inconsistencies between the proposed zones and approved uses.

Mr Milner and Ms Hill did not specifically respond to these properties. The officer report for the 24 October 2022 meeting stated:

- the future use and development of private land is the discretion of the owner
- a proposal to use or develop land that needs a planning permit will be assessed on its merits
- the Amendment proposes new NRZ character provisions to ensure future development respects the area's preferred character.

(iii) Discussion

The Panel agrees with Council's response regarding 183 and 185-217 Hotham Road. However, the large area would benefit from having a more strategic approach to subdivision to avoid an awkward or inappropriate layout. This is beyond the scope of the Amendment and would form part of a separate process.

The proposed NRZ provisions recognise the preferred neighbourhood character in this relatively sensitive coastal location. If the winery has operated continuously for at least 15 years, it may have existing use rights to enable it to operate even if the use is prohibited by the NRZ. Having said that, wineries are generally found in rural areas outside the Urban Growth Boundary to enable limited residential land within the boundary to provide housing for the growing population.

(iv) Conclusion

The Panel concludes:

- The planning provisions proposed for 183 and 185-217 Hotham Road, Portsea are appropriate and justified.
- The properties at 183 and 185-217 Hotham Road, Portsea would benefit from a strategic approach to future subdivision but this would not be needed before rezoning them to the Neighbourhood Residential Zone.

6.7 Rosebud

(i) The issue

The issue is whether the Amendment has appropriately considered planning provisions in Rosebud for:

- 141-143 Eastbourne Road
- 97-99 Ninth Avenue
- 870 Point Nepean Road.

(ii) Evidence and submissions

141-143 and 231-233 Eastbourne Road

The owners of 141-143 and 231-233 Eastbourne Road each objected to rezoning their properties from GRZ1 to NRZ6 and to the neighbourhood character policy proposed for Clause 15.01-5L. Each advised they had a permit to develop 10 dwellings and undertake associated works for 141-143 Eastbourne Road (Permit P19/2228) and 231-233 Eastbourne Road (Permit P19/1092).

The owners submitted their properties are:

- well located for medium density housing because they are:
 - near services and facilities
 - about 1.2 kilometres from the Rosebud Activity Centre retail core
 - next to a bus route, 500 metres from a primary school, 550 metres from large public open space, two secondary schools and 1,275 metres from the Rosebud foreshore
- not constrained by overlay provisions
- on a road identified for residential consolidation in the Rosebud Activity Centre Structure Plan.

The owners considered:

- NRZ to be inappropriate, give the property's strategic context
- GRZ to be the most appropriate zone, having regard to the zone's purpose.

In response, Council submitted:

- the proposed rezoning to these properties is consistent with its methodology
- the properties are designated incremental change because they are outside an activity centre, not affected by constraints and not part of an adopted structure plan supporting three storeys or more.

97-99 Ninth Avenue

The owners of 97-99 Ninth Avenue objected to the 956.9 square metre property being rezoned from GRZ1 to NRZ5 and to applying Neighbourhood Character Overlay Schedule 2. They explained:

- the property currently has no overlay, and a permit is not required for a dwelling
- the proposed zone and overlay provisions are not well reasoned and do not satisfactorily balance competing policy objectives.

870 Point Nepean Road

The owner of 870 Point Nepean Road objected to the property being rezoned from GRZ1 to NRZ2. The owner submitted the property should have been identified for Substantial Housing Change and in GRZ4 because:

- it has been used for commercial purposes for nearly 30 years and has not exhibited any residential built form character or residential amenity
- the proposed residential designation and zone do not acknowledge the property's established land use, physical context and planning principles underpinning urban consolidation
- it is located near the Rosebud Activity Centre with access to commercial facilities and services
- its frontage abuts Road Zone Category 1 which carries high traffic volumes

- it is located on the corner of Jetty Road which connects Point Nepean Road to the foreshore including the car park, playground, amenities, pier and trail
- it is opposite more intensive development at 866 Point Nepean Road.

1475 Point Nepean Road

Alesci Investments Pty Ltd objected to rezoning 1475 Point Nepean Road from GRZ1 to NRZ2 because the rezoning:

- does not recognise the property is on a main road, well served by public transport, and near commercial, medical and community services and infrastructure
- has no strategic support, is inappropriate and is not proper and orderly planning
- would constrain the objectives of state and local policy, including Clauses 11.03-1S, 11.03-1L-03 and 16.01-1S
- is not consistent with Planning Practice Note 91 (Using the residential zones) because the Rosebud Activity Centre is an area with:
 - anticipated change
 - no specific neighbourhood, heritage, environmental or landscape values.

Council considered 1475 Point Nepean Road has been appropriately identified for minimal change and for NRZ2. It submitted the Environmental Significance Overlay Schedule 25, Bushfire Prone Area and sea level risk / storm time impacts justified the minimal change designation. Its approach was to apply the NRZ to minimal change areas. Council noted there is a current permit application for the subject land which would not be prohibited by the proposed planning provisions, though it would not meet the NRZ2 rear setback or private open space requirements.

(iii) Discussion

Having considered submissions and evidence for individual properties in Rosebud, the Panel maintains its conclusions regarding:

- the approach to zones and overlays
- the Neighbourhood Character Overlay Schedule 2 not being applied to The Avenues
- the General Residential Zone being applied to residential land, including 1475 Point Nepean Road, within the Rosebud Activity Centre.

(iv) Conclusions

The Panel concludes:

- Planning provisions proposed for 870 Point Nepean Road, Rosebud should be applied as exhibited.
- As no overlay applies to 141-143 and 231-233 Eastbourne Road in Rosebud, consistent with Recommendation 4, the existing General Residential Zone should remain on each property.
- As 97-99 Ninth Avenue is in the Rosebud Activity Centre and without an overlay, consistent with Recommendation 4, the existing General Residential Zone should remain on the property.
- 1475 Point Nepean Road, Rosebud should remain in General Residential Zone Schedule 1 because there is insufficient justification to categorise it to 'minimal change' and to rezone it to Neighbourhood Residential Zone Schedule 2.

6.8 Rye

(i) The issue

The issue is whether the proposed provisions are appropriate and justified for properties in Rye including 25 Collingwood Street, 51 Field Street, 2495 Point Nepean Road and 27 Richardson Street.

(ii) Evidence and submissions

25 Collingwood Street

L and J DiFabio and Colli Investments objected to 25 Collingwood Street being rezoned from GRZ1 to NRZ2. It explained NRZ2 is inappropriate because the property:

- is highly accessible and interfaces with the CFA, bowling club and civic hall
- is within 400 metres of many services and facilities
- has reticulated sewerage and fully serviced
- could support more growth, consistent with objectives in Plan Melbourne.

In response, Council submitted:

- the property is outside the Rye Activity Centre and Rye Township Plan study area so it has been designated for minimal change irrespective of its locational attributes
- reticulated sewerage is not the only consideration regarding subdivision area requirements.

Ms Hill and Mr Milner did not specifically respond to this submission.

51 Field Street

The owners of 51 Field Street accepted the proposed rezoning of their property from GR1 to NRZ37 but objected to Neighbourhood Character Overlay Schedule 2 being applied for reasons explained in Chapter 4.4.

Ms Hill stated the NCSG preparation included a street-by-street survey of residential areas which determined that parts of Rye have an intact special character which is different to the rest of the municipality. She supported Neighbourhood Character Overlay Schedule 2 being applied to these areas. Council adopted Ms Hill's evidence.

Council referred to the precinct description for Garden Residential 4:

The character of this precinct is attributed to an abundance of older housing stock from the post war and early modern architectural eras. Dwelling materials consist primarily of weatherboard and fibro, with both hipped and flat metal roofs.

Council submitted that this style of housing is notable different to the rest of the municipality so it warrants a specific approach to neighbourhood character, consistent with Planning Practice Note 91.

2495 Point Nepean Road

Bilal Suleman Pty Ltd which owns 2495 Point Nepean Road objected to the 'two lots on a lot' provision being deleted from DDO2 for reasons explained in Chapter 5.1.

In response, Council maintained its position regarding the single dwelling requirement in DDO2.

Ms Hill and Mr Milner did not specifically respond to this submission.

27 Richardson Street

The owner of 27 Richardson Street:

- objected to the property being designated in the Minimal Change Area
- considered GRZ to be the most appropriate zone for the property
- did not oppose DDO2 or Neighbourhood Character Overlay being applied to the property.

The owner explained the property is almost 1,000 square metres, has no significant vegetation, well served by public transport, about 400 metres from the Rye Town Centre, near schools, the foreshore and community infrastructure, is connected to sewerage, water and gas, and is not in an area with a consistent neighbourhood character.

In response, Council submitted:

- the property is designated for minimal change because its neighbourhood possesses a special neighbourhood character that warrants the Neighbourhood Character Overlay
- the approach is consistent with advice in Planning Practice Note 90
- the Amendment does not propose to change the mandatory single dwelling requirement in the DDO which has influenced the area's character
- NRZ37 is the appropriate zone given the precinct's preferred character to not exceed two storeys.

Ms Hill and Mr Milner did not specifically respond to this submission.

(iii) Discussion

Having considered submissions and evidence for 2495 Point Nepean Road and 27 Richardson Street in Rye, the Panel maintains its conclusions regarding:

- the approach to applying the change area categories, zones and overlays
- not applying Neighbourhood Character Overlay Schedule 2 to Rye
- the single dwelling requirement, as discussed in Chapter 5.1.

(iv) Conclusion

The Panel concludes there should be no further changes to planning provisions for properties in Rye beyond what is proposed through the Amendment and the Panel's recommendations.

6.9 Safety beach

(i) The issue

The issue is whether the proposed provisions are appropriate and justified for 59 Dromana Parade, Safety Beach.

(ii) Evidence and submissions

The owner of 59 Dromana Parade submitted:

- the property is in GRZ1 and has a planning permit to alter and extend the existing dwelling and subdivide the land into 4 lots
- objected to the property being rezoned from GRZ1 to NRZ3 and included in a minimal change area through Clause 16.01-1L

- the NRZ3 provisions are inappropriate, unjustified and more onerous than the existing Clause 55 standards which apply to the property
- the Amendment does not clearly explain why the changes are needed.

In response, Council submitted:

- the property is appropriately designated for minimal change, because based on the HSS methodology, it is not in an activity centre, and it is affected by the Environmental Significance Overlay Schedule 17 and sea level rise and storm tide impacts
- NRZ3 is the appropriate zone because:
 - the NCSG includes it in the Garden Residential 2 precinct
 - its neighbourhood character objectives, requirements and decision guidelines will ensure the preferred character is protected and enhanced
- it maintained its position regarding its approach regarding housing change area designations, residential zones and transitional provisions.

Ms Hill stated:

The site is identified as being located within the Garden Residential 2 (GR2) character precinct. The site coverage, permeability and side setback requirements within the Schedule reflect the recommended design responses for the GR2 area to achieve the preferred neighbourhood character as identified in the NCS.

(iii) Discussion

Having considered submissions and evidence for 59 Dromana Parade, Safety Beach, the Panel maintains its conclusions regarding the application of the change area categories, application of the zones, and Clauses 54 and 55.

DDO1, which currently applies to 59 Dromana Parade and Council proposes to reinstate, currently restricts maximum building height to 10 metres (2 storeys). Council proposes to delete the 10 metres specified in DDO1. The default maximum height of 9 metres in the NRZ would then apply. There is no justified reason to reduce the maximum building height by 1 metre. However, because NRZ3 is proposed in other locations, specifying 10 metres in the schedule may result in unintended consequences. As a precautionary measure, the NRZ3 provisions should apply to 59 Dromana Parade.

(iv) Conclusion

The Panel concludes that Neighbourhood Residential Zone Schedule 3 should apply to 59 Dromana Parade, Safety Beach, even though it is unclear why the maximum building height has been reduced from 10 to 9 metres.

6.10 Sorrento

(i) The issue

The issue is whether the provisions proposed for 1 Hotham Road; 12 Hotham Road and 856 and 858 Melbourne Road; 31 Ivanhoe Street; and 149-151 Ocean Beach Road in Sorrento are appropriate and justified.

(ii) Evidence and submissions

Hotham Road and Melbourne Road properties

The owners of 1 Hotham Road objected to the property and its surrounding precinct being rezoned to NRZ12 and to applying DDO3 (Bush Coastal 1). They requested the precinct remain in GRZ1 and be recategorised as an incremental change area in the Residential Framework Plan.

Regarding 1 Hotham Road, Council referred to its post-exhibition changes and general response to issues relating to:

- retaining the existing building height permit triggers in DDO schedules
- retaining the existing 'building alteration or extension' exemption to the mandatory maximum building height requirement
- revising the design objective relating to the skyline and existing tree canopy in relevant DDO schedules to:
 - refer to the 'form, siting, materials and tones' of buildings
 - qualify that the potential skyline and existing tree canopy line impact is 'when viewed from surrounding streets and properties'.

Council further submitted:

- 1 Hotham Road has been appropriately categorised for minimal change because it is outside an activity centre and constrained by Environmental Significance Overlay Schedule 25
- Sorrento is not appropriate for urban consolidation because it is a small township with limited infrastructure and services, high job seasonality, a lack of public transport and high rates of vacant dwellings during off-peak periods
- it relied on Ms Hill's evidence regarding the property's character area.

Linfox Group requested that 12 Hotham Road and 856 and 858 Melbourne Road remain in GRZ1 rather than be rezoned to NRZ12 (Bush coastal 1). It explained that its properties are not in an area "of predominantly single and double storey residential development", as sought by one of the NRZ objectives. Linfox Group submitted that NRZ12:

- did not recognise the local character of each property
- relies on neighbourhood character statements that cover a broad area which is not relevant or meaningful to the properties.

In the same response for 1 Hotham Road and 12 Hotham Road and 856 and 858 Melbourne Road, Ms Hill stated:

- neighbourhood character is assessed at a broader scale, and not site by site
- the broader area is identified as having Bush Coastal 1 character, given the attributes
- strategic priorities inform preferred character and if the priorities change or evolve over time, the preferred character can be re-evaluated through a future planning scheme amendment.

31 Ivanhoe Street

S Pitard Pty Ltd ATF S Pitard Trust, Evie Pitard Pty Ltd ATF Evie Pitard Trust, Chloe Pitard Pty Ltd ATF Chloe Pitard Trust and Hunter Pitard Pty Ltd ATF Hunter Pitard Trust (Pitard Group) owns 12,700 square metres of land at 31 Ivanhoe Street. GRZ1, the Bushfire Management Overlay, DDO4 and VPO1 apply to the property.

The Pitard Group submitted:

- retaining the minimum lot size of 2500 square metres is inconsistent with the established neighbourhood character
- 31 Ivanhoe Street is one of the few properties in the area where the 2500 square metre subdivision restriction is relevant because most properties are smaller
- most surrounding properties range between 750 and 2000 square metres so it is not an area characterised by low density residential development (at the Hearing it referred to a range of 850 to 1500 square metres)¹⁵
- a density limit of 2500 square metres is more like the LDRZ lot sizes outside established settlements.

In its original submission, the Pitard Group requested that either:

- the 2500 square metre minimum lot size be deleted from DDO4, or
- a different DDO schedule with a smaller or no minimum lot size be applied to the property and surrounding area.

At the Hearing, the Pitard Group acknowledged that Council now proposed to apply an average (rather than a minimum) lot size. It requested DDO4 be redrafted to:

- reduce the minimum lot size from 2500 to 1300 square metres
- apply an average subdivision area rather than a minimum subdivision area requirement.

The Pitard Group added:

In response to our client's submission, the Council in its Part B submission referred to the BMO which it described as a good reason to retain larger minimum lot size. However, it was the evidence of Mr Hazell to the Panel that where the BMO applies "it will do what it does". We understood this to mean that the BMO will effectively regulate fire risk, in accordance with its purpose. We agree.

Relevantly, if the minimum lot size is reduced, all this will mean is that a permit can potentially be granted to allow the creation of smaller lots. Whether a permit will be granted will depend on the outcome of an assessment which will include an assessment against the subdivision trigger in the BMO as well as the zone and DDO.

In response, Council submitted the current minimum lot size of 2500 square metres is appropriate and strategically justified. It noted that Bushfire Management Overlay Schedule 1 applies to property which supports retaining the relatively large minimum lot size requirement.

149-151 Ocean Beach Road

The owner of 149-151 Ocean Beach Road submitted:

- the Commercial 1 Zone applies to the property and it should be designated as a substantial change area
- it is inappropriate to designate it a minimal change area
- policy directed at residential zoned land is inappropriate and confusing
- any Commercial 1 Zone land including the owner's property should be excluded from mapping and policy.

3106, 3108, 3110 and 3118 Point Nepean Road

Appletree Sorrento, which owns 3106, 3108, 3110 and 3118 Point Nepean Road, objected to the property being rezoned from GRZ1 to NRZ12 and to changes proposed to DDO3 provisions. It submitted:

¹⁵ Document 112

- the NRZ12 neighbourhood character objectives should not refer to ‘predominantly single storey dwellings’, as this is inconsistent with the NCSG, DDO3 which enables a building height of 8 metres (2 storeys) and existing conditions of 2 to 3 storeys
- land with a frontage to a Road Zone/Transport Zone should be exempt from the fence provision to recognise noise impacts and privacy requirements
- DDO3 design objectives should not refer to:
 - retaining the existing subdivision pattern because subdivision requires a permit and should be assessed on its merits
 - providing sufficient space to accommodate existing vegetation because a permit is required to remove vegetation and any permit application should be assessed on its merits
 - achieving substantial vegetation cover in private open space, because that relates to buildings and works, not subdivision
- the DDO3 minimum lot size of 1,500 square metres is not strategically justified.

At the Hearing, Appletree Sorrento provided maps and photos¹⁶ of the subject land and the surrounding context to support its submission.

Council responded:

- the post-exhibition change to reference one to two storey dwellings in the objective rather than predominantly single storey acknowledges the inconsistency with the NCSG
- the post-exhibition changes to the fencing objective at Clause 15.01-5L “*To encourage fencing choices design...*”, and to the decision guideline relating to fencing in the relevant NRZ and DDO Schedules “*Whether the choice design of fencing...*” will facilitate a wider range of fencing outcomes, having regard to matters such as permeability
- it did not support the changes requested for fencing because Standards A20 and B32 under Clause 54.06-2 and Clause 55.06-2 respectively, enable a higher front fence height limit for streets in a Transport Zone 2 to be considered
- it did not support any changes to the NCSG because it went through extensive public consultation process, was adopted by Council, and underpins the neighbourhood character provisions, policies and other provisions proposed by the Amendment.

Regarding the DDO3 subdivision requirement, Council submitted:

- the average subdivision area of 1,500 square metres should be retained for the reasons outlined above as part of Council’s general response to the key issues raised in submissions
- it did not support the proposed changes based on the design objectives
- the reference to retaining the existing subdivision pattern aligns with Clause 15.01-5S (Neighbourhood character) which seeks to ensure that development responds to its context, sense of place, valued features and characteristics by respecting the pattern of local urban structure and subdivision

Regarding the DDO3 vegetation provisions, Council stated:

- Standards A8 and B13 in Clauses 54 and 55 seek to encourage:
 - development that respects the landscape character of the neighbourhood
 - the retention of significant trees on the site

¹⁶ Documents 68 and 69

- the NCSG identified the need for adequate space to retain remnant native vegetation, the planting of native, coastal vegetation and gardens as essential elements of the preferred character for Bush Coastal 1
- the DDO3 design objectives:
 - implement these neighbourhood character elements so they strengthen the objectives of Standards A8 and B13
 - are consistent with State policy at Clause 15.01-2S which seeks to encourage development to retain existing vegetation, and at Clause 15.01-3S which seeks to protect and enhance habitat for native flora and fauna.

(iii) Discussion

Having considered submissions and evidence for the identified Sorrento properties, the Panel maintains its conclusions regarding the approach to the change area categories and application of the zones and overlays. This includes not applying the GRZ outside of a major activity centre such as 149-151 Ocean Beach Road, 12 Hotham Road and 856 and 858 Melbourne Road.

Council provided compelling reasons to support the proposed provisions for properties in Sorrento. There is insufficient policy support to enable further development potential than what is proposed on land outside of the Sorrento township boundary. Of note, 1 Hotham Road and 3106, 3108, 3110 and 3118 Point Nepean Road abut a coastal reserve so they require appropriate provisions which respond to their sensitive location. For the latter, this includes enabling enough space to retain or plant vegetation.

Land at 31 Ivanhoe Street is separated from the coastal open space reserve by a vegetated road reserve and is subject to the Bushfire Management Overlay Schedule 1 (Mornington Peninsula Bal-29 areas).

The Panel agrees with Mr Hazell's response to how the Bushfire Management Overlay should operate. This should be read within the context of existing planning provisions. Since the 2009 Victorian bushfires, State planning policy was amended to prioritise "*the protection of human life over all other policy considerations*" when proposing to change planning provisions to accommodate more people on land subject to the Bushfire Management Overlay.

The Panel cannot support smaller lots at 31 Ivanhoe Street beyond the existing 2500 square-metre submission lot size requirement without a detailed assessment to determine whether enabling more people in the area can prioritise the protection of human life over all other policy considerations.

(iv) Conclusion

The Panel concludes the provisions proposed for 1 Hotham Road; 12 Hotham Road and 856 and 858 Melbourne Road; 31 Ivanhoe Street; and 149-151 Ocean Beach Road in Sorrento are appropriate and justified.

7 Other issues

7.1 Affordable housing

(i) The issue

The issue is whether the Amendment has appropriately considered affordable housing.

(ii) Evidence and submissions

Dr Spiller's evidence statement primarily focussed on responding to whether the changes to the Planning Scheme proposed by the Amendment when compared with the current Planning Scheme, will impact on housing affordability in the municipality. In relation to this matter, he concluded that *"the amendment would not materially affect housing affordability in the foreseeable future"*. Dr Spiller considered the Amendment will make the realisation of housing supply from the planned pool of capacity subject to stricter design rules aimed at maintaining environmental and amenity values. In relation to this, his evidence is that:

This may militate against responsive supply. However, this depends in part on the extent to which housing developers adjust their production process. It also depends on how the design rules are expressed in the Scheme and associated guidelines, and how they are administered by Council.

In response to a question from the Panel as to whether Council should have modified 'the design rules' to increase 'responsive supply', Dr Spiller stated:

- it is reasonable to strive for a balance between urban design outcomes and available supply
- the Amendment strikes that balance appropriately.

Dr Spiller advised that he had read Council's adopted Triple A Housing Plan and the Mornington Peninsula Social and Affordable Housing Policy 2020, but did not assess how the Amendment seeks to advance the sought policy outcomes as he considered those matters were outside the scope of his brief from Council.

Mr Milner gave evidence that there are factors that present challenges in delivering affordable housing stock for lower income households including:

- The relative paucity of new green field housing opportunities,
- The relative affluence of the Peninsula residential community,
- The higher value of Peninsula owner occupied and rental properties, and
- Many developments and redevelopments are either small or singular and commissioned by an end owner / occupier, often as a holiday home.

Mr Milner noted that Council has not developed a developer contribution framework, and in its absence continues to encourage broader undertakings. In this regard, Mr Milner gave evidence that:

In the absence of a local policy, the Objective of the Planning Policy Framework on affordability draws the appropriate connection between affordable housing being delivered closer to jobs, transport and services.

The Direction of the MPHSS and Municipal Planning Strategy seek delivery of smaller and more diverse types of housing in and around the higher order activity centres.

That is a principal, practical way the planning framework on the Peninsula can contribute to affordability. In this amendment relying upon the default Standards of Clause 54 and 55 is a further practical initiative to reduce the costs and efficiencies of land development.

For these reasons I consider no further local planning policy initiative addressing affordability can be justified at this time, but I am advised will be the subject of further strategic work and possibly a later and separate planning scheme amendment by the close of 2023.

Mr Granger's evidence statement include a high order overview of Council Triple A Housing Plan and affordable housing policy. He gave evidence that based on his review of the exhibited material he is of the view that there will be a likely dwelling supply shortfall. Because of the likely dwelling shortfall Mr Granger considers the following negative impacts for current and future members of the community:

- A shortage of suitable dwellings for prospective homebuyers and renters, which will lead to an increase in house prices and rents;
- Reduced provision of affordable housing as prospective providers are required to compete with developers of market housing for appropriate sites; and
- The resultant need for certain groups to move out of the Peninsula to obtain more affordable housing elsewhere (e.g. young people and families, key workers, older people looking to downsize, and vulnerable groups).

Council submitted that housing affordability is an inherently complex matter driven by a multitude of factors, including but not limited to – nor primarily influenced by – housing capacity and built form requirements. Based on the evidence called by it, Council submitted:

Housing capacity is not the key factor driving housing affordability – rather, ready realisable supply is more important in the short term, and factors such as interest rates and market conditions are likely to have greater prominence in the long term. Accordingly, Council submits that concerns expressed in submissions regarding the impact of the Amendment on housing affordability are misconceived and unfounded, and should not detract from the positive outcomes which the Amendment will achieve, namely improved residential design, better amenity outcomes, the protection of neighbourhood character and the facilitation of housing growth and housing diversity in appropriate locations.

Council noted that the issue of mandated Development Contributions for affordable housing is beyond the scope of the Amendment given it concerns elements of the Shire's adopted housing strategy that are not included in the Amendment.

Housing Industry Association noted its longstanding view that levies and charges applied to development to cover physical and social infrastructure significantly affect new housing affordability – "*They are in effect a tax on new homebuyers*". This is reflected in Housing Industry Association's policy, Infrastructure Charges and Levies on Residential Development. The submission noted concern that the Housing Strategy included reference to possible future application of mandated development contributions.

Numerous submissions (9, 183, 206, 223 and 280) considered:

- Mornington Peninsula lacks affordable housing, and rising real estate prices have made unit subdivision unaffordable
- there should be some broad acre low-cost housing
- housing should be affordable for first home buyers, younger people, retired people and families that have resided in the area for decades
- affordable housing is needed to protect the most vulnerable residents
- the Amendment would negatively or significantly impact housing supply, resulting in affordability issues

- neighbourhood character needs to be balanced with other policy objectives which seek affordable housing.

(iii) Discussion

Affordable housing, including social housing, is housing that is appropriate for the needs of very low-income, low-income and moderate-income households. Key policy directions seek to achieve affordable housing outcomes include:

- the introduction of an objective into the PE Act on 1 June 2018 *“to facilitate the provision of affordable housing in Victoria”*
- Clause 16.01-2S (Housing affordability) seeks to deliver more affordable housing closer to jobs, transport and services by ensuring land supply continues to be sufficient to meet demand
- Plan Melbourne 2017-2050 Direction - Direction 2.3 – Increase the supply of social and affordable housing – Policy 2.3.3 – seeks to strengthen the role of planning in facilitating and delivering the supply of social and affordable housing.

The Panel is satisfied that broad policy directions have been reasonably considered in the HSS and in the framing of the Amendment. The Panel observes that no party to the hearing materially challenged the findings of Dr Spiller or Mr Milner in relation to impact of the Amendment on Housing Affordability. That noted, the Panel shares the opinion expressed by Mr Granger that housing shortfall is likely to increase house prices and rents, reduce provision of affordable housing, and result in some household groups seeking affordable housing elsewhere. Given the global, national and regional market forces at play as expressed by Dr Spiller, these outcomes are conceivable irrespective of applying balanced Planning Scheme provisions. In this regard, the Panel accepts Dr Spiller’s finding that while planned supply of housing and housing capacity, are relevant to housing market outcomes, they are unlikely to be the key factor driving prices and affordability at least in the short term, and that interest rates and market conditions are likely to have greater prominence in determining prices and affordability.

(iv) Conclusion

The Panel concludes the Amendment is unlikely to assist with, or negatively affect housing affordability in the Mornington Peninsula Shire.

7.2 Bushfire risk

(i) The issue

The issue is whether the Amendment appropriately responds to bushfire risk.

(ii) Evidence and submissions

Mr Hazell provided a detailed overview of his involvement in the Amendment including the preparation of two Bushfire Reports (6 May 2022 and 31 May 2022), consultation / engagement with the CFA and Council, and preparation of his expert witness statement (1 Feb 2023).

Mr Hazell’s spatial analysis and mapping as set out in his 31 May 2022 Bushfire Report concluded as follows:

Areas for substantial change (except for small areas in Rosebud and part of Baxter) can be favourably assessed against locational policies in c13.02-1S Bushfire Planning as they

avoid the Bushfire Management Overlay, avoid the Bushfire Prone Area and avoid areas of identified landscape risk. The substantial change areas are directing the most significant areas of change to low or no risk locations. This is favourable from a bushfire perspective.

Some small areas for substantial change in Rosebud and part of Baxter are within a Bushfire Prone Area. Despite their inclusion in a Bushfire Prone Area, they avoid the Bushfire Management Overlay and avoid areas of elevated landscape risk (being landscape types 3 and 4).

These substantial change areas are directing the most significant areas of change to lower risk locations. This is favourable from a bushfire perspective.

Areas for incremental change can be favourably assessed against locational policies in c13.02-1S Bushfire Planning as they avoid Bushfire Management Overlay, mostly avoid the Bushfire Prone Area, and mostly avoid Landscape type 2 and 3 areas. The incremental change areas have been selected and optimised based on bushfire factors.

There are three small areas of incremental change areas within a bushfire prone area and Landscape type 2. Two comprise commercial land in Baxter and Hastings with high site coverages and immediate access to low fuel areas within the areas themselves. The other comprises non-developable land in Balnarring. In the context of incremental change areas, these locations are lower risk.

Areas for minimal change include many areas in the Bushfire Management Overlay, Bushfire Prone Area and areas within Landscape type 2 and 3. These areas to different extents have bushfire risks. The minimal change areas are applied to areas of bushfire risk and does not therefore emphasise significant change in these areas. This is a favourable outcome from a bushfire perspective.

Areas for further investigation are not identified within a change category and are subject to further assessment before a change category is applied. C219 from a bushfire perspective is neutral on these further investigation areas. They can be assessed once further investigations are completed.

In relation to the proposed planning scheme provisions, Mr Hazell advised that:

Bushfire Report 2 included (on page 29) sample adjustments to exhibited neighbourhood character controls that address bushfire matters. These arose from my discussions with the Council in preparing that report. They were intended to support engagement with the Country Fire Authority (CFA).

Following Bushfire Report 2 being finalised, the adjustments to the neighbourhood character controls evolved further as now included in the post-exhibition changes.

The post-exhibition changes to the schedules to residential zones and the DDO (Low Density Residential Zone areas) include the following application requirement and decision guideline:

Application requirement

If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas.

Decision guideline

Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.

In noting his support for the post-exhibition changes to the provisions, Mr Hazell noted that changes provide additional specificity on expected outcomes by including a reference to low-threat vegetation as part of landscaping if land is in a bushfire prone area. He endorsed this approach and considered it to be “a *highly advantageous change*” as it provides a benchmark or standard for demonstrating that acceptable outcomes for landscaping will be achieved.

Mr Hazell concluded:

On balance, I consider that c219 if approved with the post-exhibition changes, when read in the context of the planning scheme overall, strikes the right balance on bushfire based on:

- The Neighbourhood character controls (residential zones, DDOs for LDRZ areas) being specifically focused on the management of bushfire hazards (landscaping), consistent with their emphasis on these matters more generally and the management of risks associated with inappropriate landscaping being introduced.
- *c44.06 Bushfire Management Overlay*, where it applies, providing the definitive assessment tool to confirm acceptable bushfire outcomes, in any event.
- *c13.02-1S Bushfire Planning* providing the 'generic' basis for acceptable bushfire risk outcomes to be assessed and determined, if additional risk considerations needs to be made (especially within a bushfire prone area).

For the reasons set out above, Mr Hazell considered the Amendment including Council's post-exhibition changes addresses bushfire risk adequately.

In its initial submission, the CFA raised concerns and recommended that a more detailed bushfire assessment be undertaken that identifies hazards and risks and details how the amendment responds to relevant bushfire policies. In response to the issues raised in the submission Council engaged Mr Hazell to commission his Report No 2 and for him to consult directly with the CFA. The CFA subsequently advised (15 September 2022):

CFA has reviewed the Bushfire Analysis prepared by Kevin Hazell Bushfire Planning, dated 31 May 2022, and recognise this is a comprehensive report which has been developed with a sound methodology and is useful to help guide and shape future development for Morrington Peninsula.

CFA has reviewed the updated planning controls proposed, in particular Schedule 2 to the Neighbourhood Residential Zone and Schedule 34 to the Design and Development Overlay. In addition to the information within the Bushfire Analysis, CFA is now of the view that the proposed planning scheme amendment has adequately responded to bushfire policy at Clause 13.02-1S.

The CFA did not appear at the Hearing.

Only a few individual submitters raised issues concerning bushfire management and or risk. They noted that Shoreham Village is proposed to become a minimal change area, in part due to bushfire considerations. These submissions did not oppose this outcome.

In its submission presented at Hearing, Submitter 271 expressed concern with Council's proposed post-exhibition change to include a new application requirement and decision guideline in all schedules that include a landscape plan requirement. This was a new matter raised in response to Council's proposed post exhibition changes to the provisions in response to concerns raised by the CFA. While the submission specifically acknowledged the CFA's concerns, it opposed the wording of the Application Requirement, on the basis that the definition of 'low threat vegetation' was not clear and transparent.

Council noted the post-exhibition changes, derived from and supported by the independent expert evidence of Mr Hazell. Council supported the proposed post-exhibition changes because they are:

- Currently contained in the Planning Scheme (DDO21 – Crib Point Town Centre and Commercial Area);
- Endorsed by the CFA, noting that the CFA supports the Amendment subject to the inclusion of the above provisions (as confirmed in its letter dated 15 September 2022);
- Supported by the independent expert evidence of Mr Hazell, noting that no conflicting expert evidence was presented to the Panel;
- Representative of a best practice approach, by deferring to the relevant, current Australian Standard in respect of development in bushfire prone areas;
- Readily understandable and implementable, noting that AS 3959-2018 is publicly available free of charge (refer above); and

- Strategically justified, by supporting and implementing State bushfire planning policy at Clause 13.02-1S, which seeks to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. In particular, the provisions are the output of the following strategy at Clause 13.02-1S:

Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.

The Panel informed Mr Hazell of its observation that proposed post-exhibition versions of GRZ3 and GRZ4 include the new application requirement and decision guideline despite these areas possibly not being within a Bushfire Prone Area or subject to the Bushfire Management Overlay. In response, Mr Hazell stated it would be entirely appropriate to delete the updated text in those circumstances.

(iii) Discussion

Bushfire Reports 1 and 2 prepared by Mr Hazell provide a comprehensive spatial assessment of bushfire risk and have appropriately informed the Amendment. The Amendment has adequately considered and given effect to bushfire risk and adequately responded to bushfire policy at Clause 13.02.1S. In reaching these findings, the Panel takes comfort that the CFA was actively involved in the review and finalisation of proposed provisions and expressly noted that the updated provisions adequately respond to bushfire policy.

The Panel does not share Submitter 271 concerns regarding the drafting of the proposed post-exhibition application requirement that references low threat vegetation as defined in c2.2.3.2 of Australian Standard AS 3959-2018. The Panel is satisfied that the Australian Standard is publicly available and takes comfort that both Mr Hazell and the CFA specifically support its application in the manner proposed.

In response to a question from the Panel, Mr Hazell confirmed that he had not specifically checked each version of the zone and overlay schedule changes where the proposed new landscaping requirement and decision guideline are to apply to ensure that the areas are in a Bushfire Prone Area or subject to the Bushfire Management Overlay. He noted that he had left that detail to others.

Consistent with Mr Hazell's response, the bushfire application requirement and decision guideline proposed for GRZ3 and GRZ4 since exhibition should not apply to any land outside the Bushfire Prone Area or not subject to the Bushfire Management Overlay.

(iv) Conclusions and recommendation

The Panel concludes:

- The Amendment and Council's post-exhibition changes to zone and overlay schedules to address landscaping provision, appropriately respond to and address bushfire risk.
- The bushfire application requirement and decision guideline proposed for General Residential Zone Schedules 3 and 4 since exhibition should only apply to land in a Bushfire Prone Area or subject to the Bushfire Management Overlay.

The Panel recommends:

Before adopting Mornington Peninsula Amendment C219morn, Mornington Peninsula Shire Council should confirm the proposed post-exhibition inclusion of the new application requirement and decision guideline relating to landscaping is only applied to zone and

overlay schedules affecting land that is either in a Bushfire Prone Area or subject to the Bushfire Management Overlay.

Subject to Morningson Peninsula Shire Council confirming which schedules apply to land in a Bushfire Prone Area or Bushfire Management Overlay, General Residential Zone Schedule 1, Neighbourhood Residential Zone Schedules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 40, and Design and Development Overlay Schedules 22, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 should be revised to:

- a) In 'Application requirements', delete *"If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged"*
- b) In 'Application requirements', add *"If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas."*
- c) In 'Decision guidelines', add *"Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area."*

8 Form and content of the Amendment

The Panel invited the Department of Transport and Planning to make ‘without prejudice’ comments on drafting matters and attend to assist with responding questions. On 24 February 2023, the department provided a letter with comprehensive comments on version 2 of the Amendment provisions.

There was ‘without prejudice’ discussion at the Hearing which included the opportunity for parties to provide a tracked version of their preferred provisions. Peita Tapper, Manager, Planning Services (South) represented the department at the Hearing.

Council subsequently provided a version 3 of the Amendment provisions¹⁷ after considering the Department of Transport and Planning’s comments and tracked changes from:

- Australian Unity Healthcare Property Trust
- Kangerong Ave Pty Ltd
- Pitard Group
- Linfox Group Pty Ltd and Fox Shelf No 1 Pty Ltd
- Service Link Australia Pty Ltd
- Appletree Sorrento Pty Ltd.

The Panel has considered all comments when reaching its conclusions and recommendations. It has reconciled these with the need for local schedules to comply with the issued under section 7(5) of the PE Act.

This chapter considers form and content issues raised in submissions.

8.1 Drafting issues

(i) Issues raised in the Department of Transport and Planning letter

Key comments from the department’s letter¹⁸ include:

NRZ schedules

- all NRZ schedules except NRZ37 should be reviewed to improve clarity and remove repetition – an example of a confusing objective:
To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead
- there is an opportunity to consolidate similar objectives such as the landscape objectives at NRZ18
- all schedules would benefit from a review of the decision guidelines to remove repetition of matters already required to be considered by Clauses 54 and 55 and the head provision
- using bedroom numbers to justify increased open space requirement for Clauses 54 and 55 is inconsistent with Planning Practice Note 91 guidance which seeks only a number to be specified

¹⁷ Document 131a

¹⁸ Document 102

GRZ schedules

- delete the application requirement:
 - If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged.
 - because the head provision provides for the responsible authority to waive or reduce the requirement and it is not appropriate to a reference future permit condition in 'Application requirements'

DDO schedules

- avoid use of phrases and words that are vague or require or would benefit from definition (examples were provided)
- 1.0 (Design objectives) and 6.0 (design objectives) – should be reviewed to improve clarity and remove repetition
- 2.0 (Buildings and works) – clarify whether or not a permit is required; provisions cannot apply where a permit is not required; amend Table 2 to 'Number of dwellings on a lot must not exceed one; revise order of minimum street setbacks to be listed consistent with the order of Clauses 54 and 55
- 5.0 (Application requirements) – cannot require a section 173 agreement; payment of contributions for land in multiple ownership should be provided through the Development Contributions Plan Overlay
- 6.0 (Decision guidelines) – cannot dictate design of fencing; guidance about the fence design should be considered as a required in Clause 2.0 (Buildings and works)

Neighbourhood Character Overlay schedules

- Decision guidelines – repeats the head provision; there is no need to specify 'area contained in this schedule'; landscape plan requirement is hidden as a decision guideline; specific trees requirements repeats Clauses 54 and 55 Standards A8 and B13 and is more a requirement than a decision guideline.

(ii) Number of schedules

Numerous submissions considered the number of proposed schedules for the zones, DDO and different character areas:

- were too many and will add to the already "*far too many*" existing overlays
- may affect the Amendment's intention to streamline the Planning Scheme
- is a backward step for the Morningson Peninsula Planning Scheme which has a "*well-earned reputation for having a great too many overlays*"
- should be reduced and simplified.

In response, Council submitted:

- a planning scheme's complexity is not determined by the number of zone and overlay schedules it has, but rather by how the provisions within those schedules are drafted
- many existing DDO schedules contain too many objectives which do not meet Ministerial Direction 7(5)
- some existing DDO schedules have numerous sub-precincts with different requirements, which makes them complex
- the Amendment proposes to simplify the way DDO schedule provisions apply to a site.

The Panel acknowledges the Victoria Planning Provisions enables as many schedules as needed for a zone or overlay. The question is whether so many schedules are needed to implement strategic outcomes. It is too simplistic to express the view there are too many schedules without responding to this question first.

The Mornington Peninsula Planning Scheme currently has a relatively large number of zone and overlay schedules than many other planning schemes. The Panel considers that the Amendment's approach to applying one zone schedule for each neighbourhood character precinct will exacerbate this.

Generally, neighbourhood character precincts should not automatically translate into its own schedule. There should be an exercise to determine whether similar precincts can share a schedule which achieves virtually the same outcome. It should determine whether the slight differences are worth having multiple schedules.

The Panel has not recommended reviewing its schedules before adoption to avoid delaying the Amendment's progress.

(iii) Council's proposed post-exhibition changes

Council's versions 2 and 3 post-exhibition changes seek to clarify the intent of the planning provisions and improve their operation. These include:

- changes proposed for Clauses 15.01-5L and 16.01-1L, as shown in Appendix F
- in decision guidelines throughout various schedules:
 - deleting 'design' for siting new buildings in a multi-unit development
 - revise the fencing guideline to "*Whether the design of fencing maintains the sense of openness to the streetscape*"
 - referring to new buildings which "*reflects the predominant building rhythm of the streetscape*" rather than "*relative to the street and setbacks from lot boundaries create a sense of openness and space around dwellings*"
- replacing Road Zone, Category 1 with the more recently gazetted Transport 2 Zone
- in Tables specifying requirements, replace 'should' with a definitive measure – for example, "*The gross floor area of any outbuilding ~~should~~ does not exceed 80 square metres*".
- NRZ schedules:
 - neighbourhood character objective changes such as referring to 'prominence' rather than 'dominance' of car parking and to car parking structures and access
 - deleting "*must not contain more than*" from Clause 5.0 when referring to maximum building height
 - deleting in 6.0 (Application requirements) references to applying a permit condition.

8.2 Final form of the Amendment

The Panel accepts the Department of Transport and Planning's suggested drafting comments because they:

- achieve the requirements of Ministerial Direction 7(5)
- they align with good practice advice in the *A Practitioners Guide to Victorian Planning Schemes*, Version 1.5, April 2022
- will result in simple, clear and implementable planning provisions.

The Panel considers that Council's drafting related proposed versions 2 and 3 post-exhibition changes, most which respond to the department's comments, will also improve the provisions.

The Panel agrees that a DDO schedule should not include a requirement for a section 173 agreement on land with multiple owners seeking development contributions because:

- this is inconsistent with the DDO purpose
- there is no head of power in the DDO to enable such a requirement
- the Development Contributions Plan Overlay should be used for development contributions because:
 - the PE Act recognises the process leading to the provisions specified in the overlay
 - it is a proven and appropriate tool for fairly and transparently implementing development contributions across land in multiple ownership.

(i) Recommendations

The Panel recommends:

Before adopting Mornington Peninsula Amendment C219morn, Mornington Peninsula Shire Council should:

- a) review the neighbourhood character objectives and decision guidelines in all Neighbourhood Residential Zone schedules to improve their clarity and remove repetition
- b) review Design and Development Overlay schedules to:
 - avoid or define unclear phrases or words such as 'formal garden setting' and 'hillside character'
 - improve clarity and remove repetition in the design objectives (Clause 1.0).

Amend Design and Development Overlay schedules to:

- a) rephrase design guidelines which are expressed as a requirement into an assessment guideline
- b) delete a requirement for a section 173 agreement on land in multiple ownership
- c) revise wording in Clause 2.0 to be consistent with the order of Clauses 54 and 55
- d) revise the fencing decision guideline in Schedule 38 to "*Whether the design of fencing maintains the sense of openness to the streetscape*".

Amend Neighbourhood Residential Zone schedules to:

- a) delete reference to 1-2 storeys in the neighbourhood character objectives because this replicates the purpose of the head provision
- b) revise relevant neighbourhood character objectives to refer to "*the prominence of car parking*" (rather than dominance) and "*car parking structures and access*"
- c) delete in Clause 5.0 any reference to "*must not contain more than*" when referencing maximum building height
- d) delete in Clause 6.0 (Application requirements) any reference to:

If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged.
- e) reference Transport Zone 2 rather than Road Zone Category 1.

Amend Neighbourhood Character Overlay Schedule 1 to:

- a) revise relevant neighbourhood character objectives to refer to *“the prominence of car parking”* (rather than dominance) and *“car parking structures and access”*
- b) revise the decision guidelines to:
 - delete any reference to *“area contained in this schedule”*
 - delete the requirement for a landscape plan
 - append to the fourth guideline *“that reflect the surrounding native landscape”*.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Jeff Heuston	31	G and E Stefanis
2	Capel Sound Community Group	32	Mike and Tracey Higginbottom
3	Dean Vogdanos	33	Richard Banks
4	Ernest de Vlieger	34	Suzanne Drew
5	Tim Spink	35	Avril Adams
6	Matthew Webster	36	Crib Point Football Netball Club
7	Holland Property	37	Wayne Watson
8	Nola and Wayne Drew	38	Donald and Grace Ying
9	Jem Investment Fund Holdings Pty Ltd	39	Brad Collins
10	Vince LoMoro	40	Helen Alberico
11	Matt Mytton	41	Greg Cassano
12	Andrew Bressanutti	42	Trevor Browning
13	Alice Saveneh-Murray	43	Michelle Smith
14	David Fogarty	44	Tracee Hutchison
15	Phillip Parker	45	George Stabelos
16	Merrin Robertson	46	Zhejian Zhong
17	Ben Fahey	47	Simon Sheen
18	Russell Kronenburg	48	Gaye Morrison
19	John Cummins	49	Hiram Seamons
20	Jim Fogarty Design Pty Ltd	50	Alden Collins
21	Denise and Cameron Buchanan	51	Julie Gunn
22	Vincent and Moira Dacy	52	Rupert Steiner
23	Lynne Corboy	53	Irene Scott
24	Jarrold Cole	54	Frederick Crump
25	Carol Shelton	55	Vicki Martinez
26	Travis McNeil	56	Gemma Emery
27	James Clarke	57	Ben Parkinson
28	Heather Taylor	58	Geoff Taylor
29	Peter Murphy	59	Frances & Ian Henke
30	Anthony Imison	60	Kayleen Goss

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No.	Submitter	No.	Submitter
61	Paul Quirk	91	Kim Rea
62	Donna Janssen	92	Jean Christine Thomas
63	Rowan Peckham	93	Kay Kirkland
64	Mark De Corrado	94	Margaret McKelvie
65	Faye and Mick Doherty	95	Philip Edwards
66	Pauline and Norman Bloom	96	Owner of 1171 Frankston-Flinders Road
67	Brett Howard	97	Warwick Spinaze
68	Heather and Gordon Frankland	98	Alex Zadnik
69	Carole Milton	99	Megan Zadnik
70	Elizabeth and Doug Petering	100	Donna Headlam
71	John and Joy Hall	101	Doug Macleod
72	Charlotte Ferriday	102	Andrew Lyle
73	Kim Redfern	103	Susan Idle
74	Ian Wallis	104	Whelan Design
75	Eric Pearce	105	Meghan O'Brien
76	Carla and Max Webster	106	Guy Busby
77	Joanne Hester	107	Andrea Calvio
78	Tony Gigliotti	108	Anita Faras
79	Carolyn Harbord	109	Ethwell Holdings Pty Ltd
80	Marlene Evans	110	Sheree Conole
81	Rachael Richardson	111	Kate Forbes
82	Jamie Richardson	112	Doreen Greve
83	Country Fire Authority	113	Rene Riegal
84	Susan Farrell	114	Deborah Hull
85	Ken Piesse	115	Australian Unity Healthcare Property Trust
86	Ying Zhang	116	Brendon Underwood
87	Ros and Wayne Hickey	117	Andrew Howard
88	David Stack	118	Elana Welsh
89	Patricia England	119	Sharon Mason
90	Ian Lyons	120	P R & Y Bennett Constructions Pty Ltd

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No.	Submitter	No.	Submitter
121	Douglas and Catherine Smith	151	Josephine Tunstall
122	Joe Contarino	152	Tiziano Dalla-Fontana
123	Brad Taylor	153	Joanne Swain
124	AusNet Transmission Group	154	Herbert Leins
125	John Dusting	155	Anna Smiley
126	Miranda Natecki	156	Terry Dwyer
127	Alina Tooley	157	Flinders Community Association
128	Robert Couchman	158	Meredith Lyons
129	Robert Stephens	159	Ashley Jackson
130	David Harwood	160	Donna Hoevenaars
131	Bilall Suleman Pty Ltd	161	Peter and Susan Friend
132	Jan Brennan	162	John Irving
133	CGM Building Developments Pty Ltd	163	Robert Stent
134	Jane Levin	164	Patricia Goble
135	Carmel Perta	165	Daavid Turnbull
136	Cheryl Marris	166	Bruno Strati
137	Paul Upton	167	Barker-Peak Family
138	Jennifer King	168	Daryl and Monica Reeves
139	Bernadette Whelan	169	Marcia Fitzsimons
140	David Crowder	170	Karen Williams
141	John and Catherine Kaiser	171	Stephen and Bronwyn Taylor
142	Geoff Mentiplay	172	Con Pouloupoulos
143	Environment Protection Authority	173	Glenn Dangerfield
144	Elizabeth Ryan	174	George
145	Clayton Cordeux	175	Greg Beeton
146	Helen Vidler	176	Housing Industry Association Ltd
147	Peter Wilson	177	Steve Frankland
148	Collette Frankland	178	Department of Jobs, Precincts and Regions
149	1 Jetty Road, Rosebud owner	179	Jenelle Curtin
150	Katrina Devery	180	Frankston City Council

No.	Submitter	No.	Submitter
181	Helen Loersch	211	Jilly Romeril
182	Lorraine Sampson	212	MIDGM Pty Ltd
183	Capel Sound Community Group	213	Anthony Passaris
184	Margaret O'Reilly	214	Shoreham Community Association
185	David Quinn	215	National Trust
186	Narelle Higgins	216	Russell Firth
187	Raffles Court Service Company	217	Ryman Healthcare
188	Catriona du Jardin	218	Kevin Hills
189	Anne and Michael Wright	219	Prossor Town Planning
190	Pitard Group	220	Jason Kane
191	Thunderbirds Are Go Pty Ltd	221	Eddy de Jong
192	Owner of 38 Kennedy Road, Somers	222	Judith Brown
193	Joseph Thoppil	223	Teresa Tennant
194	John and Maggie Goodman	224	John Nixon
195	Kirsten and Benjamin Nardone	225	Terence McCrann
196	Frank Mangan	226	870 Point Nepean Road, Rosebud owner
197	Appletree Sorrento Pty Ltd	227	Burbank Urban
198	Sophia Shorland	228	Neetsie
199	Neil and Marg Hawker	229	June Smith
200	Jennifer Anderson	230	Robin de Valle
201	Linfox Property Group Pty Ltd and Fox Shelf No 1 Pty Ltd	231	Ian Brannaghan
202	Mark Lampe	232	Alexandra Mayes
203	Samuel De Fazio	233	Mornington Peninsula Ratepayers' and Residents' Association Inc
204	Alan Nelsen	234	Kylie Myall
205	Hilary Jones	235	Glenn Wilson
206	Christian Vetter	236	Susan and Ian Buszard
207	Shani Vetter	237	Simon Williams
208	Barend Frielink	238	Nepean Ratepayers Association
209	Paul Millsom	239	Cameron Lyne
210	Jane Burke	240	Caroline Anderson

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No.	Submitter	No.	Submitter
241	Shane Smith and Alexandra Colliver	270	John McMahon
242	Ian Gray	271	Prossor Town Planning
243	Owner of 19 Constitutional Hill Road, Sorrento	272	Four owners of 11 Mornington properties
244	Mornington and District Historical Society Inc	273	Robert and Sarah McKay
245	Kaye Mackay	274	Ursula de Jong
246	Angie and JR Gallone	275	Alan Goodfellow
247	Sean Farrell	276	Pam Goodfellow
248	Peter McMahon	277	Tuckey Track Friends Group
249	Zaccala Property Group	278	Roza Savkoska and F & N Savkoski Property Pty Ltd
250	Jeff Akehurst	279	Nepean Planning and Bushfire Consultants
251	Penequine Enterprises Pty Ltd	280	Peninsula Community Housing and Specialised Accommodation Providers Pty Ltd
252	Ormanda Pty Ltd	281	Mr and Mrs Bontorno
253	Sandra Rigo	282	Kate Cameron
254	Nepean Conservation Group Inc	283	Robyn Croke
255	Louise Mackinnon	284	Barry and Diane Manning
256	Aranday Pty Ltd	285	David Proctor
257	Owners of 97-99 Ninth Avenue, Rosebud	286	Margaret Tudge
258	Tango Property Group and Tango Development No. 6 Pty Ltd	287	Jennine Harbrow
259	Owner of 149-151 Ocean Beach Road, Sorrento	288	Catherine McIver
260	Owner of 18-20 Harrison Street, Dromana	289	Steve Howard
261	Jiamei Xu	290	Margaret McIver
262	Owners of 51 Field Street Rye	291	Amy Auden
263	Jon Morgan	292	Juanita Stumbles
264	Lyle and Sue Ridout	293	Mr and Mrs Shepherd
265	Whitehead 30 Pty Ltd	294	John Gedye
266	Peninsula Planning Consultants Pty Ltd	295	L and J DiFabio and Colli Investments Pty Ltd
267	TCOB Developments Pty Ltd	296	Ian Smith
268	Tracey Pennington	297	Town Planning & Co
269	Dromana Association	298	The Tempo Group

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No.	Submitter	No.	Submitter
299	Doug McIver	309	M Schneider
300	Megan Bortolussi	310	Collins Street Properties Pty Ltd and Collins Dromana Pty Ltd
301	Judith Boucher	311	Bill Papadopoulos
302	Jeanette and Paul Roth	312	Alesci Investments Pty Ltd
303	Rye Community Group Alliance	313	Ranelagh Residents' Association
304	Phillip Heywood	314	Job Site Recyclers Pty Ltd
305	Leonard Heywood	315	Freeman Group Architects Pty Ltd
306	Duncan and Kate Turner	316	Andre Ferretto
307	Piermont Group	317	Warren Smith
308	David Mould		

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Mornington Peninsula Shire Council	Peter O'Farrell of Counsel with Kim Piskuric, instructed by Amara Coleman of Harwood Andrews, who called expert evidence on: <ul style="list-style-type: none"> - planning from Nikki Hill of Ethos Urban - planning (peer review) from Rob Milner of Milner Planning Advisory - bushfire planning from Kevin Hazell of KH Planning Services - housing affordability from Dr Marcus Spiller of SGS Economics & Planning - housing capacity from Andrew Spencer of SGS Economics & Planning
Alesci Investments Pty Ltd	Luke English of DSA Law
Appletree Sorrento Pty Ltd	Robert Phillips of Rigby Cooke
Australian Unity Healthcare Property Trust	Hannah Wilson of Planning and Property Partners
Bilall Suleman Pty Ltd	Robert Williams of Human Habitats
David Proctor	David Proctor of New Zalia Pty Ltd
F & N Savkoski Property Pty Ltd and Roza Savkoska	Adriane Kellock of Kellock Town Planning Pty Ltd
Housing Industry Association	Roger Cooper
Jackie Prossor, Coleby McDonough, Melinda Ryan and Luke Dowdle	Joanne Lardner, Barrister, who called expert evidence on strategic planning from Evan Granger of Urbis
Jade and John Gedye	
JV Negocois Unit Trust	Jonathon Fetterplace of A Different City Pty Ltd
Jennifer McNish	
Kangerong Ave Pty Ltd (Ormanda Pty Ltd)	Jarryd Gray of Minter Ellison
L and L Shepherd	David Proctor of New Zalia Pty Ltd
L and J DiFabio and Colli Investments Pty Ltd	Sandra Rigo of Hansen Partnership Pty Ltd
Linfox Group Pty Ltd and Fox Shelf No 1 Pty Ltd	Emma Pepler of Counsel, instructed by Rhodie Anderson of Rigby Cooke
Lyle and Sue Ridout, Leonard Heywood, and Phillip Heywood	
M Schneider	David Proctor of New Zalia Pty Ltd
Mr and Mrs Bontorno	David Proctor of New Zalia Pty Ltd
Nepean Conservation Group Inc	Dr Ursula de Jong
Pam & Alan Goodfellow	<i>Relied on a further written submission</i>

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Paul Millsom	<i>Relied on a further written submission</i>
Penequine Enterprises Pty Ltd	Peter Joyce
Pitard Group	Jarryd Gray of Minter Ellison
Raffles Court Service Company Pty Ltd and owners of units at 1 Hotham Road, Sorrento	Phillip Borelli of Urban Planning Collective
Ranelagh Residents Association Inc	Leigh Eustace
Robert and Sarah McKay	Jeremy Gammon of Tract
Service Link Australia Pty Ltd	Eliza Minney of Best Hooper
Tango Property Group Pty Ltd	Jonathan Fetterplace of A Different City Pty Ltd
TCOB Developments Pty Ltd	Adriane Kellock of Kellock Town Planning Pty Ltd
Whitehead 30 Pty Ltd	Adriane Kellock of Kellock Town Planning Pty Ltd

Appendix C Document list

No.	Date	Description	Presented by
2022			
1	17 Nov	Letter from Council to Panel –Sea Level Rise Mapping error with attachment	Council
2	18 Nov	Email Kangerong Ave Pty Ltd to Panel - Authority to become sub 252 with attachment	Kangerong Ave Pty Ltd
3	24 Nov	Panel Directions and Timetable (version 1)	Planning Panels Victoria (PPV)
4	29 Nov	Letter to parties - document sharing system	Council
5	7 Dec	Email – from DELWP to Council (redacted), 14 December 2020 with 2 attachments	Council
6	12 Dec	Site inspection request	Penequine Enterprises Pty Ltd
7	13 Dec	Panel Directions and Timetable (version 2)	PPV
8	13 Dec	Site inspection request	Linfox Group Pty Ltd and Fox Shelf No 1 Pty Ltd (Linfox et al)
9	20 Dec	Site inspection request	David Proctor
10	20 Dec	Site inspection request	Ridout and Heywood families
11	23 Dec	Site inspection request	Nepean Conservation Group Inc
2023			
12	26 Jan	Hearing submission	Paul Millsom
13	30 Jan	Site inspection request	Jade and John Gedye
14	31 Jan	Panel Directions and Timetable (version 3)	PPV
15	3 Feb	Council Part A submission with attachments: 15.1 DELWP Email dated 14 December 2020 with attachments: a. DELWP Planning Comments b. DELWP Land Use and Population Comments 15.2 Council response dated 18 December 2020 to DELWP email on 14 December 2020 15.3 DELWP email dated 18 March 2021 and Council response on 25 March 2021 with attachment: a. Council response to 25 March 2021 email 15.4 Council's email to DELWP, 14 April 2021 15.5 Re-Authorisation Letter, 18 September 2019	Council

