

**Date:** 12 September 2022

# **Mornington Peninsula Planning Scheme Amendment C270**

**Closing Submission on behalf of Mornington Peninsula Shire Council**

Planning Panels Victoria

## **SITE 1: 60-70 KUNYUNG ROAD, MOUNT ELIZA**

1. In respect of Site 1 Council maintains its position that the Site ought to be:
  - Rezoned from the Special Use Zone Schedule 2 (**SUZ2**) to the Green Wedge Zone Schedule 3 (GWZ3); and
  - Removed from the Schedule to Clause 51.02 'Metropolitan Green Wedge Land – Core Planning Provisions' (**Core Planning Provisions**).
2. Council makes the following closing remarks in response to Ryman's submissions about the Amendment as it relates to Site 1.

### **Whether additional protection of the green wedge is required**

3. Ryman acknowledges that the Site has high landscape and heritage values<sup>1</sup> but in its submission to the Panel, contends that there is no need for additional controls to protect Site 1 from inappropriate development because the existing policy and controls provide sufficient additional protection.<sup>2</sup> Council disagrees.
4. Regarding the strategic role of the site in the context of the Mornington Peninsula green wedge and as part of the inter-urban break between the townships of Mornington and Mt Eliza and within the Mornington Peninsula green wedge, the Tribunal in the Ryman Healthcare case<sup>3</sup> found:

109 *the natural, open and scenic qualities of this land which are integral to its strategic role.*

...

127 *...the land presently serves an important role in establishing the commencement of both the inter-urban break between Mt Eliza and Mornington, and in marking the commencement of the UGB. The two are aligned.*

128 *Key elements of the existing site layout and development are directly aligned with policy. There are numerous characteristics of the site that present as part*

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<sup>1</sup> Tabled Document 15 'Ryman Healthcare Submission', at [72].

<sup>2</sup> Tabled Document 15 'Ryman Healthcare Submission', at [75].

<sup>3</sup> *Ryman Healthcare (Australia) Pty Ltd v Mornington Peninsula SC* (corrected) [2021] VCAT 711.

*of the inter-urban break, even though its current development has some peri urban characteristics. These are explored further below but include generally low scale development with limited visibility from public vantage points. The heritage mansion is the paramount building on the site.*

129 *One important element of the current site presentation as identified by Professor McGauran in expert evidence for Council is the concentration of outbuildings associated with the mansion adjacent to the UGB boundary, at the point of transition, with a notable absence of buildings on the eastern and southern parts of the land.*

130 *In our view, this reinforces the open and landscaped character of the south western part of the land, consistent with notions of the inter-urban break. This was helpfully illustrated by the figure below:*

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132 *However, in its proposed form, we find that the development would be inconsistent with other more site specific policy directions since it would introduce substantial built form into the inter-urban break in a form contributing to linear development between townships, which is expressly discouraged. It would also detract from the scenic values of the green wedge to the extent it would add a series of new, sizeable buildings in parts of the site that retain a strong landscape and scenic character.*

5. Also implicit in paragraph 294 of the Tribunal's decision, is a finding that the current site layout and development contributes to the values of the inter-urban break when viewed from the coast.
6. As Mr Milner observed in his oral evidence to the Panel, the inter-urban break is very special. It is the only inter-urban break between settlements around Port Phillip Bay on this south-east side of Melbourne. As Mr Milner said in his expert witness statement, its importance is heightened because the break is narrow, being 1.59km at its narrowest point and 2.7km between Kunyung Road and the northern reaches of Mornington, adjacent to the Bay.<sup>4</sup>

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<sup>4</sup> Expert witness statement of Robert Milner, at [133] - [134].

7. It is true that the role of the Mornington Peninsula Green Wedge and the inter-urban break are expressed in a broad policy sense in the Planning Policy Framework (**PPF**) in the Planning Scheme. It is also true that the Tribunal applied that policy in considering the merit of the first permit application for the Site and found that proposal to be wanting. However, this does not mean additional protection is not warranted. In Council's submission, the Tribunal decision revealed the combination of the zoning of the site and its location just outside the urban growth boundary as causing significant confusion for Ryman and its witness, Mr McNamara as demonstrated by:

i. Mr McNamara's statement at paragraph 86 of his Expert Witness Statement that '*...the positioning of the UGB along the northern side of the Site should not be a significant item given:*

- *The Site is controlled by a Special Use Zone and Schedule with specific conditions which may only be satisfied by a narrow band of uses...*
- *...*
- *The Site is a long-time developed, urban use, forming a part of the Mt Eliza suburb. It has operated next to the Green Wedge land for many years, and I see no reason why the Proposal will not do the same.*

ii. Mr Townsend's closing submissions to the Tribunal described by the Tribunal as follows:

122 *Likewise, in closing submissions, Mr Townshend referred to the SUZ2 as contemplating small 'u' urban outcomes; being an "undeniably urban zone" since it did not prefer agricultural land use or similar. He submitted the UGB was of no significance to this proposal because the land was "exempted from the statutory implications of being outside the UGB".*

*Therefore, he urged the Tribunal to focus on whether the proposal was appropriate at the 'edge' of the UGB.*

8. Whilst the Tribunal's ultimately described this suite of submissions and evidence as 'misguided',<sup>5</sup> the evidence and submissions demonstrate an inherent tension between the zoning of the site and the higher order strategic policy expectations for the land by reason of:

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<sup>5</sup> At [122].

- The location of the Site outside the Urban Growth Boundary and at the commencement of the inter-urban break between Mount Eliza and Mornington;
  - The natural, open and scenic qualities of the land.
9. The plain fact of the matter is that the SUZ2, like all zones, includes a purpose to implement the planning policy framework and that includes that part of the planning policy framework relating to green wedge land and the inter-urban break between Mornington and Mount Eliza. However, the SUZ2 flags nothing specific about the relationship of the site with green wedge policy whereas the higher order strategic policy role of the Site is of such import that it ought to be signalled in the purposes of the Zone itself.
10. In Council's submission, the rezoning of the site to the Green Wedge Zone together with its removal from the Schedule to the Core Planning Provisions would put the higher-level strategic role of the Site front of mind for users of the planning system and provide greater clarity and certainty for all stakeholders in the planning process.

#### **Weight to give to existing zoning of the Site**

11. In Council's submission, Ryman's experts both place too great a weight on the existing zoning of the Site and its inclusion in the Schedule to the Core Planning Provisions as evidence of the strategic intent for the Land and not enough weight on:
- The higher-level strategic role of the Site being outside the Urban Growth Boundary and at the commencement of the inter-urban break between Mount Eliza and Mornington; and
  - The natural, open and scenic qualities of the Site and their importance in the above strategic planning context.
12. Ryman and its experts have contended that the existing zoning of the Site and its inclusion in the Schedule to the Core Planning Provisions were deliberate decisions made by Council which ought to be respected. Council does not dispute that. Rather, it says that the context or circumstances in which the existing zoning was applied and the Site was included in the Schedule to the Core Planning Provisions has now changed. – That is because the long-established use of the Site for an education centre has ceased.

13. In Council's submission, this change in circumstances is an appropriate trigger to review the zoning of the land and consider whether it is still achieving its strategic planning role. In Council's submission, as set out above, the current zoning of the Site does not provide adequate recognition of the higher-level strategic role of the Site arising from its location outside