No.	Date	Description	Presented by
		15.6 Extract from Minutes of Planning Services Committee meeting held on 20 July 2020	
		15.7 Authorisation Letter, 19 May 2021	
		15.8 Extract from Minutes of Planning Services Committee meeting held on 18 July 2022	
		15.9 Letter from Council to the Panel in relation to rectification of sea level rise mapping error in Hastings dated 17 November 2022 with attachment: a. spreadsheet of affected properties	
		15.10 Copies of letters giving notice of further post-exhibition changes to owners and occupiers of affected properties at Hastings	
		15.11 Submission 317 (redacted)	
		15.12 Updated Desktop Review	
		15.13 Updated explanatory document entitled 'Post-Exhibition Changes to Amendment C219morn' (January 2023)	
		15.14 Built Form Implications Summary Table	
		15.15 Detailed spreadsheet of proposed zoning changes	
		15.16 Detailed spreadsheet of proposed overlay changes	
		15.17 Table summarising the exhibited Amendment and the Version 2 Amendment Documents with post-exhibition changes	
		15.18 Council Urban Design Sketches – Development on Small Lots	
		15.19 Extract from October 2022 Officer Report – summary of concerns raised in respect of each category of issues and Council response	
		15.20 Version 2 Amendment Documents	
		15.21 Extract from October 2022 Officer Report – summary of individual submissions and Council response	
		15.22 CFA letter dated 15 September 2022	
		15.23 Email advice from DELWP regarding transitional provisions dated 16 May 2022	
		15.24 Table of Related Planning Scheme Amendments	
		15.25 Permit Applications Table	
16	3 Feb	Amendment C219morn Mornington Peninsula Bushfire Analysis (KH Planning Services, 31 May 2022)	Council
17	6 Feb	Expert witness statement – Rob Milner	Council
18	6 Feb	Expert witness statement – Nikki Hill	Council
19	6 Feb	Expert witness statement – Andrew Spencer	Council
20	6 Feb	Expert witness statement – Marcus Spiller	Council

No.	Date	Description	Presented by
21	6 Feb	Expert witness statement – Kevin Hazell	Council
22	6 Feb	Withdrawal of Luke Dowdle from Prossor Town Planning Pty Ltd, Town Planning & Co. Pty Ltd and UrbanArc Pty Ltd group	Prossor Town Planning Pty Ltd, Town Planning & Co. Pty Ltd and UrbanArc Pty Ltd group (Planning Collective)
23	6 Feb	Expert witness statement – Evan Granger	Planning Collective
24	7 Feb	Withdrawal as party	Owners of 51 Field Street, Rye
25	7 Feb	Withdrawal from Prossor Town Planning Pty Ltd, Town Planning & Co. Pty Ltd and UrbanArc Pty Ltd group	Luke Dowdle
26	8 Feb	Letter – Panel inviting Department of Transport and Planning to participate in Hearing	PPV
27	10 Feb	Council Part B submission	Council
28	13 Feb	Hearing presentation – Nikki Hill	Council
28a	13 Feb	Panel Directions and Timetable (version 4)	PPV
29	14 Feb	Andrew Spencer presentation	Council
30	14 Feb	Diagram referred to by Marcus Spiller	Council
31	15 Feb	Panel Directions and Timetable (version 5)	PPV
32	15 Feb	NRZ Schedule Comparison Table	Planning Collective
33	16 Feb	Withdrawal as party	Andre Feretto
34	16 Feb	Withdrawal as party	Peninsula Planning Consultants Pty Ltd
35	16 Feb	Panel request for further information	PPV
36	17 Feb	Submission of Australian Unity Healthcare Property Trust	Australian Unity Healthcare Property Trust
37	18 Feb	Hearing submission	John Riley and Robyn Croke
38	18 Feb	Hearing submission	Philip Edwards
39	19 Feb	Hearing submission	Servicelink Australia Pty Ltd
40	19 Feb	Hearing submission	Planning Collective
41	19 Feb	Email letter of instruction to M Spiller	Planning Collective
42	19 Feb	Illustration of existing and proposed building heights in Safety Beach	Planning Collective
43	19 Feb	Supplementary briefing letter to M Spiller and A Spencer	Planning Collective

No.	Date	Description	Presented by
44	19 Feb	Hearing presentation – Evan Granger	Planning Collective
45	19 Feb	Illustration of existing and proposed building heights in Mornington	Planning Collective
46	19 Feb	Updated NRZ schedule comparison table	Planning Collective
47	19 Feb	Updated index - SGS	Planning Collective
48	19 Feb	Hearing submission	Mr and Mrs Bontorno, D Proctor, L & L Shepherd, M Schneider (Bontorno et al)
49	19 Feb	Proctor v Mornington Peninsula SC [2020] VCAT 312	Bontorno et al
50	19 Feb	Bushfire Prone Area and Bushfire Management Overlay map of Somerville	Bontorno et al
51	19 Feb	Photos of Bungower Road north side	Bontorno et al
52	19 Feb	Photos of Bungower Road south side	Bontorno et al
53	19 Feb	LDRZ8 map (exhibited)	Bontorno et al
54	19 Feb	Bushfire Prone Area, Bushfire Management Overlay and LDRZ map of Somerville	Bontorno et al
55	19 Feb	Photos of Jones Road	Bontorno et al
56	19 Feb	Exhibited DDO53 map	Bontorno et al
57	19 Feb	Housing capacity real time analysis (March 2019)	Council
58	19 Feb	Potential number of apartments – Commercial 1 Zone & PUZ6	Council
59	20 Feb	Hearing submission	Lyle and Sue Ridout, Leonard Heywood, and Phillip Heywood (Ridout et al)
60	20 Feb	Mornington Peninsula Planning Scheme Map 8 – Somerville	Ridout et al
61	20 Feb	Somerville Township Development Framework	Ridout et al
62	20 Feb	Hearing submission	Whitehead 30 Pty Ltd
63	20 Feb	Hearing submission	TCOB Developments Pty Ltd
64	20 Feb	Hearing submission	F & N Savkoski Property Pty Ltd & Roza Savkoska
65	20 Feb	Hearing submission	Raffles Court Service Company Pty Ltd and owners of units at 1 Hotham Road, Sorrento

No.	Date	Description	Presented by
66	20 Feb	Hearing submission	David Crowder
67	21 Feb	Panel Directions and Timetable (version 6)	PPV
68	21 Feb	Hearing submission	Appletree Sorrento Pty Ltd
69	21 Feb	Submission attachments	Appletree Sorrento Pty Ltd
70	21 Feb	Hearing submission	Jane and John Gedye
71	21 Feb	Submission attachments	Jane and John Gedye
72	21 Feb	Hearing submission	Tango Property Group Pty Ltd and JV Negocois Unit Trust
73	21 Feb	Forbes v East Gippsland SC [2023] VCAT 160	Bontorno et al
74	21 Feb	Forbes v East Gippsland SC [2023] VCAT 160 extract with highlight	Bontorno et al
75	21 Feb	Mapping of existing and proposed GRZ areas	Council
76	21 Feb	Substantial change areas in the residential development framework	Council
77	21 Feb	Mornington Peninsula Housing Capacity Analysis – Methodology	Council
78	21 Feb	Clause 02.03 as exhibited, with tracked changes	Council
79	22 Feb	Hearing submission	Bilall Suleman Pty Ltd
80	22 Feb	Hearing submission	Ranelagh Residents Association (RRA)
81	22 Feb	19 Rendleshem Case Study	RRA
82	22 Feb	Mornington Peninsula C174 Part 3 Panel Report	RRA
83	22 Feb	Mornington Peninsula C135 Part 2 Panel Report	RRA
84	22 Feb	Ranelagh Poster Promo	RRA
85	22 Feb	Original submission	RRA
86	22 Feb	Hearing submission	Linfox et al
87	22 Feb	Nearmap Image 12 Hotham Road	Linfox et al
88	22 Feb	Photos 12 Hotham Road	Linfox et al
89	22 Feb	Zoning Map – 12 Hotham Road	Linfox et al
90	22 Feb	Nearmap Image 856 – 858 Melbourne Road	Linfox et al
91	22 Feb	Photos 856 – 858 Melbourne Road	Linfox et al
92	22 Feb	Zoning Map – 856 – 858 Melbourne Road	Linfox et al
93	22 Feb	854 Melbourne Road permit P19/1492	Linfox et al

No.	Date	Description	Presented by
94	22 Feb	854 Melbourne Road endorsed plans P19/1492	Linfox et al
95	22 Feb	Hearing submission	Nepean Conservation Group Inc (NCG)
96	22 Feb	Presentation Part 1	NCG
97	22 Feb	Presentation Part 2	NCG
98	22 Feb	Hearing submission	Penequine Enterprises Pty Ltd
99	22 Feb	Hearing submission	Housing Industry Association
100	22 Feb	Presentation	Jennifer McNish
101	23 Feb	Email – Proposed rewording to provisions	Appletree Sorrento Pty Ltd
102	24 Feb	Letter and without prejudice drafting comments	Department of Transport and Planning
103	24 Feb	Summary of discussion points	Jennifer McNish
104	24 Feb	LDRZ capacity mapping	Council
105	24 Feb	Hearing submission	Alesci Investments Pty Ltd
106	24 Feb	Rosebud Activity Centre Structure Plan	Alesci Investments Pty Ltd
107	24 Feb	Mornington C190 and C206 Panel report	Alesci Investments Pty Ltd
108	24 Feb	VCAT Decision Cubic Design vs Mornington Peninsula	Alesci Investments Pty Ltd
109	24 Feb	Further Panel Directions regarding ‘without prejudice’ drafting	PPV
110	26 Feb	Note on coastal design	NCG
111	27 Feb	Hearing submission	Kangerong Ave Pty Ltd
112	27 Feb	Hearing submission	Pitard Group
113	27 Feb	Email – Panel further queries regarding LDRZ	PPV
114	27 Feb	Hearing submission	L and J DiFabio
115	27 Feb	Further written submission	Pam and Alan Goodfellow
116	28 Feb	Panel report – Greater Geelong C395ggee (PSA) [2020] PPV	Planning Collective
117	28 Feb	City of Greater Geelong Settlement Strategy	Planning Collective
118	28 Feb	Closing submission	Council

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No.	Date	Description	Presented by
119	28 Feb	Closing submission: Attachment 1 – Housing Capacity Mapping	Council
120	28 Feb	Closing submission: Attachment 2 – Updated Desktop Review – Amended February 2023 (Version 3)	Council
121	28 Feb	Closing submission Attachment 3 - Planning Permit No. P19/1492 – 854 Melbourne Road, Sorrento	Council
122	28 Feb	Closing submission Attachment 4 - Response to Panel Enquiries dated 27 February 2023 – LDRZ Capacity Analysis	Council
123	1 Mar	Letter responding to without prejudice drafting comments	Council
124	6 Mar	Without prejudice drafting – NRZ12	Linfox et al
125	6 Mar	Without prejudice drafting – Clause 16.01-1L	Servicelink Australia Pty Ltd
126	6 Mar	Without prejudice drafting – NRZ2	Kangerong Ave Pty Ltd and Pitard Group
127	6 Mar	Without prejudice drafting – NRZ35	Kangerong Ave Pty Ltd and Pitard Group
128	6 Mar	Without prejudice drafting – DDO4	Kangerong Ave Pty Ltd and Pitard Group
129	6 Mar	Without prejudice drafting – NRZ2	Australian Unity Healthcare Property Trust
130	6 Mar	Without prejudice drafting – DDO1	Australian Unity Healthcare Property Trust
131	14 Mar	Letter responding to without prejudice drafting tracked changes and comments, enclosing: <ul style="list-style-type: none"> a) Final preferred version of Amendment ordinance b) List of proposed drafting changes c) Council’s response to the Department of Transport and Planning drafting comments 	Council

Appendix D Planning context

D:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The post exhibition version of the Explanatory Report identifies the following relevant State policy objectives as set out in section 4 of the PE Act, and explains how the Amendment is consistent with them:

- To provide for the fair, orderly, economic, and sustainable use, and development of land.
 - The Amendment provides clear and consistent direction for residential growth and housing change across the Peninsula's townships and villages through the residential development framework.
 - The Amendment ensures the extent of housing change is commensurate with the housing capacity, limitations (if any), and service capability of an area.
- To balance the present and future interests of all Victorians.
 - The Amendment protects and enhances the valued characteristics of the Peninsula's residential areas.
 - The Amendment ensures enough capacity to accommodate projected population growth to the year 2036.

Clause 2 (Municipal Planning Strategy)

- Clause 02.02 sets out Council's vision which is underpinned by the Localised Planning Statement (see D:2ii). The vision follows:
 - Value, protect and improve the Peninsula's unique characteristics and its special role that is distinct from and complementary to metropolitan Melbourne.
 - Protect the role of the Peninsula as one of Melbourne's greatest assets, characterised by contained townships, a substantial and diverse local economy, and areas of national and international significance.
 - Protect the Peninsula's landscapes, coastlines, seascapes and rural area, including the scenic values of the green wedge.
 - Protect and enhance the experience and enjoyment of the natural and cultural values of the Peninsula.
- Clause 02.03-5 (Built environment and heritage) recognises that Mornington Peninsula's sense of place is reinforced by the distinctive built-form character of its residential areas, noting that this arises from various factors including the balance between natural features and built form, and established subdivision and development patterns enabling retention of natural landscape settings and larger lot sizes.

Clause 11 (Settlement)

- Clause 11.02-15 (Supply of urban land) seeks to ensure a sufficient supply of land to meet forecast demand for all uses including residential and includes strategies to plan for projected population growth over at least a 15 year period and provide clear direction on where growth should occur. It also includes strategy that planning for urban growth should consider opportunities for growth in existing urban areas, neighbourhood character and landscape, land capacity, natural hazards, environmental quality, land serviceability and infrastructure costs.

Clause 15 (Neighbourhood character)

- Clause 15.01-55 (Neighbourhood character) seeks to recognise, support and protect neighbourhood character by:
 - supporting development that respects existing character or contributes to preferred character
 - ensuring preferred character is consistent with medium and high density outcomes in areas identified for increased housing
 - ensuring development responds to context and reinforces a sense of place and the valued features and characteristics of the local environment.

Clause 16 (Housing)

- Clause 16.01-15 (Housing supply) seeks to facilitate well-located, integrated and diverse housing that meets community needs including by encouraging higher density housing development on sites that are well located in relation to jobs, services and public transport.
- Clause 16.01-25 (Housing affordability) seeks to deliver more affordable housing through adequate land supply, housing diversity, promoting good design, and by encouraging a significant proportion of new development to be affordable.

D:2 Other relevant planning strategies and policies

i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne’s development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Relevant directions include:

- Direction 2.2 – Deliver more housing closer to jobs and public transport
- Direction 2.5 – Provide greater choice and diversity of housing
- Direction 4.4 – Respect Melbourne’s heritage as we build for the future
- Direction 5.1 – Create a city of 20-minute neighbourhoods
- Direction 6.2 – Reduce the likelihood and consequences of natural hazard events and adapt to climate change
- Direction 6.4 – Make Melbourne cooler and greener.

ii) Mornington Peninsula Localised Planning Statement

Localised planning statements are an additional layer of state policies for protecting and enhancing distinctive areas with State significant geographic and physical features, biodiversity, natural resources, cultural and tourism values, productive rural land and regional and national infrastructure assets. Ministerial Direction 17 requires any planning scheme amendments affecting these areas to have regard to the localised planning statement.

The Mornington Peninsula Localised Planning Statement was prepared in July 2014 and one of its objectives is to protect the role and character of Mornington Peninsula’s settlements, towns and villages. The Localised Planning Statement is largely replicated in the Planning Scheme.

iii) Mornington Peninsula Housing policy and strategy

The Triple A Housing Plan 2020 seeks to:

- Increase housing diversity and the supply of appropriate housing.
- Increase the diversity of social and affordable housing types with appropriate supply and good design to respond to the needs of the community, including:
 - Public housing and community housing including cooperative housing.
 - Smaller housing for private rental.
 - Shared housing (e.g. to prevent under-utilisation of dwellings).

Triple A Housing Plan 2020 states:

- The dwellings on the Peninsula are much more likely to be 3 or 4 bedrooms than those in Greater Melbourne.
- There is a mismatch between dwelling size and household size on the Peninsula shown by small households (2 or less persons) outnumbering small dwellings (2 or less bedrooms) by about two thirds compared to one half in Greater Melbourne.
- More smaller dwellings could potentially better house singles and couples and free up larger older housing stock for redevelopment.

It sets out a strategic basis for increasing housing affordability (purchase and rental), social housing and housing diversity, as well as better using existing housing.

The Plan references 2017 research that identifies the Mornington Peninsula had a shortfall of 1,193 dwellings and “*is already in the top 10 of Australia regions with housing shortages*”.

The Plan identifies responses to increase housing diversity:

- Enable a mix of housing types on the Peninsula to cater for different households, including one and two bedroom dwellings to better match household needs.
- Encourage alternative forms of residential development to detached houses including residential villages, retirement villages, aged care facilities, new generation rooming houses, a range of different types of supported accommodation, crisis accommodation, co-housing and the like.

D:3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework. The zones and overlays shown in Table 10 are either existing or proposed planning provisions.

Table 10 Relevant zone and overlay purposes

Zones and overlays	
Zone	
General	To encourage development that respects the neighbourhood character of the area.
Residential	To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
	To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Low Density Residential	To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.
Neighbourhood Residential	To recognise areas of predominantly single and double storey residential development. To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics. To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
Overlay	
Design and Development	To identify areas which are affected by specific requirements relating to the design and built form of new development.

D:4 Ministerial Directions, Planning Practice Notes and guides

i) Ministerial Directions

Ministerial Direction 7(5) (The form and content of planning schemes)

This Ministerial Direction specifies requirements for drafting local planning scheme content.

Ministerial Direction 9 (Metropolitan planning strategy)

Ministerial Direction 9 seeks to ensure that a planning scheme amendment has regard to the Metropolitan Planning Strategy (Plan Melbourne 2017-2050).

Ministerial Direction 11 (Strategic assessment of amendments)

Ministerial Direction 11 seeks to a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces. Guidance on how to achieve this direction is in *Planning Practice Note 46: Strategic Assessment Guidelines*.

Ministerial Direction 17 (Localised planning statements)

Ministerial Direction 17 applies to areas including Mornington Peninsula. It requires a planning authority, when preparing an amendment affecting land identified in an adopted localise planning statement, to:

- have regard to the relevant adopted Localised Planning Statement.
- discuss in the explanatory report how the amendment implements the adopted localised planning statement.

ii) Planning Practice Notes

Planning Practice Note 90: Planning for Housing

Planning Practice Note 90 states that a local housing strategy:

- ensures a range of housing opportunities are available across the municipality to meet the needs of the projected population
- outlines the strategies and implementation mechanisms to accommodate the projected population and household needs
- identifies where and how the housing needs of the future population will be met across the municipality
- identifies suitable locations for housing growth including those areas close to services, jobs, public transport and activity centres, and strategic development areas.

Planning Practice Note 91: Using the Residential Zones

Planning Practice Note 91 provides information and guidance on applying the residential zones to implement strategic work and how to use local policies and overlays with the residential zones. It sets out a number of principles underpinning the zones, including:

Housing and neighbourhood character plans need to be consistent and align with one another when specifying preferred future housing and neighbourhood character outcomes for an area

All residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist.

Planning Practice Note 91 sets out the role and application of the various residential zones, as follows:

Residential Growth Zone

Applied to areas suitable for housing diversity and housing at increased densities in locations offering good access to services, jobs and public transport, and to provide a transition between areas of more intensive use and development such as activity centres, and other residential areas.

General Residential Zone

Applied to areas where housing development of three storeys exists or is planned for in locations offering good access to services and transport.

Neighbourhood Residential Zone

Applied to areas where there is no anticipated change to the predominantly single and double storey character. Also to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area.

iii) Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

Appendix E Changes proposed by Council since exhibiting the Amendment

Table 11 Changes proposed by Council since exhibiting the Amendment

Ordinance changes to	Locational attribute	Proposed changes since exhibition
Planning Policy Framework	-	Minor revisions to proposed Strategy and Decision Guidelines at Clause 15.01-5L concerning 'glare' and 'fencing', and revision to proposed Strategy at Clause 16.01-1L on investigation areas concerning character and environmental constraints
GRZ Schedules	-	GRZ2 is deleted and the affected land in Rosebud is included in the GRZ1. In GRZ 1 and GRZ3 schedules: <ul style="list-style-type: none"> - Amended heading to Substantial Change Township Area - Revisions to Neighbourhood character objectives to characterise development as "units, townhouses or apartments" and less prescriptive - Deletion of proposed amended Clause 54 and Clause 55 requirements and revert to the default provisions
NRZ Schedules	Mornington Hastings Capel Sound Crib Point Bittern	In NRZ12, an amended Neighbourhood character objective to refer to predominantly 1-2 storey dwellings rather than single storey dwellings A new NRZ 39 and NRZ40 (Garden Court Township Area – Mornington and Hastings), and NRZ41 (Bush Coastal Contemporary Township Area - Mornington) that replaces the application of the exhibited NRZ2, NRZ6 and NRZ14 in these locations with: <ul style="list-style-type: none"> - A new Neighbourhood character objective for "single dwellings, units or townhouses" - Deletion of proposed Clause 54 and Clause 55 minimum setback and private open space requirements and revert to the default provisions - Addition of requirements for landscaping to be "low-threat bushfire risk" under 6.0 Application Requirements and 7.0 Decision Guidelines Removal of minimum subdivision requirements in Mornington (NRZ23, NRZ24, NRZ25, NRZ26, NRZ27), Capel Sound (NRZ29) and Crib Point (NRZ30, NRZ31, NRZ32 including part of Bittern, NRZ33) to enable an average subdivision requirement in the related DDO Schedules Additional Decision Guidelines in these and other NRZ Schedules (with varied application) to consider " <i>whether the siting and setback of buildings from the side and rear boundaries of a lot maintain the predominant backyard character</i> " and further, " <i>whether a reduced side setback from one side boundary is appropriate having regards to the building rhythm within the streetscape</i> " where it was identified as a characteristic of a neighbourhood precinct in the NCS
LDRZ Schedules		Reword subdivision provision where existing boundaries are being realigned Delete 'land set aside as common property' as an exemption
DDO Schedules (general)		Reinstate DDO1, DDO19, DDO20 and DDO23 which were proposed to be deleted, and amended Schedules to reduce design objectives to five, remove some permit triggers and to simplify provisions In areas proposed to be rezoned to NRZ, delete mandatory minimum lot size requirements and retain average subdivision area requirements in DDO Schedules that currently contain an average subdivision area requirement Modified Design objectives and Decision guideline on form, siting, materials and tone of a building and in some DDO schedules on vegetation, landscaping and compatibility with environmental and infrastructure constraints Retain all exemptions (in Table 2) to the mandatory maximum building height requirement for forms of development with a modified 'building alteration or extension' exemption

Ordinance changes to	Locational attribute	Proposed changes since exhibition
DDO1 (was to be deleted)	Township Area	Delete permit triggers related to setbacks from a Public Park and Recreation Zone and Public Conservation and Resource Zone and wall height (5.5 metres) and retain other permit triggers in simplified form Retain the mandatory 2 storey maximum building height requirement but delete the 10 metre maximum building height requirement
DDO2, DDO3, DDO4	Bayside and Village Area Coastal and Landscape Area Bush/Garden Environment Area	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres and from 8 metres to 5 metres in specific places in DDO4 Retain Table 2 height exemption to the maximum building height requirement for "a building in the area located to the north of a boundary defined by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street" provided the building is two storeys or less above natural ground level Amend minimum lot sizes to average lot size and other changes
DDO5	St Andrews Beach	Additional Design objective and Design guideline for existing views to the coastline and reasonable sharing of views Reduce Table 1 height exemption for building and works without a permit from 8 metres to 5 metres
DDO6	Rural Landscape Area	Additional Design objective and Design guideline for existing views to the coastline and reasonable sharing of views Modified Table 1 height exemption for building and works without a permit specifying 6 metres for Bittern or Crib Point and 8 metres for Rye or Tootgarook Additional minimal subdivision requirement of 10,000 square metres for Rye or Tootgarook
DDO7	Hastings	Additional Table 1 height exemption for building and works without a permit specifying 8 metres
DDO11, DDO18	Mt Eliza	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres New Decision guideline for form, siting, materials and tones relating to skyline and existing tree canopy viewed from surrounding streets and properties (DDO18)
DDO17	Capel Sound	New Design objective and Decision guidelines that new buildings be integrated with their site and surround areas in relationship to existing buildings, open space and coastal landscapes Reduce Table 1 height exemption for building and works without a permit from 8 metres to 7 and 2 storeys to 1 storey New Subdivision requirement including new average lot size, with specified exemptions
DDO19, DDO20, DDO23 (were to be deleted)	Bittern and Crib Point	Delete outdated permit triggers Retain the mandatory 8 metre and 2 storey maximum building height requirement Additional Table 1 height exemption for building and works without a permit specifying 6.5 metres/1 storey Additional Table 1 street setbacks specified (DDO19, DDO20) and standards on ground levels and roof area to be met. Otherwise meet Clause 54 requirements Retain all Table 2 exemptions to the mandatory maximum building height requirement for particular forms of development, but modify the 'building alteration or extension' exemption Retain mandatory requirement that limits the number of dwellings on a lot to one Modify Subdivision requirements (None specified in DDO23)

Ordinance changes to	Locational attribute	Proposed changes since exhibition
DDO24	Beleura Hill, Mornington	Reduce Table 1 height exemption for building and works without a permit from 10 metres to 8 metres and new addition " <i>(or 9 metres on a slope of 2.5 per cent)</i> " New Subdivision requirements specifying varied average lot sizes New Decision guideline for form, siting, materials and tones relating to skyline and existing tree canopy viewed from surrounding streets and properties
DDO32	Mt Martha	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres Amend Subdivision requirement to average lot size New Decision guideline for form, siting, materials and tones relating to skyline and existing tree canopy viewed from surrounding streets and properties
DDO33	Mt Eliza	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres New Decision guideline for form, siting, materials and tones relating to skyline and existing tree canopy viewed from surrounding streets and properties
DDO34, DDO35, DDO36	Low density Garden Court A, B, C	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres and remove 8 metre height in Table 2.
DDO39, DDO40, DDO43, DDO46, DDO47, DDO50	Low Density Bush Residential, Low Density Bush Coastal A, C Low Density Bush Coastal Contemp A, B Low Density Rural Settlement A	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 6 metres
DDO41, DDO44, DDO48	Low Density Bush Coastal B, E Low Density Bush Coastal Contemp C	Reduce Table 1 height exemption for building and works without a permit from 8 metres to 5 metres (DDO44, DDO48), in Rye (DDO41) and new Table 1 height exemption for building and works without a permit for 6 metres in Mt Martha (DDO41) Table 2 height exemption from 8 metres for land in Mt Martha (DDO41) provided the building is two storeys or less
Neighbourhood Character Overlay		Delete demolition permit trigger
General		In zone and overlay schedules where land is in a bushfire prone area, add an additional Application requirement and Decision guideline around "low threat bush fire risk" vegetation
Housing Change Framework Map and associated ordinance change	Hastings	Revise the Map for Hastings to amend the Housing Change Area for 76 properties Amend 27 properties from Minimal Change Area and 19 properties from Incremental Change Area to Substantial Change Area, and revert from proposed NRZ39 to retain the GRZ1 on these properties Amend 30 properties from Minimal Change Area to Incremental Change Area with no zone change
Changes to maps following C267morn gazettal	Somerville Hastings	Changes to Zone maps 8, 18 and 19

Appendix F Panel preferred Clauses 15.01-5L and 16.01-1L

15.01-5L Neighbourhood character – Mornington Peninsula

Policy application

This policy applies to all residential development in the General Residential Zone, Neighbourhood Residential Zone ~~and or~~ Low Density Residential Zone.

Built-form objective

To ensure new development reflects the preferred built-form in terms of siting, massing and articulation, building design and building materials.

Built-form strategies

Ensure new development is responsive to the topography of the site.

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

Ensure new buildings and extensions in multi-dwelling developments do not dominate the streetscape.

Ensure car parking access is designed to retain the existing rhythm of the street.

Ensure car parking structures are located to minimise their dominance on the streetscape.

Built-form policy guidelines

Consider as relevant:

- Designing and siting new buildings to follow the topography of the land or step down the site.
- Limiting the reflectivity of external finishes above a tree canopy line through the use of natural materials and subdued tones that complement the landscape ~~and roofing materials to 40 per cent or less to avoid glare when viewed from adjoining buildings, land or streets~~.
- Designing the front dwelling of a multi-dwelling development to present as one dwelling to the street through the use of roof forms, materials and design details.
- Recessing storeys above ground level from the front façade.
- Limiting the number of crossovers per typical site frontage to no more than one.
- Spacing crossovers of a side-by-side development to retain the existing rhythm of the street.
- Locating garages and carports behind the line of the front dwelling façade.

Garden setting objective

To maintain and strengthen the garden setting of dwellings.

Garden setting strategies

Encourage new development to retain existing native vegetation cover.

Encourage new development to provide adequate space for offset planting and new landscaping.

Ensure trees to be planted as part of a landscape plan requirement meet the definition of a native canopy tree.

Garden setting policy guidelines

Consider as relevant:

- Retaining existing native vegetation, including canopy trees and understorey.
- Providing a space on the site with minimum dimensions of 5 metres by 5 metres for offset planting if a tree is considered appropriate for removal.
- Planting, in the space provided for offset planting, at least one native tree that will grow to a mature height similar to the mature height of the tree to be removed.
- Providing side setbacks that are wide enough to enable the planting and growth of trees, shrubs and understorey.
- Ensuring a native canopy tree to be planted as part of a landscape plan requirement is more than 3 metres in height at maturity (i.e. when it is able to flower) and normally found in the upper layer of the relevant vegetation type.

Fencing objective

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

Fencing strategy

Maintain the openness and minimal delineation between public and private areas of the streetscape.

Fencing policy guidelines

Consider as relevant:

- Avoiding the construction of front fences.
- Maintaining a minimum permeability of 20 per cent if a front fence is to be erected along a street in a Transport Zone 2 ~~Road Zone, Category 1~~.
- Selecting an open style for front and side fences.
- Limiting the height of a side fence forward of the front dwelling façade to 1.2 metres or less.

Policy document

Consider as relevant:

- *Mornington Peninsula Neighbourhood Character Study and Guidelines* (Ethos Urban, 2019)

16.01-1L Housing supply – Mornington Peninsula

Policy application

This policy applies to all residential development in the General Residential Zone, Neighbourhood Residential Zone, Low Density Residential Zone, Commercial 1 Zone or Mixed Use Zone.

~~Strategy~~Strategies

Ensure residential development is consistent with the housing change category identified for the area as shown in the Residential Change Framework Plan to this clause.

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

Policy guidelines

Consider as relevant:

- Maintaining detached dwellings and rural dwellings in minimal change areas.
- Encouraging detached dwellings, units and townhouses in incremental change areas.
- Supporting units, townhouses and apartments in substantial change areas.

Policy document

Consider as relevant:

- *Housing and Settlement Strategy: Refresh 2020-2036* (Mornington Peninsula Shire, 2020)

Residential Change Framework Plan – housing change framework maps

Recategorise land recommended in the report in the relevant maps

Amendment C219morn - Officer Response to Planning Panel recommendations

Index	Panel recommendation	Officer response	Recommendation
Recommendation 1 - PRELIMINARY WORK			
1.	Before implementing other recommendations, Mornington Peninsula Shire Council should:		
1.a)	<p>demonstrate it can provide at least 15 years housing supply by determining the likely take-up of capacity enabled by the provisions proposed by Amendment C219morn, or</p> <p>The Panel report identified that there was uncertainty regarding whether Amendment C219morn could deliver a 15-year housing supply, having considered the estimations and housing capacity methodology applied in Council's adopted HSS Refresh.</p> <p>The Panel therefore recommends that Council should reassess its dwelling capacity to determine a more accurate estimated figure before proceeding with the amendment.</p> <p>Importantly, the Panel states that the amendment should be abandoned if this additional housing capacity analysis is not satisfactorily completed.</p> <p>In reaching this conclusion, the Panel made the following observations:</p> <ul style="list-style-type: none"> The HSS Refresh should have assessed the potential impact of Amendment C219morn rather than existing Planning Scheme provisions because the amendment proposes more focussed neighbourhood character objectives combined with more restrictive provisions. The HSS Refresh did not consider the take up rate of existing dwelling development but should have. While the HSS Refresh has generally applied a sound methodology, it agreed with the expert evidence presented by Council (SGS Economics and Planning), suggesting that: 	<p>The Shire appointed consultants SGS Economics and Planning (SGS) to undertake the recommended further housing capacity and take-up analysis. Overall, the analysis determined that Amendment C219morn can accommodate at least 15-years of housing supply for the Peninsula as required by State Government planning policy. This conclusion is based on the following key findings and observations.</p> <ul style="list-style-type: none"> The housing capacity in the Shire under the current controls is 25,397 net additional dwellings. The estimated capacity under Amendment C219morn (post-exhibition version as taken to Panel) is 25,183 net additional dwellings. This finding suggests that, in practical terms, there is little to distinguish between the housing capacity under the Shire's current planning controls and the proposed C219morn controls. Housing demand (the amount of housing that is likely to be required to meet forecast population growth) based on the most recent 2023 Victoria in Future (VIF) forecast is around 730 net new dwellings per year (or 10,950 net new dwellings between 2021 - 2036). This is lower than the VIF 2019 forecast (which the HSS Refresh is based on) of around 1,183 net new dwellings per year (or 17,750 net new dwellings between 2021 - 2036). Regardless of whether VIF 2023 or VIF 2019 are used, the housing capacity under C219morn is 25,183 net additional dwellings, which is sufficient to meet the forecast 15-year housing demand on the Peninsula. It is difficult to predict housing supply (how much housing is likely to be delivered), based on housing capacity. The extent to which theoretical housing capacity is linked to housing supply is highly contested. Notwithstanding this context, the question of 'take up' of housing capacity or housing supply has been explored in three different ways: by comparing demand and capacity by housing submarket (i.e. broad geographic areas); by comparing demand and capacity by dwelling type (i.e. apartment, medium density and lower density); and by an analysis of the ratio of 	<p>Accept in full</p> <p>Additional analysis shows that Amendment C219morn can provide at least 15 years housing supply</p>


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	<ul style="list-style-type: none"> - All identified car parks in are unlikely to be developed for housing by 2036. - Minimum lot size assumptions (where no subdivision controls apply), should assume 400sqm rather than 300sqm as applied within the HSS Refresh because it better reflects actual circumstances. - The Shire is likely to have larger apartment sizes than the assumed 80sqms used in the HSS Refresh (to respond to market demand). • There is probably capacity for close to approximately 26,900 dwellings on the Peninsula under existing controls. • When considering the 2019 VIF forecasts, a take up of just under 66% of the 26,900 dwellings would be needed to provide the estimated 15 year demand for 17,750 dwellings. • Based on the 2005 to 2016 dwelling construction rate, the above uptake is unlikely to be realised. • Council should estimate how much dwelling supply will be available to 2036 by assessing the likely take up of the estimated dwelling capacity before progressing the amendment. <p>Critically, the Panel recommends that if the estimated take up is less than 15 years supply, then Council should:</p> <ul style="list-style-type: none"> • review its provisions to enable more housing supply, or • explain why achieving certain State policy objectives overrides the need to meet State policy on housing supply. 	<p>housing demand to capacity over time (i.e. demand vs capacity year-on-year). All three analyses suggest that C219morn provides considerable capacity in excess of demand for the next 15 years.</p> <p>Furthermore, SGS's analysis notes that the capacity estimates for the amendment are conservative (meaning the amendment may deliver more capacity than has been estimated) for the following reasons:</p> <ul style="list-style-type: none"> • While the capacity analysis is based on an assumed average minimum lot size of 400m² for areas without explicit subdivision controls (as recommended by the Panel), there is evidence to suggest that more housing (i.e. additional lots below 400m² in size) can be accommodated in these areas. For instance, a sample of 10 recently approved multi-dwelling developments found an average lot size of 260m² (with lots ranging from 180m² to 294m²). Similarly, in Council's previous review of 416 planning permits issued in areas without explicit subdivision controls, the average lot size was 366m². • The capacity analysis assumed full implementation of Amendment C219morn's proposed changes to ResCode standards (i.e. Clause 54 and 55). In reality, however, ResCode standards are not mandatory controls and can be varied to achieve better design outcomes in response to site-specific constraints. The analysis therefore concluded that the 'tighter' ResCode standards will not necessarily reduce supply. • The capacity analysis has not factored in recent changes to planning scheme controls introduced by the State Government to implement Victoria's Housing Statement, such as the Small Second Dwelling provisions and expansion of the Future Homes program (discussed later in this report). As intended by the State Government, this new form of housing and associated provisions should boost housing capacity beyond the above estimates if the housing is taken up in significant numbers and not predominantly used for short-stay accommodation. In this regard, about 64,628 lots within the Shire could accommodate a Small Second Dwelling. <p>Draft State Government Housing Targets</p>	

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		<p>Since the above housing capacity analysis was completed, the State Government released draft housing targets to be implemented in the future Plan for Victoria (due for release by the end of 2024) and all planning schemes. According to the State Government, the draft targets are based on:</p> <ul style="list-style-type: none"> • An area’s proximity to jobs and services. • Level of access to existing and planned public transport. • Environmental hazards like flood and bushfire risk. • Current development trends and places already identified for more homes (e.g. Suburban Rail Loop Precincts). <p>The draft target for Mornington Peninsula is 31,000 new dwellings by 2051 which equates to the need for about 1,148 dwellings per year over 28 years. Significantly, this draft target is much higher than the State Government’s own 2023 VIF projections and is closer to the 2019 VIF projections. The 2019 projections for 1,183 dwellings per year aligns with Council’s adopted HSS Refresh (which is based on 1,200 dwellings per year).</p> <p>Additional advice provided by SGS (July 2024) finds that Amendment C219morn would still provide enough housing capacity and supply for at least 15 years. To ensure sufficient capacity beyond the 15-year planning horizon, Council would need to revisit planning controls (separate to Amendment C219morn) before 2038.</p> <p>Options to increase housing capacity beyond 2038 could include:</p> <ul style="list-style-type: none"> • Rezoning land currently zoned Low Density Residential Zone (LDRZ) which is identified in the HSS Refresh as an “investigation area” (i.e. areas that may be suitable for increased housing provision subject to detailed planning and analysis). • Reviewing all other areas currently zoned LDRZ (as recommended by the Planning Panel at Recommendation 18). • Release of surplus Special Use Zone 1 (SUZ1) land around Hastings, Tyabb, Somerville and Crib Point that has long been reserved for Port-related uses, noting that SUZ1 land currently accounts for about 3,500 hectares. 	

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		<p>Releasing some of this land requires action from the State Government and has been a major advocacy priority for the Council in recent years.</p> <ul style="list-style-type: none"> Reviewing existing mandatory single dwelling requirements that current apply to residential land covered by Design and Development Overlay schedules 2-4, 6, 7, 19, 20 and 24 as shown in Figure 1 (pink and purple shaded areas). <p><i>Figure 1: Land subject to a mandatory single dwelling requirement in DDO schedules 2-4, 6, 7, 19, 20 and 24</i></p> 	
1.b)	<p>where 15 years supply cannot be met, explain why other planning policy objectives have been given greater weight than the Clause 11.02-15 objective which seeks at least 15 years of housing supply</p>	<p>No action is required for this part of the Panel's recommendation given the additional housing capacity analysis carried out by SGS demonstrates that the amendment can deliver at least 15 years of housing supply.</p>	<p>Redundant No action required given there is no shortfall in housing supply.</p>

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1.c)	<p>review the neighbourhood character objectives and decision guidelines in all Neighbourhood Residential Zone schedules to improve their clarity and remove repetition</p> <p>As part of the ‘without prejudice’ drafting exercise held during the Panel hearing, the Department of Transport and Planning (DTP) commented that all NRZ schedules (except NRZ37) should be reviewed to improve clarity and remove repetition.</p> <p>The Panel accepted DTP’s suggested drafting comments because they:</p> <ul style="list-style-type: none"> • achieve the requirements of Ministerial Direction 7(5) • align with good practice advice in the A Practitioner’s Guide to Victorian Planning Schemes, Version 1.5, April 2022 • will result in simple, clear and implementable planning provisions. 	<p>Officers have conducted a comprehensive review of the neighbourhood character objectives and decision guidelines in all proposed NRZ schedules against the requirements of the:</p> <ul style="list-style-type: none"> • Ministerial Direction s7(5) - The form and content of planning schemes, and • Practitioner’s guide to Victoria’s planning schemes, version 1.5 (DELWP, April 2022) <p>In doing so, appropriate drafting refinements have been made to schedules to improve clarity and remove repetition. Refinements have also been made to ensure that:</p> <ul style="list-style-type: none"> • Recommendations and requirements from Council’s adopted NCS (and other localised adopted character studies) are appropriately captured and expressed, and • The intent of provisions and controls translated from existing controls (such as Design and Development Overlays) are accurately reflected. <p>The drafting refinements are shown in tracked-changes on affected ordinances with corresponding notations clearly explaining the rationale of each drafting change.</p>	<p>Accept in full</p> <p>Review the NRZ neighbourhood character objectives and decision guidelines to improve clarity and remove repetition</p>
1.d)	<p>review Design and Development Overlay schedules to:</p> <ul style="list-style-type: none"> • avoid or define unclear phrases or words such as ‘formal garden setting’ and ‘hillside character’ • improve clarity and remove repetition in the design objectives (Clause 1.0). <p>As with the previous recommendation, the Panel accepted the ‘without prejudice’ drafting recommendations for DDOs from the DTP because they:</p> <ul style="list-style-type: none"> • achieve the requirements of Ministerial Direction 7(5) • align with good practice advice in the A Practitioner’s Guide to Victorian Planning Schemes, Version 1.5, April 2022 	<p>Officers have conducted a comprehensive review of all proposed Design and Development Overlay (DDO) schedules against the requirements of the:</p> <ul style="list-style-type: none"> • Ministerial Direction s7(5) - The form and content of planning schemes, and • Practitioner’s guide to Victoria’s planning schemes, version 1.5 (DELWP, April 2022) <p>In doing so, appropriate drafting refinements have been made to schedules to improve clarity and remove repetition. Refinements have also been made to ensure that:</p> <ul style="list-style-type: none"> • Recommendations and requirements from Council’s adopted NCS (and other localised adopted character studies) are appropriately captured and expressed, and 	<p>Accept in full</p> <p>Review DDO schedules to improve clarity and remove repetition</p>

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	<ul style="list-style-type: none"> will result in simple, clear and implementable planning provisions". <p>The Panel highlighted key comments from the DTP in relation to avoiding the use of phrases and words that are vague or would benefit from definition and the need to improve clarity and remove repetition from design objectives.</p>	<ul style="list-style-type: none"> The intent of provisions and controls translated from existing DDO schedules are accurately reflected. <p>The drafting refinements are shown in tracked-changes on affected ordinances with corresponding notations clearly explaining the rationale of each drafting change.</p>	
1.e)	<p>confirm the proposed post-exhibition inclusion of the new application requirement and decision guideline relating to landscaping is only applied to zone and overlay schedules affecting land that is either in a Bushfire Prone Area or subject to the Bushfire Management Overlay.</p> <p>Council's endorsed post-exhibition version of the amendment included changes to the schedules to residential zones (General Residential Zone Schedules 3 and 4) and the DDO (in Low Density Residential Zone areas) to include the following application requirement and decision guideline: <u>Application requirement</u> <i>If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas. Decision guideline</i> <i>Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.</i></p> <p>The Panel observed that proposed post-exhibition versions of GRZ3 and GRZ4 may apply in areas that are not within a Bushfire Prone Area (BPA) or subject to the Bushfire Management Overlay (BMO).</p> <p>The Panel noted that Council's bushfire planning expert witness (Mr Kevin Hazell) stated it would be entirely</p>	<p>Officers do not recommend accepting this Panel recommendation because the drafting of the provisions already recognise that mapping of Bushfire Prone Areas does not align with the mapping of zone and overlays schedules, avoiding the need for additional schedules within the planning scheme.</p> <p>The application requirement states that: <i>If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas.</i> [emphasis added]</p> <p>The corresponding decision guideline states: <i>Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.</i> [emphasis added]</p> <p>Including the provisions as drafted ensures that the application requirement and decision guideline only become relevant if the land is bushfire prone.</p> <p>Officers maintain that this is a reasonable and efficient approach to the drafting of schedules, noting that the alternative approach to satisfy the Panel's recommendation would require the creation of further zone schedules - the only difference of which would be the absence of the above provisions.</p> <p>Officers do not support this alternative approach because it would result in unnecessary additional schedules and associated administrative burden because the schedules would then need to be continually changed as BPA mapping is regularly updated by the Minister for Planning over time.</p>	<p>Reject</p> <p>No action required. (The application requirement and decision guideline are drafted such that they only apply if land is within a Bushfire Prone Area.)</p>

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	<p>appropriate to delete the above clauses where the BPA or BMO does not apply.</p> <p>The Panel therefore concludes that the bushfire application requirement and decision guideline proposed for GRZ3 and GRZ4 should only apply to land in a BPA or subject to the BMO.</p>		
Recommendation 2 - BUSHFIRE			
2.	<p>Subject to Mornington Peninsula Shire Council confirming which schedules apply to land in a Bushfire Prone Area or Bushfire Management Overlay, General Residential Zone Schedule 1, Neighbourhood Residential Zone Schedules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 40, and Design and Development Overlay Schedules 22, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 should be revised to:</p>		
2.a)	<p>in 'Application requirements', delete "If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged."</p> <p>As part of the 'without prejudice' drafting exercise held during the Panel hearing, the Department of Transport and Planning (DTP) submitted that the above application requirement should be deleted because the head provision provides for the responsible authority to waive or reduce the requirement, and it is not appropriate to reference a future permit condition in application requirements.</p> <p>Council's delegates at the Panel hearing accepted this position which is also supported by the Panel.</p>	<p>Officers recommend accepting the Panel's recommendation, consistent with the submissions of Council's delegates during the Panel hearing which accepted the DTP's suggestion that the application requirement be deleted.</p>	<p>Accept in full</p> <p>Delete reference to Condition 1 permit requirements from relevant GRZ, NRZ and DDO schedules.</p>
2.b)	<p>in 'Application requirements', add "If the land is in a bushfire prone area, landscaping should be of a low-</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed this change in response to issues raised in the CFA's submission. The</p>	<p>Accept in full</p>

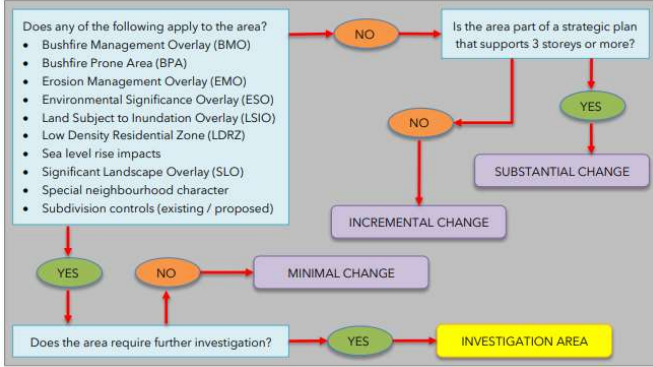
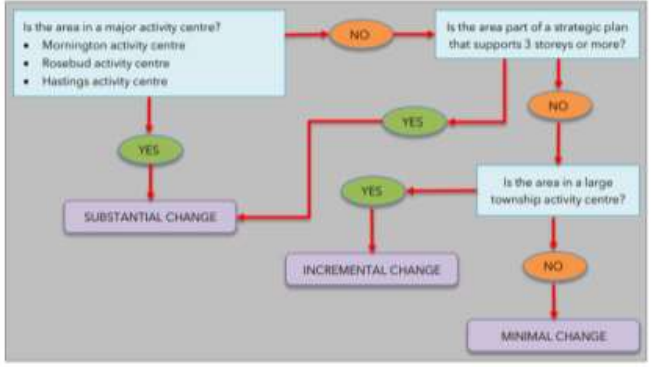
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	<p>threat bushfire risk as defined in Clause 2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas."</p> <p>The Panel acknowledges that the above change was already made in Council's endorsed post-exhibition version of the amendment and accepted that the CFA is now of the view that Amendment C219morn has adequately responded to bushfire policy at Clause 13.02-1S.</p>	<p>drafting of the requirement was developed with the assistance of an expert bushfire planning consultant (Kevin Hazell Bushfire Planning).</p>	<p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
2.c)	<p>in 'Decision guidelines', add "Whether the landscaping is of a low-threat bushfire risk if the land is in a bushfire prone area."</p> <p>The Panel acknowledges that the above change was already made in Council's endorsed post-exhibition version of the amendment and accepted that the CFA is now of the view that Amendment C219morn has adequately responded to bushfire policy at Clause 13.02-1S.</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed this change in response to issues raised in the CFA's submission. The drafting of the decision guideline was developed with the assistance of an expert bushfire planning consultant (Kevin Hazell Bushfire Planning).</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
Planning panel recommendation: 3 - CLAUSES 15 AND 16			
3.	Amend Clause 16.01-1L to:		
3.a)	<p>revise maps to:</p> <ul style="list-style-type: none"> • recategorise land identified as minimal change solely because of an existing overlay, Bushfire Prone Area or Melbourne Water flood mapping to incremental change • recategorise all residential land in a major activity centre boundary to substantial change 	<p>Officers recommend accepting the Panel's recommendation in part, altering the methodology for categorising housing change areas by reducing the scope of constraints and differentiating residential areas within Major Activity Centres (which are recognised areas for growth) and all other residential areas.</p> <p>Under the revised methodology, all residential land within Major Activity Centres is designated for substantial change unless a site is in an area of identified special character - being Neighbourhood Character Overlay or directly abutting the foreshore with an existing 2 storey mandatory height control.</p>	<p>Accept in part</p> <p>Change the methodology for categorising housing change areas by reducing the scope of constraints and differentiating</p>

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	<p>• recategorise 1501 Nepean Highway, Mount Eliza for incremental change</p> <p>The Panel observed that Council's adopted HSS Refresh has applied housing change area characteristics generally consistent with Planning Practice Note 90: Planning for Housing (PPN90). However, it concluded that:</p> <ul style="list-style-type: none"> mapping for Planning Scheme overlays, Bushfire Prone Areas and Melbourne Water flood mapping (used to identify areas subject to sea level rise of 0.8 metres by 2100) cannot be used to determine capacity impacts without further assessment and are not appropriate to categorise land for minimal change, and any land designated minimal change solely because it was in a Bushfire Prone Area or Melbourne Water flood mapping should be categorised as incremental change unless it is a major activity centre. <p>The Panel stated that an activity centre is where substantial change is expected and planned, noting that, even for the Mornington Peninsula, the extent of development capacity enabled through the amendment cannot be regarded as substantial change.</p> <p>The Panel concluded that all residential land identified through a structure plan as being in a major activity centre boundary should be categorised for substantial change.</p> <p>The Panel commented that recategorizing properties to substantial change would not result in a notable impact because based on what the amendment proposes, this would result in an additional storey of development, and that any potential land constraints would be assessed by Council during the permit application process.</p>	<p>This approach is still generally consistent with Council's adopted HSS Refresh which defines substantial, incremental and minimal change areas as follows:</p> <ul style="list-style-type: none"> <u>Substantial</u> - areas within the Shire's three Major Activity Centres, Mornington, Rosebud and Hastings and some large townships. In these areas, development of 3 or more storeys will be permitted in the commercial core and in some surrounding residential areas in line with each centre's adopted Structure Plan. <u>Incremental</u> - areas that do not have the identified constraints of the 'minimal change areas', but where housing growth is expected to occur within the context of existing or preferred neighbourhood character. In these areas' development will be restricted to 2 storeys, with no subdivision controls. <u>Minimal</u> - areas that have special neighbourhood, heritage, environmental and landscape characteristics identified in the planning scheme through Overlays (DDO, VPO, SLO, BMO) or are subject to bushfire risk, flooding or erosion. In these areas' development will be restricted 2 storeys, with existing subdivision and overlay controls retained. <p>The existing and proposed methodologies are shown in the following figures on the next pages of this document.</p>	<p>residential areas within Major Activity Centres (which are recognised areas for growth) and all other residential areas.</p> <p>Changing the categorisation of land at 1501 Nepean Highway Mount Eliza from minimal to incremental change was already made as part of Council's endorsed post-exhibition version of the amendment.</p>

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	<p>The Panel further commented that The Avenues area within the Rosebud Activity Centre boundary should enable more development than what is proposed under the NRZ and Neighbourhood Character Overlay, to achieve activity centre and housing policies over existing neighbourhood character.</p> <p>Finally, the Panel considered that 1501 Nepean Highway is visually and locationally disconnected from the remaining DDO33 in the surrounding area. It found that the property does not have the attributes to achieve the DDO33 design objectives, and its size and main road location give it development potential beyond what is sought through the exhibited amendment provisions. Therefore, the Panel concludes that the site should be recategorized as an incremental change area to reflect its ability to accommodate a greater level of built form.</p>	<p><u>Current Methodology – Residential Zones</u></p>  <p><small>SOURCE: A Desktop Review of the Strategic Work Underpinning Amendment C219morn (MPS, 2021), p.4</small></p> <p><u>Current Methodology – Commercial 1 Zone</u></p>  <p><small>SOURCE: A Desktop Review of the Strategic Work Underpinning Amendment C219morn (MPS, 2021), p.5</small></p>	

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		<p>Proposed Methodology - Residential Zones</p> <p>Inside a Major Activity Centre? Mornington, Rosebud, Hastings (Structure Plan boundaries)</p> <p>Do any of the following constraints apply? (A) Bushfire Management Overlay (BMO) (B) Bushfire Prone Area (BPA) (C) Coastal Management Overlay (CMO) (D) Environmental Significance Overlay (ESO) (E) Land Subject to Inundation Overlay (LSIO) (F) Special Building Overlay (SBO) (G) Special Building Overlay (SBO) (H) Floodway Overlay (FZO) (I) Low Density Residential Zone (LDZ) (J) Sea Level Rise Hazard (Erosion / Inundation) (K) Significant Landscape Overlay (SLO) (L) Special Airflow Overlay (SAO) (M) Mandatory Subdivision Controls (Existing / Proposed)</p> <p>Area of Special Character? As defined by the Neighbourhood Character Study & Guidelines, or land directly abutting the boundary with an existing 2-storey mandatory control</p> <p>Substantial Change</p> <p>Incremental Change</p> <p>Minimal Change</p> <p>Investigation Area</p> <p>Strategic Investigation Area? Housing & Settlement Strategy</p> <p>Adopted Plan supporting 3 or more stores?</p> <p>NOTES 1. OPA requires a building response to mitigate weather risk 2. OPA & FFA overlays were added to Building Chapter (3) controls in the LDZ one mandatory subdivision controls 3. Separated out to "Area of Special Character" with additional controls 4. Check that it is mandatory, relevant, specific</p>	

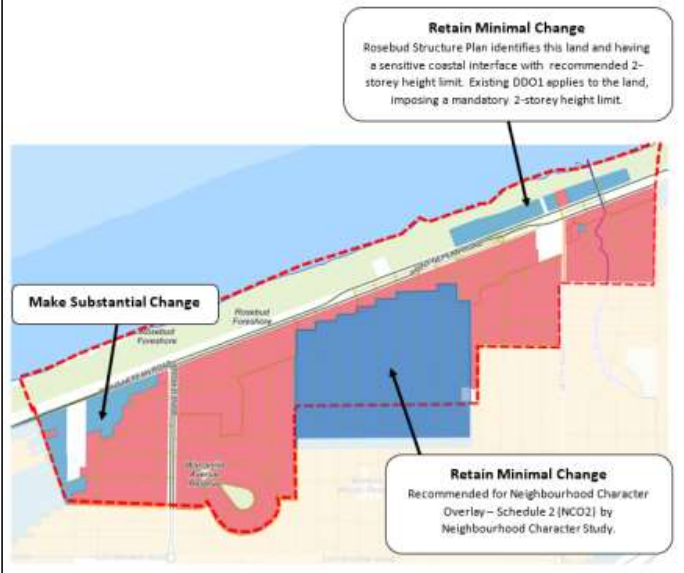
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		<p>Proposed Methodology - Commercial Zones (and MUZ & PUZ zones inside Major Activity Centres)</p> <p>The resultant changes to the mapping of housing change area mapping for each of the three Major Activity Centres are shown in the figures on the following pages of this document.</p>	

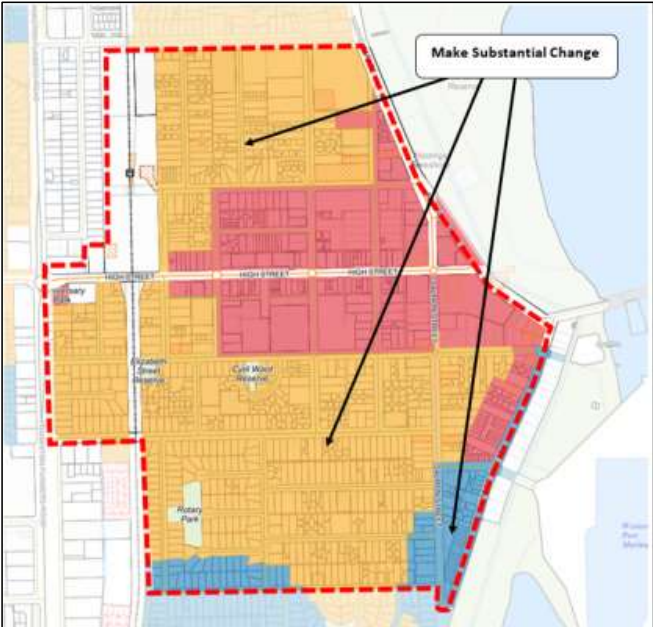
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		<p>Mornington Major Activity Centre</p> <p>All areas to be recategorised as substantial change.</p>	

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		<p><u>Rosebud Major Activity Centre</u></p> <p>All areas to be recategorized as Substantial Change, except NCO2 area and land north of Point Nepean Road adjacent to the foreshore.</p> 	

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		<p>Hastings Major Activity Centre</p> <p>All areas to be recategorised to substantial change.</p>  <p>Officers disagree, however, that the presence of overlays - including the Neighbourhood Character Overlay - should not be a determinative factor in assigning housing change areas because this would be inconsistent with Council's adopted HSS Refresh, Council's adopted NCS and Planning Practice Note 90 (PPN90).</p>	


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		<p>The findings and recommendations of Council's adopted NCS identify The Avenues as worthy of the Neighbourhood Character Overlay which in turn is identified as a minimal change area in Council's adopted HSS Refresh, as per the definition noted above. This approach - and the approach of overlays informing the designation of minimal change areas more broadly - is consistent with PPN90 which states that minimal change areas:</p> <ul style="list-style-type: none"> • <i>have special characteristics that distinguish them from other parts of the municipality or surrounding area</i> • <i>have special neighbourhood, heritage, environmental, or landscape characteristics identified in the planning scheme</i> • <i>are identified in a housing strategy, or in the planning scheme, as unsuitable for providing future housing growth</i> • <i>tend to have overlays that reflect neighbourhood, heritage, environmental or landscape characteristics or other physical constraints which may impact their capacity for change.</i> <p>(PPN90, p.9)</p> <p>Regarding the categorisation of land affected by sea level rise, officers agree that such land inside a Major Activity Centre should be recategorized from minimal to substantial, recognising that Major Activity Centres are the focus of growth, and that categorising these areas as minimal change would limit development potential and remove the opportunity for landowners to demonstrate that risks can be appropriately mitigated through the planning permit application process. That is, landowners could supply a Coastal Hazard Vulnerability Risk Assessment demonstrating that either sea level rise risks would not affect a development proposal, or that appropriate mitigation or adaptation measures could be put in place to ensure that land can be safely developed.</p> <p>The above change only affects the Hastings and Rosebud Major Activity Centres, noting that Mornington is not affected by sea level rise hazards under the '0.8m by 2100 year' scenario.</p>	

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		<p>However, officers do not agree that land affected by sea level rise in areas outside of the Major Activity Centres should be reclassified from minimal change because, under Amendment C219morn, both minimal and incremental change areas are to be rezoned to NRZ. Therefore, removing sea level rise as a constraint will not change this outcome. Further, any significant risks related to sea level rise will still be assessed as part of the planning permit application and CHVRA process noted above. Again, this approach is consistent with PPN90 as outlined above and as follows:</p> <p><i>‘Minimal change areas can also be areas that are constrained by planning considerations such as the physical capability of the land to safely accommodate more residential development. For example, restricting additional housing in areas close to airports, land subject to bushfire risk, flooding or erosion’.</i> (PPN90, p.9)</p> <p><u>1501 Nepean Highway Mount Eliza</u></p> <p>Finally, Council’s endorsed post-exhibition version of the amendment already proposed to make land at 1501 Nepean Highway Mount Eliza an incremental (as opposed to minimal) change area in response to submissions, as well as apply the DDO1 to the land rather than DDO33.</p>	
3.b)	<p>identify land in Precinct 3 of the ‘Mornington Residential Change Framework Plan - housing change framework map’ as an investigation area</p> <p>Precinct 3 forms part of the Mornington North policy area (as shown in green in the figure below) and includes seven LDRZ parcels of privately owned land east of Racecourse Road, south of Bungower Road.</p>	<p>Officers recommend accepting the Panel’s recommendation for the reasons it has outlined, noting that:</p> <ul style="list-style-type: none"> • There is still sufficient LDRZ land to the east of Precinct 3 (i.e. Precinct 4) to provide an appropriate buffer to, and protection of Green Wedge land further to the east. • Nominating Precinct 3 as an ‘investigation area’ does not mean that the land will be rezoned for more residential development density as part of Amendment C219morn. Rather, the precinct will be treated like all other ‘investigation areas’. That is, subject to separate investigation and detailed planning to determine whether more housing is appropriate having regard to careful consideration of the site’s opportunities and constraints. Any subsequent request to rezone the land to facilitate additional housing would need to be strategically justified and assessed on its merits as part of 	<p>Accept in full</p> <p>Amend the change area for Precinct 3 in the Mornington Residential Change Framework Plan from ‘minimal change’ to ‘investigation area’.</p>

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	 <p>Clause 11.03-6L (Regional and local places - Mornington North) of the planning scheme states that this land should be supported for use and development for health and other community services for elderly residents and uses that complement the racecourse, and that development should</p>	<p>a separate planning scheme amendment process, including an assessment as to how it responds to Clause 11.03-6L (Regional and local places - Mornington North) of the planning scheme.</p>	

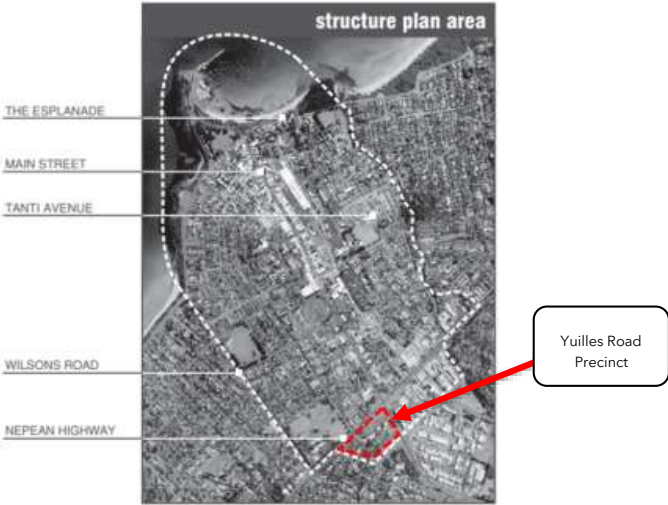
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	<p>be encouraged to provide setbacks that align with the low-density character of the area.</p> <p>The exhibited version of Amendment C219morn nominated Precinct 3 of the Mornington Residential Change Framework Plan as a 'minimal change' area in accordance with Council's adopted HSS Refresh.</p> <p>A submission to the amendment argued that the land should be designated as an 'investigation area' instead. In its response to submissions, Council resolved on 24 October 2022 not to support this request on the basis that it did not align with the strategic directions of the HSS Refresh as noted above.</p> <p>In reviewing the matter, the Panel states that it was persuaded by the submitter (Penequine Enterprises) that Precinct 3 is worthy to be designated an investigation area on the basis that:</p> <ul style="list-style-type: none"> • apart from the aged care facility at 428 Racecourse Road, the balance of Precinct 3 has not yet been developed (including the submitter's land), and • the precinct has many of the same characteristics as land in Precinct 6 (which is identified as an investigation area) <p>For these reasons, the Panel considers that Precinct 3 should be investigated further for its potential to accommodate a more intense form of residential development than the existing and proposed provisions would enable.</p>		
3.c)	<p>revise the second strategy to "ensure development in investigation areas respects the valued character of surrounding residential areas and is responsive to any environmental conditions and constraints, if any, of the site".</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed to make this change in response to submissions. No further action is required.</p>	<p>Accept in full No further action required. (This change was already made as</p>

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	<p>The Panel noted that Council's adopted HSS Refresh has appropriately identified "investigation areas" in the Residential Change Framework Plan maps, and that each area's change category should be determined through this investigation. It agreed with submitters, Council's planning expert witness (Mr Rob Milner) and Council that Clause 16.01-1L should be revised to ensure development in an investigation area:</p> <ul style="list-style-type: none"> • respects the valued character of the surrounding residential areas because it does not make sense to respect a housing change category • responds to any environmental conditions and constraints which would be identified during the investigation. 		<p>part of Council's endorsed post-exhibition version of the amendment.)</p>
Planning panel recommendation: 4 - GENERAL RESIDENTIAL ZONE (GRZ)			
4.	Retain General Residential Zone Schedule 1, including its 11 metre (3 storey) height to:		
<p>4.a)</p> <p>4.b)</p>	<p>land where this zone currently applies and has no overlay, including properties along Yuilles Road, Mornington</p> <p>all residential land within the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each adopted structure plan.</p> <p>Council's exhibited version of Amendment C219morn sought to rezone all GRZ identified in Council's adopted HSS Refresh as 'minimal' or 'incremental' change to the NRZ, while retaining 'substantial change' areas (within Major Activity Centres) in the GRZ.</p> <p>The GRZ has a maximum building height of 11 metres and 3 storeys, whereas the NRZ has a maximum building height of 9 metres and 2 storeys.</p>	<p>Officers recommend accepting this Panel recommendation in part as follows. <u>GRZ within Major Activity Centres</u></p> <p>Officers recommend accepting the Panel's recommendation to retain the GRZ within Major Activity Centres in part on the basis that:</p> <ul style="list-style-type: none"> • Major Activity Centres are recognised as areas in which increased housing growth should be focused due to their range of services, infrastructure and employment opportunities as per State and local planning policy and Council's adopted HSS Refresh. • Council already agreed to endorse the removal of more onerous ResCode requirements in these locations (except proposed front fencing standards) as part of its 24 October 2022 post-exhibition resolution in response to submissions - again, in recognition of Major Activity Centres being places for growth. 	<p>Accept in part</p> <p>Retain the GRZ1 in Major Activity Centres, except in parts of the Rosebud Major Activity Centre identified as having special character (i.e. The Avenues area and land north of Point Nepean Road, except 866 Point Nepean Road).</p>

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	<p>In response to submissions, Council resolved on 24 October 2022 to retain the extent of NRZ as exhibited, fundamentally on the basis that the application of the NRZ as proposed is consistent with the outcomes sought by:</p> <ul style="list-style-type: none"> the Mornington Peninsula Localised Planning Statement various adopted township and structure plans the requirements of Planning Practice Note 91: Using the Residential Zones (PPN91). <p>Overall, having considered all submissions, the Panel finds that:</p> <ul style="list-style-type: none"> the GRZ should apply to all land within the boundaries of each of the Shire’s three Major Activity Centres (MACs) as defined in each adopted Structure Plan. The GRZ should be retained for land outside the Hastings, Mornington and Rosebud MAC boundaries where it is not encumbered by an overlay. All other land should be rezoned to NRZ as proposed. <p>The Panel finds that there is no justification to change the designation or building height for land currently in GRZ where no overlay applies, stating that Council did not demonstrate a failure with the existing regime to justify rezoning such land to further restrict development potential and capacity.</p> <p>The Panel also considers it important that all residential land in a defined major activity centre boundary, as identified in an adopted structure plan, have an unrestricted GRZ, except where it has an identified sensitivity (which the Panel defines as not applying provisions more restrictive than those enabled by the head provisions).</p> <p>With regards to land along Yuilles Road, the Panel finds that this land does not have a consistent or prevailing</p>	<ul style="list-style-type: none"> The recently introduced “Future Homes” planning provision (Clause 53.24) would have effect in these areas, enabling licensed, high-quality designed apartments to be fast-tracked within all three Major Activity Centres. <p>This would mean the properties along Yuilles Road, Mornington would remain within the GRZ, as recommended by the Panel, because they are within the Structure Plan boundaries of the Mornington Major Activity Centre, as shown below.</p>  <p>In making this recommendation, it is acknowledged that this change is significant because it would be somewhat inconsistent with elements of the adopted Structure Plans for Mornington and Hastings which both call for 2 storey height limits in residential precincts surrounding the commercial core of</p>	<p>Create a new DDO schedule to reinstate the existing 10-metre building height permit trigger within the Mornington Major Activity Centre.</p> <p>Proceed with the NRZ in all other areas as originally proposed.</p>

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	<p>neighbourhood character and that it is rather evolving to a medium density environment, consistent with 7-9 Yuilles Road and other properties in the block.</p> <p>The Panel finds that the development at 7-9 Yuilles Road demonstrates that 3 storey built form can seamlessly blend with a predominantly 1 to 2 storey residential neighbourhood, and as such there is no justification to reduce the maximum building height by one storey in this location.</p> <p>Further, the Panel found that the neighbourhood character aspirations in the proposed NRZ2 are so distinctly different to the existing Yuilles Road character, it is unlikely to achieve its intended outcomes, and that, if anything, it would discourage future investment.</p> <p>Therefore, the Panel concludes that the urban block in Mornington bounded by Yuilles Road, Moomba Street, Nepean Highway and Tyabb Road should remain in the existing GRZ1 because the proposed NRZ2 provisions are unsuitable.</p>	<p>each centre. Accordingly, there is a risk that the community may not support this proposed change.</p> <p>However, the following observations and recommendations are made:</p> <ul style="list-style-type: none"> • While the Hastings Structure Plan clearly identifies a preferred two storey height limit (which Amendment C219morn sought to align with by proposing the NRZ), the Structure Plan does acknowledge that three storey development with a recessed upper level may be appropriate in some areas. Therefore, retaining the GRZ with a three-storey height limit is not entirely inconsistent with the Structure Plan. Further, given the GRZ already applies within the centre - and there are currently no overlays limiting height in the residential areas to 2 storeys - there is effectively no change to existing planning controls within the centre. • In the Mornington Activity Centre, residential areas are currently protected with a mandatory 2 storey / 10 metre height limit under the DDO1. Council's endorsed post-exhibition version of Amendment C219morn seeks to remove the existing 10-metre height limit of the DDO1 on the basis that the NRZ is proposed for affected areas. (The NRZ has a default mandatory maximum building height of two storeys and 9 metres). <p>In accepting the Panel's recommendation to retain the GRZ inside Major Activity Centres, it is recommended that Council seek to reinstate the existing 2 storey / 10 metre height limit to manage height concerns within the centre until Council's separate Residential Heights Review project is completed. This project seeks to determine whether existing long-standing building height provisions in DDOs should remain or whether changes are required, based on detailed assessments of landscape character, sensitivity and viewlines. (Ultimately, if DDO1 is recommended to be removed by the Residential Heights Review Project, land zoned GRZ in the Mornington Major Activity Centre could then be developed up to three storeys which is considered appropriate for a Major Activity Centre from a planning perspective.)</p>	

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		<p>Reinstating the existing 2 storey / 10 metre height limit would require the creation of a DDO schedule specific to the Mornington Major Activity Centre because DDO1 applies elsewhere on the Peninsula where the NRZ is proposed. That is, the 2 storey / 10 metre height limit cannot be reinstated in areas where the DDO1 would apply over an NRZ because it would be in conflict with the lower, 9-metre mandatory maximum height of the NRZ.</p> <p>While this change necessitates the creation of a new schedule (i.e., DDO63), it is only 'new' in so far as it is specific to Mornington. Otherwise, the schedule is simply reinstating a control that already exists in the planning scheme.</p> <p>It is recognised, however, that the Minister may not accept the above approach and elect to remove DDO1 altogether to allow 3 storey development within the Major Activity Centre. Proposing to defer potential removal of a 2 storey / 10 metre height limit until strategically justified under Council's Residential Heights Review project may lessen this risk, noting that this approach ensures the community is consulted before any such change is made.</p> <p>While accepting the retention of GRZ1 throughout the Mornington and Hastings Major Activity Centres, officers recommend that the NRZ be retained within select parts of the Rosebud Major Activity Centre, consistent with the proposed revised housing change area methodology previously outlined in response to Panel Recommendation 3(a). The balance of the centre would remain within the GRZ1 as currently proposed.</p> <p>That is, officers recommend that the NRZ be retained in areas of special character as identified by Council's adopted NCS (i.e. The Avenues, where proposed Neighbourhood Character Overlay Schedule 2 is to apply) as well as land directly abutting the foreshore with an existing 2 storey mandatory control (i.e. existing DDO1). That is, land north of Point Nepean Road (excluding the Jetty Road precinct zoned GRZ4) which is identified in Council's adopted</p>	

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		<p>Rosebud Activity Centre Structure Plan (Hansen Partnership, 2015) as an area that should be limited to 2 storey development given its sensitive foreshore interface.</p> <p>This outcome is also consistent with the findings of the independent Planning Panel that considered previous Planning Scheme Amendment C206morn (approved in November 2019) to implement the Rosebud Structure Plan. Referencing Planning Practice Note 60 (Height and Setback Controls for Activity Centres), the Panel determined that land north of Point Nepean Road is best described as: "sensitive coastal environment where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment". The Panel noted that this area provides important views to Arthurs Seat, acting as a backdrop to the town, that would be irreversibly lost if built form was too dominant. The Panel therefore concluded that this location is an exceptional circumstance warranting a mandatory maximum building height of 2 storeys (8 metres).</p> <p>While Council adopted the Panel's recommendation, the Minister for Planning ultimately decided to remove these mandatory controls in favour of retaining the existing DDO1 in the area, pending finalisation of Council's HSS Refresh work. In recognition of the Panel's recommendations and the Minister's final decision on Amendment C206morn, officers recommend that the NRZ be retained as proposed, consistent with Council's adopted HSS which designates this land as minimal change and therefore subject to the NRZ with a mandatory maximum building height of 2 storeys and 9 metres. The current controls, as per DDO1, have a 2 storey and 10 metre mandatory height control (with a building height permit trigger of 6 metres).</p> <p><u>GRZ outside Major Activity Centres</u></p> <p>While accepting GRZ within Major Activity Centres, officers do not recommend accepting the Panel's recommendation to retain the GRZ in all areas (outside Major Activity Centres) that are not covered by an overlay on the basis that:</p> <ul style="list-style-type: none"> This would be inconsistent with the Mornington Peninsula Localised Planning Statement and Council's adopted HSS which call for growth to be 	

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		<p>focused within Major Activity Centres with lower levels of growth in all other areas, commensurate with preferred local neighbourhood character outcomes.</p> <ul style="list-style-type: none"> The housing capacity analysis prepared by SGS Economics and Planning demonstrates that the amendment - including NRZ coverage as proposed - will deliver a 15-year housing supply with an excess in capacity of about 14,233 dwellings. While the opportunity for Future Homes apartments would be effectively excluded from some of these areas (i.e. those that are within 800 metres of an activity centre as per the requirements of the Future Homes provision), this is considered appropriate given Council's adopted HSS Refresh envisages apartments as being more suitably located in Major Activity Centres (i.e. areas with good access to services, infrastructure and employment). <p>The proposed approach to applying zones within and outside Major Activity Centres is summarised in the table below.</p> <p><i>Table 1: Proposed approach to applying residential zones</i></p> <table border="1"> <thead> <tr> <th>LOCATION</th> <th>CONSTRAINTS (General Neighbourhood Character)</th> <th>CONSTRAINTS (not other)</th> <th>Adopted plan supporting 3 or more storeys</th> <th>Strategic Investigation Area (HSS)</th> <th>EXISTING ZONE (Current planning scheme controls)</th> <th>CHANGE AREA (Residential Development Framework)</th> <th>PROPOSED ZONE (C219)</th> </tr> </thead> <tbody> <tr> <td rowspan="4">MAJOR ACTIVITY CENTRE</td> <td>Mornington</td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2, MUZ, PUZ, GRZ</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td>Rosebud</td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2, MUZ, PUZ, GRZ</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td>Hastings</td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2, MUZ, PUZ, GRZ</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td>(Structure Plan Boundaries)</td> <td>✓</td> <td>✓</td> <td>X</td> <td>GRZ</td> <td>Minimal</td> <td>NRZ</td> </tr> <tr> <td rowspan="8">ALL OTHER AREAS</td> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>GRZ</td> <td>Minimal</td> <td>NRZ</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2 or MUZ</td> <td>Substantial</td> <td>No change</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>CI2 or MUZ</td> <td>Minimal</td> <td>No change</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>GRZ</td> <td>Substantial</td> <td>NRZ</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>GRZ</td> <td>Minimal</td> <td>NRZ</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>GRZ or NRZ</td> <td>Minimal</td> <td>NRZ</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>LORZ</td> <td>Minimal</td> <td>No change</td> </tr> <tr> <td></td> <td>X</td> <td>✓</td> <td>X</td> <td>LORZ</td> <td>Investigation Area</td> <td>No change</td> </tr> </tbody> </table> <p>On balance, officers consider that retaining the GRZ within all three Major Activity Centres but proceeding with seeking the NRZ for all other areas (including those not covered by an overlay) is an appropriate compromise that</p>	LOCATION	CONSTRAINTS (General Neighbourhood Character)	CONSTRAINTS (not other)	Adopted plan supporting 3 or more storeys	Strategic Investigation Area (HSS)	EXISTING ZONE (Current planning scheme controls)	CHANGE AREA (Residential Development Framework)	PROPOSED ZONE (C219)	MAJOR ACTIVITY CENTRE	Mornington	X	✓	X	CI2, MUZ, PUZ, GRZ	Substantial	No change	Rosebud	X	✓	X	CI2, MUZ, PUZ, GRZ	Substantial	No change	Hastings	X	✓	X	CI2, MUZ, PUZ, GRZ	Substantial	No change	(Structure Plan Boundaries)	✓	✓	X	GRZ	Minimal	NRZ	ALL OTHER AREAS		X	✓	X	GRZ	Minimal	NRZ		X	✓	X	CI2	Substantial	No change		X	✓	X	CI2	Substantial	No change		X	✓	X	CI2 or MUZ	Substantial	No change		X	✓	X	CI2 or MUZ	Minimal	No change		X	✓	X	GRZ	Substantial	NRZ		X	✓	X	GRZ	Minimal	NRZ		X	✓	X	GRZ or NRZ	Minimal	NRZ		X	✓	X	LORZ	Minimal	No change		X	✓	X	LORZ	Investigation Area	No change	
LOCATION	CONSTRAINTS (General Neighbourhood Character)	CONSTRAINTS (not other)	Adopted plan supporting 3 or more storeys	Strategic Investigation Area (HSS)	EXISTING ZONE (Current planning scheme controls)	CHANGE AREA (Residential Development Framework)	PROPOSED ZONE (C219)																																																																																																								
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		<p>strikes the right balance between the following planning imperatives for the Peninsula:</p> <ul style="list-style-type: none"> Ensuring sufficient capacity is available to accommodate projected population growth, recognising the State Government’s renewed focus on accelerating housing supply across Victoria. Directing housing growth to appropriate locations that have good access to services, infrastructure and employment opportunities, consistent with Council’s adopted HSS Refresh. Moderating housing growth in all other areas consistent with the special character and constraints of the Peninsula, including significant environmental values and hazards, and limited public transport, consistent with Council’s adopted HSS Refresh and NCS. Recognising that the Peninsula is not a designated growth area and must be planned as a region of special character and importance that is distinctly different from, and complementary to, metropolitan Melbourne, as per the Mornington Peninsula Localised Planning Statement. <p>It is acknowledged, however, that there is a risk that the Minister may not accept this proposed compromise and instead elect to accept the Panel’s recommendation to retain the GRZ in Major Activity Centres and areas unencumbered by overlays.</p>	
Planning panel recommendation: 5 - GENERAL RESIDENTIAL ZONE (GRZ)			
5.	Amend General Residential Zone Schedule 1 to:		
5.a)	<p>revise the title from ‘Garden residential township area’ to ‘Substantial change area’</p> <p>The exhibited version of the General Residential Zone Schedule 1 (GRZ1) was called “Garden Residential Township area” based on Council’s adopted NCS and associated recommended character area. The GRZ1 was proposed to be retained in parts of the Rosebud and Hastings Major</p>	<p>Officers recommend accepting this recommendation which is a logical improvement to Council’s endorsed post-exhibition version of the amendment.</p>	<p>Accept in full</p> <p>Change the title of GRZ1 from ‘Garden Residential Township Area’ to ‘Substantial Change Area.</p>

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	<p>Activity Centres (with the GRZ3 and GRZ4 to be retained in the Mornington Major Activity Centre).</p> <p>In response to submissions, and recognition of the GRZ1 being located within Major Activity Centres which are the focus for growth, Council's endorsed post-exhibition version of the amendment proposed to rename the GRZ1 to 'Substantial Change Township Area'.</p> <p>The Panel supports this post exhibition change but suggests that the GRZ1 simply be 'Substantial change area' to reflect its actual role.</p>		
<p>5.b)</p>	<p>delete the neighbourhood character objectives and replace them with 'None specified'.</p> <p>The Panel concluded that the exhibited neighbourhood character objectives proposed for the GRZ1 are insufficiently justified and inappropriate because they do not reflect the development in a major activity centre or areas with more robust character that can accommodate more growth.</p> <p>The Panel commented that it is important that all residential land in a defined major activity centre boundary, as identified in an adopted structure plan, have an unrestricted GRZ, except where it has an identified sensitivity.</p> <p>The Panel defined unrestricted in this context as meaning not applying provisions more restrictive than those enabled by the head provisions, which includes the exhibited and post-exhibition proposed version of the GRZ1 neighbourhood character objectives.</p> <p>The Panel found that such objectives would generally be found in low density residential neighbourhoods rather than in a major activity centre. Accordingly, the Panel concluded that the GRZ1 should continue to not specify neighbourhood</p>	<p>Officers recommend accepting this Panel recommendation on the basis that Council's endorsed post-exhibition version of the amendment proposed to remove the exhibited ResCode variations (i.e. minimum street setback, side and rear setbacks, and private open space requirements) from the GRZ1 in response to submissions and in recognition of the GRZ1's location within Major Activity Centres which are the focus for growth, greater housing diversity and housing affordability. That is, removing the neighbourhood character objectives is consistent with Council's previous decision to delete proposed ResCode variations.</p> <p>As a consequence of removing character objectives and ResCode variations, officers further recommend that it is prudent to remove the corresponding decision guidelines in the GRZ1, noting that the parent provision of the GRZ includes several decision guidelines relating to general use and development, subdivision, dwellings, small second dwellings and residential buildings, non-residential use and development and signs. These decision guidelines are sufficient to guide planning permit applications in the area.</p> <p>Officers recommend, however, retaining the existing proposed application requirement for a Landscape Plan (and associated decision guidelines) - which the Panel did not recommend removing. The application requirement specifically calls for:</p>	<p>Accept in full</p> <p>Remove neighbourhood character objectives from the GRZ1 and consequently remove corresponding decision guidelines.</p>

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	<p>character objectives, consistent with the current zone schedule in the Planning Scheme.</p>	<p><i>A landscape plan, drawn to scale and prepared by a suitably qualified landscape professional. The plan must contain the following information:</i></p> <ul style="list-style-type: none"> - <i>A survey that shows the location and botanical names of all existing vegetation to be retained and those to be removed.</i> - <i>A planting schedule of all proposed trees, shrubs and ground covers, including location, botanical names, common names, pot sizes, width and height at maturity, and quantity of each plant.</i> - <i>The per cent of species selection, by type and number, that is indigenous to the local Ecological Vegetation Class (EVC) - the indigenous component should be at least 50 per cent.</i> - <i>The pot size and height of all trees and shrubs during installation - trees should have a minimum pot size of 250 millimetres and minimum height of 1.5 metres while shrubs should have a minimum pot size of 200 millimetres.</i> - <i>The location of easements, both proposed and existing - trees with a mature height over 5 metres should not be planted over easements.</i> - <i>The delineation of all excavation, garden beds, paving, grassed areas, retaining walls, fences and other landscape works.</i> - <i>Details of landscaping and planting within all open areas of the site.</i> - <i>Details of any tree protection methods required in accordance with Australian Standard AS 4970-2009 Protection of trees on development sites.</i> - <i>Notes regarding site preparation, including the removal of all weeds, proposed mulch, planting instructions, plant establishment procedures and any specific maintenance requirements.</i> <p><i>If the land is in a bushfire prone area, landscaping should be of a low-threat bushfire risk as defined in c2.2.3.2 of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas.</i></p> <p>Officers consider that this application requirement remains pertinent to ensure high-quality landscape outcomes, particularly where multi-unit development is concerned. Retaining the requirement also ensures transparency for planning permit applications, noting that Shire officers routinely request landscape plans to ensure high-quality landscape outcomes.</p>	

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		It is noted that the provision still appropriately provides for the waiver of the landscape plan requirement where the Shire deems it unnecessary.	
Planning panel recommendation: 6 - GENERAL RESIDENTIAL ZONE (GRZ)			
6.	<p>Amend General Residential Zone Schedules 1, 2 and 3 to delete requirements in Clause 4.0 for minimum street setback, side and rear setbacks and private open space and replace them with 'None specified'.</p> <p>In response to submissions, Council's endorsed post-exhibition version of the amendment proposed to make the following changes to the GRZ to support housing growth and diversity within the Shire's Major Activity Centres:</p> <ul style="list-style-type: none"> Remove the minimum street setback, side and rear setbacks, and private open space ResCode requirements from the GRZ1 and GRZ3 and replace with 'none specified', and Delete the GRZ2 but apply the GRZ1 to the area where the GRZ2 was originally proposed to apply. <p>The Panel states that it supports Council's proposed deletion of the Clause 54 and 55 ResCode variations for minimum street setback, side and rear setbacks and private open space in GRZ1, GRZ2 and GRZ3, but appears not to have acknowledged (in error) that Council intends to delete GRZ2 entirely. As such, the second part of the Panel's recommendation is considered redundant.</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.</p> <p>It is noted, however, that the Panel's recommendation erroneously refers to deleting the ResCode variations in the GRZ2, but Council's endorsed post-exhibition version of the amendment proposes to delete GRZ2 entirely. Given none of the other recommendations of the Panel seek to reinstate GRZ2, this part of the Panel's recommendation is considered redundant and does not require any action.</p> <p>It is noted that, separate to this recommendation of the Panel, officers recommend deleting the same ResCode variations from GRZ4 for consistency, given land zoned GRZ4 is located within the Structure Plan boundaries of the Rosebud Major Activity Centre.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment, noting that GRZ2 is proposed to be deleted.)</p>
Planning panel recommendation: 7 - NEIGHBOURHOOD RESIDENTIAL ZONE (NRZ)			
7.	<p>Replicate the Neighbourhood Residential Zone Schedule 37 into a new Neighbourhood Residential Zone schedule and apply the neighbourhood character objectives and relevant decision guidelines from Neighbourhood Character Overlay Schedule 2 and apply it to land</p>	<p>Officers do not recommend accepting this recommendation for the reasons detailed in the response to Panel Recommendation 11 below which are summarised as follows:</p> <ul style="list-style-type: none"> Council's adopted Rosebud Structure Plan identifies that The Avenues, Rosebud contains special neighbourhood characteristics warranting a 2 	<p>Reject</p> <p>No action required.</p> <p>(Retain the NCO2 and apply it to The Avenues as</p>

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	<p>outside the Rosebud Activity Centre boundary intended for Neighbourhood Character Overlay Schedule 2.</p> <p>The Panel considers that there is insufficient justification to apply proposed NCO2 to The Avenues and parts of Tootgarook and Rye, stating that there is no apparent reason why planning provisions beyond those proposed through Neighbourhood Residential Zone Schedule 37 - Special Neighbourhood Character Area (NRZ37) are needed to manage development and neighbourhood character in The Avenues and parts of Tootgarook and Rye.</p> <p>In effect, the Panel is suggesting that proposed NCO2 could be converted to its own NRZ schedule (similar to proposed NRZ37 which is to apply to only the NCO1 and NCO2 areas).</p> <p>The Panel states that development on private land can be managed through NRZ37 without negatively impacting the preferred neighbourhood character of these areas.</p> <p>It notes that one of the NCO2 objectives is to “maintain and strengthen the vegetated setting of dwellings” and that this objective could be equally applied as an NRZ schedule objective.</p>	<p>storey height limit and generous side setbacks, and that applying an NCO would be the appropriate mechanism to achieve preferred neighbourhood character outcomes for the area.</p> <ul style="list-style-type: none"> • Council’s adopted NCS: <ul style="list-style-type: none"> ○ recommends that an NCO is justified for all Garden Residential 4 (GR4) Character areas in Tootgarook and Rye and the northern part of the GR4 area in Rosebud (part of The Avenues), having been determined as having an intact identified special character (i.e. intact coastal character, featuring original low scale post-war and early modern architectural dwellings, set on compact allotments with simple garden settings). ○ Does not recommend applying the NCO to the southern part of The Avenues, because this area has experienced more change and so does not warrant an NCO. • Council’s neighbourhood character expert witness, Ms Nikki Hill (Ethos Urban) affirmed in her evidence to the Panel that the strategic justification for the NCO remains sound, noting that: <ul style="list-style-type: none"> ○ she was satisfied that the requirements specified in the NCO2 are consistent with recommendations for character area GR4 and are considered appropriate for the retention of the character of the area. ○ although the NCO applies to two different areas, it is appropriate to apply the same NCO over these areas as they are identified as having similar character attributes and have both been identified as GR4. • The NCO has the ability to modify ResCode (Clause 54 and Clause 55) standards (whereas a DDO cannot) and apply local neighbourhood character objectives and decision guidelines to achieve a preferred neighbourhood character. • Unlike the NCO, the NRZ has limited ability to provide desired asymmetric side setback requirements for Standards A10 and B17 (as per Form and Content requirements) making it the preferred tool to deliver identified special character outcomes. 	<p>proposed, but with changes as suggested in response to Panel Recommendation 12 (NCO1.)</p>

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Planning panel recommendation: 8 - NEIGHBOURHOOD RESIDENTIAL ZONE (NRZ)			
8.	Amend Neighbourhood Residential Zone schedules to:		
8.a)	<p>delete the rear boundary setback requirement in Clause 4.0 (Standards A10 and B17) from Schedules 2 to 18</p> <p>The Panel accepts that Planning Practice Note 91 (PPN91) specifies that variations to the key siting and amenity standards of the residential zones can be varied, where it can be strategically justified. The Panel supports a number of the variations proposed by Council but considers there is insufficient justification in the amendment for the proposed variations to rear setbacks as applicable to NRZ schedules 2 to 18. The Panel considers that the default requirements of Clause 54 and 55 provide a suitable baseline for assessing those aspects of a permit application.</p> <p>However, the Panel accepts that variations to rear setback requirements will be maintained in other NRZ schedules as a result of translating existing DDO schedule requirements for those areas. While the purpose of these requirements is unclear, the Panel accepts that they already exist in the Planning Scheme.</p>	<p>Officers recommend not supporting this recommendation for the reasons outlined below.</p> <p>For context, under existing controls, no rear setback is specified in the schedule to the GRZ, meaning that dwellings can be set back up to 1 metre from the rear boundary at ground level.</p> <p>Proposed NRZ2 - NRZ18 provide for a 5-metre rear boundary setback for a single dwelling (Standard A10 / Clause 54) and multiple dwelling developments (Standard B17 / Clause 55), whereas NRZ18 provides for a 10-metre rear setback.</p> <p>It is noted that the 5-metre rear setback is proposed for a further 9 NRZ schedules, being NRZ28-36. These requirements are based on Council's adopted NCS, whereas the proposed 10 metre setback in NRZ18 is directly translated from existing Design and Development Overlay Schedule 6 (Low Density - Landscape).</p> <p>Officers do not recommend supporting the removal of the 5-metre setback requirement from any of the NRZ schedules because the setback responds to a key threat to neighbourhood character identified in Council's adopted NCS. That is, the increased setback seeks to help address the loss of vegetation in private gardens and the public realm, and its replacement with larger scale development or non-permeable hardscaping such as paving.</p> <p>The NCS notes that existing landscape character is undermined by new development that does not provide adequate garden space for the planting of new vegetation, replanting of native species or canopy trees, which require deep soil and space for roots to grow.</p> <p>The NCS therefore recommends that Council strengthen policy around retention of existing vegetation, by including guidelines that specifically strengthen vegetation retention and deep soil areas (where possible) and</p>	<p>Reject</p> <p>No action required. (Retain the rear boundary setback variations as proposed.)</p>

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		<p>require large side and rear setbacks in areas of heavy vegetation to allow for planting of significant vegetation.</p> <p>Officers also do not recommend supporting the removal of the 10-metre rear setback from NRZ18 given it is a direct and policy neutral translation of a general requirement from DDO6 designed to meet the following key objective from the schedule:</p> <p><i>To recognise areas where substantial vegetation cover is a dominant visual and environmental feature of the local area, by ensuring site areas are large enough to accommodate development while retaining natural or established vegetation cover and to provide substantial areas for new landscaping and open space.</i></p>									
<p>8.b)</p>	<p>delete the private open space requirement in Clause 4.0 (Standards A17 and B28) and replace it with 'None specified' in Schedules 2, 3, 4, 5, 6, 7, 8, 35 and 36</p> <p>As with rear setback requirements, the Panel supports a number of the variations proposed by Council but considers there is insufficient justification in the amendment for the proposed variations to ground floor private open space as applicable to NRZ schedules 2 to 18. The Panel considers that the default requirements of Clause 54 and 55 provide a suitable baseline for assessing those aspects of a permit application.</p> <p>The Panel agrees with Council that Clause 54 and 55 may be varied through schedules to the residential zones, however, it does not agree that the proposed variations are sufficiently justified.</p> <p>Further, the Panel agrees with submissions from the DTP that the use of bedroom numbers to justify increased open space requirements is inconsistent with Planning Practice Note 91: Using the residential zones (PPN91) guidance.</p>	<p>Officers recommend accepting this recommendation in part as follows.</p> <p>Proposed NRZ2 – NRZ8, NRZ35 and NRZ36 currently provide the following private open space requirements for single (standard A17 / Clause 54) and multiple dwelling developments (standard B28 / Clause 55):</p> <table border="1" data-bbox="996 810 1659 1129"> <thead> <tr> <th></th> <th>Standard</th> <th>Requirement</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Private</td> <td>A17</td> <td>None specified.</td> </tr> <tr> <td>B28</td> <td> <p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</p> </td> </tr> </tbody> </table> <p>As with the proposed rear setback requirements, the requirement for additional private open space is based on Council's adopted NCS which seeks to ensure that vegetation and landscaping remain central elements of neighbourhood character, and that there is sufficient space on residential lots to retain existing</p>		Standard	Requirement	Private	A17	None specified.	B28	<p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</p>	<p>Accept in part</p> <p>Retain increased open space requirements for Standard B28 but delete the requirement for additional open space based on the number of bedrooms per dwelling.</p>
	Standard	Requirement									
Private	A17	None specified.									
	B28	<p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</p>									

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		<p>vegetation and provide deep soil planting areas for significant vegetation. Therefore, officers do not recommend supporting the removal of the proposed increased open space requirements. However, officers do accept the Panel's position that basing open space requirements on the number of bedrooms per dwelling does not meet the requirements of PPN91. Therefore, officers recommend that NRZ2 - NRZ8, NRZ35 and NRZ36 be amended as follows:</p> <table border="1" data-bbox="996 512 1655 831"> <thead> <tr> <th></th> <th data-bbox="1093 517 1182 539">Standard</th> <th data-bbox="1189 517 1285 539">Requirement</th> </tr> </thead> <tbody> <tr> <td data-bbox="1003 552 1086 574">Private</td> <td data-bbox="1093 552 1182 574">A17</td> <td data-bbox="1189 552 1648 574">None specified.</td> </tr> <tr> <td></td> <td data-bbox="1093 587 1182 609">B28</td> <td data-bbox="1189 587 1648 826"> <p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p><i>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</i></p> </td> </tr> </tbody> </table>		Standard	Requirement	Private	A17	None specified.		B28	<p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p><i>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</i></p>	
	Standard	Requirement										
Private	A17	None specified.										
	B28	<p>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</p> <p><i>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</i></p>										
8.c)	<p>delete the minimum subdivision area in Clause 2.0 and replace with 'None specified' in Schedules 23 to 27 and 29 to 33</p> <p>In response to submissions, Council resolved to endorse removing the minimum subdivision requirements in Mornington (NRZ23-27), Capel Sound (NRZ29), Crib Point (NRZ30-32) and part of Bittern (NRZ33) and instead retain the average subdivision requirement in the related DDO schedules. Retaining an average requirement (as opposed to a defined minimum) provides more flexibility to cater for site-specific constraints such as irregular lot shapes, vegetation and slopes.</p> <p>The Panel agrees with these changes, concluding that an averaging provision for lot sizes instead of a minimum will</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>									

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	<p>support a site responsive subdivision that can reflect topography, environmental and landscape values which aligns with Council’s broader objectives around neighbourhood character and development that is sensitive to its surroundings.</p>		
<p>8.d)</p>	<p>delete any reference to ‘predominantly single storey’ in the neighbourhood character objectives of Schedules 10 and 11</p> <p>The Panel finds that the proposed neighbourhood character objective for ‘predominantly single storey dwellings’ in NRZ10-11 is unsupported by any strategic work and inappropriate because it does not reflect actual circumstances.</p> <p>The Panel notes that the use of the reference ‘predominantly single storey dwellings’ is not a faithful translation of the NCSG, nor does it reflect the head NRZ provision or reality that there may be an emerging 1 to 2 storey character in these areas.</p> <p>The Panel further notes that it is inconsistent with the associated DDO schedules which enable up to 2 storeys and contradicts Ministerial Direction 7(5) which states that a schedule cannot specify a lower height than the head provision.</p>	<p>Officers recommend accepting this recommendation for the reasons outlined by the Panel.</p>	<p>Accept in full</p> <p>Remove reference to ‘predominantly single storey dwellings’ in NRZ schedules as relevant.</p>
<p>8.e)</p>	<p>replace the minimum subdivision area of 700 square metres with ‘None specified’ in Schedule 29.</p> <p>NRZ29 is proposed to apply in Capel Sound. The subdivision area requirement for the schedule is derived from DDO17.</p> <p>As noted above, in response to submissions, Council’s endorsed post-exhibition version of the amendment proposed to remove the minimum subdivision area</p>	<p>Council’s endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version</p>

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	requirement from proposed NR29 and retain the subdivision requirement as an average area requirement in the DDO17. The Panel supports this change.		of the amendment.)
Planning panel recommendation: 9 - NEIGHBOURHOOD RESIDENTIAL ZONE (NRZ)			
9.	Amend Neighbourhood Residential Zone schedules to:		
9.a)	delete reference to 1-2 storeys in the neighbourhood character objectives because this replicates the purpose of the head provision	<p>Officers recommend accepting this recommendation for the reason stated by the Panel. The recommendation affects proposed NRZ schedules NRZ2 - NRZ18 and NRZ28 - NRZ36. These schedules contain objectives that reference 1-2 storey dwellings as being a preferred character outcome. For example, NRZ2 contains the following objective:</p> <p><i>To ensure new development reflects the preferred built form, characterised by predominantly small-scale 1-2 storey dwellings with simple building forms and pitched roofs with prominent eaves. [emphasis added].</i></p> <p>One of the purposes of the parent provision of the NRZ, however, already recognises this character outcome as follows:</p> <p><i>To recognise areas of predominantly single and double storey residential development.</i></p> <p>Therefore, it is appropriate to delete reference to 1-2 storeys in the schedules to avoid unnecessary duplication between the schedule and head provision, as required by Ministerial Direction 7(5): The Form and Content of Planning Schemes and good practice advice in the A Practitioner's Guide to Victorian Planning Schemes, Version 1.5, April 2022.</p>	Accept in full Delete reference to 1-2 storeys in the neighbourhood character objectives of NRZ schedules.
9.b)	revise relevant neighbourhood character objectives to refer to "the prominence of car parking" (rather than dominance) and "car parking structures and access" The following objective is proposed to be included in various NRZ schedules:	<p>Officers recommend accepting the Panel's recommendation to improve the clarity of the objective regarding the impact of car parking structures and access on neighbourhood character. However, officers recommend that the term 'accessways' be used instead of 'access' because 'accessways' clarifies what the objective specifically applies to, noting that 'accessway' is a commonly used term in the planning scheme to describe things like driveways. Therefore, it is recommended that the objective be drafted as follows:</p>	Accept in part Update that the NRZ neighbourhood character objective to: <i>'To ensure new development does not dominate the</i>

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	<p><i>To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures.</i></p> <p>As part of the ‘without prejudice drafting’ exercise undertaken during the Panel hearing, Council’s delegates agreed that the above objective should be revised to improve clarity, suggesting the following updated version:</p> <p><i>To ensure new development does not dominate the streetscape and minimises the prominence of car parking structures and access.</i></p> <p>The Panel accepts these changes.</p>	<p><i>To ensure new development does not dominate the streetscape and the prominence of car parking structures and <u>accessways</u> is minimised.</i></p>	<p><i>streetscape and the prominence of car parking structures and <u>accessways</u> is minimised’</i> [emphasis added]</p>
<p>9.c)</p>	<p>delete in Clause 5.0 any reference to “must not contain more than” when referencing maximum building height</p> <p>This recommendation relates to NRZ23-27 which translate controls from existing DDOs affecting Beleura Hill in Mornington.</p> <p>During the ‘without prejudice’ drafting exercise held during the Panel hearing, the DTP submitted that Clause 5.0 (Maximum building height requirement for a dwelling or residential building) in relevant NRZ schedules should be revised to be consistent with the Ministerial Direction Form and Content, noting that it is not necessary to specify a maximum height of 2 storeys as this is the default position of the head provision. The DTP submitted that Clause 5.0 should be edited as follows:</p> <p><i>“A building used as a dwelling or a residential building must not exceed a height of 10 metres and must not contain more than 2 storeys.”</i></p> <p>Council’s delegates at the hearing accepted that the words ‘must not contain more than’ should be deleted to improve clarity. However, Council’s delegates maintained that the</p>	<p>Officers recommend accepting the Panel’s recommendation on the basis of Council’s delegates’ submissions during the without prejudice drafting exercise during the hearing.</p> <p>As an aside, it is noted that that NRZ24 and NRZ26 are recommended to be deleted to correct an error in the translation of existing DDO24: Beleura Hill, Mornington. The exhibited amendment erroneously created five character sub-precincts instead of three, resulting in the above two NRZ schedules which are no longer required.</p>	<p>Accept in full</p> <p>Amend Clause 5.0 in relevant NRZ schedules as follows:</p> <p><i>“A building used as a dwelling or a residential building must not exceed a height of 10 metres and must not contain more than 2 storeys.”</i></p>

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	<p>reference to 2 storeys should be retained to avoid any ambiguity and ensure that the maximum height requirement is drafted in accordance with the Ministerial Direction.</p> <p>While not specifically addressed, the Panel appears to accept Council's position based on its recommendation.</p>		
<p>9.d)</p>	<p>delete in Clause 6.0 (Application requirements) any reference to:</p> <p><i>If the application proposes to construct a building or construct or carry out works for one dwelling on a lot, and a permit for the application is required and approved, a landscape plan will form a Condition 1 requirement in the approved permit. For all other applications, a landscape plan must be provided at the time when an application for a permit is lodged.</i></p> <p>During the 'without prejudice' drafting exercise held during the Panel hearing, Council's delegate agreed to delete references to applying a permit condition in 6.0 (Application requirements) as above on the basis that the head provision allows the responsible authority to waive or reduce an application requirement if the application requirement is not relevant to the evaluation of an application (Clause 32.09-11). Therefore, removing this content avoids duplication and improves clarity.</p> <p>Council's delegates also proposed to delete the same text from all relevant DDO schedules (i.e. DDO schedules which affect land in the LDRZ), to ensure consistency.</p> <p>Council's delegate noted that the DDO head provision does not contain the same discretion as the head provision of the NRZ, however, the DDO schedules contain similar language (including the words 'as appropriate' before the list of application requirements in the schedule).</p>	<p>Officers recommend accepting the Panel's recommendation on the basis of Council's delegates' submissions during the without prejudice drafting exercise during the hearing.</p>	<p>Accept in full</p> <p>Delete reference to a Condition 1 permit requirement from all NRZ (and DDO) schedules as relevant.</p>

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	The Panel supported these changes.		
9.e)	<p>reference Transport Zone 2 rather than Road Zone Category 1.</p> <p>Council's post-exhibition version of the amendment proposed to amend all references to the 'Road Zone Category 1' with the 'Transport Zone 2' in all Zones and Overlay schedules to accord with Ministerial Amendment VC205 which introduced a new Transport Zone to replace the Road Zone and Public Use Zone Schedule 4 gazetted on 6 April 2022.</p> <p>The Panel supports this change.</p>	Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
Planning panel recommendation: 10 - LOW DENSITY RESIDENTIAL ZONE (LDRZ)			
10.	Amend Low Density Residential Zone Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 to:		
10.a)	<p>revise the relevant exemption to reference 6 May 1999 as follows:</p> <ul style="list-style-type: none"> two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling <p>In response to submissions, Council's endorsed post-exhibition version of the amendment proposed to reference 6 May 1999 in the subdivision exemption specified in all LDRZ and DDO schedules to recognise lawfully approved dwellings at that time, and to clarify which future subdivisions are exempt from the specified provisions.</p> <p>The Panel supports this change.</p>	Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
10.b)	<p>delete "land set aside as common property" under 'This does not apply to'</p>	Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.	<p>Accept in full</p> <p>No further action required.</p>

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	<p>In response to submissions, Council's endorsed post-exhibition version of the amendment proposed to delete the subdivision exemption 'land set aside as common property' given it is not considered a separate lot when assessing subdivision applications.</p> <p>The Panel concludes that that it is appropriate to make this change.</p>		<p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
10.c)	<p>add as a new point "a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created" under 'This does not apply to'.</p> <p>In response to submissions, Council's endorsed post-exhibition version of the amendment proposed to include the same (re-worded) re-subdivision exemption as exists in DDOs, noting that subdivision in LDRZ areas will be controlled by the LDRZ rather than DDOs. (Hence the need to translate the exemption to the LDRZ schedule).</p> <p>The Panel states that it considers it appropriate to exempt the minimum subdivision area in an LDRZ schedule for a re-subdivision that does not increase the number of lots and does not enable additional subdivision potential as it would help avoid anomalous circumstances.</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed to make this change. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
Planning panel recommendation: 11 - NEIGHBOURHOOD CHARACTER OVERLAY (NCO)			
11.	<p>Delete Neighbourhood Character Overlay Schedule 2 and do not apply it to The Avenues and parts of Tootgarook and Rye.</p> <p>The Panel agrees with Council that The Avenues and parts of Tootgarook and Rye are different to the rest of the municipality. It states that The Avenues has relatively smaller lots and identified parts of Tootgarook and Rye do not have</p>	<p>Officers do not recommend accepting the Panel's recommendation because the NCO is recommended by Council's adopted NCS, is supported in The Avenues by Council's adopted Rosebud Structure Plan and Council's neighbourhood character witness at the Panel hearing (Ms Nikki Hill, Ethos Urban) maintained in her evidence that the justification for the NCO2 as proposed remains sound.</p>	<p>Reject</p> <p>No action required.</p> <p>(Retain the NCO2 and apply it to The Avenues and parts of Tootgarook and Rye, but with</p>

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	<p>a visual differentiation between the private lot and vegetated public road reserves.</p> <p>However, the Panel states that “different does not necessarily mean special”, noting that the difference is not special enough to differentiate them as neighbourhoods requiring a specific planning response above other neighbourhoods in the municipality.</p> <p>The Panel observes that these areas have generally single storey built form with some double storey houses, resulting from decades of mandatory restrictive maximum building heights and associated provisions.</p> <p>Regarding the NCO2 character objectives, the Panel finds that:</p> <ul style="list-style-type: none"> it would be difficult to respect key elements of existing buildings from the very broad ranging ‘Post-war and Modern eras’ because there is no overall consistent housing style or form within this broad 70-year development period there is a notable proportion of brick veneer houses, particularly in some Tootgarook and Rye streets where brick veneer is more dominant the final three objectives are generally being sought through many proposed NRZ schedules”. <p>The Panel therefore finds no apparent reason why planning provisions beyond those proposed through Neighbourhood Residential Zone Schedule 37 - Special Neighbourhood Character Area (NRZ37) are needed to manage development and neighbourhood character in The Avenues and parts of Tootgarook and Rye.</p> <p>The Panel states that development on private land can be managed through NRZ37 without negatively impacting the</p>	<p>Recognising that The Avenues is within the Rosebud Major Activity Centre, officers note that Council’s adopted Rosebud Structure Plan:</p> <ul style="list-style-type: none"> Identifies that The Avenues have a distinct character in terms of fine grain subdivision pattern, typically casual coastal architectural style, and generous side setbacks, supporting coastal canopy vegetation and that the area will face redevelopment pressure in the near future by virtue of their residential zoning, proximity immediately to the rear of the main activity spine of Rosebud and the foreshore. Recommends that The Avenues distinct character warrants the requirement for future development to be responsive to the established character, including a 2 storey height limit and generous side setbacks. Recommends that The Avenues is a case example where DDO or like NCO controls may be warranted. <p>Council’s adopted NCS:</p> <ul style="list-style-type: none"> Recommends that an NCO is justified for The Avenues because all Garden Residential 4 Character Areas (GR4) in Tootgarook and Rye and the northern part of the Gr4 area in Rosebud (part of The Avenues), having been determined as having an intact special character (i.e. intact coastal character, featuring original low scale post-war and early modern architectural dwellings, set on compact allotments with simple garden settings). Does not recommend applying the NCO to the southern part of The Avenues, because this area has experienced more change and is still considered to be part of the overall GR4 precinct. <p>Council’s neighbourhood character expert witness, Ms Hill:</p> <ul style="list-style-type: none"> Maintained the above recommendations in her evidence, noting that she was satisfied that the requirements specified in the NCO2 are consistent with recommendations for character area GR4 and are considered appropriate for the retention of the character of the area. 	<p>changes as proposed in response to Panel Recommendation 12 (NCO1.)</p>

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	<p>preferred neighbourhood character of these areas, noting that one of the NCO2 objectives is to <i>“maintain and strengthen the vegetated setting of dwellings”</i>.</p> <p>For the above reasons, the Panel concludes that there is insufficient justification to apply NCO2 to The Avenues and parts of Tootgarook and Rye.</p>	<ul style="list-style-type: none"> Stated that although the NCO applies to two different areas, it is appropriate to apply the same NCO over these areas as they are identified as having similar character attributes and have both been identified as GR4. <p>Ms Hill noted that the mapped area of The Avenues identified as appropriate for the application of an NCO in the NCS is less than the proposed NCO2 area of the amendment because the area to the north of the proposed NCO2 was removed from the NCS given Amendment C206morn (which implemented Council’s Rosebud Activity Centre Structure Plan) recommended built form controls, which were to be introduced via DDO26. This land was removed from the final adopted NCS to avoid any conflicts with proposed controls under DDO26, noting that the northern portion was subsequently removed from the proposed DDO26 by the Minister for Planning as part of approving Amendment C206morn. In approving the amendment, the Minister for Planning made it clear that any changes to the residential areas of the Rosebud Activity Centre should be considered as part of the preparation and implementation of the Mornington Peninsula Housing & Settlement Strategy work.</p> <p>Given the above, Ms Hill maintains that it is appropriate to include this area within the NCO2, as it features generally similar character attributes as the portion identified for an NCO in the NCS. Officers support the findings and recommendations of Ms Hill.</p> <p>Officers also note that:</p> <ul style="list-style-type: none"> The NCO has the ability to modify ResCode (Clause 54 and Clause 55) standards (whereas a DDO cannot) and apply local neighbourhood character objectives and decision guidelines to achieve a preferred neighbourhood character, and Unlike the NCO, the NRZ has limited ability to provide asymmetric side setback requirements for Standards A10 and B17 (as per Form and Content drafting requirements), making the NCO the better tool to deliver identified special character outcomes for the area. <p>Finally, officers recommend that the NCO2 be amended to reflect the changes for NCO1 proposed in response to Recommendation 12 below, as relevant.</p>	

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Planning panel recommendation: 12 - NEIGHBOURHOOD CHARACTER OVERLAY (NCO)			
12.	Amend Neighbourhood Character Overlay Schedule 1 to:		
12.a)	<p>revise relevant neighbourhood character objectives to refer to “the prominence of car parking” (rather than dominance) and “car parking structures and access”</p> <p>As part of the ‘without prejudice’ drafting exercise carried out during the hearing, the DTP submitted that all schedules (excluding NRZ37) should be reviewed to improve clarity and remove repetition. It noted that the following objective (which appears in NRZ schedules and the NCO1) is confusingly worded:</p> <p><i>To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead.</i></p> <p>Council’s delegates agreed, stating that the drafting should be revised as follows:</p> <p><i>To ensure new development does not dominate the streetscape and minimises the prominence of car parking structures and access.</i></p> <p>(Council noted that the car parking strategy under the built-form strategies at Clause 15.01-5L should also be revised as above).</p> <p>The Panel accepts the proposed revised wording.</p>	<p>Officers recommend accepting the Panel’s recommendation to improve the clarity of the objective regarding the impact of car parking structures and access on neighbourhood character. However, officers recommend that the term ‘accessways’ be used instead of ‘access’ because ‘accessways’ clarifies what the objective specifically applies to, noting that ‘accessway’ is a commonly used term in the planning scheme to describe things like driveways. Therefore, it is recommended that the objective be drafted as follows:</p> <p><i>To ensure new development does not dominate the streetscape and the prominence of car parking structures and <u>accessways</u> is minimised.</i></p>	<p>Accept in part</p> <p>Update that the NCO1 neighbourhood character objective to: <i>‘To ensure new development does not dominate the streetscape and the prominence of car parking structures and <u>accessways</u> is minimised’</i> [emphasis added]</p>
12.b)	<p>revise the decision guidelines to:</p> <ul style="list-style-type: none"> • delete any reference to “area contained in this schedule” • delete the requirement for a landscape plan • append to the fourth guideline “that reflect the surrounding native landscape”. 	<p>Officers recommend accepting this recommendation based on the ‘without prejudice’ drafting response provided by Council’s delegates at the hearing.</p>	<p>Accept in full</p> <p>Revise NCO decision guidelines</p>

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	<p>As part of the 'without prejudice' drafting exercise carried out during the hearing, the DTP submitted that:</p> <ul style="list-style-type: none"> • Decision guidelines in the NCOs repeat the head provision • There is no need to specify 'area contained in this schedule', and • The landscape plan requirement is hidden as a decision guideline, noting that the NCO1 and NCO2 currently include the following decision guideline: <ul style="list-style-type: none"> ▪ <i>The need for a landscape plan, prepared by a suitably qualified landscape professional, reflecting the surrounding native landscape</i>." <p>The Panel accepts the DTP's suggested drafting comments because they:</p> <ul style="list-style-type: none"> • achieve the requirements of Ministerial Direction 7(5) • they align with good practice advice in the A Practitioner's Guide to Victorian Planning Schemes, Version 1.5, April 2022 • will result in simple, clear and implementable planning provisions. <p>Council's delegates at the hearing agreed that there is repetition with the head provision and proposes to delete the words 'of the area contained in this schedule'.</p> <p>Council's delegates also acknowledged that the decision guideline is phrased in a manner which indicates it is a requirement, rather than a matter which should be considered by the decision-maker when exercising a discretion, and is therefore inconsistent with the function of a decision guideline, as described at section 2.5 of the Practitioner's Guide.</p>		

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	<p>Council’s delegates therefore proposed to delete the above decision guideline and amend the subsequent decision guideline in the NCO1 and NCO2 to incorporate the relevant matter for consideration, namely, ‘the surrounding native landscape’ -</p> <ul style="list-style-type: none"> ▪ <i>Whether there is sufficient land available for the retention and planting of native vegetation and trees that reflect the surrounding native landscape”.</i> 		
<p>12.c)</p>	<p>delete the permit requirement to demolish or remove a building and delete ‘demolished’ from the second decision guideline</p> <p>In response to submissions, Council’s endorsed post-exhibition version of the amendment proposes to change the NCO1 and NCO2 by:</p> <ul style="list-style-type: none"> • removing the permit requirement relating to the demolition or removal of a building, and • revising the decision guidelines to remove consideration of demolition. <p>Removal of the permit requirement for demolition was considered appropriate to reduce unnecessary regulatory burden, noting that future development applications for land under the NCO would be assessed as part of a planning permit application.</p> <p>The Panel supports this position and associated change to NCO1 stating that the NCO1 and its head provisions have sufficient requirements to manage future development without the need for a permit to demolish or remove a building. The Panel supports Council’s proposal to delete this permit requirement and associated decision guideline content.</p>	<p>Council’s endorsed post-exhibition version of the amendment already proposes to make this change. No further action required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version of the amendment.)</p>

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	<p>The Panel therefore concludes that the NCO1 provisions are generally appropriate and justified subject to recommended changes.</p>		
<p>12.d)</p>	<p>in the Clause 4.0 walls on boundaries standard, revise the garage wall length exemption to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres front and rear wall thickness</p> <p>In response to submissions, Council’s endorsed post-exhibition version of the amendment proposes to change the NCO1 and NCO2 by amending the garage wall length exemption in the ‘walls on boundaries standard’ (ResCode Standards A11 and B18) to 6.5 metres to allow for a standard garage of 6 metres internal dimension plus 250 millimetres wall thickness front and rear.</p> <p>The Panel supports this change for the NCO1.</p>	<p>Council’s endorsed post-exhibition version of the amendment already proposes to make this change. No further action required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version of the amendment.)</p>
<p>12.e)</p>	<p>delete the private open space requirement in Clause 4.0 (Standards A17 and B28) and replace it with ‘None specified’.</p> <p>NCO1 and NCO2 currently provides the following private open space requirements for multiple dwelling developments (ResCode Standard B28 / Clause 55):</p> <p><i>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</i></p> <p><i>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for</i></p>	<p>Officers recommend accepting this recommendation in part as follows.</p> <p>As with the proposed increased private open space requirements in NRZ schedules, the additional open space requirements proposed in NCO1 are based on Council’s adopted NCS which seeks to ensure that vegetation and landscaping remain central elements of neighbourhood character, and that there is sufficient space on residential lots to retain existing vegetation and provide deep soil planting areas for significant vegetation.</p> <p>Therefore, officers do not recommend supporting the removal of the proposed increased open space requirements. However, officers do accept the Panel’s position that basing open space requirements on the number of bedrooms per dwelling does not meet the requirements of PPN91.</p> <p>Further, officers note that the 40sqm references are intentional, not a drafting error. The intention of the modified requirement is to direct the <u>location of the private open space</u> as well as the <u>quantum of private open space area / secluded private open space</u> in the same area, thereby requiring a total of 40sqm of private open space area / secluded private open space.</p>	<p>Accept in part</p> <p>Retain increased open space requirements for Standard B28 but delete the requirement for additional open space based on the number of bedrooms per dwelling.</p>

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	<p><i>each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</i></p> <p>As part of the 'without prejudice' drafting exercise undertaken as part of the hearing, DTP submitted that:</p> <ul style="list-style-type: none"> The requirement for 40sqm is repeated as both the total requirement and the minimum open space area required at the side or rear, and that it is unclear if this is a drafting error or intentional. Because the provision is discretionary, a maximum area of open space (80sqm) is not appropriate. The use of bedroom numbers to justify increased open space requirements is inconsistent with Planning Practice Note 91: Using the residential zones (PPN91) guidance. <p>The Panel accepts the DTP's drafting comments because they:</p> <ul style="list-style-type: none"> achieve the requirements of Ministerial Direction 7(5) they align with good practice advice in the A Practitioner's Guide to Victorian Planning Schemes, Version 1.5, April 2022 will result in simple, clear and implementable planning provisions". 	<p>Based on the above, officers recommend that Standard B28 be amended as follows::</p> <p><i>A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 40 square metres, a minimum dimension of 5 metres and convenient access from a living room.</i></p> <p><i>If a dwelling has more than 2 bedrooms, an additional ground level private open space area of 20 square metres with a minimum width of 3 metres should be provided for each additional bedroom, with a maximum of 80 square metres of private open space for each dwelling.</i></p> <p>Finally, the NCO1 and NCO2 do not include a variation to Standard A17 as the Panel's recommendation suggests. Therefore, there is no need to include A17 or 'none specified'.</p>	
Planning panel recommendation: 13 - DESIGN AND DEVELOPMENT OVERLAY SCHEDULES (DDOs)			
13.	<p>Retain Design and Development Overlay Schedules 1, 19, 20 and 23.</p> <p>Council's exhibited version of Amendment C219morn proposed to remove DDO1 (Township Design), DDO19 (Bittern and Crib Point Township Residential Area), DDO20 (Crib Point Town Centre Residential Area) and DDO23 (Hendersons - Creswell Residential Precinct) because the</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed to retain DDO schedules 1, 19, 20 and 23.</p> <p>However, as previously outlined in the response to Panel Recommendation 4(b), officers recommend that a new schedule (DDO63) be applied in place of DDO1 within the Structure Plan boundaries of the Mornington Major Activity Centre.</p> <p>This change is recommended to reinstate the existing 10-metre height limit (currently found in DDO1) within the centre, on the basis that officers</p>	<p>Accept in part</p> <p>Retain DDO1, DDO19, DDO20 and DDO23 as recommended by the Panel, but replace DDO1</p>

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	<p>provisions of these overlays were being translated directly into proposed new NRZ schedules and/or unnecessary permit triggers and complexities within the schedules were proposed to be deleted, and the amendment also sought to remove building wall height and building height permit triggers.</p> <p>In response to submissions, Council's post-endorsed post-exhibition version of the amendment proposed to retain DDO1, DDO19, DDO20 and DDO23, but amend the schedules to remove unnecessary permit triggers and complexities specifically as follows:</p> <p><u>DDO1:</u></p> <ul style="list-style-type: none"> • Rename the schedule as 'Township Area'. • Reduce the number of design objectives to five. • Provide permit exemptions if all permit requirements are met but only for one dwelling on a lot. • Remove all permit requirements except building height of 6 metres, 10-metre building setback from Nepean Highway with first 5 metres landscaped, and difference between finished and natural ground levels. • Retain the mandatory 2-storey maximum building height requirement but remove the 10-metre maximum building height requirement. • Retain all exemptions to the mandatory maximum building height requirement. • Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement: <ul style="list-style-type: none"> - remove the first condition relating to the existing building height given it is superfluous. 	<p>recommend accepting the Panel's recommendation to retain the GRZ within all Major Activity Centres.</p> <p>Reinstating the 10-metre height limit via proposed new DDO63 is intended to ensure the existing mandatory height control remains in place for the Mornington Major Activity Centre until the merits of this height limit are comprehensively reviewed as part of Council's separate Residential Heights Review project.</p> <p>As explained, if this project ultimately recommends that the 10-metre height limit is no longer required, it (and likely DDO63) can be removed in a subsequent planning scheme amendment process - separate to Amendment C219morn - which would then allow development up to 11 metres under the GRZ provisions.</p> <p>As explained previously, the DDO1 can't be retained in the Mornington Major Activity Centre, because DDO1 applies elsewhere on the Peninsula where the NRZ is proposed. That is, the 10-metre height limit cannot be reinstated in areas where the DDO1 would apply over an NRZ because it would be in conflict with the lower, 9-metre mandatory maximum height of the NRZ.</p>	<p>within the structure plan boundaries of the Mornington Major Activity Centre with proposed DDO63. This is recommended in response to Panel Recommendation 4(b) to retain the existing 10-metre height limit within the centre as part of retaining the GRZ within the centre.</p> <p>Otherwise, retention of DDO1 where it currently applies elsewhere on the Peninsula, as well as DDO19, DDO20 and DDO23 was a change already made as part of Council's endorsed post-exhibition version of the amendment, noting that height triggers for these</p>

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	<ul style="list-style-type: none"> - remove the third condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making. - specify the approval date of 6 May 1999 in the fourth condition for clarity. • Revise the decision guidelines to achieve a better nexus with the objectives and permit requirements. <p><u>DDO19 and DDO20:</u></p> <ul style="list-style-type: none"> • Remove 'Residential' from the schedule name. • Reduce the number of objectives to five. • Remove all permit requirements except building height of 6.5 metres and 1 storey, minimum street setback, difference between finished and natural ground levels, and access to a roof area. • Retain the mandatory 8-metre and 2-storey maximum building height requirement. • Retain all exemptions to the mandatory maximum building height requirement. • Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement: <ul style="list-style-type: none"> - remove the second condition relating to the external bulk of the existing building given it is too subjective and not helpful in decision-making. - specify the approval date of 6 May 1999 in the third condition for clarity. • Retain the mandatory maximum of one dwelling on a lot requirement. 		<p>DDOs (and DDO63) will be reviewed separately as part of Council's Residential Heights Review project.</p>

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	<ul style="list-style-type: none"> • Retain the average subdivision area requirement and allow only land set aside as common property to be included in the calculation of the average area. • Allow land to be transferred to Council as public open space contribution to be exempted from the subdivision requirement. • Reword the realignment exemption to the subdivision requirement to provide for re-subdivision to better reflect the original intention of this exemption. • Include the approval date of 6 May 1999 in the subdivision exemption relating to creating a separate lot for each dwelling where two or more dwellings have lawfully existed on a lot at the approval date. • Include an additional subdivision exemption for the purpose of creating a road, utility installation or other public purpose. • Revise the decision guidelines to achieve a better nexus with the design objectives and permit requirements. • Remove the transitional provisions". <p><u>DDO23:</u></p> <ul style="list-style-type: none"> • Reduce the number of objectives to five. • Remove all permit requirements except building height of 6.5 metres and 1 storey, minimum street setback, difference between finished and natural ground levels, and access to a roof area. • Retain the mandatory 8-metre and 2-storey maximum building height requirement. • Retain all exemptions to the mandatory maximum building height requirement. 		

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	<ul style="list-style-type: none"> • Regarding the 'building alteration or extension' exemption to the mandatory maximum building height requirement, include a second condition to the exemption as follows: <ul style="list-style-type: none"> - The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent. • Retain the mandatory maximum of one dwelling on a lot requirement. • Remove all subdivision provisions. (N.B. The minimum subdivision area of 900 square metres has been moved to the NRZ34.) • Revise the decision guidelines to achieve a better nexus with the design objectives and permit requirements. <p>The Panel supports Council's proposed reinstatement of DDO1, DDO19, DDO20, and DDO23 and the above post-exhibition changes, noting that the retained or reduced building height trigger provisions will enable the review and assessment of building proposals where height might impact the amenity of neighbours, shared views and built form above a tree canopy line. The Panel also acknowledged and supports Council's proposal to review the relevant height triggers and provisions separately as part of Council's separate Residential Heights Review project.</p>		
Planning panel recommendation: 14 - DESIGN AND DEVELOPMENT OVERLAY SCHEDULES (DDOs)			
14.	<p>Amend Design and Development Overlay Schedules 2, 3, 4, 6, 7, 19, 20 and 24 to reinstate the current exemptions to a single dwelling on a lot requirement in 'Number of dwellings' in Table 2.</p> <p>The above DDOs in their current form have a mandatory requirement for no more than one dwelling per lot</p>	<p>Officers recommend accepting this recommendation for the reasons outlined by the Panel, recognising that while removal of existing exemptions was a simplification of otherwise complex controls, this inadvertently changed planning controls that should have been translated on a policy-neutral basis in line with Council's original approach to the amendment.</p>	<p>Accept in full</p> <p>Reinstate exemptions to the 'single dwelling on a lot' mandatory</p>

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	<p>(excluding a dependent persons unit) to achieve stated objectives about ensuring development is site responsive and compatible with the environmental and infrastructure capacities of the area (which include limited access to infrastructure, services and facilities) that are considered inappropriate for higher densities of occupation.</p> <p>The DDOs, however, contain exemptions to this requirement, allowing more than one dwelling provided a range of criteria can be met. These criteria vary between schedules. Importantly, while a second dwelling may be allowed on a lot - the dwelling cannot be subdivided under the DDOs - meaning the second dwelling would remain on the same title as the first, existing dwelling.</p> <p>Amendment C219morn proposes to remove exemptions to the single dwelling requirement in order to simplify what are currently very complex subdivision requirements to just a mandatory single dwelling requirement (translated from existing controls) and an average subdivision area.</p> <p>The Panel observes that the above simplification has the effect of tightening the single dwelling requirement across DDO schedules where there are currently exemptions which it considers unreasonable and therefore recommends that the exemptions be reinstated.</p> <p>The Panel also concluded that the existing mandatory 'single dwelling on a lot' provisions, will likely negatively impact on achieving more diverse housing and constrain supply. The panel therefore concludes that future work on the Mornington Peninsula Housing & Settlement Strategy should comprehensively review the necessity for the mandatory single dwelling on a lot provision.</p>	<p>In light of the Panel's comments about the need to review the necessity of the existing mandatory single dwelling on a lot provisions, officers agree with the Panel's conclusion that this should be done as part of a future review of the Mornington Peninsula Housing & Settlement Strategy (not as part of C219morn). This approach enables a strategic and comprehensive review of the existing provisions and the implications of removing them and enables engagement with the community on any proposed change.</p> <p>Furthermore, given the housing capacity analysis undertaken by SGS on behalf of the Shire demonstrates that Amendment C219morn will deliver a 15-year housing supply and as such there is no shortfall in housing supply, this review is not considered urgent.</p>	<p>requirement in affected DDOs.</p>
<p>Planning panel recommendation: 15 - DESIGN AND DEVELOPMENT OVERLAY SCHEDULES (DDOs)</p>			

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15.	Amend Design and Development Overlay schedules to:		
15.a)	<p>revise the permit trigger threshold so that a permit is not required for a building that does not exceed a height of:</p> <ul style="list-style-type: none"> • 5 metres (Schedules 5, 44, 48) • 6 metres (Schedules 1, 2, 3, 11, 18, 32, 33, 34, 35, 36, 39, 40, 43, 46, 47, 50) • 8 metres (Schedule 7) • 5 metres in specified area and 6 metres elsewhere (Schedules 4, 41) • 6 metres in specified areas and 8 metres elsewhere (Schedule 6) • 6.5 metres and no more than 1 storey (Schedules 19, 20, 23) • 7 metres and no more than 1 storey (Schedule 17) • 8 metres, or 9 metres on a slope of 2.5 per cent (Schedule 24) <p>Council received numerous submissions to the exhibited version of Amendment C219morn which proposed to delete the existing wall and overall building height general requirements (i.e. permit triggers) from DDOs, and instead rely solely on the maximum mandatory height limit set by the DDO schedules or the default height nominated in the underlying zone.</p> <p>In response to submissions, Council’s endorsed post-exhibition version of the amendment proposed to:</p> <ul style="list-style-type: none"> • retain the building height permit triggers in the current DDO schedules, 	<p>Council’s endorsed post-exhibition version of the amendment already proposed to make these changes. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version of the amendment, noting that building height permit triggers will be reviewed separately, as part of Council’s Residential Heights Review project.)</p>

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	<ul style="list-style-type: none"> • reinstate DDO1, DDO19, DDO20 and DDO23 (which were proposed to be deleted in the exhibited version of the amendment), and • revise the design objective and decision guideline relating to the skyline and existing tree canopy line in relevant DDO schedules to provide clearer guidance on the matters to be considered when assessing a proposed development that exceeds the building height permit trigger. <p>The Panel agrees with Council’s post-exhibition changes to the DDO schedules (including reinstating DDO1, DDO19, DDO20 and DDO23 with revisions). It stated that the retained or reduced height trigger provisions will enable the review and assessment of building proposals where height might impact the amenity of neighbours, shared views and built form above a tree canopy line.</p> <p>The Panel acknowledged that Council will be conducting a project to review residential height permit triggers as a separate exercise to Amendment C219morn. Known as the Residential Heights Review, the Panel agreed this project will be an opportunity to fully interrogate the appropriateness of existing heights and permit triggers and that it supports a considered approach to these matters outside Amendment C219morn.</p> <p>The Panel therefore note that it agreed with Council’s planning expert witness at the hearing (Mr Rob Milner), that Council’s post-exhibition revision to the DDO schedules and intended process towards strategically justifying revised height provisions are an appropriate response.</p> <p>The Panel further acknowledged that although Council proposes reinstating height triggers in sensitive areas, it has sought to remove other unnecessary permit triggers. It also</p>		

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	<p>observed that the height provisions are specified clearly in each relevant DDO schedule and provide more transparency for development applications and the community on the height permit trigger and decision guidelines.</p>		
<p>15.b)</p>	<p>rephrase design guidelines which are expressed as a requirement into an assessment guideline</p> <p>The Panel report notes that it invited the Department of Transport and Planning (DTP) to make ‘without prejudice’ comments on drafting matters. Specific to the DDO schedules, DTP submitted that all schedules should be reviewed to improve clarity and remove repetition.</p> <p>The Panel accepted DTP’s suggested drafting comments because they:</p> <ul style="list-style-type: none"> • achieve the requirements of Ministerial Direction 7(5) • align with good practice advice in the A Practitioner’s Guide to Victorian Planning Schemes, Version 1.5, April 2022 • will result in simple, clear and implementable planning provisions. 	<p>Officers have conducted a comprehensive review of the drafting of all proposed DDO schedules against the requirements of the:</p> <ul style="list-style-type: none"> • Ministerial Direction s7(5) - The form and content of planning schemes, and • Practitioner’s guide to Victoria’s planning schemes, version 1.5 (DELWP, April 2022) <p>In doing so, appropriate drafting refinements have been made to schedules to improve clarity and remove repetition. Refinements have also been made to ensure that:</p> <ul style="list-style-type: none"> • Recommendations and requirements from Council’s adopted NCS (and other localised adopted character studies) are appropriately captured and expressed, and • The intent of provisions and controls translated from existing DDO schedules are accurately reflected. <p>The drafting refinements are shown in tracked-changes on affected ordinances with corresponding notations clearly explaining the rationale of each drafting change.</p>	<p>Accept in full</p> <p>Redraft all DDO design guidelines as appropriate.</p>
<p>15.c)</p>	<p>delete a requirement for a section 173 agreement on land in multiple ownership</p> <p>DDO11 (Mt Eliza North of Tower Road Development Design) and DDO18 (Mount Eliza Woodland Area) contain lawfully existing requirements for a section 173 Agreement to address various matters. Council’s exhibited version of Amendment C219morn translated these existing requirements into the proposed revised versions of each DDO.</p>	<p>Officers recommend accepting this Panel recommendation on the basis of findings in Council’s adopted 2018 Planning Scheme Review that have in fact addressed these matters but have not been actioned in a subsequent planning scheme amendment to date.</p> <p>Recommendation R202 from Council’s adopted 2018 Planning Scheme Review 2018 stated that the section 173 Agreement in DDO11 should be removed, noting that in Cameron Manor Pty Ltd v Mornington Peninsula (Red Dot) [2007] VCAT 1822 (5 October 2007), Member Helen Gibson concluded that the head clause does not include a power to specify that a permit must include any conditions in a Schedule to the overlay. Successive planning permit application</p>	<p>Accept in full</p> <p>Delete the requirement for section 173 agreements in DDO11 and DDO18.</p>

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	<p>DDO11 requires a section 173 Agreement for applications relating to subdivision or additional residential development (other than a single dwelling on a lot) for the provision of infrastructure, development contributions (in accordance with the Tower Road Development Contributions Report), traffic measures, open space contributions, and contributions for environmental improvements in the area. Under DDO18, a section 173 Agreement is required to prevent the subdivision of land where more than one dwelling is permitted under strict conditions.</p> <p>The Panel concluded that a DDO schedule should not include a requirement for a section 173 agreement on land with multiple owners seeking development contributions because:</p> <ul style="list-style-type: none"> • this is inconsistent with the DDO purpose • there is no head of power in the DDO to enable such a requirement • the Development Contributions Plan Overlay should be used for development contributions because: <ul style="list-style-type: none"> - the <i>Planning and Environment Act 1987</i> recognises the process leading to the provisions specified in the overlay - it is a proven and appropriate tool for fairly and transparently implementing development contributions across land in multiple ownership”. 	<p>decisions by the Shire have acknowledged this decision, and also accept that the landscape design guidelines and net gain response to native vegetation can be managed via standard planning permit conditions.</p> <p>The 2018 Planning Scheme Review also commented that the requirement for a section 173 Agreement in DDO18 to prevent subdivision of 2,600sqm sized lots with two dwellings is redundant because the DDO already states that the minimum size of any lot within a subdivision is 2,600sqm, which already prohibits these smaller multi dwelling lots from subdivision. The 2018 Planning Scheme Review recommended that if the subdivision exemption allowing two dwellings to be developed on a lot greater than 2,600sqm is retained (which it is under Amendment C219morn), then the Section 173 Agreement should be removed from the requirements.</p>	
<p>15.d)</p>	<p>revise wording in Clause 2.0 to be consistent with the order of Clauses 54 and 55</p> <p>During the ‘without prejudice’ drafting exercise held during the Panel hearing, the DTP submitted that Council should revise the order of minimum street setbacks to be listed</p>	<p>Officers recommend accepting this recommendation in full, based on ‘without prejudice’ drafting submissions to this effect made by Council’s delegate during the Panel hearing.</p>	<p>Accept in full</p> <p>Revise Clause 2.0 to be consistent with the order of Clause 54 and 55</p>

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	<p>consistent with the order of Clauses 54 and 55 in Clause 2.0 (Buildings and works).</p> <p>Council's delegates accepted this change, providing the below tracked change example of DDO17 and accepting that all DDO schedules should be revised to align with this revised drafting.</p> <p>Minimum street setback</p> <p>If the site is not on a corner, walls of buildings should be set back from the front street at least:</p> <ul style="list-style-type: none"> • 7.5 metres, if there is no existing building on any abutting allotment facing the front street. • the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 7.5 metres, whichever is the greater, if only one abutting allotment facing the front street has an existing building. • the average distance as the setbacks of the front walls of the existing buildings on both abutting allotments facing the front street or 7.5 metres, whichever is the greater, if both abutting allotments facing the front street have an existing building. • the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 7.5 metres, whichever is the greater, if only one abutting allotment facing the front street has an existing building. • 7.5 metres, if there is no existing building on any abutting allotment facing the front street. <p>If the site is on a corner, walls of buildings should be set back from a side street at least 3 metres.</p> <p>The Panel supports these changes.</p>		<p>in relevant DDO schedules.</p>
<p>15.e)</p>	<p>revise the fencing decision guideline in Schedule 38 to "Whether the design of fencing maintains the sense of openness to the streetscape"</p> <p>In response to submissions, Council's post-exhibition version of the amendment proposed to revise the decision guidelines relating to fencing in the relevant NRZ and DDO schedules as follows:</p> <ul style="list-style-type: none"> • Whether the choice design of fencing maintains the sense of openness to the streetscape. 	<p>Officers recommend accepting this recommendation in part as follows.</p> <p>Firstly, it is noted that this decision guideline is included in most NRZ, GRZ and DDO schedules, not just the DDO38.</p> <p>Having reviewed the Panel's recommendation and reconsidered the issue, officers recommend amending the Decision guideline across the relevant NRZ, GRZ and DDO schedules to generally be:</p> <p style="padding-left: 40px;">"Whether the height and permeability of fencing allows views to dwellings and front gardens".</p> <p>This guideline is more explicit in intent, noting that the height and permeability are the specific design aspects that affect whether a front fence 'maintains the</p>	<p>Accept in part</p> <p>Amend the fencing decision guideline in relevant DDO, NRZ and GRZ schedules to generally state: "Whether the height and permeability of</p>

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	<p>During the 'without prejudice' drafting exercise held during the hearing, the DTP submitted that the decision guidelines of DDO38 can't dictate the design of fencing, and that guidance about fencing design should instead be considered as a requirement under section 2.0 (Buildings and works).</p> <p>The Panel accepts the DTP's suggested drafting comments because they:</p> <ul style="list-style-type: none"> • achieve the requirements of Ministerial Direction 7(5) • they align with good practice advice in the A Practitioner's Guide to Victorian Planning Schemes, Version 1.5, April 2022 • will result in simple, clear and implementable planning provisions. 	<p>sense of openness to the streetscape'. This proposed revised decision guideline also has a clearer nexus with the design objectives which generally seeks:</p> <p style="padding-left: 40px;">"To maintain the openness of the streetscape with no or low and permeable front fences".</p> <p>The proposed drafting of this decision guideline, however, may vary in the various NRZ, GRZ and DDO schedules, depending on any related nuances from underlying neighbourhood character studies or existing DDO schedules.</p> <p>Officers recommend this approach because it:</p> <ul style="list-style-type: none"> • It is consistent with section 6.5.11 of the Practitioner's Guide (which states that "decision guidelines should relate to the schedule objectives that they serve..."). • Removes any ambiguity about which 'design' elements of a fence should be assessed during the decision-making process (i.e. height and permeability) to satisfy the objective. 	<p><i>fencing allows views to dwellings and front gardens'. [emphasis added]</i></p>
<p>15.f)</p>	<p>add, in schedules which specify maximum building heights:</p> <p><i>A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.</i></p> <p>The Panel notes that the NRZ and GRZ parent provisions enable a building to exceed the maximum height (11 metres in the GRZ and 9 metres in the NRZ) by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.</p> <p>It therefore states that, to support an appropriately designed 2 storey building of up to 8 metres on a sloping property,</p>	<p>While officers accept the logic of this recommendation, officers do not support accepting this recommendation for the following reasons.</p> <p>DDO24 (which applies to the Beleura Hill, Mornington area), currently allows a similar building height exemption for sloping land to the one recommended by the Panel which was translated from existing DDO provisions. However, no other DDO's include such an exemption, nor are any proposed to include such an exemption under Amendment C219morn.</p> <p>Officers recommend that the merits of including a sloping land exemption be interrogated as part of Council's separate Residential Heights Review Project.</p> <p>As acknowledged by the Panel, the purpose of this project (which Council resolved to undertake as part of its 24 October 2022 post-exhibition resolution) is to review existing residential building height planning controls within DDOs (which are lower than the maximum building heights specified in zones) to strategically justify and ground truth the application of existing height controls, and determine whether they ought to be retained, removed or refined based on contemporary landscape assessments.</p>	<p>Reject</p> <p>No action required. (Do not include a 1 metre building height exemption in DDOs for sloping land, other than where it already exists in DDO24. Instead, interrogate the appropriateness of such an exemption as part of Council's Residential Heights Review Project.)</p>

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	this flexibility should be replicated in any DDO schedule which specifies a maximum building height.	The overall aim of the project is to ensure that future residential built form protects the distinctive and significant landscapes of the Mornington Peninsula while appropriately managing reasonable view-sharing to valued landscapes and waterbodies. Officers note that, in accepting other proposed changes from Council about building height (such as retaining existing building height triggers), the Panel agrees that the Residential Heights Review project 'is the appropriate process to examine residential heights and height permit triggers' and 'should fully interrogate the appropriateness of heights, particularly those which are more restrictive than the default height specified in a residential zone'. Therefore, officers consider that including a building height trigger in DDOs for sloping land as part of Amendment C219morn is premature and should instead be considered alongside other potential changes to height control, separately as part of the Residential Heights Review Project.	
Planning panel recommendation: 16 - DESIGN AND DEVELOPMENT OVERLAY SCHEDULES (DDOs)			
16.	Amend Design and Development Overlay schedules to:		
16.a)	<p>revise Table 2 in Schedules 1, 2, 3, 4, 5, 6, 12,18, 19, 20, 23, 24, 32, 33, 34, 35,36, 39, 40, 41, 43, 44, 46, 47, 48 and 50 to introduce the following building height requirement exemptions:</p> <ul style="list-style-type: none"> alteration to or extension of a lawfully existing building but only if all of the following requirements are met: The maximum building height of the existing building is not exceeded. The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent. <p>In response to submissions, Council's endorsed post-exhibition version of the amendment proposed to retain the</p>	Council's endorsed post-exhibition version of the amendment already proposed these changes in response to submissions. No further action is required.	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>

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	<p>existing 'building alteration or extension' exemption to the mandatory maximum building height requirement where it currently applies, but amend the exemption as follows:</p> <ul style="list-style-type: none"> • <i>Alteration to or extension of a lawfully existing building but only if all of the following requirements are met:</i> <ul style="list-style-type: none"> ◦ <i>The existing building has a building height of more than 8 metres or contains 3 or more storeys above natural ground level.</i> ◦ <i>The maximum building height of the existing building is not exceeded.</i> ◦ <i>The external bulk of the existing building is not significantly increased.</i> ◦ <i>The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.</i> <p>These changes were proposed on the basis that minor buildings and works on the upper level of existing lawfully constructed buildings should be permissible. However, the first condition relating to the existing building height is superfluous and should be deleted given the exemption already only applies to a building with an existing height that exceeds the mandatory building height requirement.</p> <p>The third condition relating to the external bulk of the existing building should be deleted given it is too subjective and not helpful in decision-making.</p> <p>Also, specifying the approval date of 6 May 1999 in the fourth condition would provide clarity that the date refers to when the planning scheme first came into effect.</p> <p>The Panel agreed that exempting minor extensions and alterations from the height provisions in circumstances where the existing building height would not exceed the</p>		

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	<p>maximum height would result in a reasonable outcome, and that existing buildings that exceed the maximum height control should be permitted to make alterations or extensions without raising concerns about non-conforming development.</p> <p>The Panel stated that it supported Council's response to submissions to retain the existing exemptions in the DDO schedules, because the exemption will provide flexibility where non-compliance is an issue and will enable minor extensions or alterations to be undertaken to existing dwellings that meet height limits without the need to obtain a permit. The Panel stated that this is appropriate and justified and will reduce the number of permit applications without compromising character objectives.</p> <p>The Panel also agreed that it is appropriate to reference the Planning Scheme's approval and operation date of 6 May 1999 because it clarifies which future alterations and extensions are exempt from the specified provisions.</p>		
16.b)	<p>revise Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 32 and 33 under 'This does not apply to' in Clause 3.0 (Subdivision) to:</p> <ul style="list-style-type: none"> • delete "land set aside as common property" • add as a new point "a re-subdivision of existing lots provided the number of lots is not increased and no additional subdivision potential is created" <p>In response to submissions and to correct clerical errors, Council's endorsed post-exhibition version of the amendment resolved to delete the subdivision exemption 'land set aside as common property' because such land is not considered a separate lot when assessing subdivision applications.</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed these changes in response to submissions and to correct clerical errors. No further action is required</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>

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	<p>Council also endorsed a change to reword the realignment exemption to the subdivision requirement to provide for re-subdivision of existing lots, provided the number of lots is not increased and no additional subdivision potential is created. This change is designed to better reflect the original intention of the exemption.</p> <p>The Panel supports these changes.</p>		
<p>16.c)</p>	<p>apply the subdivision area in Clause 3.0 (Subdivision) of Schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32 as an average rather than a minimum, through the following provision:</p> <p><i>The average area of the lots created by the subdivision must be at least [number] metres. Land set aside as common property may be included in the calculation of the average area of the lots created by the subdivision</i></p> <p>The exhibited version of Amendment C219morn sought to change a range of subdivision lot size requirements in DDOs from an average lot size to a specified minimum lot size for areas zoned LDRZ and proposed to be rezoned from GRZ to NRZ.</p> <p>Submitters objected to this proposed change on the basis that average lot sizes provide more flexibility to cater for site-specific constraints such as irregular lot shapes, vegetation and slopes.</p> <p>In response to submissions, Council’s endorsed post-exhibition version of the amendment proposed to retain the average subdivision area requirement in DDOs where it currently applies in areas proposed to be rezoned to the NRZ, recognising that an average subdivision requirement allows greater flexibility for relatively smaller sites with</p>	<p>Council’s endorsed post-exhibition version of the amendment already proposed this change in response to submissions. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version of the amendment.)</p>

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	<p>specific constraints such as vegetation, existing buildings, and topography.</p> <p>In doing so, Council endorsed deleting the minimum subdivision area requirement from the new NRZ23- NRZ27 and NRZ29-NRZ33, and in general, retain the average subdivision area requirement in DDO schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32.</p> <p>The Panel noted it agrees with Council’s planning expert witness (Mr Rob Milner) and submissions that a lot size averaging provision instead of a minimum will support site responsive subdivision. The Panel noted that flexibility to set boundaries and areas for building envelopes supports development to better avoid sky and ridge lines, and vegetation aligns with Council’s broader objectives around neighbourhood character and development that is sensitive to its surroundings. Therefore, the Panel concludes that it is appropriate to apply average lot size subdivision area requirements in DDO schedules 2, 3, 6, 7, 11, 17, 19, 20, 24 and 32.</p> <p>(It is noted that Council endorsed retaining minimum subdivision lot sizes for LDRZ areas on the basis that larger sites are unlikely to be subject to the above constraints. None of the above DDO schedules applied to the LRDZ areas).</p>		
16.d)	<p>retain the current building height exemption for the Ellerina Road area (bounded by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street) in Schedules 2, 3 and 4</p>	<p>Council’s endorsed post-exhibition version of the amendment already proposed this change in response to submissions. No further action is required.</p>	<p>Accept in full No further action required. (This change was already made as part of Council’s endorsed post-</p>

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	<p>DDO schedules 2 - 4 currently contain the following exemption to the maximum mandatory 8 metre building height requirement:</p> <p style="padding-left: 40px;">"A building in the area located to the north of a boundary defined by Ellerina Road West, Bruce Road, the Nepean Highway, Mornington-Flinders Road, Bittern- Dromana Road and Disney Street but only if the building is 2 storeys or less above natural ground level".</p> <p>This exemption is known as the 'Ellerina Road' exemption. Under the exemption, building height in these locations defaults to the maximum building height allowed in the underlying zone, which is 11 metres in the GRZ.</p> <p>The exhibited version of Amendment C219morn sought to delete this exemption while rezoning land to the NRZ, meaning that building height would have been limited to 8 metres and 2 storeys - a reduction of 3 metres in height.</p> <p>In response to submissions, Council's endorsed post-exhibition version of the amendment agreed to reinstate the exemption, but re-draft the boundary with accurate references to existing roads as follows:</p> <p style="padding-left: 40px;"><i>"A building in the area located to the north of a boundary defined by Ellerina Road, Potts Lane, Bruce Road, the Nepean Highway, White Hill Road, Dunns Creek Road, Bittern-Dromana Road, Frankston-Flinders Road and Disney Street but only if the building is 2 storeys or less above natural ground level."</i></p> <p>Council resolved to reinstate the exemption, noting that any concerns about building height impacts in the affected area (that might result from keeping the exemption) would be mitigated through the proposed change in zoning from GRZ to NRZ. That is, the overall mandatory maximum building</p>		<p>exhibition version of the amendment, noting that the 'Ellerina Road' exemption will be reviewed separately, as part of Council's Residential Heights Review project.)</p>

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	<p>height in the area will reduce from 11 metres (GRZ) to 9 metres (NRZ).</p> <p>The Panel supports this change, noting Council’s submission that it will be conducting a project to review residential height permit triggers as a separate exercise to Amendment C219morn - including the Ellerina Road exemption.</p> <p>Known as the Residential Heights Review, the Panel agreed this project will be an opportunity to fully interrogate the appropriateness of existing heights and permit triggers and that it supports a considered approach to these matters outside Amendment C219morn.</p> <p>The Panel therefore noted that it agreed with Council’s planning expert witness at the hearing (Mr Rob Milner), that Council’s post-exhibition revision to the DDO schedules and intended process towards strategically justifying revised height provisions are an appropriate response.</p> <p>The Panel further acknowledged that although Council proposes reinstating height triggers in sensitive areas, it has sought to remove other unnecessary permit triggers. It also observed that the height provisions are specified clearly in each relevant DDO schedule and provide more transparency for development applications and the community on the height permit trigger and decision guidelines.</p>		
<p>16.e)</p>	<p>revise the relevant requirement in Clause 3.0 (Subdivision) in Schedules 2, 3, 4, 5, 6, 7, 11, 17, 19, 20, 24, 32, 33 to reference 6 May 1999 as follows:</p> <ul style="list-style-type: none"> <i>two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling</i> 	<p>Council’s endorsed post-exhibition version of the amendment already proposed this change in response to submissions. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council’s endorsed post-exhibition version</p>

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	<p>The above exemption already exists within the Planning Scheme and is proposed to be translated into new and modified DDOs under Amendment C219morn.</p> <p>The Panel report acknowledges that Council's endorsed post-exhibition version of the amendment proposed to reference 6 May 1999 in DDO schedules as follows:</p> <p><i>A permit to subdivide land must meet the following requirements:</i></p> <ul style="list-style-type: none"> <i>two or more dwellings that have lawfully existed on a lot at the approval date of 6 May 1999 and the subdivision proposes to create a separate lot for each dwelling.</i> <p>The Panel agrees that it is appropriate to reference the Planning Scheme's approval and operation date of 6 May 1999 because it clarifies which future subdivisions are exempt from the specified provisions.</p>		<p>of the amendment.)</p>
<p>16.f)</p>	<p>revise the relevant requirement in Table 2 of Schedules 1, 2, 4, 4, 5, 6, 17, 18, 19, 20, 23, 24, 32, 33, 35, 36, 39, 40, 41, 43, 44, 46, 48 and 50 to reference 6 May 1999 as:</p> <ul style="list-style-type: none"> <i>The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent.</i> <p>The above exemption already exists within the Planning Scheme and is proposed to be translated into new and modified DDOs under Amendment C219morn.</p> <p>The Panel report acknowledges that Council's endorsed post-exhibition version of the amendment proposed to reference 6 May 1999 in DDO schedules as follows:</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed this change in response to submissions. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>

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	<p><i>"A building must not exceed a height of 8 metres and must not contain more than 2 storeys. This does not apply to:</i></p> <ul style="list-style-type: none"> <i>• alteration to or extension of a lawfully existing building but only if all of the following requirements are met:</i> <i>- The footprint of the upper storey, existing at the approval date of 6 May 1999, is not increased by more than 10 per cent".</i> <p>The Panel agrees that it is appropriate to reference the Planning Scheme's approval and operation date because it clarifies which future alterations and extensions are exempt from the specified provisions.</p>		
Planning panel recommendation: 17 - CLAUSE 74.01			
17.	Amend the Clause 74.01 Schedule:		
17.a)	<p>add <i>"The Design and Development Overlay to residential land adjacent to foreshore reserves to ensure a consistent approach to building heights and setbacks on land near the coast."</i></p> <p>Recognising that this was part of Council's post-exhibition version of the amendment, the Panel concluded that adding a new statement in the Clause 74.01 Schedule will create transparency in Council's approach to applying the DDO to residential land next to foreshore reserves to ensure a consistent approach to building heights and setbacks near the coast.</p>	<p>Council's endorsed post-exhibition version of the amendment already proposed this change in response to submissions. No further action is required.</p>	<p>Accept in full</p> <p>No further action required.</p> <p>(This change was already made as part of Council's endorsed post-exhibition version of the amendment.)</p>
17.b)	<p>delete <i>"Apply the"</i> from the beginning of each statement.</p> <p>Clause 1.0 of the Schedule to Clause 74.01 (Application of Zones, Overlays and Provisions) currently states:</p>	<p>Officers accept this drafting change for the reasons explained by the Panel.</p>	<p>Accept in full</p> <p>Delete <i>"Apply the"</i> from the beginning of each statement</p>

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	<p><i>This planning scheme applies the following zones, overlays and provisions to implement the Municipal Planning Strategy and the objectives and strategies in Clauses 11 to 19:</i></p> <ul style="list-style-type: none"> <i>Apply the Low Density Residential Zone to appropriate areas to provide low-density and rural residential lots.</i> <p>The Panel recommends that the words "Apply the" should be deleted from the existing and proposed statement because it is unnecessary (i.e. already referenced in the parent statement) and would bring drafting of the Mornington Peninsula Planning Scheme in line with other planning schemes.</p>		<p>in Clause 1.0 of the Schedule to Clause 74.01 (Application of Zones, Overlays and Provisions).</p>
<p>Planning panel recommendation: 18 - FURTHER RECOMMENDATIONS The Planning panel makes the following further recommendations:</p>			
<p>18.</p>	<p>After adopting the Amendment, and separate to the Amendment, Council should review the Low Density Residential Zone areas as a matter of priority, to assess and identify areas that could accommodate an increase in development density without materially impacting amenity or the environment.</p> <p>The Panel notes that while the 11 LDRZ schedules are supported at this time, the Panel considers it is important that Council comprehensively and critically review the LDRZ areas, including the new schedule provisions, in the short term. The Panel recommended this occur separately to avoid delaying the amendment.</p> <p>The Panel noted that it shares concerns outlined in the amendment's authorisation letter which strongly encouraged Council to undertake a strategic review of the LDRZ areas within the municipality because there does not appear to be any clear reason as to why certain properties have larger</p>	<p>Officers recommend accepting this Panel recommendation in part. While officers accept that a review of LDRZ areas is warranted, the housing capacity analysis undertaken by SGS on behalf of the Shire demonstrates that there is no shortfall in housing supply under Amendment C219morn, as the amendment is expected to deliver a 15-year supply with excess capacity for an additional 14,233 dwellings. Therefore, a review of LDRZ areas for potential increase in supply can be undertaken as part of a future review of Council's adopted HSS Refresh, within the next 5 years.</p> <p>It is noted that Council's adopted HSS Refresh nominates a number of existing privately owned LDRZ sites as 'investigation areas', which are areas that require further investigation for potential additional housing and associated rezoning. Two of the nominated 'investigation areas' are currently the subject of combined planning scheme amendment and subdivision application requests to deliver multi-lot infill housing. Combined, these rezonings would provide more than 500 new dwellings:</p>	<p>Accept in part</p> <p>Agree to review LDRZ areas for the potential to accommodate more housing density as part of a future review of Council's HSS Refresh, noting that Amendment C219 is expected to deliver a 15-year housing supply with excess capacity.</p>

Amendment C219morn - Officer Response to Planning Panel recommendations

Index	Panel recommendation	Officer response	Recommendation
	<p>minimum lot sizes than others, and a review of these areas could simplify the application of the LDRZ schedules across the municipality.</p> <p>The Panel stated that there are many LDRZ areas that could accommodate appropriate and sympathetic development at a higher density than the current subdivision provisions allow. Advancing this outcome through a comprehensive LDRZ review could assist Council in addressing its likely shortfall in housing supply.</p> <p>The Panel recommended that Council should prioritise this review to help reduce pressure to rezone Green Wedge Land or intensify development in established general residential areas. It said the review should critically assess all LDRZ areas in the municipality, including properties subject to the submissions.</p>	<ol style="list-style-type: none"> 1. Land at 2, 4, 5, 6,7, 8 and 10 Woodbyne Crescent and 1, 2, 3 and 4 Albany Way, Mornington (Amendment C247morn and Planning Permits P21/3339 and P22/0292), and 2. Land at 170 Boundary Road and 62 Collins Road, Dromana (Amendment C249morn and Planning Permit P20/2355) 	

Mornington Peninsula Housing Capacity Analysis 2024

Mornington Peninsula Shire

18 | 06 | 2024





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Glossary

Term	Definition
Zoned residential land	Refers to total land where residential development is permitted, excluding public realm areas (e.g. roads and footpaths) that cannot be development for residential purposes. It includes land that is zoned Commercial 1, Mixed Use and selected Public Use Zone (PUZ).
Available land	Refers to the subset of net land areas after land that is considered constrained (or 'unavailable') for new residential development within the planning horizon under consideration. Non-developable areas are determined using a defined set of assumptions (including lot size, recently development, etc.).
Lots	Parcels of land. May have no dwellings (i.e. vacant or non-residential uses), one dwelling or multiple dwellings (i.e. apartments).
Net dwelling capacity	Total capacity for dwelling <i>minus</i> the existing dwelling/s on available land.
Dwelling density assumptions	Refers to density assumptions derived from planning controls and/or past development trends that are used to estimate dwelling capacity.

Executive summary

Overview

This report provides estimates of housing capacity in the Mornington Peninsula Shire (the Shire) based on the existing planning scheme controls and the controls proposed by Amendment C219morn. It also considers the issue of 'take up' of housing capacity by comparing forecast housing demand to housing capacity by submarkets, dwelling types across the 15 year planning horizon.

Background

Planning Scheme Amendment C219morn implements Council's Housing and Settlement Strategy Refresh 2020-2036 (the HSS) and Neighbourhood Character Study and Guidelines (the NCSG). The amendment proposes changes to the zones, overlays and policies to the Shire's residential areas.

Council completed a housing capacity analysis in March 2019. In late 2022 SGS was commissioned to undertake a peer review of this capacity work. The SGS peer review applied more conservative assumptions to Council's capacity analysis findings and suggested that a more conservative capacity estimate of 26,921 dwellings (vs Council's estimate of 52,895 dwellings). The Panel's report on C219morn was published in May 2023 and recommended Council "reassess its dwelling capacity to determine a more accurate estimated figure" assessing "the potential impact of the provisions proposed by the Amendment ... because the Amendment proposes more focussed neighbourhood character objectives combined with more restrictive provisions" and to give consideration to "at least one, if not a few different likely take up figures, to differentiate between potential housing capacity and likely housing supply".

Amendment C219morn

The current planning scheme in the Shire applies a largely consistent zoning of urban residential land General Residential Zone (GRZ) however there is a considerable diversity of controls in practice, achieved via the application of other design provisions through Design and Development Overlays (DDOs). This represents the prevailing approach to scheme design prior to the new residential zones (i.e. pre-2013), where local policy and overlays were used to particularise and moderate development outcomes. Amendment C219morn seeks to apply the Neighbourhood Residential Zone (NRZ) to substantial areas where the GRZ currently applies, recognising them as minimal or incremental change areas and unlikely to accommodate three-storey development.

The use of the NRZ reflects changes to the design of zones, and current guidance about how they should be applied, that emphasises the GRZ as the appropriate zone where widespread three-storey development is anticipated or desired. The GRZ no longer aligns with expectations for many areas in which it is currently applied. The use of the NRZ reflects a better alignment of zone settings with expected outcomes.

Housing capacity

The estimated housing capacity under the current controls is 25,397 net additional dwellings. The estimated capacity under amendment C219morn (post exhibition version as taken to Panel) is 25,183 net additional dwellings. In practical terms, there is little to distinguish between the capacity under current controls and the C219morn controls. These estimates are lower than Council's initial capacity estimate

from the 2019 but are similar to the adjusted capacity estimate from SGS's 2023 peer review of Council capacity assessment.

Both capacity estimates described in this report are based on minimum lots size assumptions found in zone and overlay controls (existing and C219morn). For NRZ and GRZ areas without explicit minimum lot size subdivision controls in zone or overlay controls, a minimum lot size assumption of 400 sqm per dwelling was applied. This is a likely to be a conservative assumption in that previous analysis of 412 permitted planning applications under current controls in these areas suggested an *average* lot size was 366 sqm. Another sample of 10 recently approved multi-dwelling developments found an average lot size of 260 sqm (with a range 180 sqm to 294 sqm).

TABLE 1: CAPACITY ANALYSES COMPARED

Capacity assessment	Council's estimate (2019)	Peer review estimate (SGS, 2023, based on Council's 2019 estimate)	Current controls (SGS, 2024)	C219morn post-exhibition controls (SGS, 2024)
Activity Centres (C1Z, MUZ, PU6Z)	11,360	5,680	7,380	7,380
GRZ/NRZ (w/o lot size controls)	32,658	13,985	11,071	10,983
GRZ/NRZ (with min. lot size controls)	7,072	7,072	6,444	6,153
LDRZ/SUZ	1,685	1,685	502	667
Adjustment in Council's capacity analysis	120			
Total capacity (2019)	52,895	28,422	(na)	(na)
Total capacity (2021)	(na)	26,921*	(na)	(na)
Total capacity (2023)	(na)	(na)	25,397	25,183

*Based on estimated take up for capacity of 1,621 dwellings in 2019 and 2020.

Take-up analysis

Historically, on average around 1000 net additional dwellings have been added in the Shire each year between 2011 and 2021. In December 2023 new government official dwelling growth forecasts (Victoria in Future or VIF) were released and forecast demand for 730 dwellings per year for the 15 years between 2021 and 2036. This represents a significant change from the 2019 VIF forecasts of 1,178 dwellings per year that was consider at the Planning Panels. Evidently, the most recent demand forecast demand is well below the recent rate of supply.

It is difficult to predict the future realisation of dwelling stock based on housing capacity. The extent to which theoretical housing capacity is linked to housing supply is highly contested. Notwithstanding this context the question of 'take up' of housing capacity has been explored in three different ways: by comparing demand and capacity by housing submarket (i.e. broad geographic areas); by comparing demand and capacity by dwelling type (i.e. apartment, medium density and lower density); and by an analysis of the ratio of housing demand to capacity over time (i.e. demand vs capacity year-on-year). All three analyses suggest that C219morn provides considerable capacity in excess of demand for the next 15 years.

Further considerations

The total housing capacity estimated is likely to be conservative for a number of reasons:

- There is evidence to suggest higher densities (i.e. lower lots sizes) can be accommodated in areas without explicit subdivision controls than implied by the 400 sqm minimum lot size benchmark applied in this analysis.
- The proposed amendments to the “ResCode standards” in C219morn are not mandatory controls and can be varied based on individual site constraints and the development of an appropriate design response.
- This capacity analysis has not considered recent planning changes related to Victoria’s Housing Statement that will increase capacity: small secondary dwellings (SSDs) on lots of over 300 sqm without a planning permit; the expansion of the Future Homes program.

Summary

The Planning Panel’s report on Amendment C219morn recommended Council “demonstrate it can provide at least 15 years housing supply by determining the likely take-up of capacity”.

This report provides evidence there will be sufficient capacity to accommodate 15 years of supply in the Shire finding that:

- The 2023 VIF forecasts indicate the Shire will accommodate 730 dwellings per annum between 2021 and 2036. This figure is lower than the average for the period 2011 to 2021 or around 1000 dwellings per year (and 40% fewer dwellings than the 2019 forecast that was considered during the panel hearing).
- Amendment C219 would deliver a capacity of about 25,183 net additional dwellings, 43.5% of which is required to provide for the 15 year demand forecast, leaving additional capacity for 14,233 dwellings.
- Three different approaches to considering the likely take up of capacity (housing submarkets, dwelling types and ratio of demand to capacity over time) all suggest C219morn will provide capacity that broadly aligns with the locational preference and dwelling type preferences of households in the future.

1. Introduction

1.1 Background

Planning Scheme Amendment C219morn implements a series of strategic documents: the Housing and Settlement Strategy Refresh 2020-2036 (Mornington Peninsula Shire, 2020) (the HSS) and Neighbourhood Character Study and Guidelines (Ethos Urban, 2019) (the NCSG). The amendment proposes changes to the zones, overlays and policies to the Shire's residential areas (i.e. areas that are currently zoned residential GRZ or LDRZ and/or covered by Schedules 1 to 7, 11, 17 to 20, and 22 to 24 of the DDO).

Council completed a housing capacity analysis in March 2019. In late 2022 SGS was commissioned to undertake a peer review of this work. The peer review was presented at the C219morn panel hearing in February 2023. Council's capacity analysis suggested capacity for 52,895 dwellings. The SGS peer review applied more conservative assumptions to Council's capacity analysis findings and suggested that a more conservative estimate of capacity of 26,921 dwellings.

The 2019 Victoria in the Future forecasts indicated that the Shire might accommodate an additional 17,750 dwellings between 2021 and 2036. To accommodate this forecast demand for additional dwellings would require 34% of housing capacity (Council capacity estimate) or 66% of housing capacity (SGS revised capacity estimate).

The Panel's report was published in May 2023 and recommended Council "reassess its dwelling capacity to determine a more accurate estimated figure" assessing "the potential impact of the provisions proposed by the Amendment ... because the Amendment proposes more focussed neighbourhood character objectives combined with more restrictive provisions" and to give consideration to "at least one, if not a few different likely take up figures, to differentiate between potential housing capacity and likely housing supply".

1.2 This report

This report provides an assessment of housing capacity based on the existing planning scheme and the controls proposed by the post-exhibition version of Amendment C219morn.¹ It also considers the issue of 'take up' by comparing housing demand to housing capacity by housing submarkets within the Shire, by dwelling type and analysis of demand and capacity over time.

It is structured as follows:

- The next chapter discusses the planning context
- Chapter 3 provides results of the capacity analysis
- Chapter 4 the question of take-up is explored in three ways: by housing submarkets, by dwelling types, and ratio of demand to capacity over time. This chapter also includes the latest VIF forecasts for the Mornington Peninsula.
- The appendices contain supporting information.

¹ All references to Amendment C219morn in this report refer to the post-exhibition version of the Amendment sent to Panel.

2. Planning context

2.1 Existing controls and scheme settings

The overwhelming majority of existing residential urban land within the Shire is currently zoned General Residential Zone (GRZ), carrying forward the largely singular zoning used in most metropolitan areas prior to the 2013 revisions to the residential zones. Only two schedules to the GRZ have been applied, and neither alters the default settings of the zone.

The Neighbourhood Residential Zone (NRZ) has been applied only to a single precinct in Crib Point, and the Residential Growth Zone (RGZ) has not been applied at all. The Township Zone (TZ) is also not used, with the Shire's small townships using the GRZ for their residential precincts. The Commercial 1 Zone (C1Z) is applied within the activity centres. There are small areas of Mixed Use Zone (MUZ), typically close to commercial centres, but these represent a very small amount of the total residentially-zoned land. Some PUZ6 land in major activity centres has been identified as suitable for mixed use development within the relevant structure plans.

Outside of townships there are also some substantial areas of Low Density Residential (LDRZ) land, most notably on the fringes of Mornington, Somerville, Tyabb, Hastings, and Bittern/Crib Point, and some SUZ4 zoned land inside the UBG.

Despite this largely consistent zoning of urban residential land, considerable diversity of controls is in practice achieved via the application of other design provisions through Design and Development Overlays (DDOs). This represents the prevailing approach to scheme design prior to the new residential zones, where local policy and overlays were used to particularise and moderate development outcomes for particular precincts (rather than zone schedules as has been encouraged after 2013). Indeed, many of the DDOs have their origins in development controls that preceded the new format planning scheme's gazettal in May 1999. The lineage of these controls is also likely the reason that council has not applied the Neighbourhood Character Overlay (NCO) (a tool introduced in August 2001).

While these DDOs include a variety of design controls, it is noted that many include minimum subdivision lot size restrictions that require lots notably above typical lot sizes that would apply under a default GRZ. These lot sizes are large enough that generally they are considered likely to be the key yield constraint applied by these DDOs.

The DDOs – and to a degree, other provisions such as the Vegetation Protection Overlay (VPO) – reflect various contextual factors that are considered development constraints even using a first-principles assessment without the overlay. In particular, many of the lots in the Shire exhibit contextual or character traits with one or more of the following qualities:

- Existing large lot sizes
- Extensive vegetation (which warrants protection for character, habitat, and cooling qualities)
- Distinct character traits, with much of the municipality having coastal/holiday township, semirural and/or bush-suburban character
- Landscape factors (for example significant skylines)
- Design imperatives such as view sharing.

While the DDOs – and their minimum lot sizes especially – doubtless currently limit yields in these areas, the above factors alone would moderate development outcomes compared to a typical metropolitan suburban outcome.

The effect of this is that while the scheme currently makes extensive use of the GRZ, which under current guidance (Planning Practice Note 91: Using the Residential Zones) is used for incremental and substantial change, in practice the planning outcomes for areas with a combination of the GRZ and a DDO has been moderated and has reflected varying degrees of minimal or incremental growth.

It should also be noted that the current guidance about the application of the GRZ frames the zone as a more intense zone than it was at the time the zone was first applied. For example, the current Planning Practice Note 91, July 2023, states as follows about the GRZ (at page 3):

The General Residential Zone should be applied to areas where housing development of three storeys exists or is planned for. It is inappropriate to apply the General Residential Zone to areas where a planning authority seeks to respect the existing single and double storey character of an area.

This can be contrasted with the guidance when the General Residential Zone was introduced (Practice Note 78: Applying the Residential Zones, July 2013, page 2) that described it as for:

A mixture of single dwellings, dual occupancies with some villa units and in limited circumstances town houses, where appropriate.

The shire's areas of GRZ certainly do not currently exhibit notable areas of three storey form and this is not considered to be an outcome suggested by current built form controls. They are much closer – especially where DDOs are applied – to the conception of the zone at its introduction in 2013.

The extensive use of minimum lot sizes in DDOs also means that changes in height expectations for the GRZ over time have likely had little impact upon expected yields. Therefore, increasing typical heights from 2 to 3 storeys is unlikely to increase housing capacity where minimum lot sizes reduces the ability to use height to realise additional dwelling numbers on a lot (e.g. apartments as opposed to villas and town houses).

2.2 Amendment C219morn

Amendment C219morn implements the Shire's HSS and NCSG.

Notably, the application of the zones is changed to reflect current guidance. As discussed in the preceding section, the existing approach largely reflects pre-2013 approaches (and indeed pre new format scheme approaches) that used the GRZ and its predecessor the Residential 1 Zone (R1Z) as a broad default zone and then used overlays to further clarify the type of outcomes and hence the extent of change expected in different areas.

Current planning guidance no longer recognises any "default" residential zone (see page 4 of Planning Practice Note 91). Furthermore, current guidance does not treat the GRZ as a purely mid-tier zone. As shown in Figure 1 below, the GRZ now covers both incremental and substantial change areas.

FIGURE 1: ZONE APPLICATION TABLE

Zone	Minimal	Incremental	Substantial
Low Density Residential Zone	✓		
Mixed Use Zone		✓	✓
Township Zone	✓	✓	
Residential Growth Zone		✓	✓
General Residential Zone		✓	✓
Neighbourhood Residential Zone	✓	✓	

Source: Page 4, Planning Practice note 91

The practice note further notes (page 5):

The right residential zone will reflect the true development capacity of the land. If land is impacted by special attributes or physical constraints that are identified in the MPS and PPF, then a residential zone should be applied that aligns with these attributes or constraints.

With regards to height the practice note (page 5 and 6) indicates as follows:

The GRZ has a maximum building height of 11 metres and three storeys. It is important to remember that through the building system, a single dwelling can be constructed to a height of 11 metres and three storeys in the GRZ without the need to obtain a planning permit. If applying the GRZ, this should be considered.

If an area has an existing single and double storey character that is sought to be maintained, applying the GRZ is likely to be inconsistent with this preferred neighbourhood character outcome.

While the purpose of the GRZ includes *'To encourage development that respects the neighbourhood character of the area'*, it is unlikely that neighbourhood character can be respected if existing development is single and double storey. However, the GRZ may be the appropriate zone to apply to areas with existing three-storey development.

The practice note also notes (at page 3):

The General Residential Zone should be applied to areas where housing development of three storeys exists or is planned for. It is inappropriate to apply the General Residential Zone to areas where a planning authority seeks to respect the existing single and double storey character of an area.

These changes in guidance since 2013 mean that the application of the GRZ does not align with areas that:

- Have a widespread one or two-storey form and / or are not expected to accommodate three-storey development.
- Have special attributes or physical constraints that limit development outcomes.

Amendment C219morn therefore introduces more widespread application of the NRZ recognising those residential areas in the Shire that are either minimal or incremental change areas and are unlikely to accommodate three-storey development.

Although changing large areas from GRZ to NRZ has the appearance of 'downzoning', given the change in the zones and the guidance regarding how they should be applied since 2013, these changes are intended to reflect a 'neutral translation'. It applies the appropriate zoning to reflect current guidance. By contrast, maintenance of widespread application of the GRZ would signal an expectation of three-storey development in many areas where this is not considered to be a typical or desired outcome.

2.3 State Government's Housing Statement

The State government's housing statement was released in September 2023. The statement and associated planning reforms are intended to facilitate greater housing supply through 'global' changes to planning schemes throughout the state.

Four key reforms associated with the Housing Statement are relevant to this work:

- The 'ResCode' provisions (which set the "default" development standards for single dwellings and medium density housing) have been partially codified, reducing the scope of qualitative and character based-assessments. This change was implemented by Amendment VC243, gazetted on 29 November 2023, with further codification proposed by September 2024.
- A facilitated planning pathway has been created for developments pursuant to the "Future Homes" project, which involves the use of a range of state-government developed exemplar designs. This pathway is available within 800 metres of identified activity centres. This was also introduced by Amendment VC243 on 29 November 2023.
- The ability to require permits for single dwellings between 300 sqm and 500sqm – which Amendment C219morn proposed to take up – was removed, again by Amendment VC243.
- Permit exemptions were introduced for "small second dwellings" – granny flat-style small second houses on a lot – through amendment VC253 on 14 December 2023.

In all four cases the effect of these changes is difficult to quantify with regards to both theoretical capacity and especially actual take-up.

The ResCode changes can be expected to have less effect in the Mornington Peninsula Shire than in other councils, as they affect the default provisions but do not negate local controls such as DDOs or local variations to the ResCode standards. These localised provisions – notably minimum lot sizes – will influence yields more than higher than achievable under underlying ResCode changes. The changes also do not change the actual quantum of ResCode standards; while it could be expected to be somewhat easier to build in compliance with standards, this would not affect the maximum capacity attributable to lots using this methodology. Furthermore, ResCode remains subject to an overriding qualitative character assessment and in the Mornington Peninsula context these are expected to hold development to yields less than a minimally compliant ResCode approach.

The current ResCode controls are also an interim set of arrangements that the State government has committed to revising further by September 2024. That next round of changes may have more substantial impacts on capacity, as full codification would strip out all local variations. However the final form of those changes is not yet known.

The Future Homes capacity impacts are challenging to reliably estimate as the provisions require application of exemplar designs to actual site circumstance (likely involving consolidation of lots). Even if qualifying lots could be reliably identified, yields will vary from design to design. In practice, likely take-up of that capacity is also questionable, with the attractiveness of Future Homes to developers not established.

The change to the lot size at which a permit is required for single dwellings is not expected to have appreciable capacity implications. This affects the approval process for dwellings on some lots, and may affect character outcomes, but should not affect achieved yields on such lots.

The small second dwelling exemptions will likely add some supply. However this cannot easily be factored into the following analysis as realised yield of small second dwelling would occur partially at the expense of traditional two-dwelling development. With the controls only recently having come into operation, it is difficult to ascertain what likely take-up of the provisions is and how this overlaps with existing medium density forms.

Given the above, the specific impacts of these changes have not been considered in the analysis in this report. However, for all these cases if there is an impact it will be to increase supply. This means that the analysis of supply will be conservative (in that capacity factoring in these changes should be higher than that calculated here).

3. Capacity analysis approach

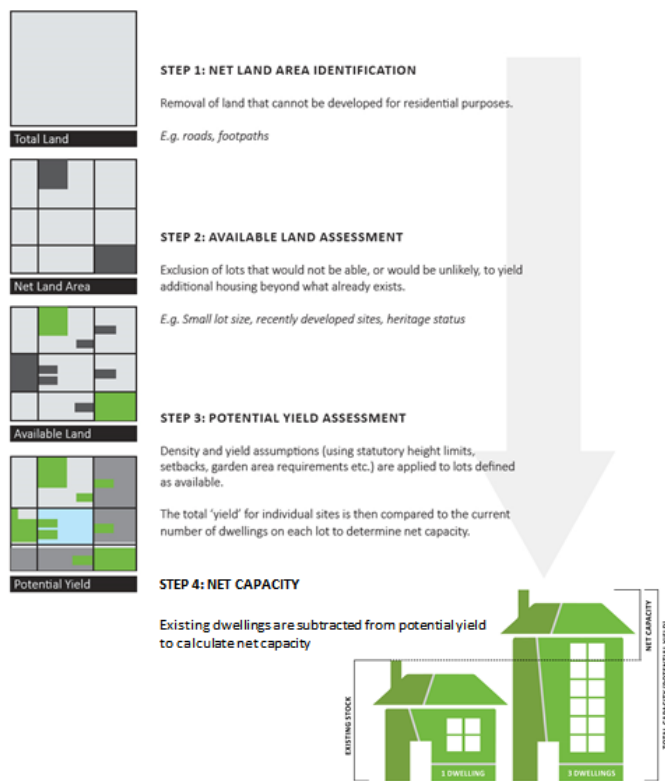
3.1 Overview

Capacity for housing in the Mornington Peninsula Shire has been estimated using a four step approach:

- Identify lots with zoning that allow residential uses²
- Excluded the subset of lots that are unlikely to yield additional housing in the next 15 years
- Estimate the potential dwelling yields on land available for residential development, based on planning and policy controls using relevant assumptions and calculations
- Calculate the net dwelling capacity by subtracting existing housing dwellings stock from the total capacity.

These steps are also described in Figure 2.

FIGURE 2: HOUSING CAPACITY MODEL PROCESS



² That is accommodation uses are permitted as either Section 1 and 2 uses in the zone.

This capacity assessment considers two “scenarios”: the existing planning controls and the post-exhibition version of the amendment that was taken to the Panel hearing. The findings of these two analyses are presented at Section 4.1 and Section 4.2 respectively.

A comparison of housing capacity and housing demand is explored in Section 5 to provide an understanding of whether there is sufficient capacity to accommodate 15 years of forecast housing demand.

3.2 Extent, timeframe, submarkets

Extent

The assessment considers all zoned land in the municipality which could provide additional housing, that is, land zoned NRZ, GRZ, LDRZ, selected C1Z land (see below), MUZ, SUZ4 (inside the Urban Growth Boundary (UGB)) and selected areas zoned PUZ6 in activity centres (which are designated for substantial change due to their strategic development potential to facilitate higher density residential development under an appropriate residential zone. (i.e. mixed use).

More specifically, the land included in the assessment is:

- NRZ1 - where in and outside of UGB (i.e. Balnarring Beach, Merricks Beach, Merricks and Point Leo)
- GRZ1 - where in and outside of UGB (i.e. Balnarring Beach, Merricks Beach, Merricks and Point Leo)
- GRZ3 - where in and outside of UGB (i.e. Balnarring Beach, Merricks Beach, Merricks and Point Leo)
- LDRZ - where in and outside of UGB (i.e. Balnarring Beach, Merricks Beach, Merricks and Point Leo)
- SUZ4 - inside UGB only (Safety Beach (Martha Cove) and Tootgarook)
- MUZ - where in and outside of UGB, as appropriate
- PUZ6 - only where inside MAC and designated for substantial change due to their strategic development potential to facilitate higher density residential development under an appropriate residential zone (i.e. mixed use)
- C1Z - in Mornington, Rosebud and Hastings MACs, Somerville Township (area as per DDO30), Rye Town Centre (area as per DDO58), Dromana township (area as per DDO29) and Baxter Township (area as per DDO25).

Timeframe

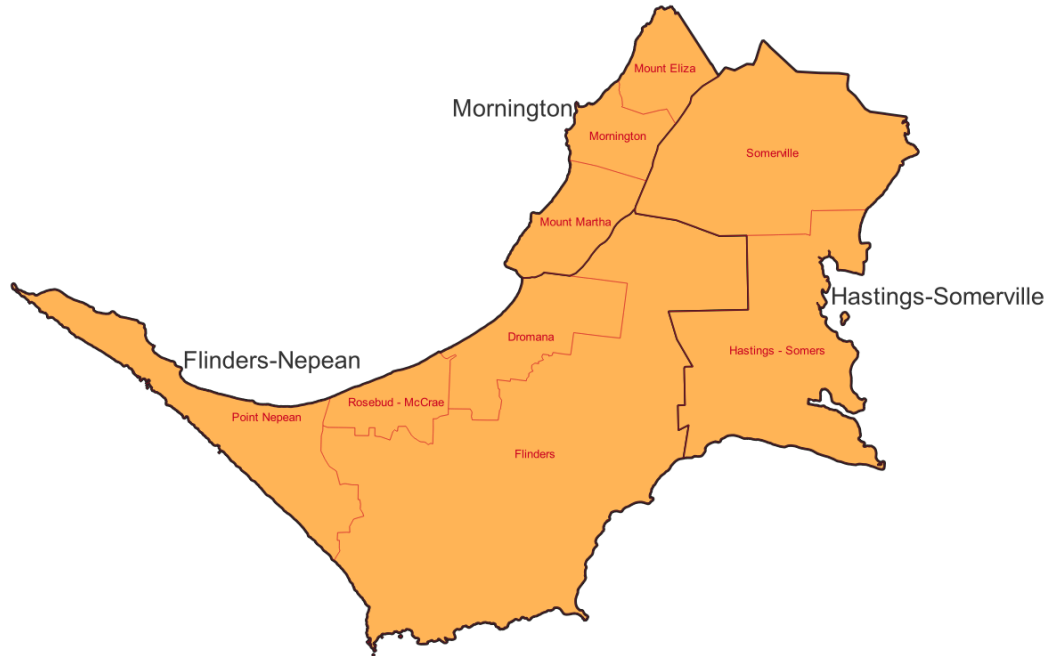
The assessment has considered the following time periods:

- The assessment reference year is 2023.
- Theoretical capacity is ‘untimed’ and based on what is possible under relevant planning controls
- The take up assessment has considered a 15-year time horizon to 2038.

Housing submarkets

The take-up assessment compares capacity and demand across a series of housing submarkets. VIF small area districts (VIFSA) have been used for this purpose, as shown in the figure below. These are ‘Mornington’ which includes the northern coastal areas closest to metropolitan Melbourne, ‘Hastings-Somerville’ which includes the eastern portion of the Shire, and ‘Flinders-Nepean’ which includes the western and southern portions of the LGA. The VIFSAs are amalgamations of the nine ABS SA2 geographies as shown in the figure below.

FIGURE 3: BROAD HOUSING SUBMARKETS – VIFSA DISTRICTS



Source: SGSEP based on VIF 2019.

3.3 Data sources

The following key data sources were used in the assessment, and which are further detailed in the report:

- Property layer provide by Council (which combined adjoining lots in single ownership, rated as one property)
- Zones – existing and proposed by Amendment C219morn
- Design and Development Overlays – existing and proposed by Amendment C219morn
- Housing and Development Data (2005 – 2016)³
- Building permit data provided by Council (2011 – 2023).

³ The Housing and Development Data (HDD) is a spatial data set of new housing development, collected by the state government for each year in the period 2005 to 2016.

4. Capacity analysis

This chapter sets out the findings of capacity analysis based on existing controls and the C219morn controls in Sections 4.1 and 4.2 respectively. Section 4.3 compares these capacity analyses with the earlier capacity analysis results that were presented at the Panel hearing. The final section of this chapter discusses some additional considerations, not accounted for in these analyses, but are likely to influence the capacity for housing in the Shire.

4.1 Housing capacity under existing controls

Density assumptions in activity centres

For land zoned C1Z and MUZ in specific activity centres, the dwelling capacity has been estimated by applying the average dwelling density for each centre derived from the relevant structure plan or urban design framework. These estimates draw on Council's previous modelling of floor space yields for each activity centre, based on the height and setback controls for each precinct. These floor space yields were converted to dwelling per hectare. Although there is some variability with respect to density across the various precincts within each activity centre, the average for the whole centre has been used to estimate capacity. The specific density assumptions applied to each activity centre are set out in Table 2.

TABLE 2: DENSITY ASSUMPTIONS FOR ACTIVITY CENTRES

Zone	Overlay	Dwelling density (dph)*	Note
CZ1 and MUZ	DDO13	105	Mornington Major Activity Centre
CZ1	DDO25	110	Baxter Small Activity Centre
CZ1 and MUZ	DDO26	135	Rosebud Major Activity Centre
CZ1 and MUZ	DDO27	105	Hastings Major Activity Centre
CZ1	DDO29	105	Dromana Large Activity Centre
CZ1	DDO30	110	Somerville Large Activity Centre
CZ1 and MUZ	DDO58	110	Rye Large Activity Centre

*Note: These estimates are based on average apartment size of 100 sqm per dwelling.

Density assumptions on residential land

A large proportion of residential land in the Shire has some form of minimum lot size control, implemented through zones or overlays. Where an explicit minimum lot control for subdivision exists, these controls have been used to estimate the dwelling capacity as these are likely to be the primary limiting factor on the density of new development (see Chapter 2). These assumptions are shown in Table 7 below.

For areas without minimum lot size controls a minimum lot size assumption of 400 sqm per dwelling has been used. This benchmark was used in the 2023 SGS peer review of Council capacity analysis as a review of over 400 permitted applications on land without subdivision controls found the *average* lot size of these

developments was 366 sqm.⁴ The 400 sqm *minimum* lot size benchmark was thus chosen for that analysis a conservative assumption (on the high side) to inform the capacity analysis. It also aligns with the Panel’s report which noted that “While the HSS has applied a sound methodology, the Panel agrees with Mr Spencer that... An assumed minimum 400 square metres should be applied because it better reflects actual circumstances”.

The average lot size of a more recent sample of 10 approved permit applications in areas without subdivision controls was found to be 260 sqm. The average lot size per dwelling ranged from 180 sqm to 294 sqm per dwelling. The characteristics of the group of approved projects adds weight to the suggestion that a blanket a 400 sqm benchmark across all residential areas without subdivision controls is a conservative assumption (on the high side).

TABLE 3: DENSITY (AVERAGE LOT SIZE) FOR A SAMPLE OF RECENT DEVELOPMENTS

Case study	Current zone	Proposed zone	Lot size (sqm)	Dwellings	Average lot size	Type
85 Marine Pde Hastings	GRZ	NRZ2	1,232	6	205	2 x 3 on wide lot
7 Rankin Road Hastings	GRZ	NRZ39	813	3	271	3 'down the lot'
24 Thomas Street Rosebud	GRZ	GRZ1	720	4	180	4 'down the lot'
775 Point Nepean Road Rosebud	GRZ	NRZ2	2,024	9	225	9 'down the lot'
6 Bimble Street Rye	GRZ	NRZ2	510	2	255	2 on shallow lot
26 Government Road Rye	GRZ	NRZ2	909	3	303	3 on corner lot
6 Yacht Court Mornington	GRZ	NRZ2	588	2	294	Side-by-side duplex
6 Bimble Street Rye	GRZ	NRZ2	510	2	255	2 on corner lot
26 Government Road Rye	GRZ	NRZ2	909	3	303	Side-by-side duplex
36 Broadway Capel Sound	GRZ	NRZ3	855	3	285	3 'down the lot'
Average			882	3.6	257	

Source: Sample of recent planning permit applications provided by Mornington Peninsula Shire Council, 2024.

Capacity on vacant sites vs land with existing dwellings

The application of minimum lot size assumptions in the capacity analysis accounts for whether a lot is vacant or hosts existing dwellings, as per the table below. For example, assuming an average lot size of 400 sqm per dwelling, a lot of 950 sqm in area with a single dwelling that is has been assessed as having capacity for one additional dwelling. Alternatively, a vacant lot of 810 sqm has been assessed as having capacity for two dwellings.

⁴ The permit data in question showed a wide range of lots sizes for permitted developments ranging from 120 sqm to 1,280 sqm per dwelling. The variation reflects the fact that this data set cover a wide range of contexts and that new developments do not always maximise the potential yield (e.g. a development may propose fewer dwellings than are technically permissible).

TABLE 4: NET DWELLING CAPACITY FOR VACANT LOTS VS LOTS WITH DWELLINGS

Lot size	Capacity if existing dwelling (400 sqm)	Capacity for vacant lot (400 sqm)
Less than 799 sqm	0	1
800 sqm – 1,199 sqm	1	2
1200 sqm – 1,399 sqm	2	3
Etc.		

TABLE 5: CURRENT CONTROLS - MINIMUM LOT SIZE ASSUMPTIONS FOR RESIDENTIAL AREAS

Zone	Overlay	Minimum lot size assumption (sqm)	Note
LDRZ	Default	4,000	This assumption has been applied to all LDRZ land, however LDRZ land with a reticulated sewerage connection can be subdivided to 2,000sqm.
	DDO5	5,000	
	DDO6	10,000	
	DDO7	20,000	
	DDO7 - Precinct H	80,000	
	DDO7 - Precinct I	40,000	
	DDO7 - Precinct J	40,000	
	DDO22 – Precinct 1	3,000	
	DDO22 – Precinct 2	6,000	
NRZ1	All	650	
GRZ1	Default	400	Assumption (not a planning requirement)
	DDO2 – default	650	Bayside and Village Design. Part of an integrated subdivision, meaning that a lot of 1,300 sqm could be subdivided into 2, but a lot of 1,950 sqm could not be subdivided into 3.
	DDO2 - designated area	450	Bayside and Village Design Part of an integrated subdivision, meaning that a lot of 900 sqm could be subdivided into 2, but a lot of 1,350 sqm could not be subdivided into 3.
	DDO3	1,500	Coast & Landscape Design
	DDO4 – default	2,500	Environmental Design
	DDO4 – Precinct C	5,000	Environmental Design
	DDO4 – Precinct D1	3,000	Environmental Design
	DDO4 – Precinct D2	1,200	Environmental Design

Zone	Overlay	Minimum lot size assumption (sqm)	Note
	DDO4 – Precinct E	10,000	Environmental Design
	DDO4 – Precinct F1	2,500	Environmental Design
	DDO4 – Precinct F2	1,300	Environmental Design
	DDO4 – Precinct G1	2,500	Environmental Design
	DDO4 – Precinct G2	2,000	Environmental Design. Part of an integrated subdivision, meaning that a lot of 4,000 sqm could be subdivided into 2, but a lot of 6,000 sqm could not be subdivided into 3.
	DDO11	2,000	Mt Eliza (North of Tower Road)
	DDO17	700	Woodthorpe Estate, Rosebud West
	DDO18	2,000	Mount Eliza Woodland Area
	DDO19	650	Bittern & Crib Point Township Residential Area
	DDO20	600	Crib Point Town Centre Residential Area
	DDO23	900	Hendersons – Creswell Residential Precinct
	DDO24	700	Beleura Hill, Mornington, Esplanade and Northeast
	DDO24	500	Beleura Hill, Mornington, Southeast and West
	DDO24	400	Beleura Hill, Mornington, South
GRZ3	Default	400	Assumption (not a planning requirement)
SUZ4		20,000	

Findings

The application of these assumptions to the available land in the Shire yields the total net capacity estimate of 25,397 dwellings. The breakdown by zone and submarket is shown in the table below.

TABLE 6: C219MORN CAPACITY BY SUBMARKET

Category	Mornington	Hastings-Somerville	Flinders - Nepean	Total
Activity Centres (C1Z, MUZ, PU6Z)	1,462	2,507	3,411	7,380
GRZ/NRZ (w/o lot size controls)	3,620	2,779	4,584	10,983
GRZ/NRZ (with min. lot size controls)	2,395	486	3,272	6,153
LDRZ/SUZ	146	252	269	667
Total	7,623	6,024	11,536	25,183

4.2 Capacity under Amendment C219morn (post exhibition version taken to panel)

Density assumptions in activity centres

The planning controls for land zoned C1Z, MUZ and PUZ6 within these areas are unchanged so the approach to the capacity assessment is the same as that for the current controls as outlined in Section 4.1 above.

Density assumptions on residential land

A similar approach has been applied to estimate housing capacity under the proposed C219morn controls. Where there are explicit minimum lot size controls implemented via zones or overlays, these have been used to estimate housing capacity. These assumptions are shown in Table 8 below.

For areas without minimum lot size controls the benchmark of 400 sqm per dwelling has been applied as the proposed changes to the ResCode standards in the Amendment appear unlikely to impact dwelling capacity. While increases to setbacks and open space requirements may require some design changes, built form testing by Council officers of recently approved permit applications (in areas without subdivision controls) found that compliance with the C219morn controls required only minor changes to some developments (see Table 7 and Appendix C). It was possible to achieve the same dwelling yield in all but one case. In that case the compliance required the loss of one bedroom (i.e. from 3 to 2) from 4 of the 9 dwellings or the reduction of the total numbers of dwellings from 9 to 8 (to retain all as three bedroom dwellings). In each of these examples the average lot size per dwelling is below the 400 sqm per dwelling assumption.

TABLE 7: IMPACT OF C219MORN ON AVERAGE LOT SIZES FOR A SAMPLE OF RECENT DEVELOPMENTS

Case study	Current zone	Proposed zone	Original lot size (sqm)	Dwellings	Average lot size (sqm)	Change to yield due to C219morn requirements
7 Rankin Road Hastings	GRZ	NRZ39	813	3	271	None
24 Thomas Street Rosebud	GRZ	GRZ1	720	4	180	None
775 Point Nepean Road Rosebud	GRZ	NRZ2	2,024	8 or 9	225/253	4 beds or 1 dwelling
6 Yacht Court Mornington	GRZ	NRZ2	588	2	294	None
36 Broadway Capel Sound	GRZ	NRZ3	855	3	285	None
Average			882		251/257	

Source: Sample of recent planning permit applications provided by Council, 2024.

TABLE 8: C219MORN - MINIMUM LOT SIZE ASSUMPTIONS FOR RESIDENTIAL AREAS

Zone	Overlay	Min lot size assumption (sqm)	Note
LDRZ1		2,000	
LDRZ2		2,500	
LDRZ3		3,000	
LDRZ4		4,000	
LDRZ5		5,000	
LDRZ6		6,000	
LDRZ7		10,000	
LDRZ8		20,000	
LDRZ9		40,000	
LDRZ10		80,000	
LDRZ11		10,000	
LDRZ	DDO5	5000	
LDRZ	DDO6	10,000	
LDRZ	DDO7	20,000	
NRZ19		2,000	
NRZ23		700	
NRZ34		900	
NRZ36		650	
NRZ or GRZ	Default	400	Assumption (not a planning requirement)
NRZ or GRZ	DDO1	400	Assumption (not a planning requirement)
NRZ or GRZ	DDO2	650	
NRZ or GRZ	DDO3	1500	
NRZ or GRZ	DDO4	2,500	
NRZ or GRZ	DDO11	2,000	
NRZ or GRZ	DDO17	700	
NRZ or GRZ	DDO19	650	
NRZ or GRZ	DDO20	600	
NRZ or GRZ	DDO24	700	Beleura Hill, Mornington, Esplanade and Northeast
NRZ or GRZ	DDO24	500	Beleura Hill, Mornington, Southeast and West
NRZ or GRZ	DDO24	400	Beleura Hill, Mornington, South
NRZ or GRZ	DDO32	450	
NRZ or GRZ	DDO33	1,300	
SUZ4		20,000	

Findings

The application of these assumptions to the available land in the Shire yields the total net capacity estimate of 25,183 dwellings. The breakdown by zone and submarket is shown in the table below.

TABLE 9: C219MORN CAPACITY BY SUBMARKET

Capacity assessment	Mornington	Hastings-Somerville	Flinders-Nepean	Total
Activity Centres (C1Z, MUZ, PU6Z)	1,462	2,507	3,411	7,380
GRZ/NRZ (w/o lot size controls)	3,620	2,779	4,584	10,983
GRZ/NRZ (with min. lot size controls)	2,395	486	3,272	6,153
LDRZ/SUZ	146	252	269	667
Total	7,623	6,024	11,536	25,183

4.3 Capacity analyses compared

It is estimated that the capacity in the Shire under the current controls is 25,397 net additional dwellings. The estimated capacity under amendment C219morn (post exhibition version as taken to Panel) is 25,183 net additional dwellings. These estimates are lower than Council's 2019 capacity estimate but similar to the adjusted capacity estimate from SGS's 2023 peer review of council's capacity assessment (although the distribution of capacity across categories differs).

TABLE 10: CAPACITY ANALYSIS COMPARED

Capacity assessment	Council estimate (2019)	Peer review estimate (SGS, 2023, based on council capacity estimate, 2019)	Current controls (SGS, 2024)	C219morn post-exhibition controls (SGS, 2024)
Activity Centres (C1Z, MUZ, PU6Z)	11,360	5,680	7,380	7,380
GRZ/NRZ (w/o lot size controls)	32,658	13,985	11,071	10,983
GRZ/NRZ (with min. lot size controls)	7,072	7,072	6,444	6,153
LDRZ/SUZ	1,685	1,685	502	667
Adjustment in Council's capacity analysis	120			
Total capacity (2019)	52,895	28,422	(na)	(na)
Total capacity (2021)	(na)	26,921*	(na)	(na)
Total capacity (2023?)	(na)	(na)	25,397	25,183

*Based on estimated take up for capacity of 1,621 dwellings in 2019 and 2020.

4.4 Discussion

The findings above suggest that, in practical terms, there is little to distinguish between the housing capacity under the Shire's current planning controls and the proposed C219morn controls.

This total capacity is likely to be a conservative assessment for a number of reasons:

- As noted above, there is evidence to suggest higher densities (i.e. lower lots sizes) can be accommodated in areas without explicit subdivision controls than implied by the 400 sqm minimum lot size benchmark (under both the existing and proposed C219morn controls).
- The proposed amendments to the "ResCode standards" in C219morn are not mandatory controls and can be varied based on individual site constraints and the development of an appropriate design response.
- We understand that some standards in the post-exhibition version of C219morn may not be implemented to respond to some of the planning panel recommendations
- The capacity analysis has not considered recent planning changes introduced to implement elements of Victoria's Housing Statement. Specifically, it does not account for the potential for small secondary dwellings (granny flats) to be constructed on lots of over 300 sqm without a planning permit or the expansion of the Future Homes program.
- Council has estimated that there might be in the order of 64,628 lots that could technically be eligible for small secondary dwellings.⁵

Thus, the total capacity for housing in the Shire is likely to be somewhat higher than suggested by the figures above.

⁵ Council's analysis considered lots zoned NRZ, GRZ, LDRZ or MUZ, are 300 sqm or greater in size, and not subject to the ESO, SLO, EMO, FO, LSIO, BMO, PAO or RO.

5. Take up analysis

5.1 Introduction

The purpose of this take-up analysis is to consider whether the new housing required to meet forecast growth might be realised on the land available for redevelopment, at the likely densities/likely housing forms, during the time period in question. This is a speculative exercise. It is very difficult to predict with precision and how new or amended planning controls influence the conversion of theoretical housing capacity into built housing stock. To do so would require a significant amount of data (fine grained information about population growth, housing demand, land prices, dwelling prices, housing preferences, construction cost and development feasibility now, and in the future) and even if this data were available, the analysis would encounter the challenge of predicting the decisions and behaviours of thousands of households and businesses that are buyers, sellers, renters, developers, land bankers, lenders, and so on that are all participants in the housing system.

The extent to which zoning and planning controls influence housing supply and price has also been the subject of lively debate in recent years. Two perspectives have emerged that coalesce around polar opposite views. The first is that zoning has a primary role and significant influence over housing supply (and rents/ prices). Whereas the contrary view holds that zoning has very little to do with housing supply (and rents/prices) as the flow of new housing is controlled by actors (and factors) are largely beyond the influence of planners and the planning system.⁶ A recent review of actual studies of the impact zoning changes on supply and prices has found mixed evidence and concluded that:

upzonings offer mixed success in terms of housing production, reduced costs, and social integration in impacted neighborhoods; outcomes depend on market demand, local context, housing types, and timing (Freemark, 2023).

Notwithstanding the limitations of trying to predict future development trends, or debates about the extent to which zoning and planning changes actually influence the rate or type of development realised, in this chapter housing capacity and demand will be compared. In doing so we make the following observations:

- Although consideration should be given to the alignment of theoretical housing capacity and forecast housing demand, however this is a prediction about future of dwelling supply.
- This alignment of capacity and demand has multiple dimensions (e.g. spatial locations and dwelling types) that might be considered.
- There is very little empirical evidence of an appropriate 'ratio' of capacity to demand. A recent report has cited a figure of market capacity in the range of 7 to 10 times demand (i.e. a capacity to demand ratio of between 7:1 and 10:1) although the empirical source of this claim is unclear.⁷
- Modest planning changes are unlikely (in themselves) to significantly disrupt the prevailing market conditions for housing supply.

With these principles in mind the take-up analysis consists of three separate analyses:

⁶ Examples of the 'pro-zoning' perspective include (Kendall and Tulip, 2018; Greenaway-McGrevy and Phillips, 2022). Examples of the counter-perspective include (Murray, 2020; Helm, 2023).

⁷ See Committee for Sydney (2022) *Planning for Growth*.

- A comparison of demand and capacity by housing submarket (i.e. broader geographic areas)
- A comparison of demand and capacity by dwelling type (i.e. apartment, medium and lower density)
- An analysis of the ratio of demand to capacity over time (i.e. demand vs capacity year-on-year).

The first compares capacity to forecast dwelling demand by housing sub-market, based on the VOFSAs areas described above (see 3.2). The second compared demand by dwelling type, based on recent trends, adjusted for shifts towards more diverse housing in the future compared to recent trends.

5.2 Housing demand

The starting point for the take-up analysis is to consider the amount of housing that is likely to be required. The official government population and dwellings forecasts, Victoria in the Future (VIF) were updated in December 2023 to reflect changes in forecasts of population growth patterns and rates. While the 2019 VIF forecasts indicated that Mornington might need to accommodate an additional 17,750 dwellings between 2021 and 2036. The most recent VIF forecasts have revised this forecast down to 10,950 dwellings, or 40% lower than the 2019 forecast (Table 11). This downward revision is likely to reflect lower growth forecasts for the state of Victoria and changes to the forecast distribution of growth within the state.

VIF forecasts by LGA do not extend beyond 2036. However, for the sake of this exercise we have assumed that the 15 year dwelling demand forecasts of 10,950 for 2021 to 2036 is also a reasonable estimate of the likely demand for the 15 years period 2023 to 2038.

TABLE 11: VICTORIA IN THE FUTURE DWELLING FORECASTS FOR MORNINGTON PENINSULA SHIRE

	2021	2036	Change
VIF 2019	95,500	113,250	17,750
VIF 2023	93,600	104,540	10,950
Difference	(1,900)	(8,710)	(6,800)

5.3 Recent dwelling growth

The VIF forecast implies average dwelling construction of around 730 dwelling per year for the 15-year period. ABS data indicates that between 2011 to 2021 around 10,000 net additional dwelling were added in the Shire, an average of 1,000 dwellings per year. Evidently, these recent rates of dwelling supply are higher than the updated VIF forecasts.

5.4 Demand and capacity by sub-market compared

The first element of the take-up analysis compares capacity and demand across three broad housing submarkets (see Figure 3). The VIF small area districts (VIFSA) have been used for this purpose: 'Mornington', 'Hastings-Somerville' and 'Flinders-Nepean'.

Capacity and demand by the three sub-markets in the Shire are shown in the table below. In each sub-market, capacity exceeds demand. The submarket where the highest amount of capacity is required to satisfy demand is Mornington, where 69% of capacity is required. This suggests that after 15 years 31% of capacity remains (assuming no additional capacity is identified in that time).

TABLE 12: CAPACITY AND DEMAND BY SUB-MARKET COMPARED

Type	Capacity (C219)	Demand (2023-2038)	Excess capacity	Capacity required 2021-2036
Mornington	7,623	5,266	2,357	69.1%
Hastings-Somerville	6,024	2,408	3,616	40.0%
Flinders-Nepean	11,536	3,276	8,260	28.4%
Total	25,183	10,950	14,233	43.5%

5.5 Demand and capacity compared by dwelling type

This element of the take-up analysis compares capacity and demand by dwelling type. Comparing ABS dwelling type data from 2016 and 2021 suggests that the majority of new dwellings in the Shire are detached, with some medium and higher density dwellings (Table 13). Rather than assuming the continuation of these trends in relation to dwelling mix, a slight shift towards higher density dwellings has been assumed to estimate future housing demand. The forecast shares of dwelling by type are shown in the third column of Table 13. These have been multiplied by the forecast demand total of 10,950 dwellings. The resulting notional dwelling demand, by type, is shown in the final column.

TABLE 13: FORECAST BY DWELLING TYPE

Type	Share of growth 2011-2021*	Adjust share for higher density	Notional dwelling demand 2023 to 2038
High and medium density	4%	8%	876
Detached/lower density	91%	88%	9,636
Very low density	5%	4%	438
Total	100%	100%	10,950

*Based on ABS, 2021; **Based on share of growth in LDRZ between 2005 to 2016 from DPE's Housing and Development Data.

Capacity and demand by dwelling type are compared in the table below. Capacity was assigned to dwelling types as follows:

- Activity centres: high and medium density
- LDRZ/SUZ4 – very low density
- All other residential areas: detached/low density.

For each dwelling type category, capacity exceeds demand. For the detached dwelling categories, 56% of capacity would be required to satisfy the forecast demand. There is considerable capacity for higher density dwellings compared to the demand forecasts for these dwelling types (even with the assumption of a doubling of the future share apartments and medium density dwellings from 4% to 8%).

TABLE 14: CAPACITY AND DEMAND BY DWELLING TYPE COMPARED

Type	Capacity	Demand (2023-2038)	Excess capacity	Capacity required
High and medium density	7,380	876	6,504	11.9%
Detached/lower density	17,136	9,636	7,500	56.1%
Very low density	667	438	229	40.1%
Total	25,183	10,950	14,233	43.5%

5.6 Demand and capacity over time

Finally, consideration is given to the relationship between demand and capacity over time and the manner in which the development of new housing ‘consumes’ capacity. Specifically, at the start of the planning horizon, there is a large amount of capacity compared to average annual demand figure. In each year a share of the capacity is consumed as new dwellings are realised, reducing the housing capacity available in the subsequent years. This is illustrated in the table and figure on the following page which compare annualised dwelling demand for the Shire (730 dwellings per year) to remaining capacity, year-on-year. In the chart, average annual demand is shown in orange and the remaining capacity in blue.

It is apparent from this comparison that the capacity consumed in any one year represents a modest share of all capacity. The ratio of total capacity to annual demand is 33:1 in year 1 and decreased progressively to 19:1 by year 15. This means that in the year 2038, for every dwelling required to meet demand there will be capacity for 20 dwellings. As noted above, one study has cited a target for capacity to be 7 to 10 times annual demand (a ratio of between 7:1 and 10:1), which is exceeded throughout the 15 years period.

The remaining figures present similar year-on-year take up analysis for the three housing submarkets and three broad housing type categories.

TABLE 15: CAPACITY AND DEMAND OVER TIME

Year	Dwelling demand per annum	Ratio of capacity to annual demand	Remaining capacity
Year 0	na	na	25,183
Year 1	730	33:1	24,453
Year 2	730	32:1	23,723
Year 3	730	31:1	22,993
Year 4	730	30:1	22,263
Year 5	730	29:1	21,533
Year 6	730	28:1	20,803
Year 7	730	27:1	20,073
Year 8	730	26:1	19,343
Year 9	730	25:1	18,613
Year 10	730	24:1	17,883
Year 11	730	23:1	17,153
Year 12	730	22:1	16,423
Year 13	730	21:1	15,693
Year 14	730	20:1	14,963
Year 15	730	19:1	14,233

FIGURE 4: DEMAND VS CAPACITY OVER TIME (ALL CAPACITY)

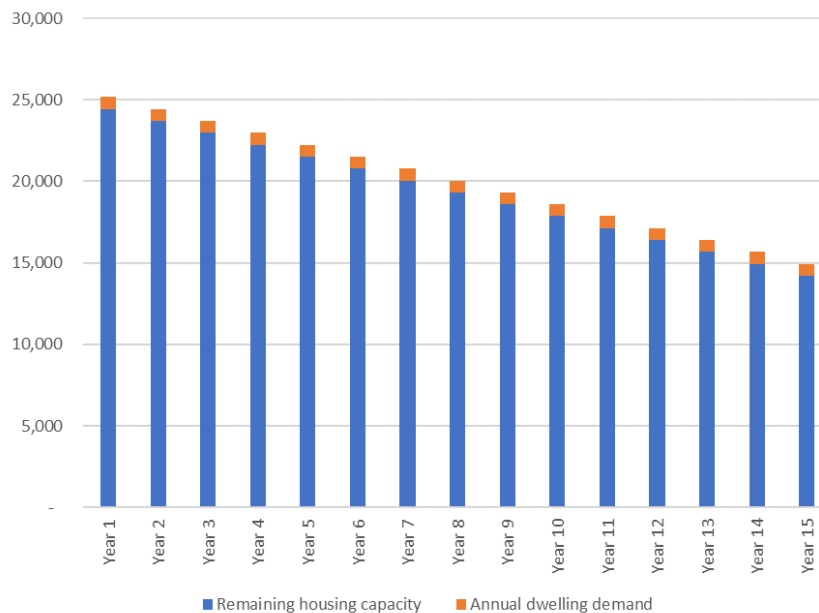


FIGURE 5: DEMAND VS CAPACITY OVER TIME (BY SUBMARKET)

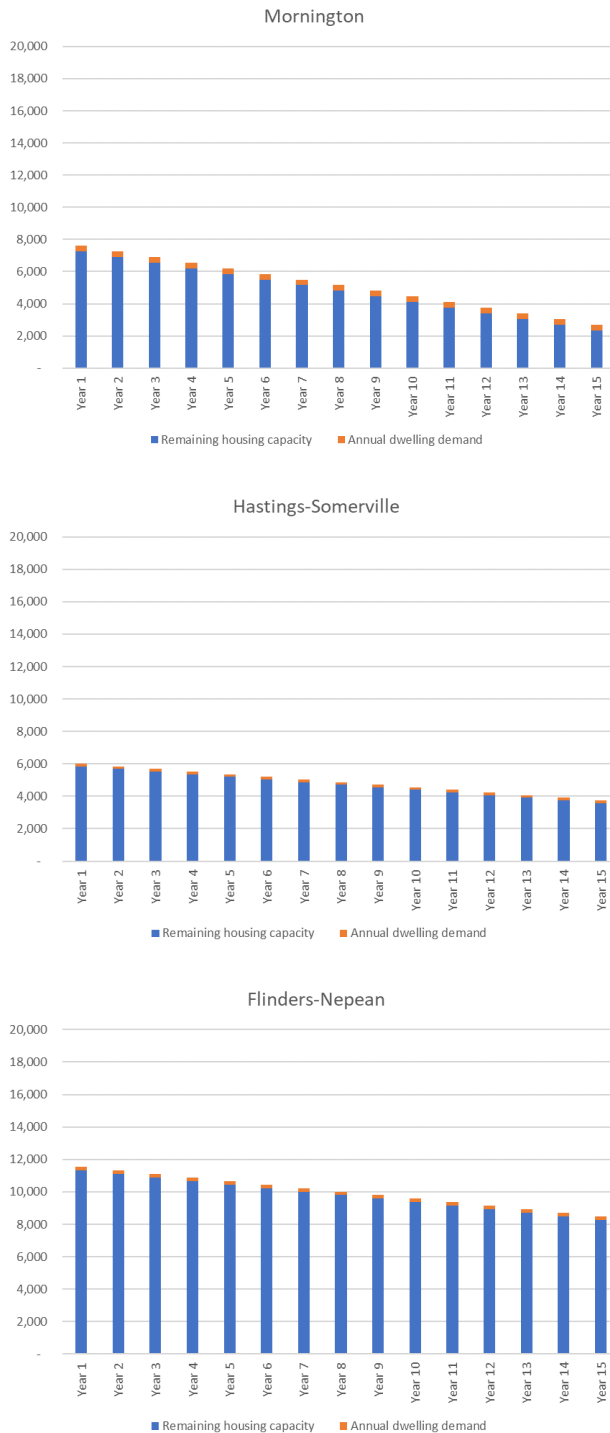
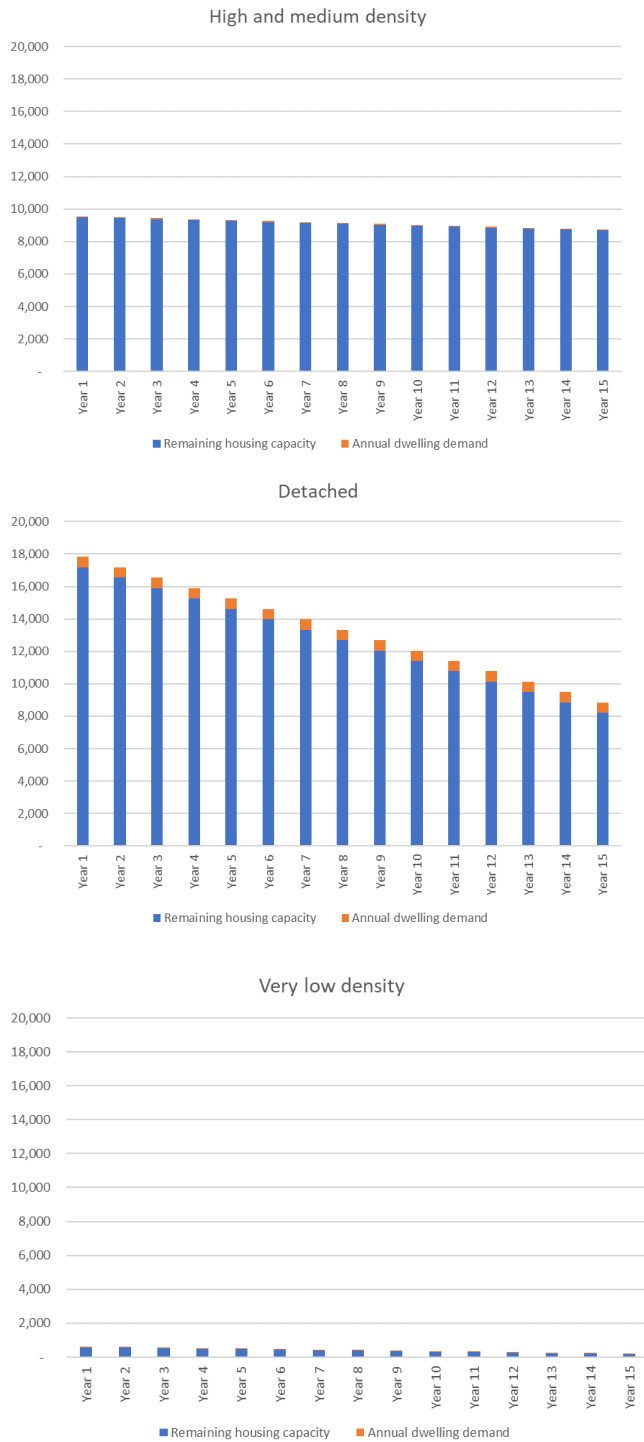


FIGURE 6: DEMAND VS CAPACITY OVER TIME (BY TYPE)



6. Conclusions

The analyses presented above provides evidence there will be sufficient capacity to accommodate 15 years of supply in the Shire finding that:

- Recent official forecasts of dwelling demand in the Shire are 40% lower than previous forecasts.
- The implied annual rate of supply of 730 dwelling pr year is lower than than the average for the period 2011 to 2021 of around 1000 dwelling per year.
- Amendment C219 would deliver a capacity of about 25,183 net additional dwellings, 43.5% of which is required to provide for the 15 year demand forecast, leaving additional capacity for 14,233 dwellings.
- The alignment of theoretical housing capacity and forecast housing demand by submarket found that there is suffice capacity to meet demand in all submarkets. Mornington is the tightest submarket largely by virtue of higher demand in that submarket.
- The alignment of theoretical housing capacity and forecast housing demand by type found that there is suffice capacity to meet demand for all dwelling types.
- Although there is very little empirical evidence of an appropriate ratio of capacity to demand. The ratio of annual demand to total capacity is consistently higher than 10:1 *at the end of the 15 year planning horizon*.

It should also be reiterated that the capacity estimates present in this report are conservative (on the low side) and therefore estimate of the share of capacity consumed to accommodate 15 years of dwelling growth are likely to be lower that the figures provided.

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Appendices

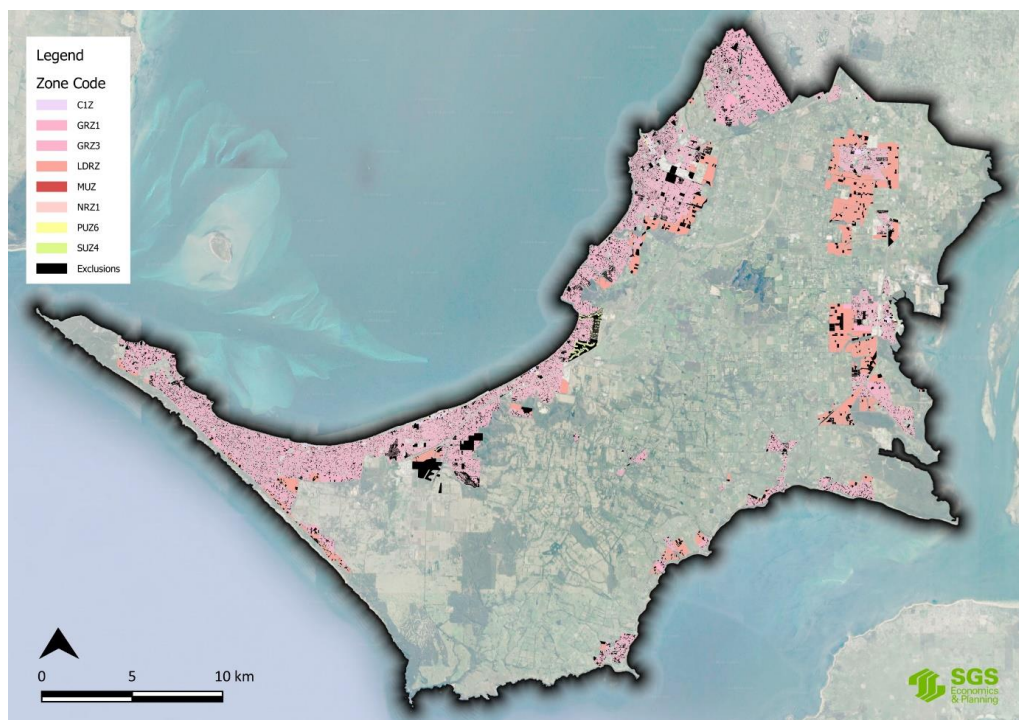
Appendix A: Zoned residential land

Zoned residential land refers to land where residential development is permitted excluding public realm areas (e.g. roads and footpaths) that cannot be developed for residential purposes.

The capacity calculation is conducted on a lot level basis, with only lots where residential development is permissible considered, and so parts of the public domain are automatically excluded.

In this assessment, the net land includes all properties within the LGA zoned NRZ, GRZ, MUZ and C1Z land within selected activity centres, PUZ6 flagged for development in Major Activity Centres, LDRZ, and SUZ4 within UGB, as per the specific extent set out at Section 3.2 above. Net land based on the proposed controls is summarised in Figure 7 below.

FIGURE 7: NET RESIDENTIAL LAND



Source: SGS Economics and Planning, September 2023

Appendix B: Available residential land

Summary of available land assumptions

Available land is a subset of net residential land and excludes lots (within the net land) which cannot be developed, or are unlikely to be developed, based on lot level attributes or characteristics described below.

Designation of lots as available does not mean that development is necessarily feasible or that property owners are ready or willing to develop these sites. Typically, only a small portion of available lots are likely to be developed in any one year. There are also likely to be site-specific attributes which may affect the development potential of some sites, but which cannot be included in a municipal wide assessment.

The table below summarises the exclusions that have been applied for the base case capacity analysis.

TABLE 16: EXCLUSIONS FOR AVAILABLE LAND ANALYSIS

Criteria	Data source	Assumption	NRZ	GRZ	MUZ	C1Z*	LDRZ	PUZ6*	SUZ4*
a) Recent development	HDD – 2008 to 2016 Council building permit data – 2011 to 2023	Exclude projects with year 2008 or later. Filtered based on code descriptions. See Table 17 below.	x	x	x	x	x	x	x
b) Land with multiple owners (e.g. strata title)	Council data	See below for description.	x	x			x		x
c) Community uses, public infrastructure, common lots	Council property layer	Filtered based on code descriptions below.	x	x	x	x	x	x	x

* Selected C1Z,PUZ6 and SUZ4 land as described in 3.2 below

TABLE 17: RECENT DEVELOPMENT – COUNCIL BUILDING PERMIT DATA – 2008 TO 2023

Permit categories of recent developments excluded from capacity analysis	Permit categories not excluded from capacity analysis
Accommodat, Apartment, Cottage, DualOcc, Dwelling, ResidDevel, Townhouse, Units/Flat	Academy, AccRamp, Add&Verand, AgeCarFac, Alarm Sys, Alfresco, Balcony, Balustrad, Barn, Basemen, Bathroom, Bed&Break, Bedroom, BoardHouse, BoatShed, Bungalow, Cabana, CareDwell, Carport, Conservat, CoverArea, Deck, Demolition, DentSurg, DepPerUnit, DressRoom, Earthworks, ElevShaft, EncVeranda, Fence, Fire Detec, Fire Servi, Fireplace, Gallery, Games Room, Garage, Gazebo, GrannyFlat, GroupHouse, GuestHouse, Gymnasium, HabOutBld, HabRoom, Hotel, Installift, InternAlt, Laundry, Lift, Loft, MachShed, MgrFlat, MiscBuild, MOH Unit, Office, OfficeFitO, openroof, Outbld, Pads & Col, PartDwell, Patio, PatioRoof, Pavilion, Pergola, Pool Pavil, Pool Room, PoolEncl, PoolFence, PoolHse, Porch, Portable, Portico, Ramp, RemedialWk, Removal, Restricted, Restump, RetailDeve, RetWall, Roof, RumpusRoom, SafetyFen, Screen Wal, ShadeSail, Shed, ShopCentre, ShopFitout, Sleepout, Spa, Spa & Safe, Spa Fence, Staircase, Steps, Storage, Store, Studio, Sunroom, Swimming P, SwimPool, TennisPav, Terrace, Transdwell, Verandah, VeranEncl, Vergola, Walkway, Wall, Warehouse, Workshop

Note: This table shows the categories of building permits that were used to excluded land that has been recently developed from the analysis. The "Excluded permit categories" are those deemed "recent development" and unlikely to host further residential development.

TABLE 18: EXCLUSIONS - COMMUNITY USES AND PUBLIC INFRASTRUCTURE

Excluded from capacity analysis	Included
DrainReserve, Parks&Gdns, ToiletBlock, TouristAtt, Cemetery, Library, VacHlthSrv, CommCtr, School, HistoriHom, HoliCamp, NursingHome, RecrCamp, OYOStrataF, Boatshed/Bathing Box, RefPlg2025, PublicBuil,	Dwelling, Unit, ConjUnit, GrnyFltStu, ResVacantLand, DisabHsng, RuralDwelling, Farmhouse, RuralVacantLand, SemiDetach, Dw&DepUnit, RetVilUnit, 2ndDwelling, PoultryShed, ResRoadway, ResMiscBld, ResSubdLnd, PreSchool, Bed&Break, StraUnitFl, Indiv Flat, MarketGarden, Hall, Church, DentalClin, HealthClin, InvestFlat, ShopDwelling, Shack/Hut, Vet, Motel, ServApart, Hotel, CaravanPark, Club, RelStyCtr, ReligResid, VacantLand, Flats, MiscBuilding, Creche, Market, WhseShowrm, Shop, ShopCtr, CarPark, Offices, DeptStore, Kiosk, Supermarket, YOSubFlat, LifeStyleV, Gaming, ComVacantLand, Gymnasium, Pub, PlanningAp

Note: This table shows the categories of land uses that were excluded from the capacity analysis as they host existing community uses and public infrastructure, or common lots (e.g. shared driveways), that are unlikely to be redeveloped for housing.

a) Recently developed sites

Sites that are recently developed are unlikely to be redeveloped again within the short to medium term and are therefore excluded from the capacity analysis. We have assumed that recently developed sites are unlikely to be comprehensively redeveloped again for at least 30 years. Therefore, a site developed in the last 15 years is unlikely to be redeveloped in the next 15 years – the planning horizon for this assessment. So the threshold for ‘recent development’ is 2008 ($2023 + 15 - 30 = 2008$).

Recently completed buildings were identified using two data sources:

- The Housing and Development data (HDD) was used to identify lots developed from 2008 to 2016.
- Council building permit data (from 2011 to 2023) used to identify lots developed in that period. The data was filtered to limit the exclusion to major developments (see first column of Table 17 for details).

b) Lots with multiple owners

Land that has multiple owners (e.g. is subject to strata title) is less likely to be redeveloped as it requires multiple parties to agree to the sale and/or redevelopment at the same time. Using data provided by Council on the “count of owners” per lot, lots with five or more owners were excluded. As a result of these exclusions, only land with 4 or fewer owners was included in the analysis.

c) Other exclusions: community uses, essential services, common lots

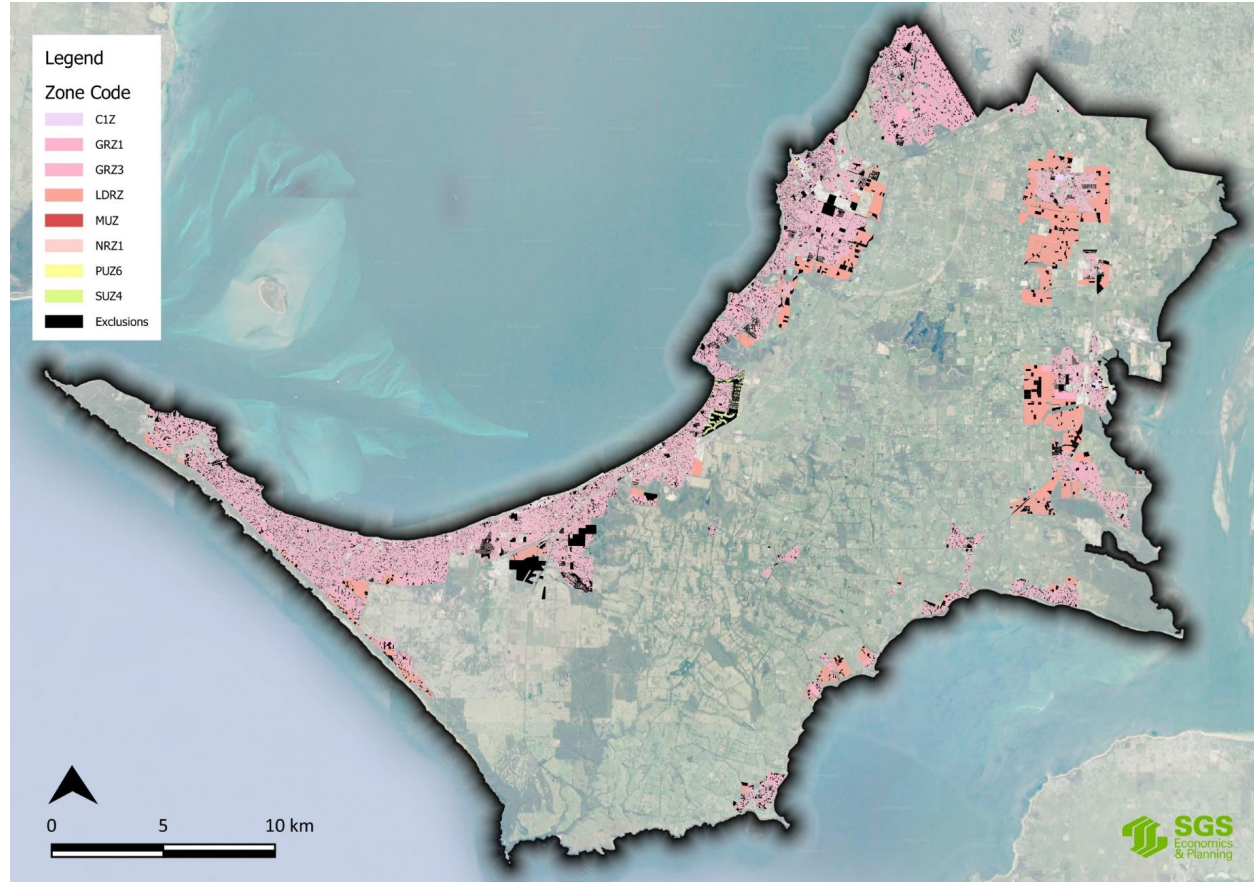
The final category of exclusions includes:

- Land currently occupied by community uses, essential services and other uses that are unlikely to be replaced with housing. Council property layer was used to identify these land uses by filtering out land with specific code descriptions. The excluded categories are listed in the first column of Table 18.
- Common lots that are typically the shared driveways in multi-dwelling developments.

All exclusions combined

Figure 8 shows all of the above exclusions combined. All land that has been deemed unavailable for new residential development within the UGB and within the next 15 years is shown in black. Excluded lots for each specific filter can be found in the attached package of maps.

FIGURE 8: AVAILABLE LAND



Source: SGS Economics and Planning, September 2023

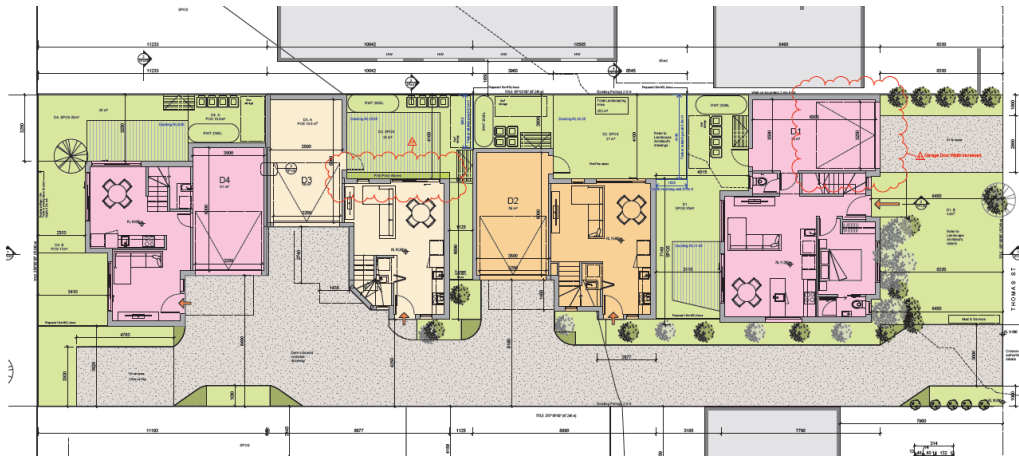
SGS ECONOMICS AND PLANNING: HOUSING CAPACITY ANALYSIS 2024

1

Appendix C: Case studies – impact of C219morn controls on development in areas without minimum lots size controls

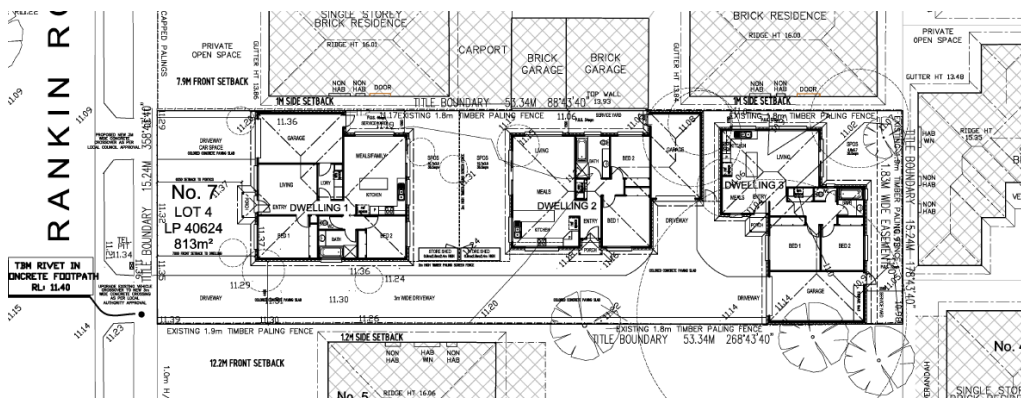
Thomas Street, Rosebud – 4 units

- No change.
- Post C219morn the site will remain GRZ1 therefore the assessment will stay the same as under C219morn



Rankins Road, Hastings – 3 units

- No change.
- The units are single storey therefore the 2 storey height limit will not result in change.
- NRZ39 has no additional ResCode requirements therefore the assessment will stay the same as under C219morn

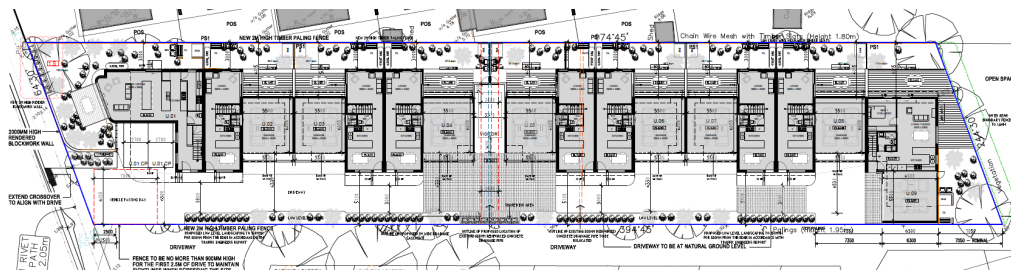


Point Nepean Road, Rosebud – 9 units

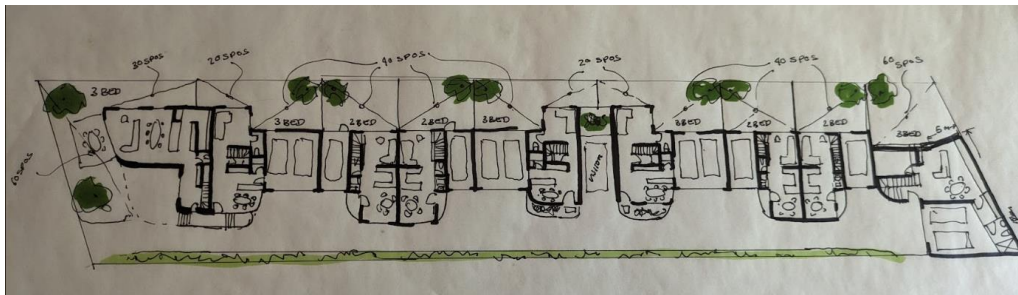
- Under NRZ2 the change to the SPOS required results in the loss of a unit or the change of unit make up.
- The other increased standards will have immaterial changes to the proposal.

- The units are two storey therefore the 2 storey height limit will not result in change.
- The proposal already complies with 2m side setbacks.
- To comply with the 5m rear setback unit 9 would need to extend to the rear boundary to be a wall on boundary.
- NRZ2 requires SPOS 40 sqm with a min dimension of 5m + 20spm POS with a min dimension of 3m for the 3rd bedroom.

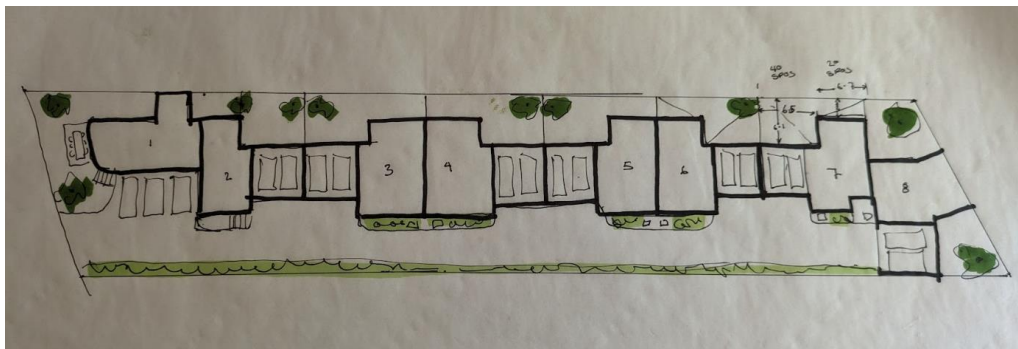
Endorsed Plans: 3 bed x9 units:



Keeping the number of lots but changing the bedroom make up: 3 bed x 5 units and 2 bed x 4 units



Keeping the bedroom makeup and therefore losing a unit: 3 bed x 8 units

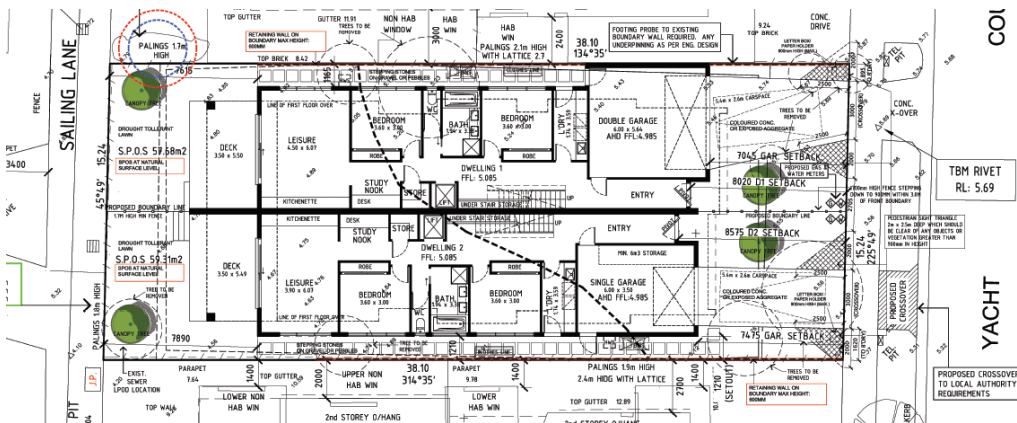


Yacht Court, Mornington – duplex

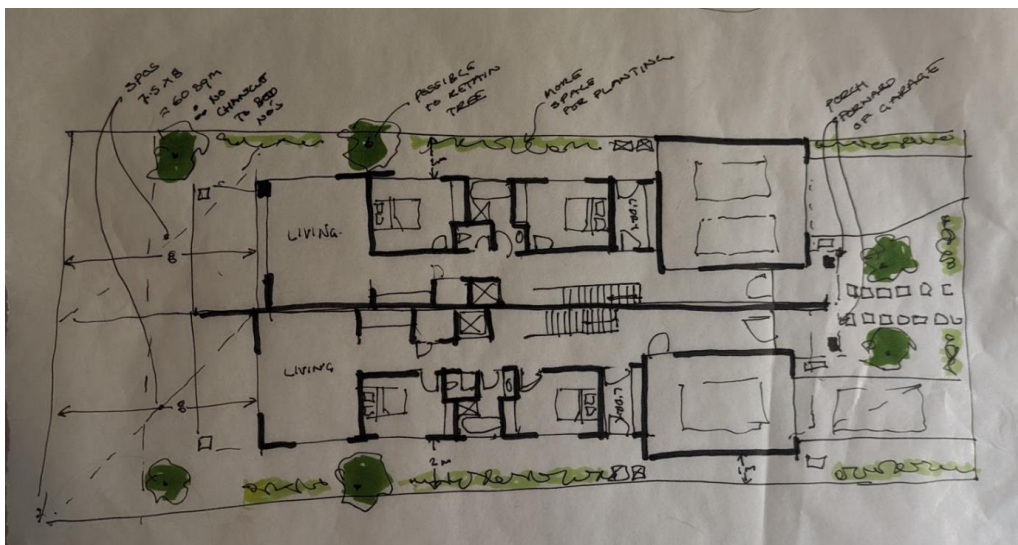
- Under NRZ2 there will only be minor tweaks to the plans required.
- The other increased standards will have immaterial changes to the proposal.
- The units are two storey therefore the 2 storey height limit will not result in change.

- The proposal would need an additional 0.8m on one side.
- The proposal complies with the 5m rear setback.
- NRZ2 requires SPOS 40 sqm with a min dimension of 5m + 20spm POS with a min dimension of 3m for the 3rd bedroom.
- Therefore the proposal only needs an extra 2sqm in unit 1 and 1sqm in unit 2.

Endorsed Plans:



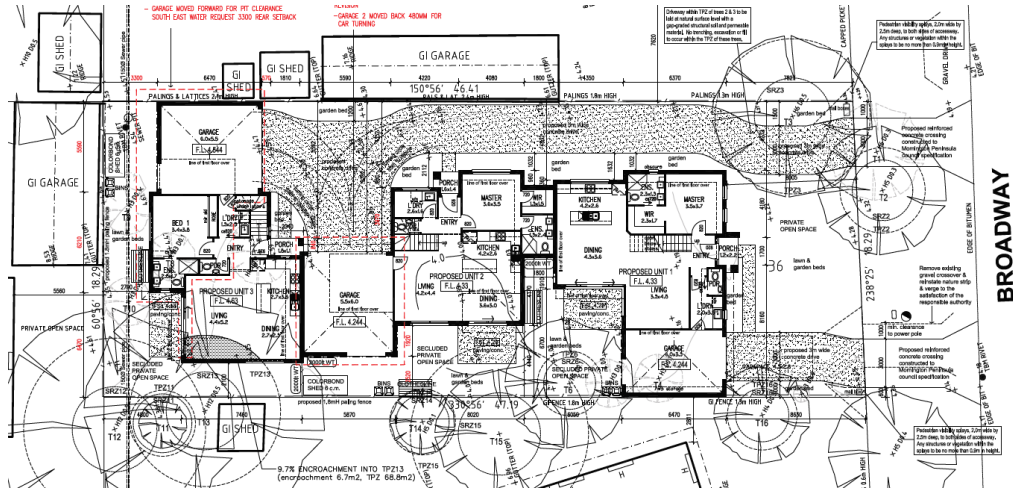
Proposed changes NRZ2:



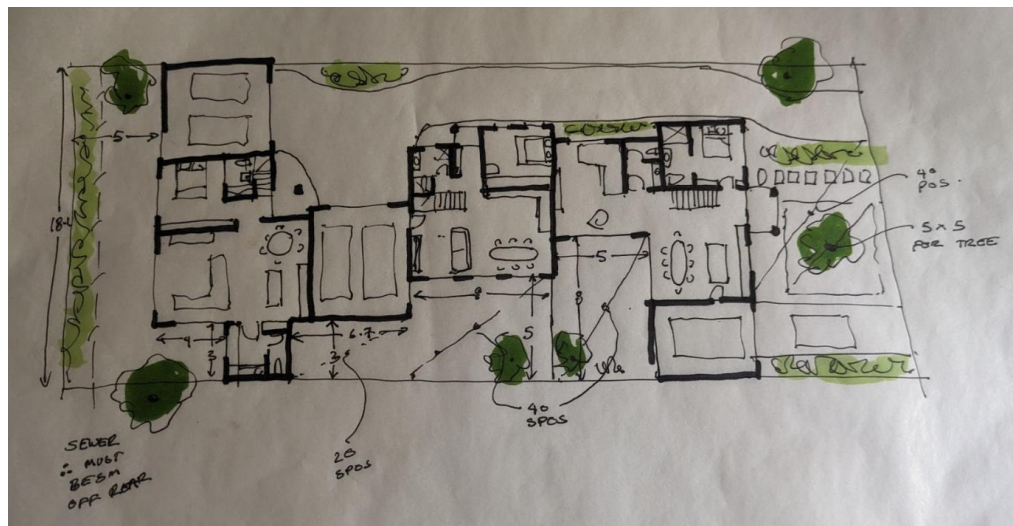
36 Broadway Capel sounds – 3 units.

- Change from GRZ to NRZ3
- Under NRZ3 the change to the SPOS required and the setbacks results in no change to the dwelling make up or subdivision yield
- There is a sewer in an easement close to the back of the lot in the rear so the building must be setback 5m as building over the easement to have the wall on boundary would not be possible.

Endorsed plans GRZ:



NRZ3:



19 Mary Street Dromana – duplex

- From GRZ to NRZ36.
- Under NRZ36 the change to the res code standards would require a bit of a redesign however the dwelling typology is essentially the same.
- The big change is that the lot can no longer be subdivided before or after development

Appendix D: Capacity results by township

TABLE 19: CURRENT NET DWELLING CAPACITY BY LOCALITY

Locality	Activity Centres (C1Z, MUZ, PU6Z)	GRZ/NRZ (w/o lot size controls)	GRZ/NRZ (with min. lot size controls)	Lower density (SUZ4 and LDRZ)	Net capacity
Arthurs Seat			97		97
Balnarring		17	114	1	132
Balnarring Beach			3		3
Baxter	163	140			303
Bittern		135	62	166	363
Blairgowrie			370	2	372
Boneo				60	60
Capel Sound		691	6		697
Crib Point		221	239		460
Dromana	494	687	42	27	1,250
Flinders			236	2	238
Hastings	1147	1059		23	2,229
McCrae		494	85		579
Merricks			12	3	15
Merricks Beach			6		6
Mornington	1462	2215	102	14	3,793
Mount Eliza		139	1584	2	1,725
Mount Martha		1258	817	32	2,107
Point Leo			85		85
Portsea			1034	21	1,055
Red Hill			64		64
Red Hill South			43		43
Rosebud	2212	2032	19	57	4,320
Rye	705	86	278	30	1,099
Safety Beach		699	6		705
Shoreham			156	3	159
Somers			50		50
Somerville	1197	1080	123	24	2,424
Sorrento			709		709
St Andrews Beach			37	6	43
Tootgarook			65	2	67
Tyabb		118		27	145
Total	7,380	11,071	6,444	502	25,397

TABLE 20: C219 MORN NET DWELLING CAPACITY BY TOWNSHIP

'Township'	Activity Centres (C1Z, MUZ, PU6Z)	GRZ/NRZ (w/o lot size controls)	GRZ/NRZ (with min. lot size controls)	Lower density (SUZ4 and LDRZ)	Net capacity
Arthurs Seat		2	32	65	99
Balnarring		17	114	1	132
Balnarring Beach			3		3
Baxter	163	140			303
Bittern		138	63	70	271
Blairgowrie			364	1	365
Boneo				60	60
Capel Sound		691	6		697
Crib Point		221	239		460
Dromana	494	549	70	30	1,143
Flinders			236	2	238
Hastings	1,147	1,059	11	12	2,229
McCrae		494	85		579
Merricks			12	3	15
Merricks Beach			6		6
Mornington	1,462	2,215	102	14	3,793
Mount Eliza		139	1,587		1,726
Mount Martha		1,266	706	132	2,104
Point Leo			85		85
Portsea			1,032	22	1,054
Red Hill			64		64
Red Hill South			43		43
Rosebud	2,212	2,032	19	57	4,320
Rye	705	117	254	20	1,096
Safety Beach		699	6		705
Shoreham			156	3	159
Somers			50		50
Somerville	1,197	1,080		147	2,424
Sorrento			709		709
St Andrews Beach			40	6	46
Tootgarook			59		59
Tyabb		124		22	146
Total	7,380	10,983	6,153	667	25,183

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ADDENDUM TO MORNINGTON HOUSING CAPACITY REPORT: STATE GOVERNMENT DRAFT HOUSING TARGETS

Overview

This addendum briefly describes the draft State Government housing targets, compares the targets to the VIF2023 forecasts, and compares the implied rate of dwelling supply for 15 years to housing capacity in Mornington Peninsula Shire. It concludes that the higher rate of housing supply implied in the draft housing targets can be accommodated within the identified housing capacity in Mornington.

Housing targets: capacity or supply?

The Victorian Governments' September 2023 Housing Statement foreshadowed the future release of housing targets for local government areas. Given the limited information at that time, there has been some speculation about whether these would be housing supply targets or housing capacity targets.

A supply target suggests a target for the number of dwellings that should be built in a given period. Whereas a capacity target is a target for the planned capacity for housing that should be made available at a particular point in time.

In relation to supply targets, it is important to note that the role of councils in supplying housing is indirect: they are responsible for strategic planning and development approvals, but the actual delivery of new housing relies on the actions of the private sector. As such, councils ability to influence the rate of housing supply – and achieve the 'supply target' – is limited.

A recent position paper from the Planning Institute of Australia (PIA) has suggested the draft housing capacity targets are more appropriate supply targets.¹ The PIA paper suggests there is a need for both 'housing capacity' and 'housing diversity' targets related to the 'carrying capacity' (which includes physical constraints and opportunities, existing or planned public transport and active transport, major state investments and job rich land uses and infrastructure, existing and planned parks, community and other social infrastructure, services and amenities, existing or planned utilities and other services).

In June 2024 the State Government release draft targets with the following description:

What are draft housing targets?

The draft housing targets represent an initial distribution of new homes across each local government area. When finalised, local government housing targets will be an important element of a new plan for Victoria.²

¹ PIA Victoria, P.V. (2024) 'Policy Position Paper: Housing Targets - 2024'.

² <https://engage.vic.gov.au/project/shape-our-victoria/page/housing-targets-2051>



This description appears to suggest the Government has proposed supply targets rather than capacity targets.

2024 draft housing targets and Victoria in the Future 2023 compared

The draft housing targets represent a significant increase on the current ‘official’ demand forecasts contained in the December 2023 release of Victoria in the Future (VIF 2023)

Adding the draft housing targets for all local government areas in Victoria gives a total of 2,461,200 additional dwellings to be supplied between ‘now to 2051’, or 87,900 dwellings each year (total divided by 28 years).

In comparison, the VIF 2023 forecasts is for 847,024 additional dwellings in Victoria between 2021 and 2036, or 56,468 dwellings per annum (simple average). The draft housing targets therefore represent a 56% increase on VIF 2023 forecasts.

The government’s Housing Statement also included the “bold target” of 800,000 new dwellings in the next decade (i.e. 80,000 dwellings per year). This is a slightly less ambitious target but still represents a 42% increase on the VIF 2023 forecasts.

TABLE 1: VICTORIA IN THE FUTURE 2023 DWELLING FORECASTS AND 2024 DRAFT HOUSING TARGETS COMPARED

	2021	2036	Change	Change per annum	Increase on VIF 2023	Increase on VIF 2023 (%)
VIF 2023	2,810,790	3,657,814	847,024	56,468	N/A	N/A
Housing Statement 2023	N/A	N/A	800,000	80,000	23,532	42%
Draft Housing Targets 2024	N/A	N/A	2,461,200*	87,900**	31,432	56%

*Target for period 2024 to 2051 (28 years inclusive). **Target divided by 28.

Draft Housing targets and VIF 2023 for Mornington Peninsula Shire

Comparing the VIF 2023 forecasts and the government’s housing target for Mornington Peninsula Shire reveals a similar story. The VIF 2023 forecast for Mornington Peninsula Shire is for a total of 10,950 additional dwellings in the period 2021 to 2036, or 730 dwelling per annum. The draft housing target is 31,000 dwellings (between now and 2051; for 28 years, rather than 15 years as per VIF 2023) which implies an average of 1,107 dwellings per annum – a 52% increase per annum on the VIF 2023 forecasts.

TABLE 2: VICTORIA IN THE FUTURE 2023 DWELLING FORECASTS AND 2024 DRAFT HOUSING TARGETS COMPARED

	2021	2036	Change	Change per annum	Increase on VIF 2023	Increase on VIF 2023 (%)
VIF 2023	93,590	104,540	10,950	730	NA	NA
Housing Target 2024	NA	NA	31,000*	1,107**	378	52%

*Target for period 2024 to 2051 (28 years inclusive). **Target divided by 28.



Draft Housing targets and capacity compared

In the *Mornington Peninsula Housing Capacity Analysis 2024* (SGS Economics and Planning, June 2024) (main report), the relationship between demand and capacity over time was explored by comparing annual dwelling demand to total capacity. This comparison is reproduced in the Table 3 and Figure 1 below based on VIF 2023 demand forecast (730 dwellings per year). The main report contained the following commentary:

In the chart, average annual demand is shown in orange and the remaining capacity in blue.

It is apparent from this comparison that the capacity consumed in any one year represents a modest share of all capacity. The ratio of total capacity to annual demand is 33:1 in year 1 and decreased progressively to 19:1 by year 15. This means that in the year 2038, for every dwelling required to meet demand there will be capacity for 20 dwellings. As noted above, one study has cited a target for capacity to be 7 to 10 times annual demand (a ratio of between 7:1 and 10:1), which is exceeded throughout the 15 years period.

Similar analysis has been undertaken assuming Mornington Peninsula Shire's draft housing targets represent demand for the next 15 years rather than VIF 2023 (Table 4 and Figure 2) applying the figure of 1,107 dwelling per year.

The higher demand figure means that more capacity is consumed over the 15 year horizon. The ratio of total capacity to annual demand is 23:1 in year 1, 14:1 in year 10, and 9:1 by year 15. By year 15, the ratio of demand to capacity is approaching the minimum ratio cited above of between 7:1 and 10:1.

This suggest that *if* the rate of housing supply implied by the draft housing targets rate are achieved, the ratio of demand to capacity will exceed 10:1 up until year 14. In year 15 the residual capacity of 8,576 dwellings exceeds the annual demand of 1,107 by a considerable margin.

Alternatively, if dwelling supply trends exceed the densities assumed in the further housing capacity analysis, an updating of the capacity assumptions may reveal that the remaining capacity is higher than estimated in the main report, and may be sufficient for the 15 year period.



TABLE 3: CAPACITY AND VIF 2023 DEMAND COMPARED, OVER TIME

Year	Dwelling demand per annum	Ratio of capacity to annual demand	Remaining capacity
Year 0	N/A	N/A	25,183
Year 1	730	33:1	24,453
Year 2	730	32:1	23,723
Year 3	730	31:1	22,993
Year 4	730	30:1	22,263
Year 5	730	29:1	21,533
Year 6	730	28:1	20,803
Year 7	730	27:1	20,073
Year 8	730	26:1	19,343
Year 9	730	25:1	18,613
Year 10	730	24:1	17,883
Year 11	730	23:1	17,153
Year 12	730	22:1	16,423
Year 13	730	21:1	15,693
Year 14	730	20:1	14,963
Year 15	730	19:1	14,233

FIGURE 1: CAPACITY AND VIF 2023 DEMAND COMPARED, OVER TIME

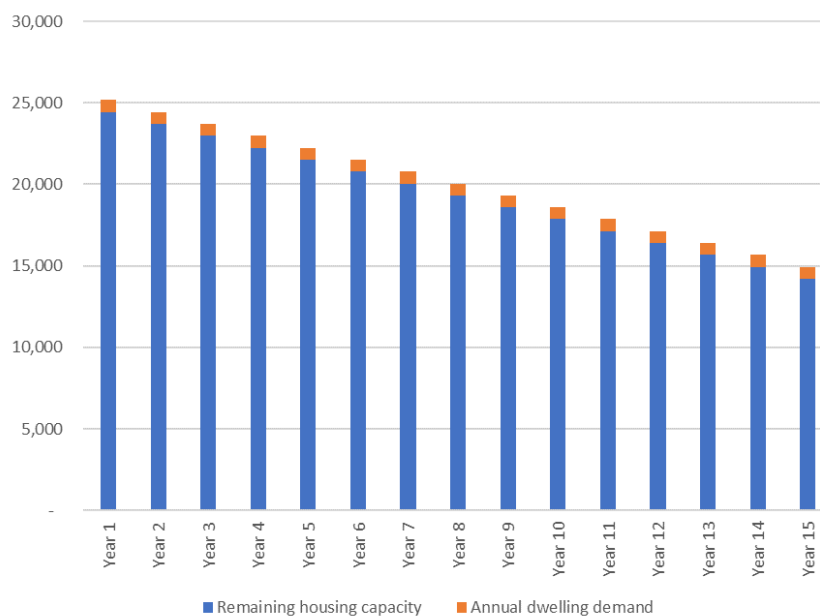
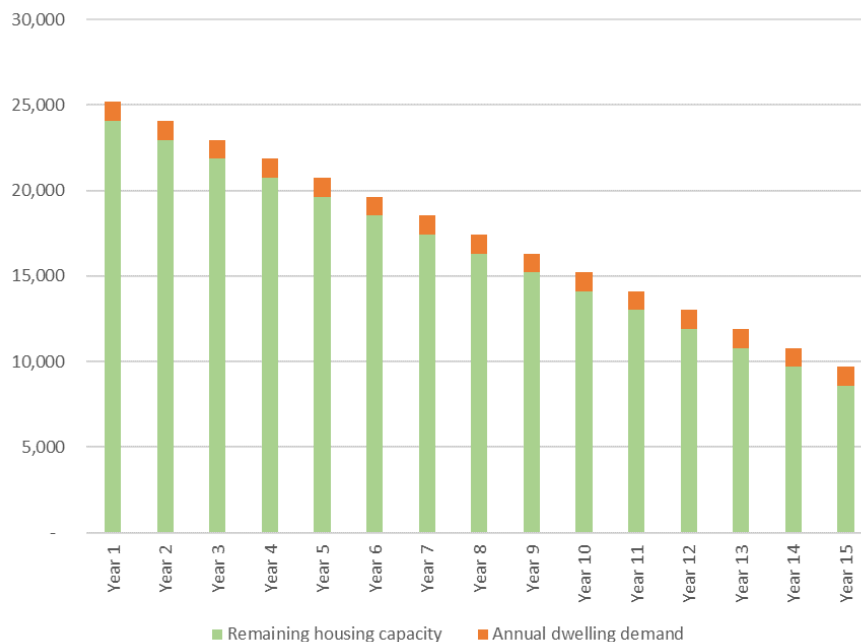




TABLE 4: CAPACITY AND DRAFT HOUSING TARGETS 2024 DEMAND COMPARED

Year	Dwelling demand per annum	Ratio of capacity to annual demand	Remaining capacity
Year 0	N/A	N/A	25,183
Year 1	1,107	23:1	24,076
Year 2	1,107	22:1	22,969
Year 3	1,107	21:1	21,862
Year 4	1,107	20:1	20,754
Year 5	1,107	19:1	19,647
Year 6	1,107	18:1	18,540
Year 7	1,107	17:1	17,433
Year 8	1,107	16:1	16,326
Year 9	1,107	15:1	15,219
Year 10	1,107	14:1	14,112
Year 11	1,107	13:1	13,004
Year 12	1,107	12:1	11,897
Year 13	1,107	11:1	10,790
Year 14	1,107	10:1	9,683
Year 15	1,107	9:1	8,576

FIGURE 2: CAPACITY AND DRAFT HOUSING TARGETS 2024 DEMAND COMPARED



2024

Other post-Planning Panel
changes to Amendment
C219morn



Strategic Planning

Mornington Peninsula Shire

August 2024

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Appendices:

Appendix 1: Residential Development Framework - Housing Change Areas for C1Z, MUZ & PUZ Land by Township & Commercial Area

Abbreviations:

C1Z	Commercial 1 Zone
DDO	Design and Development Overlay
DTP	Department of Transport and Planning
GRZ	General Residential Zone
LDRZ	Low density Residential Zone
MAC	Major Activity Centre
MUZ	Mixed Use Zone
NCO	Neighbourhood Character Overlay
NCS	Neighbourhood Character Study and Guidelines (Ethos Urban, 2019)
NRZ	Neighbourhood Residential Zone
PCRZ	Public Conservation and Resource Zone
PPRZ	Public Park and Recreation Zone
PUZ	Public Use Zone
TRZ	Transport Zone
VPO	Vegetation Protection Overlay

1 List of Changes

Item	Change
4	Update the Housing Change Areas methodology for land zoned GRZ, C1Z, MUZ and PUZ (inside MACs) land.
5.1	Update Amendment C219morn mapping to be consistent with Amendment C241morn (Balcombe Estuary and associated reserves).
5.2	Apply LDRZ7 to the area in Crib Point that was originally proposed to be rezoned to LDRZ2 to correct an error in the translation of existing subdivision controls.
5.3	<ul style="list-style-type: none"> Consolidate the NRZ2 and NRZ6. Delete NRZ6 mapping / schedule.
5.4	<ul style="list-style-type: none"> Consolidate the NRZ4 and NRZ8. Delete the NRZ8 mapping / schedule.
5.5	Retain the C1Z and delete proposed NRZ16 from land at 3746 Point Nepean Road, Portsea to correct a zone mapping error.
5.6	Ensure the translation of DDO24 is policy neutral, as intended, by: <ul style="list-style-type: none"> Deleting proposed NRZ24 along with the NRZ24 mapping and applying proposed NRZ23 to the affected land instead. Deleting proposed NRZ26 along with the NRZ26 mapping and applying proposed NRZ25 to the affected land instead.
5.7	Remove the NRZ2 and apply the NRZ37 to the foreshore side of Point Nepean Road, Rosebud.
5.8	Delete the DDO1 from additional areas within the Rosebud MAC.
5.9	Apply the DDO63 to replace the DDO1, where it applies within the Mornington MAC.
6	Amend Clause 15.01-5L to improve clarity, remove repetition and define unclear phrases or words, consistent with the amendments to the NRZs, GRZs, DDOs and NCOs.
7.1	Amend the proposed 'Policy application' of Clause 16.01-1L to include land within the PUZ, within the MACs (Rosebud, Mornington and Hastings).
7.2	Amend the proposed 'Policy guidelines' of Clause 16.01-1L to generally remove 'rural dwellings' and include 'shop top housing'.

7.3	Amend the proposed Residential Change Framework Plan - housing change framework maps of Clause 16.01-1L.
8.1	Amend proposed LDRZ1 to recognise that minimum subdivision lot sizes should be consistent with the LDRZ parent provision (i.e. recognise the 0.2 and 0.4 hectare minimum subdivision size requirements, pending sewerage connections).
8.2	Amend proposed LDRZ2 to recognise that minimum subdivision lot sizes should be consistent with the LDRZ parent provision and existing DDO4 (i.e. recognise the 0.25 and 0.4 hectare minimum subdivision size requirements, pending sewerage connections).
9.1.1	Amend GRZ1, GRZ3 and GRZ4 to delete section 3.0 and re-number the remaining sub-clauses to be consistent with the format of the local provision templates.
9.1.2	Delete Decision Guidelines in GRZ1, GRZ3 and GRZ4.
9.2	Remove the proposed neighbourhood character objectives from the GRZ3 and GRZ4.
9.3	Rename the GRZ3 schedule to 'Central Mornington Substantial Change Areas'.
9.4	Delete ResCode requirements from the GRZ4.
10.1	<ul style="list-style-type: none"> • Delete proposed NRZ6. • Reduce the proposed side setback ResCode standard within proposed NRZ2, to be consistent with the exhibited NRZ6.
10.2	Delete proposed NRZ8.
10.3	Amend proposed schedules NRZ2 - NRZ5, NRZ7, NRZ9 - NRZ23, NRZ25, NRZ27 - NRZ37 to delete section 3.0 and re-number the remaining sub-clauses to be consistent with the format of the local provision templates.
10.4	<ul style="list-style-type: none"> • Delete proposed NRZ24 and NRZ26. • Rename NRZ23 and NRZ25.
10.5	Delete the 'residential building' reference from Standard A17 within proposed NRZ30 - NRZ34.
10.6	Amend proposed NRZ37 to include a front fence height requirement for Standards A20 and B32.
11.1.1	Amend Table 1 of proposed DDO4 to correct the area that the building height requirement applies to.
11.1.2	Ensure the subdivision requirements of the existing DDO4 have been translated on a policy neutral basis, as intended for the area west of Truemans Road and north of the Urban Growth Boundary.

11.2	Delete the landscape plan Application requirement from DDO22 and DDO34 - DDO54.
11.3	Rename DDO schedules DDO34 - DDO38.
11.4	<p>Create new schedule DDO63 with content duplicated from DDO1 but amended to:</p> <ul style="list-style-type: none"> • Reinstate the existing maximum mandatory 10 metre height requirement within Table 2 to 2.0 Buildings and Works. • Rename the schedule 'Mornington Activity Centre - Residential' instead of 'Township Area'. • Apply DDO63 to land within the Mornington Activity Centre.
12.1.1	Amend proposed NCO1 and NCO2 to improve clarity, remove repetition and define unclear phrases or words.
12.1.2	Amend proposed NCO1 and NCO2 to refine the permit requirement for native vegetation removal to be generally consistent with the existing VPO1.
12.2	Amend proposed NCO2 to be consistent with the NCO1, as appropriate, consistent with the Planning Panel's recommended changes for the NCO1 (recommendations 12.a) - 12.e)).
13.1	Amend the Schedule to Clause 72.03 to reflect the final maps comprising part of the Mornington Peninsula Planning Scheme, as updated by other Planning Scheme amendments.
13.2	<p>Amend the Schedule to Clause 72.08 to:</p> <ul style="list-style-type: none"> • include the name of any Background Document and related planning scheme amendment number that has been included since the Schedule to Clause 72.08 was drafted for exhibition. • revise the referenced clause numbers, as appropriate.
14.1	Amend the Instruction sheet to reflect the post-Planning Panel version of Amendment C219morn.
14.2	<p>Amend the Explanatory Report to:</p> <ul style="list-style-type: none"> • Reflect the post-Planning Panel version of Amendment C219morn. • Correct any clerical errors and update any outdated references.
15	Make editorial changes to improve phrasing, or correct grammatical and spelling errors, where necessary.

2 Purpose of this document

The purpose of this document is to outline and explain changes made to Amendment C219morn in addition to those made in response to accepting recommendations of the Planning Panel. The types of changes addressed in this document include:

- Changes agreed to by Council's delegates as part of the 'without prejudice' drafting exercise held during the Panel hearing that were not included as formal recommendations in the Panel Report.
- Ensuring the drafting of ordinances faithfully align with Council's adopted NCS and accurately translate existing DDO requirements as originally intended.
- Ensuring all ordinances comply with Ministerial Direction 7(5): Form and Content of Planning Schemes and the Practitioner's Guide to Victorian Planning Schemes.
- Updating the methodology to determine how change area categories are applied to residential and commercial areas (required in response to partly accepting Panel Recommendation 3).
- Ensuring any accepted changes recommended by the Panel are applied consistently across all ordinances.
- Correcting any identified clerical errors, anomalies or inconsistencies (such as errors in zone mapping and the translation of existing mandatory subdivision controls).
- Ensuring all ordinances and mapping reflect other planning scheme amendments that have either been adopted by Council, approved by the Minister or gazetted (including VC amendments).
- Ensuring all supporting amendment documents, including the Explanatory Report and Instruction Sheet, reflect post-Panel changes and correctly identify schedule and planning scheme mapping numbers.

3 Methodology for drafting refinements to comply with drafting rules and ensure consistency with Council's adopted NCS and existing DDO schedules

As part of a comprehensive post-Panel review of Amendment C219morn, the drafting of ordinances has been refined to ensure all ordinances:

- Comply with Ministerial Direction 7(5): Form and Content of Planning Schemes and the Practitioner's Guide to Victorian Planning Schemes.
- Faithfully align with Council's adopted NCS and accurately translate existing DDO requirements as originally intended in the approach to Amendment C219morn.

The following is an explanation of how these drafting changes have been made.

3.1 Reviewing ordinances against Council's adopted NCS and existing DDOs

Planning Panel recommendations 1.c) and 1.d) recommend that Council:

c) review the neighbourhood character objectives and decision guidelines in all Neighbourhood Residential Zone schedules to improve their clarity and remove repetition

d) review Design and Development Overlay schedules to:

- *avoid or define unclear phrases or words such as 'formal garden setting' and 'hillside character'*
- *improve clarity and remove repetition in the design objectives (Clause 1.0).*

The NRZ and DDO schedules have been reviewed as recommended, as well as all GRZ and NCO schedules. When making such changes, care has been taken to ensure that the language applied better aligns with Council's adopted NCS, particularly concerning:

- Neighbourhood character objectives (NRZs and NCOs).
- Design objectives (DDOs).
- Decision guidelines (NRZs, GRZs, DDOs and NCOs).

It is noted that the NCS consistently defines Precinct Profiles (character areas) by the following character elements (along with an objective and design response) (see image 1 below):

- Building height, form and layout
- Gardens and landscaping
- Siting and setbacks
- Garage storage and vehicle access
- Front fencing

A sixth character element, that is only referenced in some Precinct Profiles (character areas), addresses building materials, design and details (along with an objective and design response).

Given Ministerial direction s7(5) - The form and Content of Planning Schemes only allows five objectives per ordinance, ordinances have been reviewed to ensure the following five elements are derived from the NCS:

- Building form within setting
- Setbacks
- Garden
- Street and car presentation
- Front fences

Where appropriate, language that better defines each of the Precinct Profiles (character areas) in the 'Preferred Character Statement', 'Key Characteristics' or 'Design Guidelines' have been translated into the ordinances. For example, Bush Residential 1 is described as follows in the NCS (images 1 and 2):

Design Guidelines - Bush Residential 1		
Character Elements	Objective	Design Responses
Building height and form	To ensure that new buildings and extensions do not dominate the streetscape.	New development should complement the 1-2 storey building height and forms of existing dwellings. Roofs should provide prominent eaves.
Gardens and landscaping	To maintain and enhance the native vegetation dominated vistas, streetscapes and backdrops.	Retain existing native and/or canopy trees and understorey wherever possible (Locate footings outside tree protection zone). If this cannot be achieved, or a tree is considered appropriate for removal, the site should provide adequate space for offset planting of native trees that will grow to a mature height similar to the mature height of the tree to be removed. Prepare a landscape plan to accompany all applications for new dwellings that utilise appropriate native species. Plant vegetation around dwellings, including trees. Provide for one area within the front set back with minimum dimensions of 5m x 5m, to accommodate at least one canopy tree. Where a tree is to be removed, it is to be replaced on site with a tree of a similar height. Buildings should not exceed 40% site coverage. Provide at least 40% of the site as permeable surface.
Siting and setbacks	To maintain and reinforce the predominant rhythm of dwelling spacing within the streetscape, while enabling tree planting.	Buildings should be set back a minimum of 2m from both side boundaries to enable the planting and growth of medium to large trees and understorey planting.
Garage storage and vehicle access	To minimise the dominance of car parking access and structures and to retain the existing street rhythm.	Locate garages and carports behind the line of the front dwelling façade. Minimise paving in front yards, including the driveway. Provide only one vehicular crossover per typical site frontage.
Front fencing	To maintain and strengthen the spaciousness and bush character of front gardens and the view of these gardens and trees from the street.	Provide no or a low, open style front fence up to 1.2m in height. Provide no, or a low, open style side fence up to 1.2m in height from the front of the dwelling.

Image 1: Bush Residential 1 (BR1) - Design Guidelines (Character Elements, Objective and Design Response)

6.9 Bush Residential 1

Preferred Character Statement

Informal bush gardens surround low scale dwellings on spacious sites. New development provides large front and side setbacks to allow for the retention and continued planting of native vegetation.

New development reflects the existing low scale dwellings, using simple building forms. Dwellings do not penetrate the existing native tree canopy and are often obscured by vegetation.

Dwellings utilise natural materials with muted tones and colours to fit within the vegetated landscape setting.

Front fencing is low and unobtrusive, blending with gardens and street vegetation.

Key Characteristics

- Architectural Style**
 - Modern to occasional contemporary/post war
- Dwelling Type**
 - Single detached dwelling
- Material & Form**
 - Brick and weatherboard
- Roof Styles**
 - Hipped, tiled and occasional metal roofs
- Setbacks**
 - 8-9 front
 - 2-3m to one side, 2-5m from the other
- Height**
 - Predominantly single storey, occasional double storey
- Orientation**
 - Generally sited parallel to the street, considerable number of dwellings informally sited
- Car Storage**
 - Equal with dwelling, occasionally in front or behind

- Garden Styles**
 - Medium to high levels of native, informal vegetation
 - Large native canopy trees (5 - 8m+)
- Fencing**
 - 1 to 1.5m, transparent post and wire and permeable timber picket / solid timber mix, front and side
- Public Realm**
 - High levels of native, informal vegetation in nature strips, no footpaths, swale drains, occasional unsealed roads
- Topography**
 - Flat to sloping
- Views and Vistas**
 - Views down neighbourhood streets and of vegetation and tree canopies
- Street Layout**
 - Curvilinear and modified grid mix

Image 2: Bush Residential 1 (BR1) - Preferred Character Statement and Key Characteristics

The final Neighbourhood character objectives of NRZ9 are therefore expressed as follows (as shown in table 1), drawing on the key statements circled above:

Objective	NRZ9 / BR1
Form within setting	To ensure new built form is of a Modern style and responds to the bush character by fitting within the streetscape and the wider landscape setting.
Setbacks	To provide spacious setbacks of buildings, that retain the existing street rhythm and allow for the retention of native vegetation, including canopy trees.
Garden	To enhance the native vegetation dominated vistas, streetscapes and backdrops by providing space for native canopy trees and planting within the private realm.
Street and car presentation	To ensure the prominence of car parking structures and accessways is minimised
Front fence	To maintain the minimal delineation between the public and private realm with unobtrusive low front fences that blend with gardens and street vegetation.

Table1: Adopted NRZ9 / BR1 Neighbourhood character objectives

In addition to ensuring alignment with the NCS, refinements to drafting were undertaken ensuring that the key character requirements of existing DDO schedules are accurately translated as originally intended, including having regard to underpinning character studies.

Drafting refinements also have regard to:

- *Ministerial Direction 7(5) - The Form and Content of Planning Schemes*
- *Practitioner's Guide to Victoria's Planning Schemes (March 2024)*

3.2 Tracked changes

Tracked changes are provided on all ordinances and supporting amendment documents (including the Explanatory Report) as per the *Guidelines: Preparing Planning Scheme Amendment Documentation (September 2014)*:

- *insertions of text are shown in blue and underlined i.e. 'Example'*
- *deletions of text are shown in red strikethrough i.e. 'Example'*

Tracked changes record:

- Council's endorsed post-exhibition changes as per its 24 October 2022 resolution (i.e. the version of Amendment C219morn considered by the Planning Panel), and
- Post-Planning Panel changes adopted by Council on 6 August 2024.

3.3 Notations

Notations (or comments) are provided for most tracked changes to all GRZ, NRZ, DDO and NCO ordinances. These comments have been included to provide transparency about why changes have been made and at what stage in the amendment process as follows:

Example:

PE:

WP:

PP:

Definition:

Post-exhibition change

Without Prejudice change*

Post-Planning Panel change

* Changes agreed to by Council's delegates as part of the 'without prejudice' drafting exercise held during the Panel hearing.

Following the stage in which the change was made (PE, WP or PP), a brief description is provided within the comment to justify the change, such as:

Example:

REC 6.

Reason for change - context:

The change has been made due to implementing Planning Panel recommendation 6. 'in full' (as opposed to 'in part', noting some recommendations have been accepted in part).

OC Form and Content

This represents an 'other change' and the reason for the other change is to make the Schedule consistent with *Ministerial direction s7(5) - The form and content of Planning Schemes or Practitioner's Guide to Victoria's Planning Schemes (March 2024)*.

VC255

Planning Scheme Amendment VC255 deleted 3.0 from the GRZ and NRZ schedules. Therefore the remaining sub-clauses have been re-numbered to be consistent with the format of the local provision templates.

Changes that are not accompanied by a comment are generally the result of universally applying Planning Panel recommendations 1.c) and 1.d) (as discussed above in section 3.1).

These changes particularly apply to:

- Neighbourhood character objectives (NRZs and NCOs)
- Design objectives (DDOs)
- Statement of neighbourhood character (NCOs)
- Decision guidelines (NRZs, GRZs, DDOs and NCOs)
- Clause 15.01-5L (Neighbourhood character - Mornington Peninsula)
- The Explanatory Report

4 Updated methodology for applying Housing Change Area categories to residential and commercial land

In its report, the Planning Panel concluded that the designation of 'Housing Change Areas' within the amendment is overly conservative when considering constraints – specifically in relation to bushfire prone areas, flood prone areas, areas subject to sea level rise, land affected by overlays and land within MACs (i.e. Mornington, Rosebud and Hastings).

The Panel concluded that:

- Mapping for Planning Scheme overlays, Bushfire Prone Areas and Melbourne Water flood mapping (used to identify areas subject to sea level rise of 0.8 metres by 2100) cannot be used to determine capacity impacts without further assessment and are not appropriate to categorise land for minimal change,
- Any land designated minimal change solely because it was in a Bushfire Prone Area or Melbourne Water flood mapping should be categorised as incremental change unless it is a MAC, and
- All residential land identified through a structure plan as being in a MAC boundary should be categorised for substantial change.

In response, the methodology for categorising housing change areas has been updated by reducing the scope of constraints and differentiating residential areas within MACs (which are recognised areas for growth) and all other residential areas.

Under the revised methodology, all residential land within MACs is designated for substantial change unless land is in an area of identified special character – either by the proposed Neighbourhood Character Overlay or land directly abutting the foreshore with an existing two storey mandatory control (consistent with the Rosebud Activity Centre Structure Plan (Hansen Partnership, 2017).

This approach is still generally consistent with Council's adopted HSS Refresh which defines substantial, incremental and minimal change areas as follows:

- Substantial - areas within the Shire's three Major Activity Centres, Mornington, Rosebud and Hastings and some large townships. In these areas, development of 3 or more storeys will be permitted in the commercial core and in some surrounding residential areas in line with each centre's adopted Structure Plan.
- Incremental - areas that do not have the identified constraints of the 'minimal change areas', but where housing growth is expected to occur within the context of existing or preferred neighbourhood character. In these areas' development will be restricted to 2 storeys, with no subdivision controls.
- Minimal - areas that have special neighbourhood, heritage, environmental and landscape characteristics identified in the planning scheme through Overlays (DDO, VPO, SLO, BMO) or are subject to bushfire risk, flooding or erosion. In these areas' development will be restricted 2 storeys, with existing subdivision and overlay controls retained.

The current methodology (as per the Housing and Settlement Strategy: Refresh 2020-2036 (Morningson Peninsula Shire, 2020)) and revised methodology are shown in images 3 - 6 below:

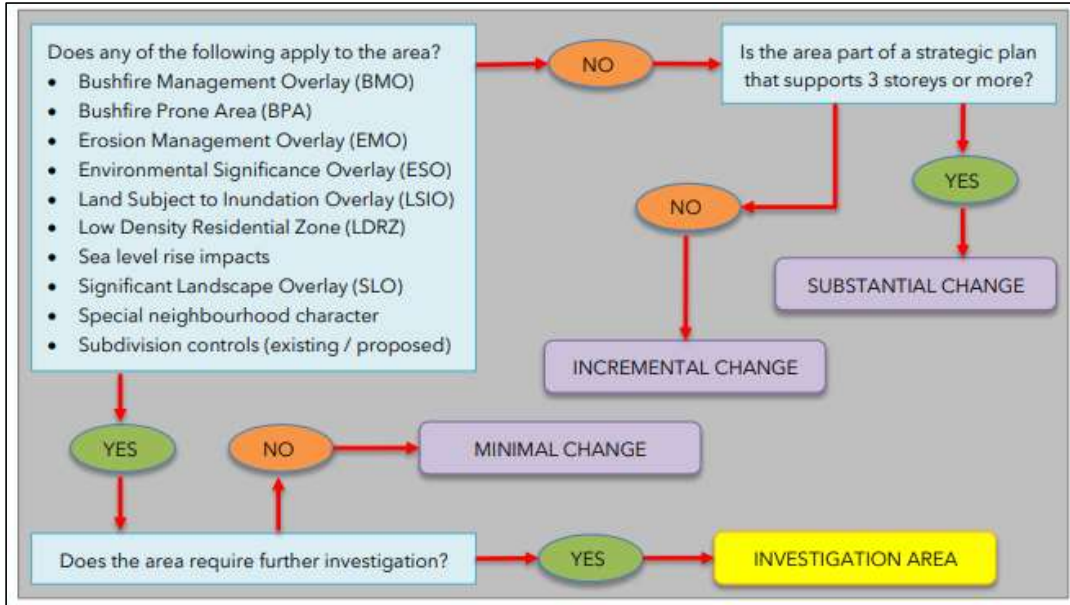


Image 3: Current Methodology - Residential Zones

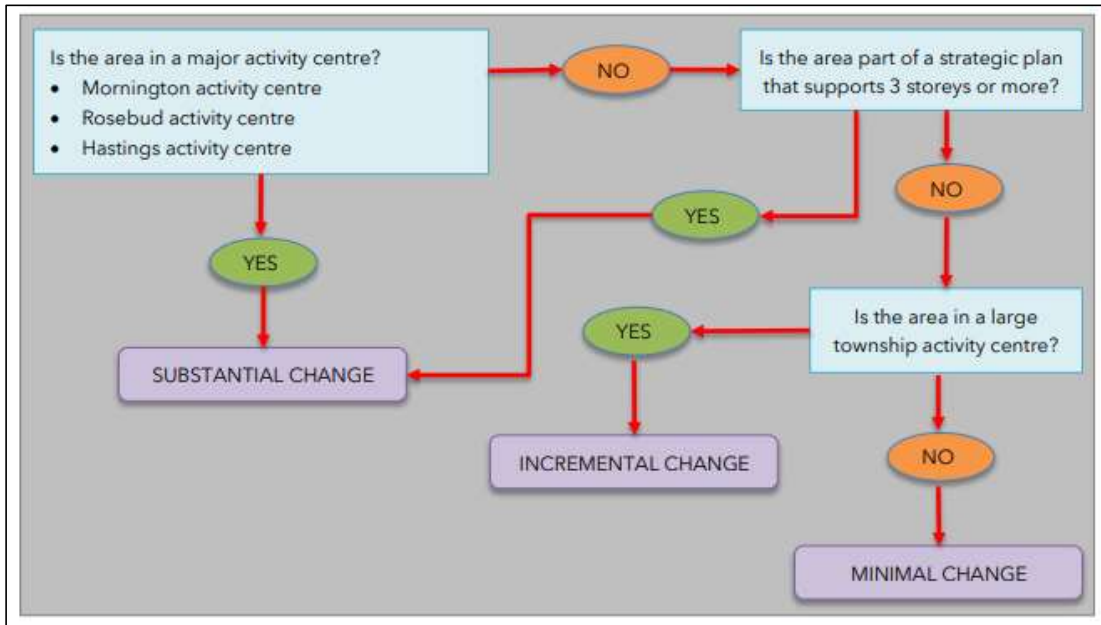


Image 4: Current Methodology - Commercial areas

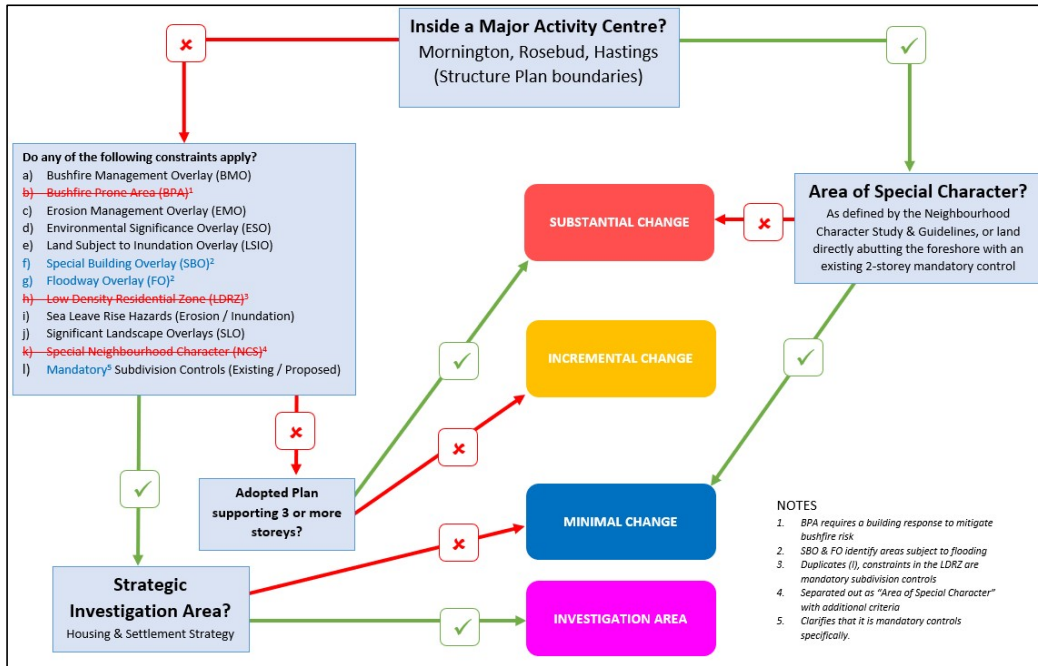


Image 5: Revised Methodology - Residential Zones

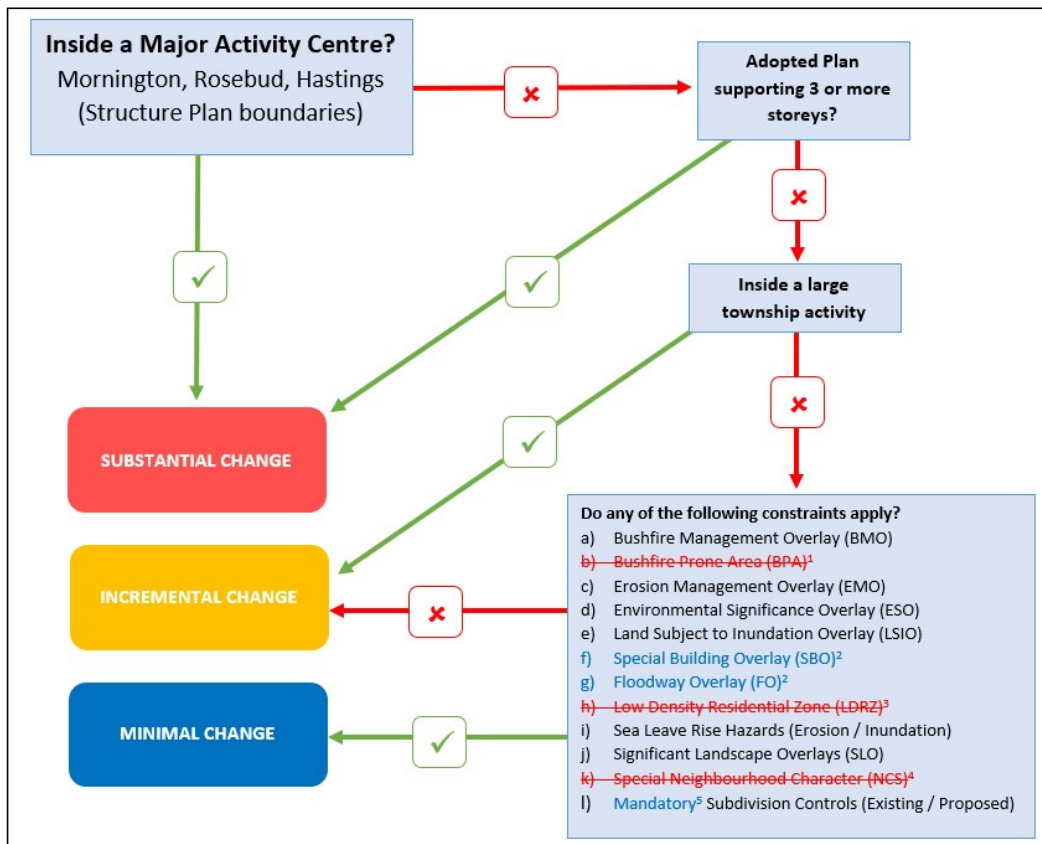


Image 6: Revised Methodology - C1Z, MUZ and PUZ (inside MACs)

The resultant changes to the mapping of housing change area mapping for each of the three Major Activity Centres are shown below in images 7 - 9:

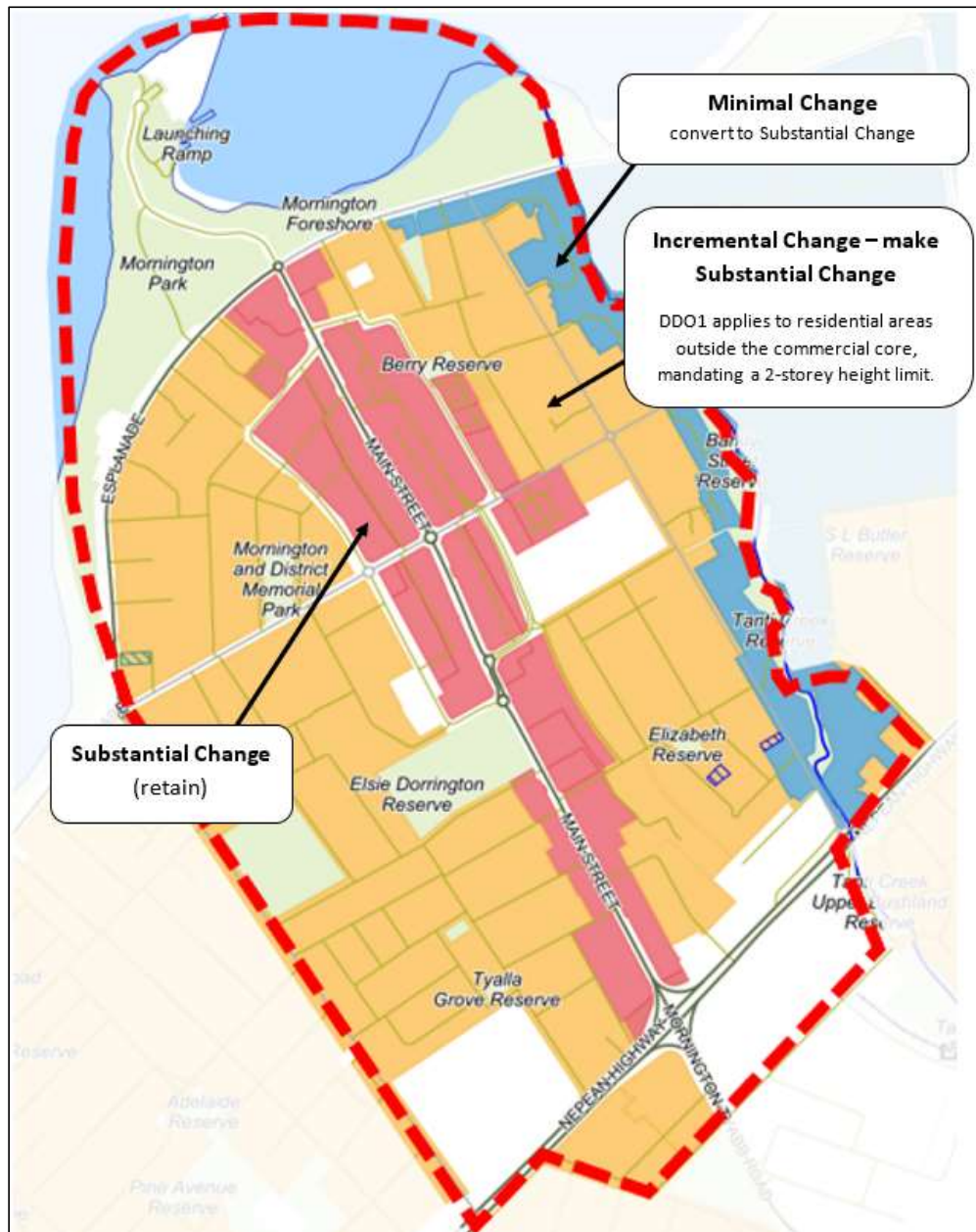


Image 7: Revised Housing Change Area mapping in the Morningson MAC

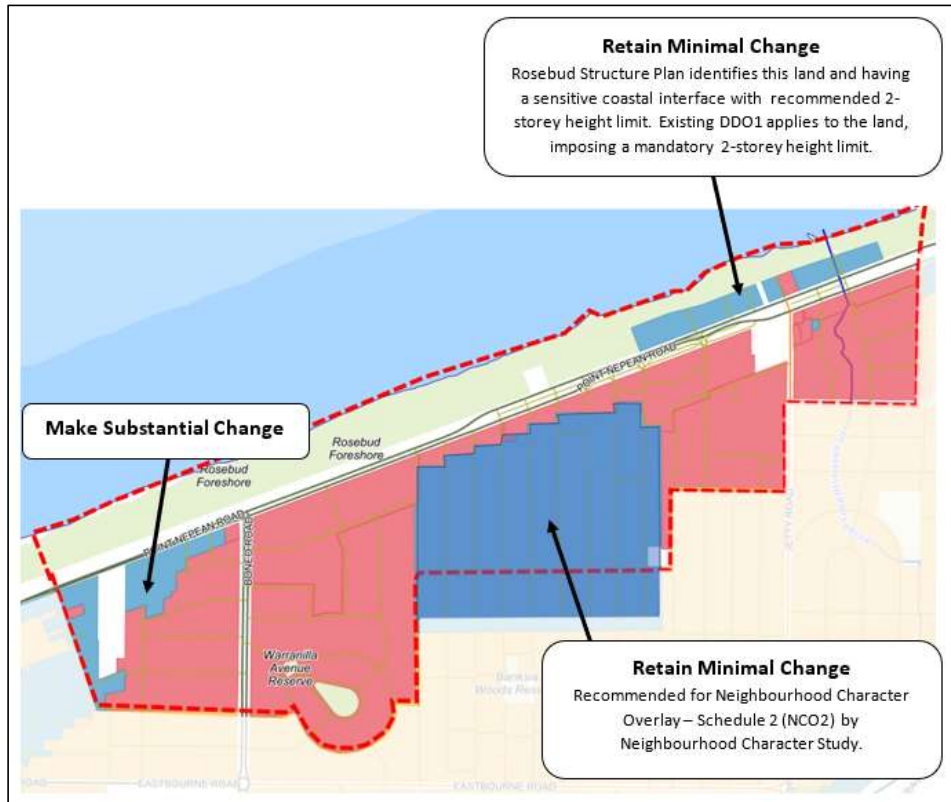


Image 8: Revised Housing Change Area mapping in the Rosebud MAC

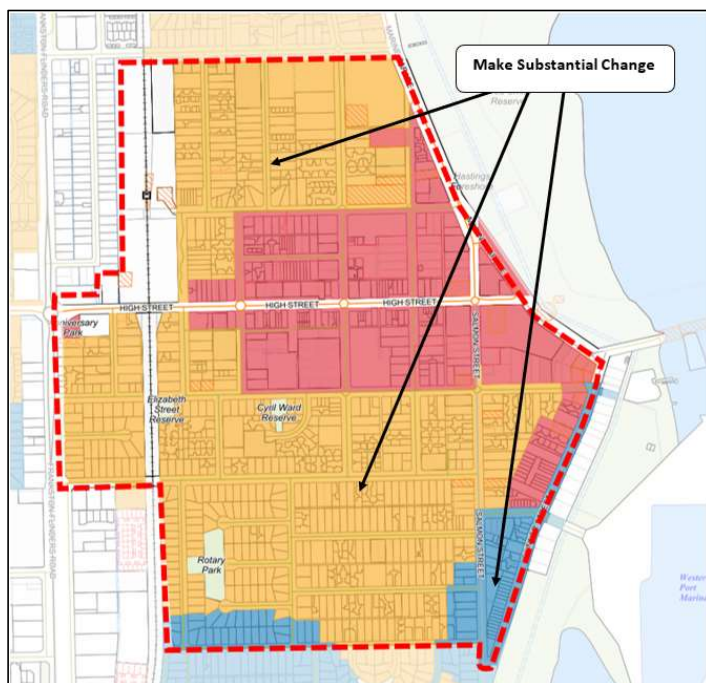


Image 9: Revised Housing Change Area mapping in the Hastings MAC

Officers disagree, however, that the presence of overlays – including the Neighbourhood Character Overlay – should not be a determinative factor in assigning housing change areas because this would be inconsistent with Council’s adopted HSS Refresh, Council’s adopted NCS and Planning Practice Note 90 (PPN90).

The findings and recommendations of Council’s adopted NCS identify The Avenues¹ as worthy of the Neighbourhood Character Overlay which in turn is identified as a minimal change area in Council’s adopted HSS Refresh, as per the definition noted above. This approach – and the approach of overlays informing the designation of minimal change areas more broadly – is consistent with PPN90 which states that minimal change areas:

- *have special characteristics that distinguish them from other parts of the municipality or surrounding area*
- *have special neighbourhood, heritage, environmental, or landscape characteristics identified in the planning scheme*
- *are identified in a housing strategy, or in the planning scheme, as unsuitable for providing future housing growth*
- *tend to have overlays that reflect neighbourhood, heritage, environmental or landscape characteristics or other physical constraints which may impact their capacity for change.*

(PPN90, p.9)

Regarding the categorisation of land affected by sea level rise, officers agree that such land inside a Major Activity Centre should be recategorised from minimal to substantial change. This change recognises that Major Activity Centres are the focus of growth, and that categorising these areas as minimal change would limit development potential and remove the opportunity for landowners to demonstrate that risks can be appropriately mitigated through the planning permit application process. That is, landowners could supply a Coastal Hazard Vulnerability Risk Assessment (CHVRA) demonstrating that either sea level rise risks would not affect a development proposal, or that appropriate mitigation or adaptation measures could be put in place to ensure that land can be safely developed.

The above change only affects the Hastings and Rosebud Major Activity Centres, noting that Mornington is not affected by sea level rise hazards under the ‘0.8m by 2100 year’ scenario.

However, officers do not agree that land affected by sea level rise in areas outside of the Major Activity Centres should be reclassified from minimal change because, under Amendment C219morn, both minimal and incremental change areas are to be rezoned to NRZ. Therefore, removing sea level rise as a constraint will not change this outcome. Further, any significant risks related to sea level rise will still be assessed as part of the planning permit application and CHVRA process noted above. Again, this approach is consistent with PPN90 as outlined above and as follows:

‘Minimal change areas can also be areas that are constrained by planning considerations such as the physical capability of the land to safely accommodate more residential

¹ Note: NCO2 applies to The Avenues, Rosebud and parts of Tootgarook and Rye and the NCO1 applies to Ranelagh Estate, Mount Eliza.

development. For example, restricting additional housing in areas close to airports, land subject to bushfire risk, flooding or erosion’.

(PPN90, p.9)

Table 2 below provides a summary of the application of Zones according to the revised housing change area methodology:

LOCATION	CONSTRAINTS <i>(Special Neighbourhood Character)</i>	CONSTRAINTS <i>(all other)</i>	Adopted plan supporting 3 or more storeys	Strategic Investigation Area (HSS)	EXISTING ZONE <i>Current planning scheme controls</i>	CHANGE AREA <i>Residential Development Framework</i>	PROPOSED ZONE <i>C219</i>
MAJOR ACTIVITY CENTRE <i>Mornington Rosebud Hastings (Structure Plan Boundaries)</i>	✗	✗	✓	✗	C1Z, MUZ, PUZ, GRZ	Substantial	No change
	✗	✓	✓	✗	C1Z, MUZ, PUZ, GRZ	Substantial	No change
	✗	✓	✗	✗	C1Z, MUZ, PUZ, GRZ	Substantial	No change
	✓	✗	✗	✗	GRZ	Minimal	NRZ
	✓	✓	✗	✗	GRZ	Minimal	NRZ
ALL OTHER AREAS	✗	✗	✓	✗	C1Z	Substantial	No change
	✗	✓	✓	✗	C1Z	Substantial	No change
	✗	✗	✗	✗	C1Z or MUZ	Incremental	No change
	✗	✓	✗	✗	C1Z or MUZ	Minimal	No change
	✗	✗	✗	✗	GRZ	Incremental	NRZ
	✓	✓	✗	✗	GRZ	Minimal	NRZ
	✗	✓	✗	✗	GRZ or NRZ	Minimal	NRZ
	✗	✓	✗	✗	LDRZ	Minimal	No change
✗	✓	✗	✓	LDRZ	Investigation Area	No change	

Table 2: Application of Zones vs revised housing change area methodology

Appendix 1, provides an analysis of changes in the Housing Change Area category of the land within each of the following zones within the municipality:

- C1Z
- MUZ, and
- PUZ (inside MACs)

Appendix 1 notes the activity centres hierarchy (if any), the zones, constraints (if any), and whether there is an adopted plan which supports three or more storeys of development for each area. The Appendix then compares the post-exhibition and post-Planning Panel categorisation of Housing Change Areas, explaining each associated change.

By implementing table 2 above, the resultant changes to the planning Scheme maps from exhibition/post-exhibition to the adopted version of Amendment C219morn for each of the three Major Activity Centres, are compared below in images 10 - 13:

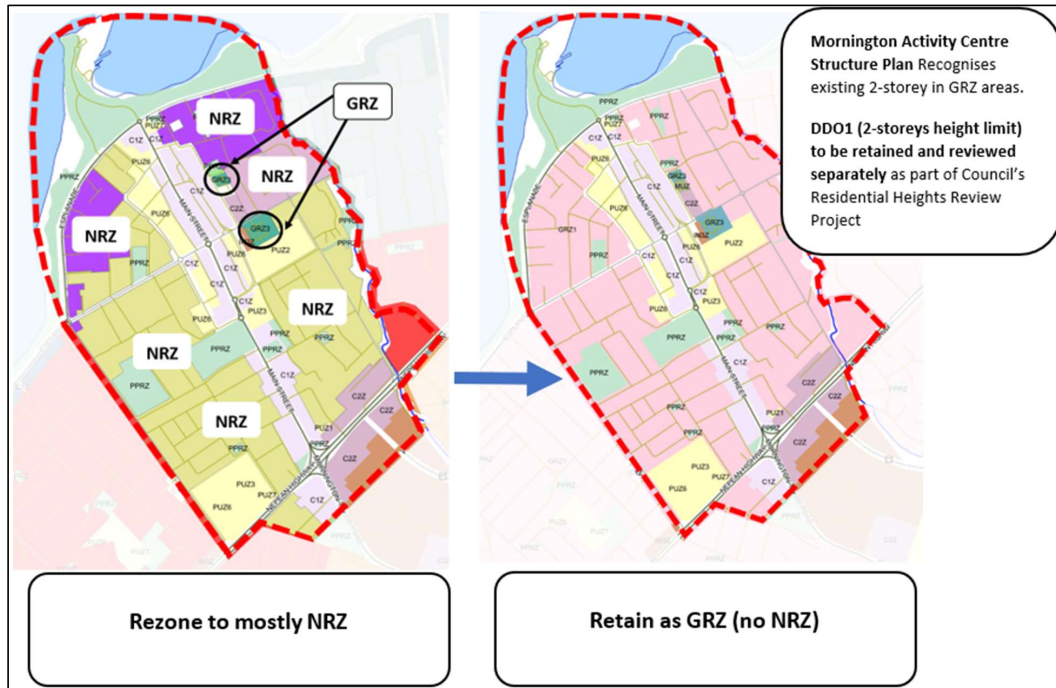


Image 10: Mornington MAC - exhibition Zone map vs adopted Zone map



Image 11: Rosebud MAC - post-exhibition Zone map



Image 12: Rosebud MAC - adopted Zone map

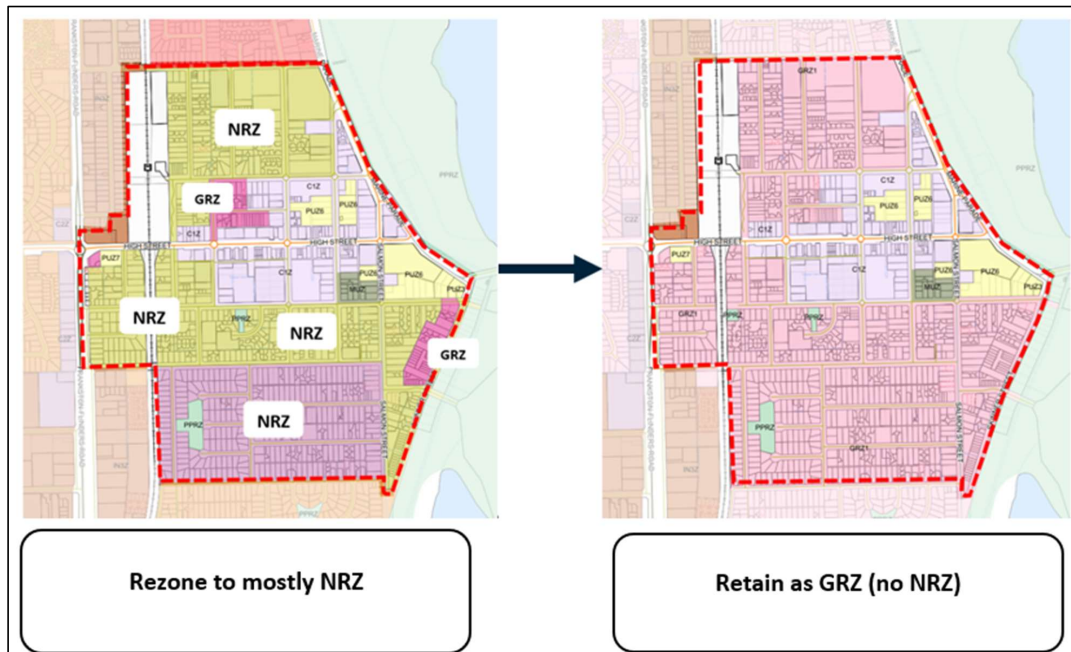


Image 13: Hastings MAC - exhibition Zone map vs adopted Zone map

5 Changes to zone and overlay mapping

The following changes have been made to the mapping of zones and overlays, either as a result of a separate planning scheme amendment process, or the identification of a translation error that has occurred during Amendment C219morn.

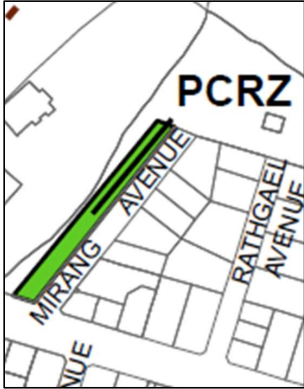
5.1 Amendment C241morn (Balcombe Estuary & Reserves)

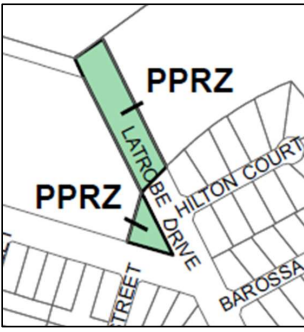
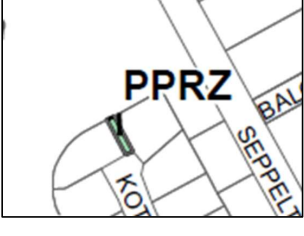
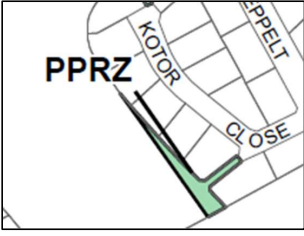
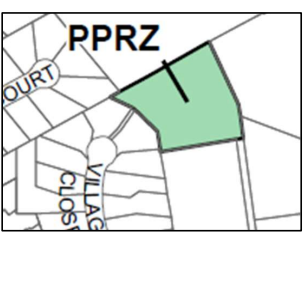
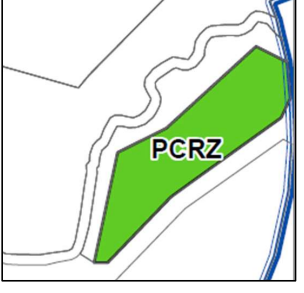
Amendment C241morn applies to land within the Balcombe Estuary and associated reserves, in Mount Martha and was adopted by Council on 11 June 2024. This amendment has been submitted to the Minister, and at the time of preparing this report, is waiting approval.

As outlined below, Amendment C241morn rezones a number of parcels:

- From either LDRZ or GRZ1.
- To either the PPRZ or PCRZ.

Given these changes, the below parcels have been removed from Amendment C219morn Planning Scheme maps and associated Housing Change Framework maps, as outlined in table 3 below (i.e. C219morn will no longer apply to these parcels):

Parcels / area	Map	C241morn Zone and DDO changes	C219morn post-exhibition controls	C219morn post-Planning Panel controls	Housing change framework (post-Planning Panel)
Land to the west of Mirang Avenue		<ul style="list-style-type: none"> • GRZ1 to PCRZ • Deletes DDO2 	<ul style="list-style-type: none"> • NRZ13 • DDO2 	Nil	Nil

<p>Latrobe Drive (road reserves only)</p>		<ul style="list-style-type: none"> • GRZ1 to PPRZ • Deletes DDO2 	<ul style="list-style-type: none"> • NRZ7 (part) • NRZ13 (part) • DDO2 	<p>Nil</p>	<p>Nil</p>
<p>37 Seppelt Ave</p>		<ul style="list-style-type: none"> • GRZ1 to PPRZ • Deletes DDO2 	<ul style="list-style-type: none"> • NRZ7 • DDO2 	<p>Nil</p>	<p>Nil</p>
<p>37 Seppelt Ave</p>		<ul style="list-style-type: none"> • GRZ1 to PPRZ • Deletes DDO2 	<ul style="list-style-type: none"> • NRZ7 • DDO2 	<p>Nil</p>	<p>Nil</p>
<p>37 Seppelt Ave</p>		<ul style="list-style-type: none"> • LDRZ to PPRZ • Deletes DDO6 	<ul style="list-style-type: none"> • NRZ7 (part) • LDRZ7 (part) • DDO2 (part) • DDO37 (part) 	<p>Nil</p>	<p>Nil</p>
<p>499 Nepean Highway</p>		<ul style="list-style-type: none"> • LDRZ to PCRZ • Deletes DDO7 	<ul style="list-style-type: none"> • LDRZ8 • DDO2 (part) • DDO37 (part) 	<p>Nil</p>	<p>Nil</p>

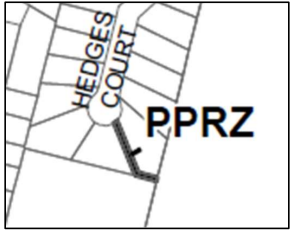

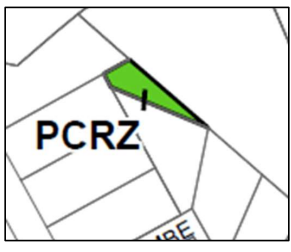
Hedges Court		<ul style="list-style-type: none"> GRZ1 to PPRZ Deletes DDO2 	<ul style="list-style-type: none"> NRZ13 DDO2 	Nil	Nil
Augusta Street road reserve		<ul style="list-style-type: none"> GRZ1 to PCRZ Deletes DDO2 	<ul style="list-style-type: none"> NRZ13 DDO2 	Nil	Nil
Seppelt Park Reserve		<ul style="list-style-type: none"> GRZ1 to PCRZ Deletes DDO4 	<ul style="list-style-type: none"> LDRZ2 DDO36 	Nil	Nil

Table 3: Amendment C241morn zone, DDO and housing change framework map changes

It is also noted that Amendment C241morn deletes DDO2, DDO4, DDO6 and DDO7 from a larger area of the Balcombe Estuary and associated reserves, as outlined in image 14 below:

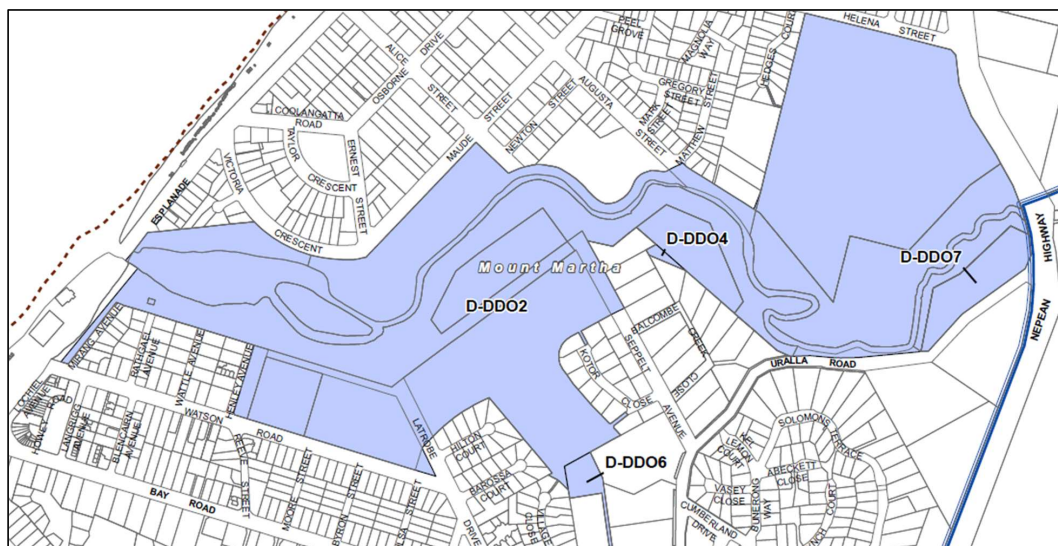


Image 14: DDO deletion map

5.2 LDRZ2 and LDRZ7

The subdivision requirements for LDRZ2 where it applies in Crib Point was translated incorrectly (as exhibited).

The original intended approach of Amendment C219morn was to translate existing subdivision controls on a policy neutral basis and simplify their expression (for clarity and certainty) where required.

In some cases, this included translating existing subdivision controls in DDOs to zone schedules (to comply with the Ministerial Direction on the Form and Content of Planning Schemes).

A clerical error occurred with the translation of the LDRZ2 from the existing DDO4 as outlined in table 4 below.

	Minimum subdivision lot size
Existing DDO4 (map 1 area)	1 hectare
LDRZ2 (adopted Amendment C219morn version)	0.25 hectare
LDRZ7 (adopted Amendment C219morn version)	1 hectare

Table 4: LDRZ2 Translation error analysis

To correct this, the area in Crib Point, as shown in image 15 below, has been rezoned from LDRZ2 to LDRZ7 to ensure that the below land remains subject to a minimum lot size of 1 hectare - not 0.25 hectares - as per existing controls:

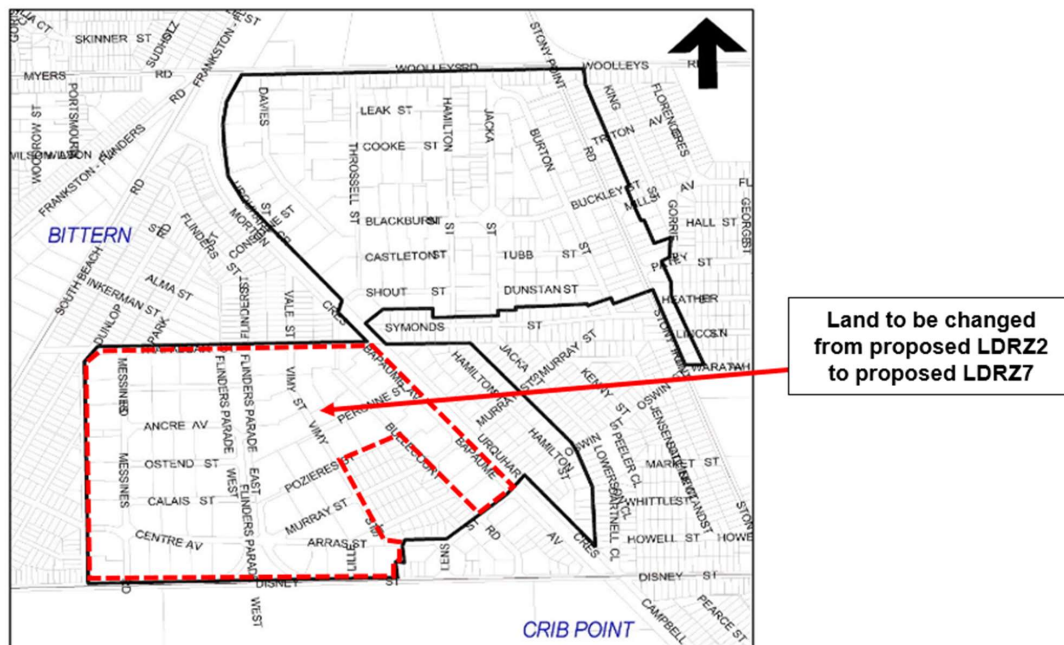


Image 15: Land in Crib Point rezoned from LDRZ2 to LDRZ7

This correction ensures the subdivision controls are translated on a policy neutral basis for the relevant area of Crib Point.

5.3 Combine NRZ2 and NRZ6

The Planning Panel observed that:

“Generally, neighbourhood character precincts should not automatically translate into its own schedule. There should be an exercise to determine whether similar precincts can share a schedule which achieves virtually the same outcome. It should determine whether the slight differences are worth having multiple schedules. The Panel has not recommended reviewing its schedules before adoption to avoid delaying the Amendment’s progress”.

While the Panel did not make a specific recommendation to review schedules, all schedules were nevertheless comprehensively reviewed post-Panel in partnership with consultants Ethos Urban (author of the original NCS). As part of this review, Ethos Urban suggested that the following consolidation could occur without having a detrimental impact on achieving preferred future neighbourhood character outcomes as per the NCS (as shown in table 5 below):

Garden Court 1 (GC1) / NRZ6	→	Garden Residential 1 (GR1) / NRZ2
------------------------------------	----------	--

Table 5: NRZ6 and NRZ2 consolidation

Consolidating the schedules means that NRZ6 has been deleted from Amendment C219morn, and the area where the NRZ6 was proposed to apply (as exhibited) has now been zoned NRZ2 instead. The area of the NRZ2 and NRZ6 (as exhibited) is shown in image 16 below:

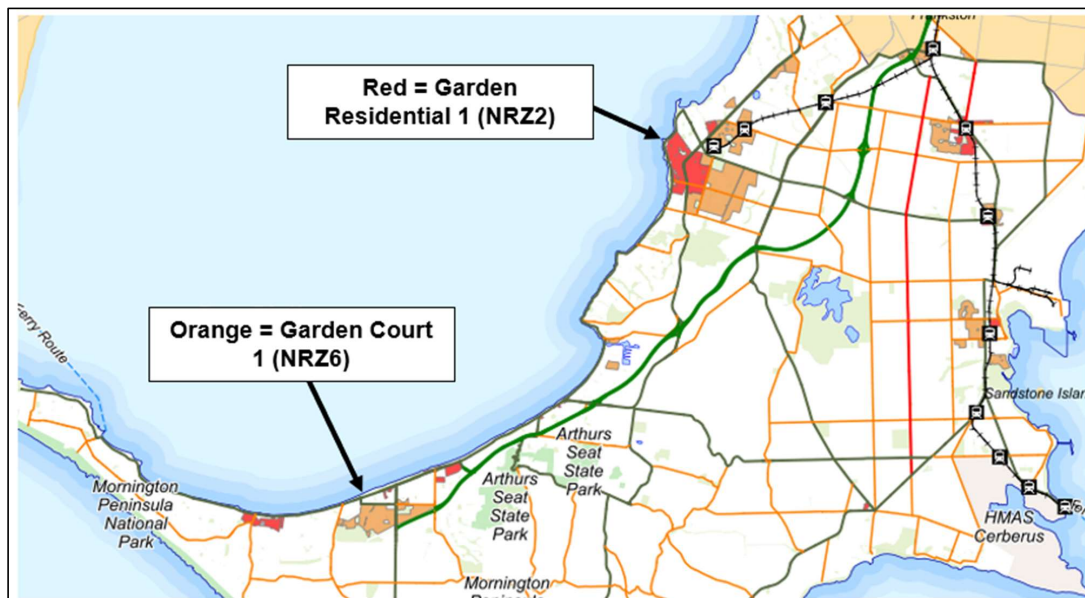


Image 16: Areas of the exhibited NRZ2 and NRZ6

This consolidation is warranted given the requirements of Clause 54 and Clause 55 are the same (with the exception of the side setback requirement, this is discussed further below in section 10.1) and the intent of the Neighbourhood character objectives and Decision guidelines between the two schedules are similar.

5.4 Combine NRZ4 and NRZ8

Similar to the NRZ2 and NRZ6 schedules, Ethos Urban confirmed that NRZ8 and NRZ4 can also be consolidated without detrimentally impacting preferred future neighbourhood outcomes as per the NCS. The consolidation is shown in table 6 below:

Garden Court 3 (GC3) / NRZ8 → Garden Residential 3 (GR3) / NRZ4

Table 6: NRZ8 and NRZ4 consolidation

Consolidating these schedules means that area where the NRZ8 has been deleted from Amendment C219morn, and the area that was proposed to zoned NRZ8 (as exhibited) will now be zoned NRZ4 instead. The area of the NRZ4 and NRZ8 (as exhibited) is shown in image 17 below:

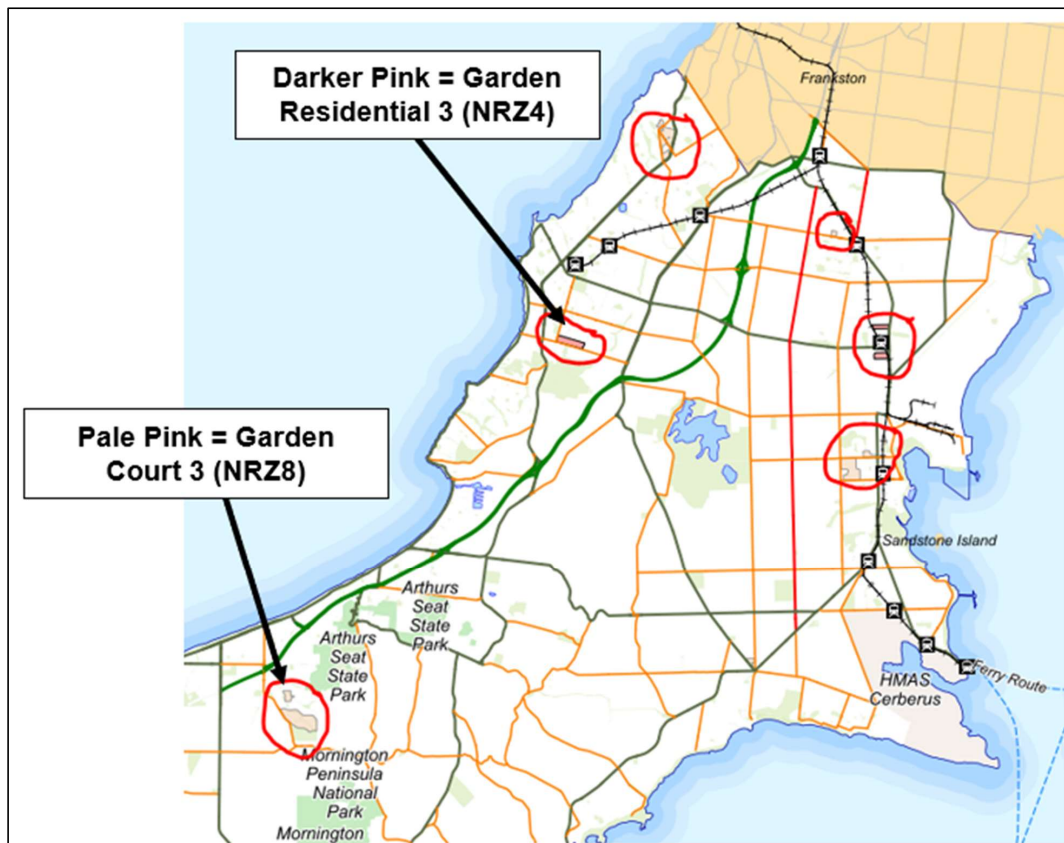


Image 17: Areas of the exhibited NRZ4 and NRZ8

Again, this consolidation is warranted given the requirements of Clause 54 and Clause 55 are the same, and the intent of the Neighbourhood character objectives and Decision guidelines between the two schedules are similar. This is discussed further below in section 10.2.

5.5 NRZ16 - Portsea Hotel

The exhibited version of Amendment C219morn inadvertently mapped part of the Portsea Hotel at 3746 Point Nepean Road, Portsea as being rezoned from C1Z to NRZ16 (as shown below in image 18):

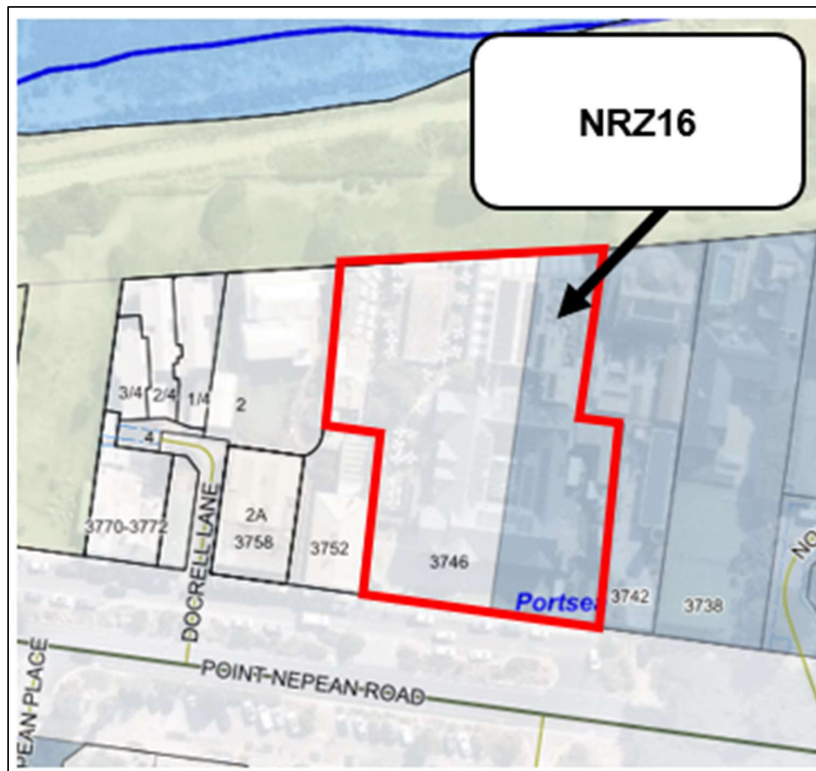


Image 18: NRZ16 proposed to apply to the Portsea Hotel, as exhibited

This is a mapping error that has been corrected so that the site remains entirely within the C1Z as per existing conditions (as per image 19 below). That is, the NRZ16 is deleted from 3746 Point Nepean Road, Portsea:

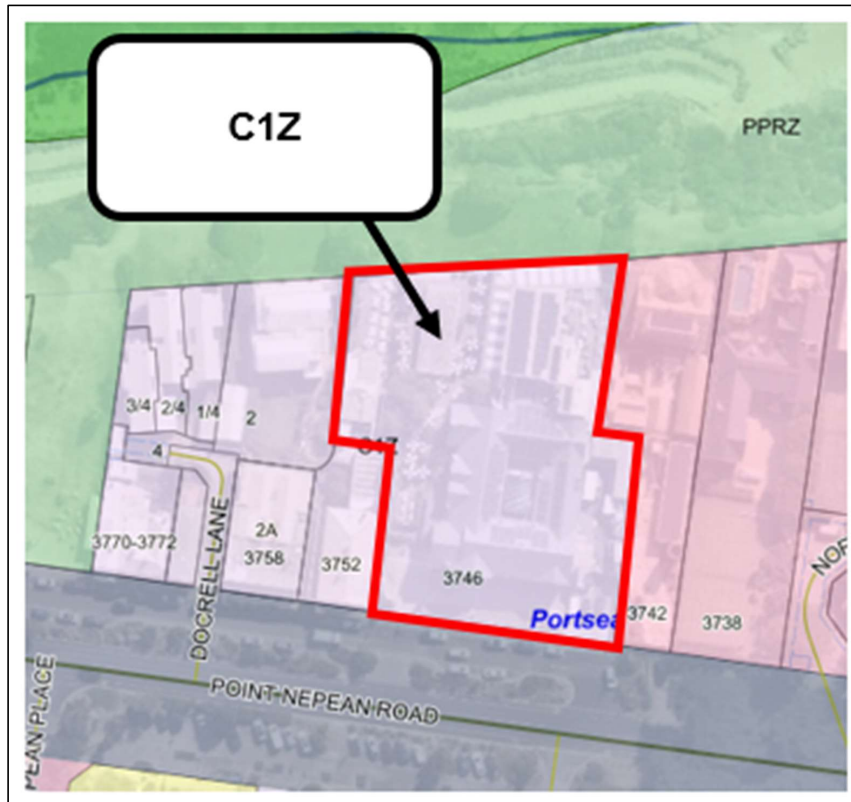


Image 19: C1Z over the Portsea Hotel

5.6 NRZ23 – NRZ26

The DDO24 applies to Beluera Hill in Mornington (as shown in image 20 below). The schedule identifies three different precincts for which there are different planning requirements.

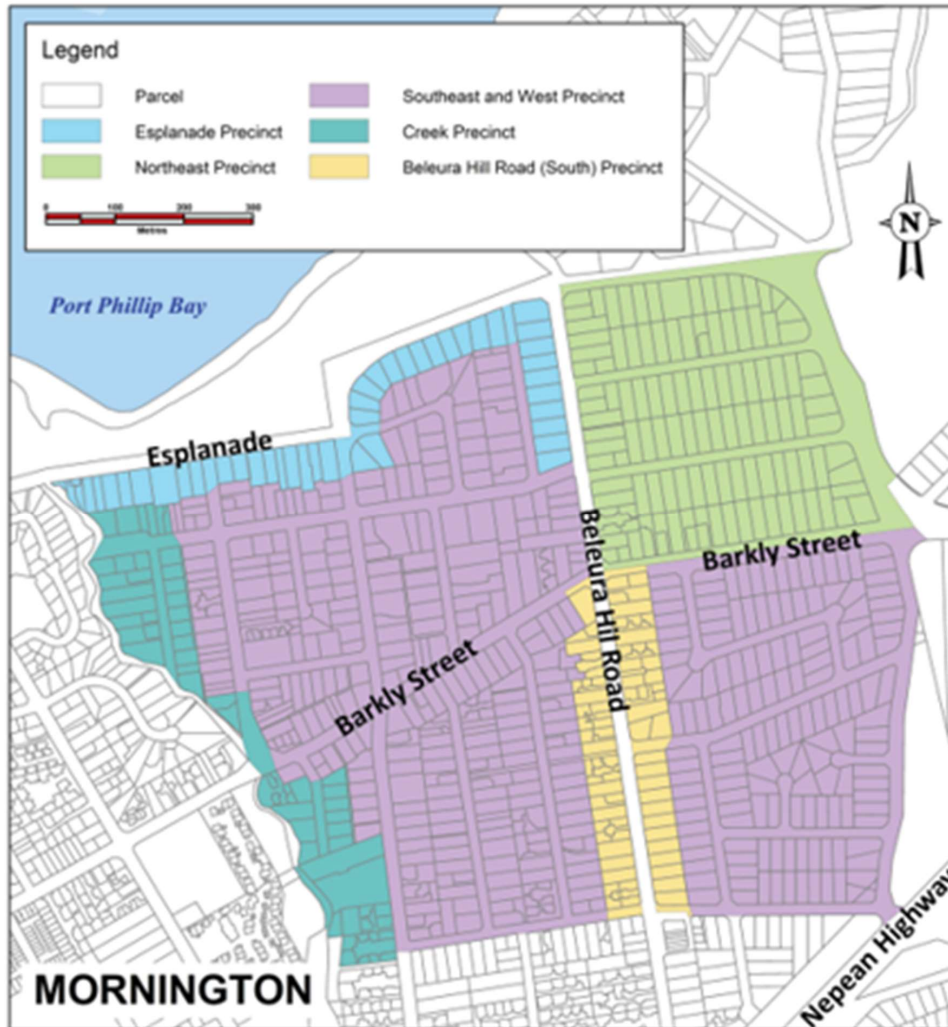


Image 21: Beleura Hill Neighbourhood Character Study (Tract, 2014) five precincts

This translation has occurred despite Council adopting - and the Minister for Planning later approving - Amendment C189 which introduced the DDO24 with the three precincts shown above in October 2016.

To ensure the translation of DDO24 is policy neutral, as intended, the following changes have been made to ensure the NRZ schedules align with the three precincts as per existing controls:

- The NRZ24 is deleted along with the NRZ24 mapping.
The extent of the NRZ23 is amended to apply to the area that the NRZ24 was to apply to.
- The NRZ26 is deleted along with the NRZ26 mapping.
The extent of the NRZ25 is amended to apply to the area that the NRZ26 was to apply to.

5.7 NRZ37

The exhibited version of Amendment C219morn applied the NRZ2 to the below area (as per image 22) of the Rosebud MAC (foreshore side of Point Nepean Road, Rosebud):

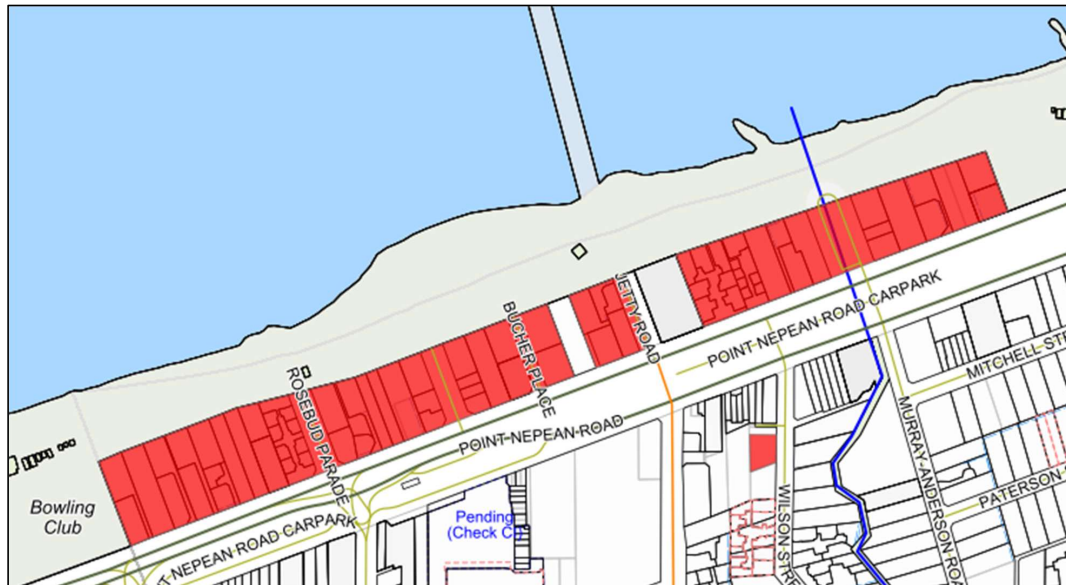


Image 22: NRZ2 mapping, as exhibited

Planning Panel recommendation 4.b), recommended that the GRZ1 apply to all “residential land within the Hastings, Mornington and Rosebud activity centre boundaries, as defined in each adopted structure plan”. This recommendation has been accepted in part.

In responding to Planning Panel recommendation 4.b), it was identified that the Rosebud Activity Centre Structure Plan (Hansen Partnership, 2017) identifies land north of Point Nepean Road (excluding the land at 866 Point Nepean Road) as an area that should be limited to 2 storey development given its sensitive foreshore interface.

The independent Planning Panel that considered Planning Scheme Amendment C206morn (approved in November 2019) to implement the Rosebud Structure Plan (Referencing Planning Practice Note 60 (Height and Setback Controls for Activity Centres), determined that land north of Point Nepean Road is best described as:

“sensitive coastal environment where exceeding an identified height limit will unreasonably detract from the significance of the coastal environment”.

The Panel noted that this area provides important views to Arthurs Seat, acting as a backdrop to the town, that would be irreversibly lost if built form was too dominant. The Panel therefore concluded that this location is an exceptional circumstance warranting a mandatory maximum building height of 2 storeys / 8m.

As exhibited, the NRZ37 is to apply to areas of special neighbourhood character (i.e. it applies to the NCO1 and NCO2 areas).

The extent of the NRZ37 has been extended to apply to the area outlined below in image 23, (rather than the NRZ2 as exhibited and rather than the GRZ1 as the Planning Panel recommends):

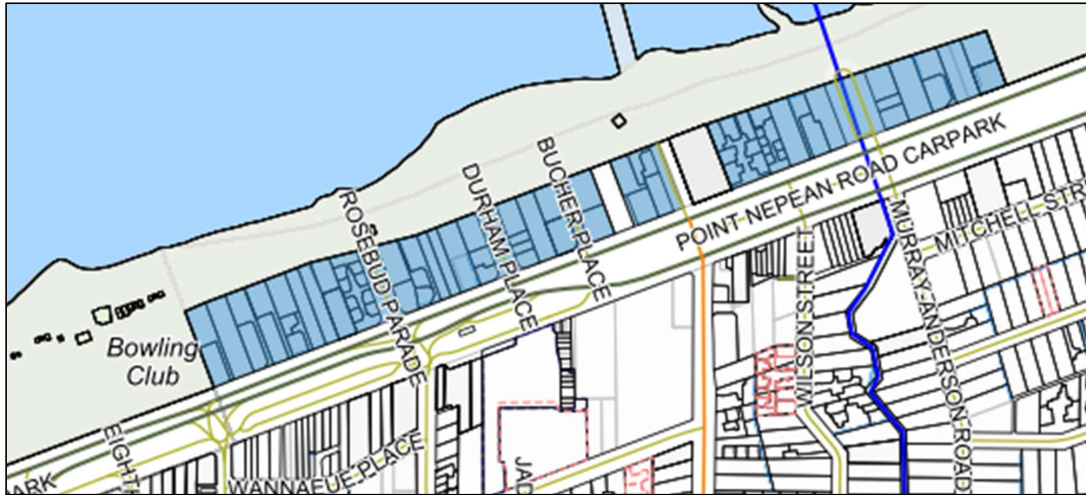


Image 23: Extent of the NRZ37 to apply to the foreshore side of Point Nepean Road, Rosebud

Note: Amendment C219morn:

- Retains the DDO1, 2 storey maximum mandatory height limit for this area outlined in image 23 above.
- Applies the NRZ37 which limits development to 9 metre / 2 storeys.

5.8 DDO1

As a post-exhibition change to Amendment C219morn (to respond to submissions) the DDO1 was removed from the DDO deletion (D-DDO) maps, except for land zoned GRZ around the Rosebud Activity Centre, as shown in image 24.

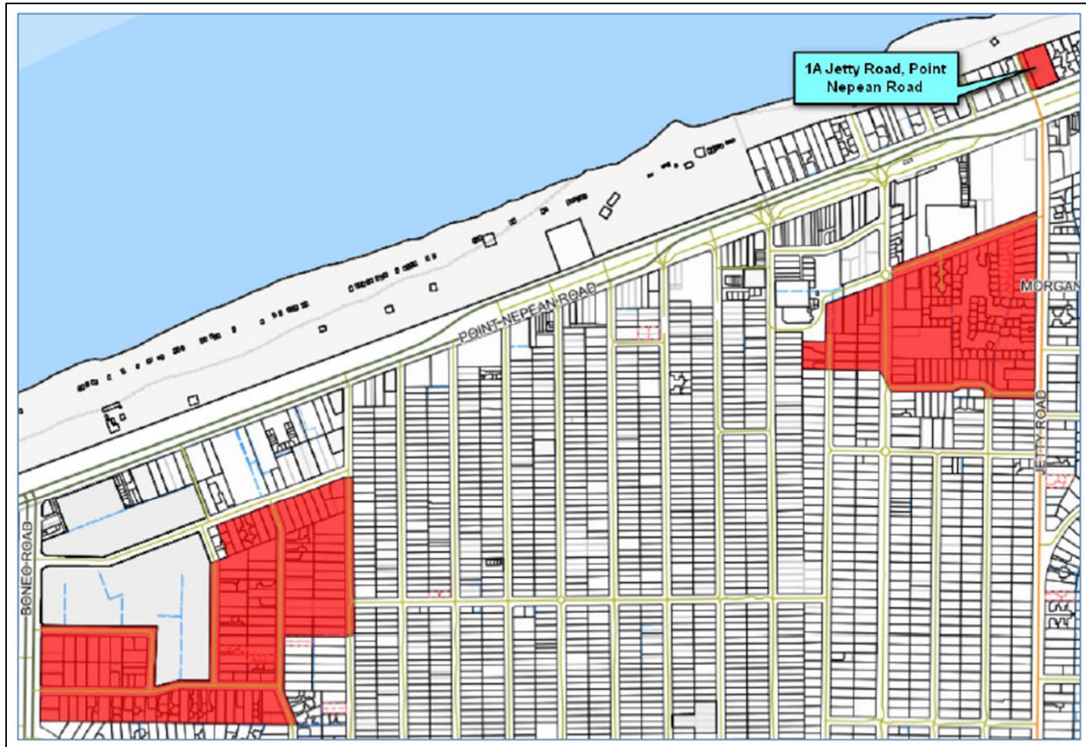


Image 24: DDO1 deleted from Rosebud MAC - post-exhibition change

It has been identified that the DDO1 has been retained within the Rosebud MAC, for some land that is to:

- Be zoned NRZ37.
- Have the NCO2 applied.

The DDO1 has therefore been deleted from the below area, as outlined in image 25.

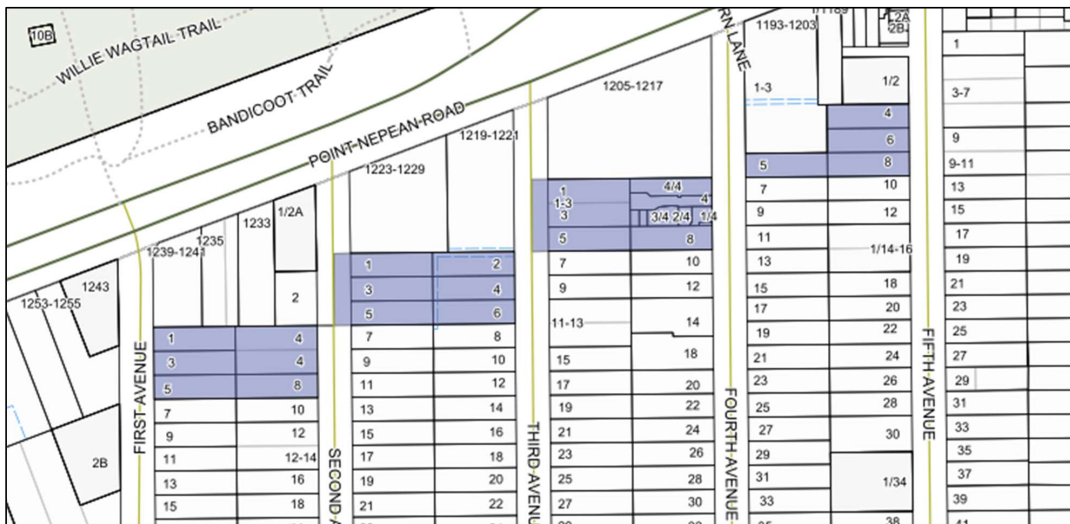


Image 25: Additional area where the DDO1 is deleted from within the Rosebud MAC

This is considered an appropriate change to the D-DDO1 (DDO1 deletion maps), given:

- The NRZ parent provision will control the height of development (9 metre / 2 storeys).
- The NRZ37 will control the use of the land.
- The NCO2 will require a planning permit for most buildings and works.
- Deleting the DDO1 facilitates the removal of redundant and / or duplicated provisions and the overall simplification of planning controls for the land identified in image 25 above.

5.9 DDO63

Within the Mornington MAC, residential areas are currently protected with a mandatory 2 storey / 10 metre height limit under the existing DDO1. Amendment C219morn (as exhibited) sought to remove the existing 10 metre height limit of the DDO1 on the basis that the NRZ was to be applied to these areas. (The NRZ has a default mandatory maximum building height of 2 storeys / 9 metres).

As outlined further in section 11.4 below, in accepting Planning Panel recommendation 4.b) to retain the GRZ1 inside the MACs (as per each of the respective adopted structure plan boundary areas), the existing 2 storey / 10 metre height limit to manage height within the Mornington MAC has been reinstated via the DDO63 until Council's separate Residential Heights Review project is completed. This project seeks to determine whether existing long-standing building height provisions in DDOs should remain or whether changes are required, based on detailed assessments of landscape character, sensitivity and viewlines.

Accordingly, the DDO63 has been included within the planning scheme maps to replace the existing DDO1, as shown in image 26 below:



Image 26: Area of DDO63 to replace the DDO1 within the Mornington MAC

6 Clause 15.01-5L - Neighbourhood character – Mornington Peninsula

As outlined in section 3.1 above, Planning Panel recommendations 1.c) and 1.d) recommend that Council:

- c) review the neighbourhood character objectives and decision guidelines in all Neighbourhood Residential Zone schedules to improve their clarity and remove repetition*
- d) review Design and Development Overlay schedules to:*
 - *avoid or define unclear phrases or words such as 'formal garden setting' and 'hillside character'*
 - *improve clarity and remove repetition in the design objectives (Clause 1.0).*

The NRZ and DDO schedules have been reviewed as recommended, as well as all GRZ and NCO schedules. When making such changes, care has been taken to ensure that the language applied better aligns with Council's adopted NCS, particularly concerning:

- Neighbourhood character objectives (NRZs and NCOs).
- Design objectives (DDOs).
- Decision guidelines (NRZs, GRZs, DDOs and NCOs).

Clause 15.01-5L has therefore been amended to improve clarity, remove repetition and define unclear phrases or words, consistent with the amendments to the NRZs, GRZs, DDOs and NCOs as a result of Planning Panel recommendations 1.c) and 1.d).

7 Clause 16.01-1L - Housing supply – Mornington Peninsula

7.1 Policy application

The description of where Clause 16.01-1L applies has been amended to include land within the PUZ, within the MACs (Rosebud, Mornington and Hastings), where the following Structure Plans supports up-to three storey mixed use developments:

- Rosebud Activity Centre Structure Plan (Hansen Partnership, 2017)
- Mornington Activity Centre Structure Plan: A plan for a Coastal Town (Ratio Consultants, 2007)
- Hastings Town Centre Structure Plan (Planisphere, 2017)

This allows PUZ land to be nominated as a 'substantial change area' where identified within the above Structure Plans, as being suitable for up-to three storey mixed use developments.

7.2 Policy guidelines

Similarly, the Policy guidelines for Clause 16.01-1L have been amended to:

- Delete the reference to 'rural dwellings' because Clause 16.01-1L does not apply to land within the Green Wedge Zone (GWZ) and therefore the reference to 'rural dwellings' is not necessary.
- Include the reference to 'shop top housing' because Clause 16.01-1L applies to land within the C1Z, MUZ or PUZ (inside the MACs). It is therefore suitable to recognise that mixed use developments may provide housing above a differing use operating at the ground floor - i.e. a dwelling above a shop on the ground floor.

7.3 Housing change framework maps

The following changes have been made to the Housing Change Framework maps as at Clause 16.01-1L:

7.3.1 Changes related to activity centres

Consistent with Appendix 1, table 7 below provides a summary and explanation of the changes to the 'Housing Change Areas' for each activity centre - from the post-exhibition version of Amendment C219morn to the post-Panel (adopted) version.

The changes ensure the Housing Change Framework maps are consistent with the revised methodology for applying 'Housing Change Areas' as per images 5 - 6 and table 2 in Section 4 of this document.

Township	Commercial Area	Housing Change Area (Post-exhibition)	Housing Change Area (Recommended post-Panel)	Justification for post-Panel change
Rosebud	Old Cape Schanck Road	Minimal	Incremental	<ul style="list-style-type: none"> • DDO1 does not contain mandatory subdivision controls. • Accept Panel's recommendation that BPA is not a reason for making a site minimal change. • Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
Mornington	Hargreaves Street / The Esplanade	Nil	Incremental	<ul style="list-style-type: none"> • Accept Panel's recommendation that flood prone is not a reason for making a site minimal change. • DDO1 does not contain mandatory subdivision controls.
Hastings	Marine Parade / Hodgins Road	Incremental	Minimal	<ul style="list-style-type: none"> • Sea Level Rise Hazards apply. • LSIO1 applies.
Mount Eliza	Humphries Road	Minimal	Incremental	<ul style="list-style-type: none"> • DDO18 does not contain mandatory subdivision controls. • Accept Panel's recommendation that BPA is not a reason for making a site minimal change.

Township	Commercial Area	Housing Change Area (Post-exhibition)	Housing Change Area (Recommended post-Panel)	Justification for post-Panel change
Dromana	31-39 Palmerston Avenue	Nil	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
Mount Martha	Lochiel Avenue / Watson Road	Minimal	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change. Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
Sorrento	Ocean Beach Road	Minimal	Substantial	<ul style="list-style-type: none"> The Ocean Beach Road Sorrento: Built Form Review (November 2021) supports three storey development.
Balnarring	Frankston-Flinders Road	Minimal	Incremental (part)	<ul style="list-style-type: none"> Where no DDO2 applies
McCrae	Bayview Road	Minimal	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change. DDO1 does not contain mandatory subdivision controls
Portsea	Point Nepean Road	Minimal	Incremental (part)	<ul style="list-style-type: none"> Where no ESO25 applies. Where no DDO3 applies.

Township	Commercial Area	Housing Change Area (Post-exhibition)	Housing Change Area (Recommended post-Panel)	Justification for post-Panel change
Baxter	1 and 21 Baxter-Tooradin Road	Incremental	Substantial	<ul style="list-style-type: none"> The Baxter Township Structure Plan (Mornington Peninsula Shire, 2019) supports up to three storeys for this area.
Crib Point	Stony Point Road	Minimal	Incremental (part)	<ul style="list-style-type: none"> Where no BMO2 applies. The DDO21 does not contain mandatory subdivision controls.
Crib Point	Disney Street	Minimal	Incremental	<ul style="list-style-type: none"> The DDO21 does not contain mandatory subdivision controls.
Flinders	Cook Street	Minimal	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change. DDO14 does not contain mandatory subdivision controls.
Tootgarook	Point Nepean Road / Carmichael Street	Minimal	Incremental (part)	<ul style="list-style-type: none"> Where no ESO25 applies. Where no Sea Level Rise Hazards apply.

Table 7: All Activity Centres to have a different housing change category

7.3.2 1100 Frankston-Flinders Road, Somerville

Under Amendment C293morn (gazetted on 22 March 2024), land at 1100 Frankston-Flinders Road, Somerville (shown in image 27 below), was rezoned from TRZ1 to the C1Z. Amendment C293morn also applied the DDO30 to the land.

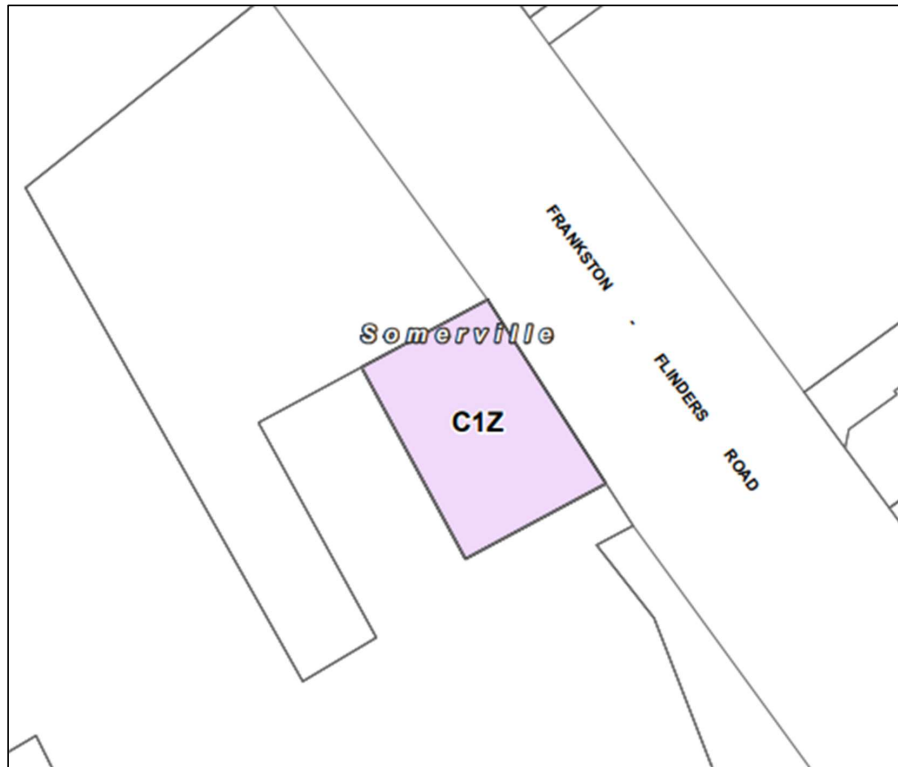


Image 27: Area of 1100 Frankston-Flinders Road, Somerville rezoned to C1Z and to be designated as a 'Substantial change area'.

Prior to Amendment C293morn being gazetted, 1100 Frankston-Flinders Road, Somerville did not have a housing change framework designation under Amendment C219morn because it was zoned TRZ1. However, given the DDO30 allows development on the land up to 3 storeys / 11 metres in height and accommodation uses, the site is appropriate to be designated as a 'Substantial change area' under the 'Housing Change Area' methodology described in images 5 and 6 and table 2 above in section 4.

7.3.3 Amendment C241morn

As previously explained in section 5.1 of this document, Amendment C241morn applies to land within the Balcombe Estuary and associated reserves, in Mount Martha and was adopted by Council on 11 June 2024. The amendment has been submitted to the Minister and, at the time of preparing this report, is waiting approval and gazettal.

As outlined above in Table 3, Amendment C241morn rezones a number of parcels from either LDRZ or GRZ1 to either the PPRZ or PCRZ. As these parcels will no longer be within a residential zone, land identified above in table 3 and image 14, have therefore been removed from Amendment C219morn and associated Housing Change Framework maps.

8 LDRZ Schedules (Clause 32.03)

The subdivision requirements for proposed LDRZ1 (which applies to pockets in Mornington and Somerville) and LDRZ2 (which applies to pockets in Somerville, Mount Martha, Crib Point and Arthurs Seat) were translated incorrectly.

The original intended approach of Amendment C219morn was to translate existing subdivision controls on a policy neutral basis and simplify their expression (for clarity and certainty) where required. In some cases, this included translating existing subdivision controls in DDOs to zone schedules (to comply with the Ministerial Direction on the Form and Content of Planning Schemes).

A clerical error appears to have occurred, however, with the translation of LDRZ1 and LDRZ2 (which was not policy neutral).

For context, the LDRZ parent provision states that a permit is required to subdivide land, and that each lot must be at least the area specified for the land in a schedule to the zone. Any area specified must be at least:

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

The LDRZ1 which currently exists in the planning scheme only provides a minimum subdivision lot size of 0.4 hectare for land outside the Urban Growth Boundary (UGB). Therefore, the existing LDRZ1 requires the following minimum subdivision areas for land within the UGB:

- 0.2 hectare per lot created where sewerage is connected, or
- 0.4 hectare per lot created where sewerage is not connected.

To address these translation issues, the following changes have been made to the LDRZ1 and LDRZ2, as outlined in sections 8.1 and 8.2 below and section 5.2 above.

8.1 LDRZ1

The exhibited version of proposed LDRZ1 has a minimum lot size of 0.2 hectare, however some land covered by proposed LDRZ1 is not connected to sewerage and is greater than 0.4 hectare in area.

The LDRZ1 has therefore been amended to recognise that minimum subdivision lot sizes should be consistent with the LDRZ parent provision and recognise the 0.2 and 0.4 hectare minimum subdivision lot size requirements, pending sewerage connections.

This ensures potential subdivision proposals respond to the constraints of the land and either connect to sewerage or provide enough land to allow for development and a septic tank system to treat sewerage onsite. The LDRZ1 therefore reads similarly to the parent control. This would apply to land in Mornington and Somerville only, where the LDRZ1 is to apply.

8.2 LDRZ2

The exhibited version of proposed LDRZ2 has a minimum lot size of 0.25 hectare, however some land proposed to be rezoned LDRZ2 is not connected to sewerage and is greater than 0.4 hectare in area.

LDRZ2 has been amended to recognise that minimum lot sizes should be consistent with the LDRZ parent provision and recognise the 0.25 and 0.4 hectare minimum lot size requirements, pending sewerage connections.

This ensures potential subdivision proposals respond to the constraints of the land and either connect to sewerage or provide enough land to allow for development and a septic tank system to treat sewerage onsite.

The LDRZ2 therefore reads similarly to the parent provision, except containing a 0.25 hectare, rather than 0.2 hectare minimum lot size to reflect the existing DDO4 provision. This would apply to land in Somerville, Mount Martha and Arthurs Seat only, where the LDRZ2 is to apply.

9 GRZ Schedules (Clause 32.08)

9.1 GRZ1, GRZ3 & GRZ4

9.1.1 Permit requirement

The exhibited version of Amendment C219morn included the following text within the schedules to the GRZ (image 28), consistent with the local provision templates:

3.0 ---/---/--- Proposed C219morn	Permit requirement for the construction or extension of one dwelling or a fence associated with a dwelling on a lot
	Is a permit required to construct or extend one dwelling on a lot of between 300 and 500 square metres?
	Yes
	Is a permit required to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot of between 300 and 500 square metres?
	Yes

Image 28: 3.0 of the GRZ schedules proposed by Amendment C219morn

Amendment VC243 (gazetted on 22 September 2023) made changes the Victoria Planning Provisions (VPP) and all planning schemes to codify residential development standards, implement the Future Homes project across Victoria, remove permit requirements for single dwellings on lots of 300 square metres or more, and introduce VicSmart permits for single dwellings on lots less than 300 square metres.

VC243 amended the table text from 'yes' to 'no', within the Schedules to the GRZ, as per image 29 below):

3.0 22/09/2023 VC243	Permit requirement for the construction or extension of one dwelling or a fence associated with a dwelling on a lot
	Is a permit required to construct or extend one dwelling on a lot of between 300 and 500 square metres?
	No
	Is a permit required to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot of between 300 and 500 square metres?
	No

Image 29: 3.0 of the GRZ1 (VC243 point in time)

However, Amendment VC255 changed the VPP and 52 planning schemes in Victoria by correcting obvious or technical errors and by making consequential changes to local schedules to align with Amendment VC243 and Amendment VC253.

Amendment VC255 deleted 3.0 from the existing GRZ1 and GRZ3 entirely.

Accordingly, the GRZ1, GRZ3 and GRZ4 have been amended to delete 3.0 and the remaining sub-clauses have been re-numbered to be consistent with the format of the local provision templates.

9.1.2 Decision Guidelines

Recommendation 5(b) of the Panel report recommends removing neighbourhood character objectives within the GRZ1. This recommendation was supported and the corresponding changes have been made to the GRZ1.

As a consequence of removing neighbourhood character objectives and ResCode variations, it is prudent to remove the corresponding Decision guidelines in the GRZ1, GRZ3 and GRZ4. The parent provision of the GRZ includes several Decision guidelines relating to general use and development, subdivision, dwellings, small second dwellings and residential buildings, non-residential use and development and signs. These Decision guidelines are sufficient to guide decision making processes.

However, given the Landscape plan Application requirement is being retained and front fences may require a planning permit (subject to meeting the Front fence height Requirement in Clause 54 for one dwelling on a lot less than 300sqm or in Clause 55 for two or more dwellings on a lot), the following Decision Guidelines are relevant to be retained (in the GRZ1, GRZ3 and GRZ4) to aid decision making processes:

- *The extent to which the selection of plant species is from the local EVC.*
- *Whether the landscaping is of a low-threat bushfire risk, if the land is in a bushfire prone area.*
- *Whether the design of fencing retains the spaciousness of the streetscape with views to front garden areas.*

9.2 GRZ3 and GRZ4

Recommendation 5(b) of the Panel report recommends removing neighbourhood character objectives within the GRZ1. This recommendation was supported and the corresponding changes have been made to the GRZ1. However, it is prudent to apply a consistent approach and remove the Neighbourhood character objectives from the GRZ3 and GRZ4 also.

Council's endorsed post-exhibition version of the amendment proposed to remove the exhibited ResCode variations (i.e. minimum street setback, side and rear setbacks, and private open space requirements) from the GRZ1 and GRZ3 in response to submissions and in recognition of the GRZs location within MACs which are the focus for growth, greater housing diversity and housing affordability. Removing the Neighbourhood character objectives is consistent with Council's previous decision to delete proposed ResCode variations.

9.3 GRZ3

As a result of Planning Panel recommendation 5.a), the GRZ1 has been renamed to 'Substantial Change Area'. This is very similar to the post-exhibition version of the GRZ3, which is named 'Substantial Change Town Centre Area'.

Section 6.5.5 of Practitioners Guide to Victoria's Planning Schemes suggests that "the *Ministerial Direction - The Form and Content of Planning Schemes* makes provision for each local schedule to include a unique name. The name can help to identify the geographical scope of the schedule".

Because the amended GRZ1 name and post-exhibition GRZ3 name are too similar and do not differentiate their geographical application, the GRZ3 has been renamed to 'Central Mornington Substantial Change Areas' to identify its location and make it unique from the GRZ1.

9.4 GRZ4

When Amendment C219morn was prepared, the DPO18 which applies to 866 Point Nepean Road, Rosebud (originally 1A and 1B Jetty Road, Rosebud) was proposed to be deleted from the subject site via separate Amendment C267morn. Translatable character controls from the DPO18 were drafted into the Zone schedule as part of Amendment C219morn.

As a post-exhibition change to Amendment C267morn, Council resolved to not delete the DPO18. Given the DPO18 has been retained, the GRZ4 has been amended to delete the ResCode requirements and rely on the DPO18 applying, for any future development at the subject site.

The GRZ4 is required to be retained to allow for the height of development to exceed the maximum mandatory outlined in the GRZ parent provision, which is 11 metre / 3 storeys, whereas the GRZ4 specifies a maximum mandatory of 13.5m / 3 storeys. The height specified in the GRZ4 has been translated from 4.0 of the DPO18.

10 NRZ Schedules (Clause 32.09)

10.1 NRZ2 and NRZ6

As outline in section 5.3 above, Ethos Urban confirmed that NRZ2 and NRZ6 can be consolidated without detrimentally impacting preferred future neighbourhood outcomes as per the NCS. The consolidation is shown in table 5 above.

As previously explained, this means that the NRZ6 has been deleted from Amendment C219morn, and the area where the NRZ6 was originally proposed to apply (as exhibited) is now to be zoned NRZ2 (refer to image 16 above for context). This consolidation is warranted given the Requirements of Clause 54 and Clause 55 are the same (with the exception of the Side setback Requirement) and the intent of the Neighbourhood character objectives and Decision guidelines between the two schedules are similar.

However, the following Decision guideline (of the post-exhibition version of the NRZ2) states:

'Whether a reduced side setback from one side boundary is appropriate having regard to the building rhythm within the streetscape'

Therefore, Ethos Urban recommended that it is appropriate to reduce the side setback ResCode Requirement within the NRZ2 to read as follows (translated from the NRZ6):

A new building not on or within 200 mm of a boundary should be set back at least:

- *1 metre from a side boundary, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.*

Rather than the existing NRZ2 which states:

A new building not on or within 200 mm of a boundary should be set back at least:

- *2 metres from a side boundary, plus 1 metre for every metre of height over 6.9 metres.*

The rear setback remains unchanged (being 5m from a rear boundary).

For clarity, images 30 - 31 demonstrate the comparative differences in objectives between the schedules (underlined in red).

SCHEDULE 2 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE

Shown on the planning scheme map as **NRZ2**.

GARDEN RESIDENTIAL 1

Neighbourhood character objectives

To ensure new development reflects the preferred built form, characterised by predominantly small-scale 1-2 storey dwellings with simple building forms and pitched roofs with prominent eaves.

To maintain and reinforce the predominant building alignment along the street, characterised by setbacks that create a sense of openness and space around dwellings.

To maintain and strengthen the formal garden setting of dwellings, characterised by canopy trees, bushes, shrubs and garden beds.

To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead.

To maintain the openness and minimal delineation between the public and private realms, characterised by absent, or low and permeable, front fences with views to front garden areas.

Image 30: NRZ2 (Garden Residential 1) objectives [Post-exhibition version]

SCHEDULE 6 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE

Shown on the planning scheme map as **NRZ6**.

GARDEN COURT 1

Neighbourhood character objectives

To ensure new development reflects the preferred built form, characterised by predominantly low-scale 1-2 storey dwellings with simple building forms and low-pitched roofs with prominent eaves.

To maintain and reinforce the predominant building siting and rhythm of the streetscape, characterised by setbacks that provide space for native vegetation and contribute to the sense of openness.

To maintain and strengthen the formal garden setting of dwellings, characterised by large native canopy trees, bushes, shrubs and garden beds.

To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead.

To retain the spaciousness of the streetscape, characterised by absent, or low and permeable, front fences with views to front garden areas.

Image 31: NRZ6 (Garden Court 1) objectives [Post-exhibition version]

Images 32 - 33 below show the differences in ResCode variations.

GARDEN RESIDENTIAL 1		
Side and rear setbacks	A10 and B17	<p>A new building not on or within 200 mm of a boundary should be set back at least:</p> <ul style="list-style-type: none"> ▪ <u>2 metres</u> from a side boundary, <u>plus 1 metre for every metre of height over 6.9 metres.</u> ▪ 5 metres from a rear boundary.

Image 32: NRZ2 (Garden Residential 1) ResCode requirements [Post-exhibition version]

GARDEN COURT 1		
Side and rear setbacks	A10 and B17	<p>A new building not on or within 200 mm of a boundary should be set back at least:</p> <ul style="list-style-type: none"> ▪ <u>1 metre</u> from a side boundary, <u>plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres,</u> plus 1 metre for every metre of height over 6.9 metres. ▪ 5 metres from a rear boundary.

Image 33: NRZ6 (Garden Court 1) ResCode requirements [Post-exhibition version]

10.2 NRZ4 and NRZ8

As outline in section 5.4 above, Ethos Urban confirmed that NRZ4 and NRZ8 can also be consolidated without detrimentally impacting preferred future neighbourhood outcomes as per the NCS. The consolidation is shown in table 6 above.

As previously explained, this means that the NRZ8 has been deleted from Amendment C219morn, and the area where the NRZ8 was originally proposed to apply (as exhibited) is now to be zoned NRZ4 (refer to image 17 above for context). Again, this consolidation is warranted given the requirements of Clause 54 and Clause 55 are the same, and the intent of the Neighbourhood character objectives and Decision guidelines between the two schedules are similar.

For clarity, images 34-35 demonstrate the comparative differences in objectives between the schedules (underlined in red).

SCHEDULE 4 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE

Shown on the planning scheme map as NRZ4.

GARDEN RESIDENTIAL 3

Neighbourhood character objectives

To ensure new development reflects the preferred built form, characterised by predominantly small-scale 1-2 storey dwellings that utilise a contemporary façade articulation and consistent materials palette of brick or rendered finish with muted tones.

To maintain and reinforce the predominant building alignment along the street.

To encourage space for increased vegetation planting within front gardens to enhance the garden setting of dwellings.

To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead.

To maintain the openness of the streetscape, characterised by absent front fences.

Image 34: NRZ4 (Garden Residential 3) objectives [Post-exhibition version]

SCHEDULE 8 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE

Shown on the planning scheme map as NRZ8.

GARDEN COURT 3

Neighbourhood character objectives

To ensure new development reflects the preferred built form, characterised by predominantly small-scale 1-2 storey dwellings that utilise a contemporary façade articulation and consistent materials palette of brick or render.

To maintain and reinforce the predominant building alignment along the street, characterised by setbacks that contribute to the sense of openness.

To encourage space for increased vegetation planting within the private realm to enhance the garden setting of dwellings.

To ensure new development does not dominate the streetscape but minimises the dominance of car parking access and structures instead.

To maintain the openness of the streetscape, characterised by absent front fences.

Image 35: NRZ8 (Garden Court 3) objectives [Post-exhibition version]

10.3 NRZ2 - NRZ5, NRZ7, NRZ9 - NRZ23, NRZ25, NRZ27 - NRZ37

The exhibited version of Amendment C219morn included the following text within the schedules to the NRZ (image 36), consistent with the local provision templates:

3.0 <small>---/---/--- Proposed C219morn</small>	Permit requirement for the construction or extension of one dwelling or a fence associated with a dwelling on a lot	
		Requirement
	Permit requirement for the construction or extension of one dwelling on a lot	500 square metres
	Permit requirement to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot	500 square metres

Image 36: 3.0 of the GRZ schedules proposed by Amendment C219morn

As previously noted, Amendment VC243 (gazetted on 22 September 2023) made changes to the VPPs and all planning schemes to codify residential development standards, implement the Future Homes project across Victoria, remove permit requirements for single dwellings on lots of 300 square metres or more, and introduce VicSmart permits for single dwellings on lots less than 300 square metres.

VC243 amended the table text from '500 square metres' to 'None specified', within the Schedules to the NRZ, as per image 37 below):

3.0 <small>22/09/2023 VC243</small>	Permit requirement for the construction or extension of one dwelling or a fence associated with a dwelling on a lot	
		Requirement
	Permit requirement for the construction or extension of one dwelling on a lot	None specified
	Permit requirement to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot	None specified

Image 37: 3.0 of the GRZ1 (VC243 point in time)

However, Amendment VC255 changed the VPP and 52 planning schemes in Victoria by correcting obvious or technical errors and by making consequential changes to local schedules to align with Amendment VC243 and Amendment VC253.

Amendment VC255 deleted 3.0 from the existing NRZ1 entirely.

Accordingly, the NRZ2 - NRZ5, NRZ7, NRZ9 - NRZ23, NRZ25, NRZ27 - NRZ37 have been amended to delete 3.0 and the remaining sub-clauses have been re-numbered to be consistent with the format of the local provision templates.

10.4 NRZ24 and NRZ26

The existing and proposed DDO24 applies to Beluera Hill in Mornington (as shown in image 20 above). The DDO24 identifies three different precincts for which there are different planning

requirements. It was intended that Amendment C219morn translate the requirements of these precincts into NRZ schedules.

However, it was identified that the requirements of the original Beleura Hill Neighbourhood Character Study (Tract, 2014) underpinning the DDO24 have been translated into five NRZ schedules instead (NRZ23 - NRZ27). This translation has occurred despite Council adopting - and the Minister for Planning later approving - Amendment C189 which introduced the DDO24 with the three precincts shown above in October 2016.

To ensure the translation of DDO24 is policy neutral, as intended, the following changes have been made to ensure the NRZs align with the three precincts consistent with the DDO24:

- The NRZ24 is deleted (along with the mapping changes outlined above in section 5.3).
- The NRZ26 is deleted (along with the mapping changes outlined above in section 5.4).

To account for these changes, NRZ23 and NRZ25 have been renamed (consistent with the legend as shown in image 21 above), as per table 8 below:

Schedule	Exhibited schedule name	Adopted schedule name
NRZ23	Beleura Hill, Mornington - Esplanade Precinct	Beleura Hill, Mornington - Esplanade and <u>Northeast</u> Precinct
NRZ25	Beleura Hill, Mornington - Southeast and West Precinct	Beleura Hill, Mornington - <u>Creek</u> , Southeast and West Precinct

Table 8: NRZ23 and NRZ25 exhibited vs adopted schedule names

Note: NRZ27 does not need a name change given the area that it applies to, corresponds with the name as shown in image 21 above.

10.5 NRZ30 – NRZ34

As part of the ‘without prejudice’ drafting exercise held during the Panel hearing, the Department of Transport and Planning (DTP) submitted the following:

“A17 - Remove reference to ‘residential building’ as the standard applies only to single dwellings on a lot and confirm requirement is appropriate for single dwellings as it duplicates the varied B28 requirement.”

Council’s delegates at the Panel hearing accepted this position. The Planning Panel did not make a formal recommendation on this matter. However, NRZ30 - NRZ34 has nevertheless been amended to delete the ‘residential building’ reference from Standard A17.

10.6 NRZ37

As part of the ‘without prejudice’ drafting exercise held during the Panel hearing, the DTP provided commentary regarding fencing standards within the proposed Schedules 1 and 2 to the NCO.

In the course of considering the DTP’s drafting comments, it was observed that:

- Clause 43.05-2 of the head provision states that a permit is required to construct a building or construct or carry out works, but it does not specifically identify fences;
- Clause 43.05-2 of the head provision also identifies that an application under the NCO to 'construct, demolish or remove a fence' is a VicSmart application;
- However, Clause 62.02-2 provides that any requirement in the scheme relating to the construction of a building or construction or carrying out of works does not apply to a fence, unless a permit is specifically required for a fence;
- There appears to be a gap in the drafting of the head provision, such that a permit is not required to construct or carry out works in respect of a fence, despite the VicSmart provisions.

To address this matter, Council’s delegates at the Panel hearing suggested that:

“changes be made to the NRZ37 to include a permit requirement for front fences, being the zone which is associated with the NCO1 and NCO2. This permit requirement achieves the following purpose of the head provision of the NRZ -

To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics,

consistent with section 6.5.10 of the Practitioner’s Guide, which states that a permit requirement in a schedule must be capable of achieving the objectives or purposes of the zone or its schedule”.

Council’s delegates at the Panel hearing provided the following change to the NRZ37 to address this matter (as per table 9 below):

	Standard	Requirement
Front fence height	A20 and B32	None specified. A front fence within 3 metres of a street should not exceed a height of: <ul style="list-style-type: none"> ▪ 1.2 metres, for a street in a Transport Zone 2. ▪ 1.2 metres, for all other streets

Table 9: NRZ37 standard A20 and B32

The NRZ37 has therefore been amended to be consistent with table 9 above.

11 DDO Schedules (Clause 43.02)

11.1 DDO4

11.1.1 Building height

Table 1 of the DDO4 was amended (as a post-exhibition change) to read as per image 38 below:

Table 1	
	Requirement
Building height	<p>A building must <u>does</u> not exceed a height of:</p> <ul style="list-style-type: none"> ▪ 8.5 metres, for land: <ul style="list-style-type: none"> - <u>in Portsea, Sorrento or St Andrews Beach.</u> - <u>south of Melbourne Road in Blairgowrie.</u> - <u>south of the Public Acquisition Overlay 1 (PAO1) in Rye.</u> ▪ <u>6 metres, for all other land.</u> and must not contain more than 2 storeys.

Image 38: Table 1 of the DDO4 (post-exhibition)

The DDO4 is amended as follows, as per image 39 below:

Table 1	
	Requirement
Building height	<p>A building must <u>does</u> not exceed a height of:</p> <ul style="list-style-type: none"> ▪ 8.5 metres, for land: <ul style="list-style-type: none"> - <u>in Portsea, Sorrento, Blairgowrie or St Andrews Beach.</u> - south of Melbourne Road in Blairgowrie. - <u>south of the Public Acquisition Overlay 1 (PAO1) in Rye.</u> ▪ <u>6 metres, for all other land.</u> and must not contain more than 2 storeys.

Image 39: Table 1 of the DDO4 (post-Planning Panel)

Post-Panel, the DDO4 has been amended to:

- Add Blairgowrie to the first point.
- Delete the second point as the DDO4 only applies to land south of Melbourne Road in Blairgowrie so is not relevant.

11.1.2 Subdivision

The existing integrated subdivision requirements for DDO4 applicable to the following area:

“Land located west of Truemans Road and north of the proposed Mornington Peninsula Freeway in Rye”.

was translated incorrectly (as exhibited).

The original intended approach of Amendment C219morn was to translate existing integrated subdivision controls on a policy neutral basis and simplify their expression (for clarity and certainty) where required.

A clerical error occurred with the translation of the existing DDO4, as outlined in table 10 below:

	Applicable area	Subdivision requirement
Existing DDO4	Land located west of Truemans Road and north of the proposed Mornington Peninsula Freeway in Rye.	<p>Each lot must be:</p> <ul style="list-style-type: none"> ▪ At least 2,500 square metres and be able to contain a rectangle with minimum dimensions of 25 metres x 35 metres; or ▪ In the case of an integrated subdivision*, at least 2,000 square metres. <p><i>*An integrated subdivision is a subdivision proposed in conjunction with an application for more than one dwelling on a lot where:</i></p> <ul style="list-style-type: none"> ▪ <i>None of the land has been involved in a previously approved integrated subdivision;</i> ▪ <i>Each of the proposed lots is for a single dwelling only, except that a dependent person's unit may also be constructed on a lot; and,</i> ▪ <i>The application includes a site analysis and site development plan that responds to the design objectives of the schedule to the satisfaction of the responsible authority.</i>
Exhibited DDO4	For all land that the DDO4 applies to.	Each lot created by the subdivision must be at least 2,500 square metres.
Adopted DDO4	<ul style="list-style-type: none"> ▪ For Land located west of Truemans Road and north of the Urban Growth Boundary. ▪ For all other land. 	<ul style="list-style-type: none"> ▪ Each lot created by the subdivision must be at least 2,000 square metres. ▪ Each lot created by the subdivision must be at least 2,500 square metres.

Table 10: LDRZ2 Translation error analysis

This correction ensures the subdivision controls are translated on a policy neutral basis for the relevant area of DDO4.

11.2 DDO22 and DDO34 – DDO53

The exhibited version of Amendment C219morn included an Application requirement for a landscape plan in the GRZ and NRZ schedules, as well as DDO schedules that apply to LDRZ land (DDO22 and DDO34 – DDO54).

The intent was to ensure high-quality landscape outcomes and transparency for permit applicants, given the Shire routinely requests landscape plans - particularly for multiple-dwelling development. While this remains appropriate in both the GRZ and the NRZ, where there are generally smaller lot sizes where deep soil planting and vegetation is particularly important to achieve.

This Application requirement is unreasonably onerous for LDRZ areas because lots in these areas are generally much larger and therefore have greater opportunity for landscaping and deep soil planting without the need to demonstrate, via a landscape plan.

There will still be other instances where a landscape plan is required for land zoned LRDZ, for example, where a Vegetation Protection Overlay or Environmental Significance Overlay. A landscape plan is still routinely requested in these cases and this would not change under Amendment C219morn.

The landscape plan Application requirement has therefore been deleted from DDO22 and DDO34 – DDO54.

11.3 DDO34 – DDO38

DDO schedules DDO34 - DDO38 have been renamed as shown below in table 11:

DDO schedule	Schedule name as exhibited	Neighbourhood character precinct (as per the NCS)	Schedule name post-Planning Panel
DDO34	Low Density Garden Court A	Garden Court 1 (GC1)	Low Density Garden Residential A
DDO35	Low Density Garden Court B	Garden Court 1 (GC1)	Low Density Garden Residential B
DDO36	Low Density Garden Court C	Garden Court 2 (GC2)	Low Density Garden Court A
DDO37	Low Density Garden Court D	Garden Court 2 (GC2)	Low Density Garden Court B
DDO38	Low Density Garden Court E	Garden Court 3 (GC3)	Low Density Garden Residential C

Table 11: DDO34 - DDO38 revised schedule names

These changes are required to ensure the schedule names are consistent with the changes outlined in sections 5.3 - 5.4 and 10.1 - 10.2 above and summarised in table 12 below.



Neighbourhood character precinct (as per the NCS)	Exhibited Zone	Consolidated with	Neighbourhood character precinct (as per the NCS)	Exhibited Zone	Post-Planning Panel Zone
Garden Court 1 (GC1)	NRZ6		Garden Residential 1 (GR1)	NRZ2	NRZ2 (GR1)
Garden Court 3 (GC3)	NRZ8		Garden Residential 3 (GR3)	NRZ4	NRZ4 (GR3)

Table 12: NCS and Zone consolidations summarised

A justification for each schedule name change is provided below in table 13:

DDO schedule	Schedule name post-Planning Panel	Justification
DDO34	Low Density Garden Residential A	GC1 is consolidated into GR1 as shown in table 12 above.
DDO35	Low Density Garden Residential B	<ul style="list-style-type: none"> GC1 is consolidated into GR1 as shown in table 12 above. The letter sequencing follows DDO34 (A).
DDO36	Low Density Garden Court A	Given DDO34 is no longer named Low Density Garden Court A and DDO35 is no longer named Low Density Garden Court B - the Low Density Garden Court letter sequencing can commence at A for the DDO36.
DDO37	Low Density Garden Court B	The letter sequencing follows DDO36 (B).
DDO38	Low Density Garden Residential C	<ul style="list-style-type: none"> GC1 is consolidated into GR3 as shown in table 12 above. The letter sequencing follows DDO35 (B).

Table 13: Justification for DDO34 - DDO38 schedule name changes

11.4 DDO63

The DDO1 has been duplicated, renumbered DDO63 and amended to:

- Reinstate the existing maximum mandatory 2 storey / 10 metre height requirement within Table 2 to 2.0 Buildings and Works.

- Be renamed 'Mornington Activity Centre - Residential' instead of 'Township Area'.
- Be applied to the Mornington MAC where DDO1 formerly applied.

Within the Mornington MAC, residential areas are currently protected with a mandatory 2 storey / 10 metre height limit under the DDO1. Amendment C219morn (as exhibited) sought to remove the existing 10 metre height limit of the DDO1 on the basis that the NRZ was to be applied to these areas. (The NRZ has a default mandatory maximum building height of 2 storeys / 9 metres).

In accepting Planning Panel recommendation 4.b) to retain the GRZ1 inside the MACs (as per each of the respective adopted structure plan boundary areas), the existing 2 storey / 10 metre height limit to manage height within the Mornington MAC has been reinstated, until Council's separate Residential Heights Review project is completed. This project seeks to determine whether existing long-standing building height provisions in DDOs should remain or whether changes are required, based on detailed assessments of landscape character, sensitivity and viewlines.

Retaining the existing 2 storey / 10 metre height limit requires the creation of a DDO schedule specific to the Mornington MAC because DDO1 applies elsewhere on the Peninsula where the NRZ is proposed. That is, the 2 storey / 10 metre height limit cannot be reinstated in areas where the DDO1 would apply over an NRZ because it would be in conflict with the lower, 9-metre mandatory maximum height of the NRZ.

While this change necessitates the creation of a new schedule (i.e., DDO63), it is only 'new' in so far as it is specific to Mornington. Otherwise, the schedule is simply retaining a control that already exists in the planning scheme.

12 NCO Schedules (Clause 43.05)

12.1 NCO1 and NCO2

12.1.1 Statement of neighbourhood character, Neighbourhood character objective and Decision guidelines

The following sections of the NCO1 and NCO2 have been reviewed and amended to improve their clarity, remove repetition and define unclear phrases or words:

- Statement of neighbourhood character
- Neighbourhood character objective
- Decision guidelines

This refinement of drafting is consistent with Planning Panel recommendations to improve the drafting of other provisions as follows:

- Recommendation 1.c) recommends that NRZ schedules be reviewed to improve the clarity and remove repetition within the Neighbourhood Character objectives and Decision Guidelines.
- Recommendation 1.d) recommends that DDO schedules be reviewed to:
 - Avoid or define unclear phrases or words.
 - Improve clarity and remove repetition within the Design objectives.

12.1.2 Permit requirement

The exhibited versions of NCO1 and NCO2 triggered a planning permit for the following vegetation removal:

Remove, destroy or lop a native coastal tree. This does not apply to the removal, destruction or lopping of sweet pittosporum (pittosporum undulatum).

The Mornington Peninsula Planning Scheme, within the Schedule to Clause 52.17 (Native vegetation), includes Sweet Pittosporum (*Pittosporum undulatum*) as a Scheduled weed for the whole municipality.

The vegetation removal Permit requirement within the NCO1 and NCO2 has therefore been amended to read as follows:

Remove, destroy or lop native vegetation, except for the removal of vegetation specified in the schedule to Clause 52.17.

This revised Permit requirement wording is consistent with the Schedule 1 to the VPO, Permit requirement. Furthermore, should any other vegetation be included within the Schedule to Clause 52.17 (by a future Planning Scheme Amendment) the NCO1 and NCO2 will then allow for such vegetation to be removed, without the need for a planning permit.

12.2 NCO2

The NCO2 has been amended to reflect changes that the Planning Panel recommended for the NCO1 (recommendation 12.a) - 12.e)).

Recommendation 11 suggested that the NCO1 be deleted and not applied to The Avenues, Rosebud and parts of Tootgarook and Rye. For the reasons outlined within the Officer Response to Planning Panel recommendations document, this recommendation was not supported and the NCO2 is being retained, as adopted.

The NCO2 has therefore been amended, to apply Planning Panel recommendations 12.a) - 12.e), in addition to those changes outlined in section 12.1 above, generally as follows:

- Revise references of "the dominance of car parking" to "the prominence of car parking" instead.
- Delete any reference to "area contained in this schedule".
- Delete the requirement for a landscape plan.
- Delete the requirement for additional private open space based on the number of bedrooms per dwelling from Standard B28.

13 Schedules to the Operational provisions

13.1 Schedule to Clause 72.03

The Schedule to Clause 72.03 has been amended to reflect the final maps comprising part of the Mornington Peninsula Planning Scheme consistent with any other amendment that has been gazetted and has made an amendment to the Schedule to Clause 72.03, since Amendment C219morn was drafted for exhibition.

This is to ensure that the Schedule to Clause 72.03 is the most up-to-date version for Council adoption.

13.2 Schedule to Clause 72.08

The Schedule to Clause 72.08 has been amended to include the:

- Name of any Background document.
- Related amendment number.

that has been included within the Mornington Peninsula Planning Scheme since the Schedule to Clause 72.08 was drafted for exhibition. This is to ensure that the Schedule to Clause 72.08 is the most up-to-date version for Council adoption.

Given the post-Planning Panel changes that have occurred (i.e. deleting schedule numbers etc.) the Schedule to Clause 72.08 has also been amended to revise the referenced clause numbers, as appropriate.

14 Other amendment documents

14.1 Instruction sheet

The Instruction sheet has been amended to depict the post-Planning Panel version of Amendment C219morn and amended the:

- Planning Scheme map instructions
- Planning Scheme ordinance instructions

This is to ensure that the instructions represent the changes required to the Mornington Peninsula Planning Scheme and maps as per the post-Planning Panel version of Amendment C219morn for Council adoption.

14.2 Explanatory Report

The Explanatory Report has been amended to:

- Depict the post-Planning Panel version of Amendment C219morn i.e. amend references to the final ordinance names, numbers and planning scheme maps.
- Correct any clerical errors and update any outdated references.

15 Editorial changes

Changes to improve phrasing, or correct grammatical and spelling errors have been made, where necessary.

APPENDIX 1

Residential Development Framework – Housing Change Areas for C1Z, MUZ & PUZ Land by Township & Commercial Area Amendment Version: Post-Exhibition vs Recommended Post-Panel

[To be read in conjunction with post-panel revised methodology]

Township	Commercial Area	Activity centre Hierarchy (Clause 02.03)	Existing Zone	Housing Change Area (Post-exhibition)	Constraints	Adopted plan supporting three or more storeys?	Housing Change Area (Recommended post-Panel)	Justification for post-Panel recommendation
Rosebud	Old Cape Schanck Road	Convenience	C1Z	Minimal	Flood-prone (part) Bushfire-prone area (BPA) DDO1	✘	Incremental	<ul style="list-style-type: none"> DDO1 does not contain mandatory subdivision controls. Accept Panel's recommendation that BPA is not a reason for making a site minimal change. Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
	Eastbourne Road	Nil	C1Z	Incremental	Nil	✘	Incremental	<ul style="list-style-type: none"> No constraints apply.
	Point Nepean Road	Major	C1Z MUZ PUZ6	Substantial	Sea Level Rise Hazards (part) ESO25 BPA DDO26	✔	Substantial	<ul style="list-style-type: none"> The Rosebud Activity Centre Structure Plan (Hansen Partnership, 2017) supports three storey development.
Mornington	Dava Drive	Convenience	C1Z	Incremental	Flood-prone	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
	Wilsons Road	Convenience	C1Z	Incremental	Flood-prone (part)	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
	Hargreaves Street / The Esplanade	Nil	C1Z	Nil	Flood-prone (part) DDO1	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.

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Township	Commercial Area	Activity centre Hierarchy (Clause 02.03)	Existing Zone	Housing Change Area (Post-exhibition)	Constraints	Adopted plan supporting three or more storeys?	Housing Change Area (Recommended post-Panel)	Justification for post-Panel recommendation
								<ul style="list-style-type: none"> DDO1 does not contain mandatory subdivision controls.
	Beleura Hill Road	Convenience	C1Z	Incremental	DDO1 Flood-prone (part)	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change. DDO1 does not contain mandatory subdivision controls.
	Robertson Drive	Convenience	C1Z	Incremental	Flood-prone	✘	Incremental	<ul style="list-style-type: none"> No constraints apply.
Mornington	Main Street	Major	C1Z MUZ PUZ6	Substantial	Flood-prone (part) DDO13	✓	Substantial	<ul style="list-style-type: none"> The Mornington Activity Centre Structure Plan: A plan for a Coastal Town (Ratio Consultants, 2007) supports three storey development.
	Bentons Square	Large Township	C1Z	Incremental	Flood-prone	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
Hastings	Marine Parade / Hodgins Road	Nil	C1Z	Incremental	Sea Level Rise Hazards LSIO1 BPA Flood-prone	✘	Minimal	<ul style="list-style-type: none"> Sea Level Rise Hazards apply. LSIO1 applies.
	High Street	Major	C1Z MUZ PUZ6	Substantial	DDO27 LSIO1 (part) Sea Level Rise Hazards (part)	✓	Substantial	<ul style="list-style-type: none"> The Hastings Town Centre Structure Plan (Planisphere, 2017) supports three storey development.
Mount Eliza	Humphries Road	Convenience	C1Z	Minimal	BPA DDO18	✘	Incremental	<ul style="list-style-type: none"> DDO18 does not contain mandatory subdivision controls.

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								<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change.
	Mountain View Road	Convenience	C1Z	Minimal	DDO3	✘	Minimal	<ul style="list-style-type: none"> Mandatory subdivision controls are being retained in the proposed DDO3.
	Mount Eliza Way	Large Township	C1Z	Incremental	DDO1 (part) DDO12 (part)	✘	Incremental	<ul style="list-style-type: none"> DDO1 does not contain mandatory subdivision controls. DDO12 does not contain mandatory subdivision controls.
Dromana	Point Nepean Road (near Heales Street)	Nil	C1Z	Minimal	Flood-prone ESO25	✘	Minimal	<ul style="list-style-type: none"> ESO25 applies.
	Boundary Road	Convenience	C1Z	Minimal	BPA Flood-prone BMO2	✘	Minimal	<ul style="list-style-type: none"> BMO2 applies.
	Point Nepean Road (near the pier)	Large Township	C1Z PUZ6	Substantial	ESO25 (part) DDO29	✔	Substantial	<ul style="list-style-type: none"> The Dromana Township Project Report (Hansen Partnership, 2021) supports three storey development.
	31-39 Palmerston Avenue	Nil	C1Z	Nil	Flood-prone	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
Rye	Dundas Street	Convenience	C1Z	Minimal	BPA BMO (part) BMO1 (part) DDO4	✘	Minimal	<ul style="list-style-type: none"> BMO partly applies. BMO1 partly applies. Mandatory subdivision controls are being retained in the proposed DDO4.

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	Point Nepean Road	Large Township	C1Z MUZ PUZ6	Substantial	ESO25 DDO58	✓	Substantial	<ul style="list-style-type: none"> The Rye Township Plan (Realm Studios, July 2020) supports three storey development.
Somerville	Somerville Town Centre	Large Township	C1Z	Substantial	Flood-prone DDO30	✓	Substantial	<ul style="list-style-type: none"> The Somerville Township Structure Plan (Mornington Peninsula Shire, 2019) supports three storey development.
Mount Martha	Lochiel Avenue / Watson Road	Small Township	C1Z	Minimal	BPA Flood-prone	✗	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change. Accept Panel's recommendation that flood prone is not a reason for making a site minimal change.
	Walara Drive	Convenience	C1Z	Minimal	DDO2	✗	Minimal	<ul style="list-style-type: none"> Mandatory subdivision controls are being retained in the proposed DDO2.
	614 Esplanade (The Dava Hotel)	Nil	C1Z	Incremental	BPA DDO1	✗	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change. DDO1 does not contain mandatory subdivision controls.
Sorrento	Ocean Beach Road	Small Township	C1Z	Minimal	DDO28 BPA	✓	Substantial	<ul style="list-style-type: none"> The Ocean Beach Road Sorrento: Built Form Review (November 2021) supports three storey development.

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	Point Nepean Road / Esplanade	Nil	C1Z	Minimal	ESO25 DDO3 (part) DDO28 (part) Sea Level Rise Hazards (part)	✘	Minimal	<ul style="list-style-type: none"> The Ocean Beach Road Sorrento Built Form Review - May 2024 supports development up to two storeys for this area of Sorrento Activity Centre. Mandatory subdivision controls are being retained in the proposed DDO3 that partly applies. Sea Level Rise Hazards partly apply.
	5 Hotham Road (Sorrento Hotel)	Small Township	C1Z	Minimal	ESO25	✘	Minimal	<ul style="list-style-type: none"> The proposed The Ocean Beach Road Sorrento Built Form Review - May 2024 supports development up to two storeys for this area of Sorrento Activity Centre. ESO25 applies.
Balnarring	Frankston-Flinders Road	Small Township	C1Z	Minimal	DPO4 (part) DDO2 (part)	✘	Incremental	<ul style="list-style-type: none"> Where no DDO2 applies.
			C1Z				Minimal	<ul style="list-style-type: none"> Where DDO2 applies and mandatory subdivision controls are being retained.
McCrae	Point Nepean Road / Beverley Road	Convenience	C1Z	Minimal	DDO16 ESO25 BPA Floodprone Sea Level Rise Hazards	✘	Minimal change	<ul style="list-style-type: none"> ESO25 applies. Sea Level Rise Hazards apply.
	Point Nepean Road / Lonsdale Street	Local	C1Z	Minimal	ESO25 BPA Floodprone Sea Level Rise Hazards (part)	✘	Minimal	<ul style="list-style-type: none"> ESO25 applies. Sea Level Rise Hazards partly apply.

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	Bayview Road	Nil	C1Z	Minimal	BPA DDO1	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that BPA is not a reason for making a site minimal change. DDO1 does not contain mandatory subdivision controls.
Capel Sound	Point Nepean Road	Local	C1Z	Minimal	ESO25 Sea Level Rise Hazards (part) BPA Flood-prone	✘	Minimal	<ul style="list-style-type: none"> ESO25 applies. Sea Level Rise Hazards partly apply.
	Illaroo Street	Convenience	C1Z	Incremental	Nil	✘	Incremental	<ul style="list-style-type: none"> No constraints apply.
Blairgowrie	Point Nepean Road	Local	C1Z	Minimal	BPA Flood-prone ESO25	✘	Minimal	<ul style="list-style-type: none"> ESO25 applies.
Portsea	Point Nepean Road	Local	C1Z	Minimal	ESO25 (part) DDO3 (part)	✘	Incremental	<ul style="list-style-type: none"> Where no ESO25 applies. Where no DDO3 applies.
							Minimal	<ul style="list-style-type: none"> Where ESO25 applies Mandatory subdivision controls are being retained in the proposed DDO3 that partly applies.
Baxter	Baxter-Tooradin Road	Local	C1Z	Substantial	BPA DDO31	✓	Substantial	<ul style="list-style-type: none"> The Baxter Township Structure Plan (Mornington Peninsula Shire, 2019) supports up to three storeys for this area.
	632-640 Frankston-Flinders Road	Nil	C1Z	Incremental	BPA DDO31	✘	Incremental	<ul style="list-style-type: none"> The Baxter Township Structure Plan (Mornington Peninsula Shire, 2019) supports up to two storeys for this area
	Baxter Gateway	Nil	C1Z	Incremental	BPA DPO9	✓	Substantial	<ul style="list-style-type: none"> The Baxter Township Structure Plan (Mornington Peninsula

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								Shire, 2019) supports up to three storeys for this area.
Tyabb	Frankston-Flinders Road	Local	C1Z	Incremental	Nil	✘	Incremental	<ul style="list-style-type: none"> No constraints apply.
Bittern	Frankston-Flinders Road	Local	C1Z	Incremental	Nil	✘	Incremental	<ul style="list-style-type: none"> No constraints apply.
Crib Point	Stony Point Road	Local	C1Z	Minimal	BPA BMO2 (part) DDO21	✘	Incremental	<ul style="list-style-type: none"> Where no BMO2 applies. The DDO21 does not contain mandatory subdivision controls.
	Disney Street	Convenience	C1Z	Minimal	DDO21	✘	Incremental	<ul style="list-style-type: none"> Where BMO2 applies. The DDO21 does not contain mandatory subdivision controls.
Red Hill South	Shoreham Road / Red Hill Road	Local	C1Z	Minimal	BPA BMO ESO10 (part) ESO26 (part) ESO28 (part) SLO1 (part) SLO6 (part)	✘	Minimal	<ul style="list-style-type: none"> BMO applies. ESO10 partly applies. ESO26 partly applies. ESO28 partly applies. SLO1 partly applies. SLO6 partly applies.
Flinders	Cook Street	Local	C1Z	Minimal	DDO14 Flood-prone	✘	Incremental	<ul style="list-style-type: none"> Accept Panel's recommendation that flood prone is not a reason for making a site minimal change. DDO14 does not contain mandatory subdivision controls.
Tootgarook	Point Nepean Road / Carmichael Street	Convenience	C1Z	Minimal	ESO25 (part) Flood-prone Sea Level Rise Hazards (part)	✘	Incremental	<ul style="list-style-type: none"> Where no ESO25 applies. Where no Sea Level Rise Hazards apply.
							Minimal	<ul style="list-style-type: none"> Where ESO25 applies.

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								<ul style="list-style-type: none"> Where Sea Level Rise Hazards apply.
	Guest Street	Nil	C1Z	Minimal	DDO4 BPA Flood-prone	✘	Minimal	<ul style="list-style-type: none"> Mandatory subdivision controls are being retained in the proposed DDO4.
Safety Beach	Marine Drive	Nil	C1Z	Minimal	ESO25 Sea Level Rise Hazards (part) Flood-prone	✘	Minimal	<ul style="list-style-type: none"> ESO25 applies. Sea Level Rise Hazards partly apply.
Shoreham	Byrnes Road	Nil	C1Z	Minimal	BPA Flood-prone BMO DDO15 SLO2	✘	Minimal	<ul style="list-style-type: none"> BMO applies. SLO2 applies.
Red Hill	Mornington-Flinders Road	Nil	C1Z	Minimal	BPA BMO ESO10 EMO1 (part) ESO17 (part) ESO28 (part) SLO1 (part) SLO6	✘	Minimal	<ul style="list-style-type: none"> BMO applies. ESO10 applies. EMO1 partly applies. ESO17 partly applies. ESO28 partly applies. SLO1 partly applies. SLO6 applies.
	Arthurs Seat Road	Nil	C1Z	Minimal	BPA BMO ESO10 ESO28 SLO1 SLO6	✘	Minimal	<ul style="list-style-type: none"> BMO applies. ESO10 applies. ESO28 applies. SLO1 applies. SLO6 applies.

Implications of Recent State Government Housing Policy and Planning Reforms

In addition to draft housing targets under Plan Victoria, officers have considered implications for Amendment C219morn of the following additional State Government housing policy and planning reforms that seek to accelerate housing delivery across Victoria.

In September 2023, the State Government released Victoria's Housing Statement for the Decade Ahead: 2024 – 2034. The Statement declares an ambitious target of building 800,000 homes in Victoria over the next decade to address Victoria's housing crisis. Subsequent Ministerial amendments (known as "VC" amendments) have been implemented in planning schemes across the State to help boost housing supply and achieve these targets.

Amendment VC243, gazetted on 22 September 2023:

1. Codified ResCode standards in Clause 54 (One dwelling on a lot) and Clause 55 (Two or more dwellings on a lot and residential buildings).
2. Implemented the *Future Homes* project across Victoria.
3. Removed permit requirements for single dwelling on lots of 300sqm or more.
4. Introduced VicSmart permits for single dwellings on lots less than 300sqm.

ResCode Codification

Under VC243, if a housing development meets the relevant ResCode standards in Clause 54 or 55, the development is now 'deemed to comply'. This means the development meets the objective for that standard and does not require further assessment against the standard). Where the standards (and hence objectives) are met, any decision guidelines in the relevant zone are also no longer applicable.

In total, 14 of the current residential development standards have been codified. The codified standards generally relate to setbacks, wall heights on boundaries, building heights, daylight access, and access to private open space, and apply to all single dwelling and multi-unit development up to 4 storeys. The remaining 39 will be reviewed and finalised by September 2024 following targeted consultation.

Importantly, these changes mean that building height is no longer required to be graduated between existing buildings and new buildings – it only has to meet the maximum height specified in an applicable zone or overlay schedule. (Other requirements of an applicable overlay – such as a Design and Development Overlay – still must be met). Similarly, front fences no longer need to be designed to complement a dwelling or front fences of adjoining properties – they only need to meet a specified height requirement.

Nevertheless, by tailoring ResCode standards for different character areas as per the recommendations of Council's adopted NCS, Amendment C219morn will help ensure better neighbourhood character outcomes than the generic ResCode standards which currently apply in the planning scheme.

For example, Amendment C219morn proposes to introduce varied ResCode standards for front fencing in response to Council's adopted NCS. Proposed NRZ2 includes an objective to 'maintain the openness of the streetscape with no or low and permeable front fences'. The ResCode standards (A20 and B32) are therefore proposed to be varied so that a front fence within 3 metres of a street should not exceed a height of 1.8 metres (for a street in a

Transport Zone 2) or 1.2 metres, for all other streets. If a proposed fence is higher than these standards, it must demonstrate how it meets the aforementioned objective, noting that the NRZ2 has a corresponding decision guideline regarding whether the height and permeability of fencing allows views to dwellings and front gardens.

Future Homes (Clause 53.24)

The Future Homes particular provision provides a streamlined process to facilitate apartment developments from the State Government's Future Homes program in areas close to existing services and infrastructure. Specifically, the provision facilitates delivery of licenced designs for 3 storeys apartments with either at-grade or basement parking.

Importantly, the Future Homes provision applies to land zoned GRZ that is not covered by a Heritage Overlay (HO) or NCO and prevails over any other inconsistent provision in the planning scheme. These provisions therefore override any zone or DDO change proposed by Amendment C219morn.

Amendment C219morn proposes to rezone most existing GRZ land on the Peninsula to the NRZ. The extent of land on which Future Homes can be delivered therefore depends on the extent of GRZ that Council ultimately resolves to retain. The four main options for Council's consideration are:

- Retain all existing GRZ land (should Council resolve to abandon Amendment C219morn)
- Retain GRZ in all three Major Activity Centres (Hastings, Mornington and Rosebud) and for all land currently not covered by an overlay (as recommended by the Panel)
- Retain GRZ only limited parts of the three Major Activity Centres (as per the post-exhibition version of Amendment C219morn endorsed by Council on 24 October 2022).
- Retain GRZ in all three Major Activity Centres only (recommended by officers)

It is noted that, no Future Homes apartments have yet been approved or built, nor have any licensed designs yet been purchased (including through the State Government's earlier pilot of the program in limited municipal locations).

Removal of the 500sqm permit trigger threshold for single dwellings in residential zones

VC243 removed the 500sqm permit trigger threshold for single dwellings in residential zones, effectively streamlining the assessment of single dwelling development.

Previously, the MUZ, GRZ and NRZ required a planning permit to construct a front fence or construct or extend one dwelling on a lot under 500sqm. Now, under VC243, a permit is only required for these works on lots less than 300sqm.

This change is significant because submissions to Amendment C219morn raised concerns that removing planning permit triggers for single dwelling development would effectively transfer decision-making from the planning system to the building system, reducing community transparency and engagement (with limited third-party notice and appeal rights), and significantly increasing Report and Consent applications and slowing down development approvals. (Report and Consent is an assessment of a development under the building

system where a development seeks to vary a ResCode standard and no planning permit is required. These assessments are determined by the Shire's Building Department).

VC243 therefore effectively voids issues raised in submissions about the transfer of development assessment to the building assessment as these changes have occurred regardless of whether Amendment C219morn proceeds.

VicSmart for single dwellings on lots less than 300sqm

VC243 further streamlined the assessment of single dwellings by amending residential zones to make an application to construct or extend one dwelling on a lot of less than 300sqm a VicSmart application (i.e. fast-tracked permit process with no third-party appeal rights) if specified requirements are met.

Small Secondary Dwellings (SSD)

Following VC243, the Minister gazetted Amendment VC253 on 14 December 2023 to make it easier to build a small second dwelling. A Small Second Dwelling (SSD) is defined as a building that is 60sqm or less with a kitchen, bathroom and toilet, located on the same lot as an existing dwelling. It must not be connected to reticulated natural gas and does not require a car parking space.

Importantly, an SSD does not require a planning permit in most cases where there are no flooding, environmental or other special planning controls.

VC253 introduced the ability to construct an SSD on lots with an existing dwelling, therefore increasing housing capacity within the Shire. This increase in housing capacity will occur irrespective of Amendment C219morn, overriding any zone or DDO change proposed by the amendment.

An SSD can be located on residential and rural zoned land across the Peninsula. Generally speaking, the use of land for an SSD does not require a planning permit where conditions are met. That is, a permit is not required for an SSD on land zoned LDRZ, as well as land zoned GRZ, MUZ or NRZ (unless land is less than 300sqm). A planning permit is required in the Green Wedge Zone as well as the Farming Zone (in certain circumstances), but these zones are not impacted by Amendment C219morn.

In terms of overlays, if an SSD is below 5m in height and is finished in muted tones, a planning permit is not required where a DDO or HO applies to the land. VicSmart provisions apply where a permit is required in a Significant Landscape Overlay (SLO) and where the requirements of a HO are not met. Otherwise, the remainder of overlays apply as normal, and the regular permit process may apply for buildings and works permit triggers to construct an SSD.

Importantly, under the new provisions, an SSD is a type of accommodation distinctly different from a 'dwelling'. This means that DDO controls within the Mornington Peninsula Planning Scheme which mandate 'one dwelling per lot' will not prevent the use and development of a lot for an SSD.

Overall, introduction of SSD provisions will increase housing capacity and diversity on the Peninsula, irrespective of whether Amendment C219morn proceeds. Changes to ResCode standards proposed by Amendment C219morn will apply where relevant for SSDs.

Finally, it is noted that Amendment C219morn makes numerous changes to the schedules to the DDO. Given the SSD exemptions are contained in the parent provision of the DDO, the

local DDO schedules cannot override these exemptions – i.e. the SSD exemptions contained in the DDO parent provision will remain applicable.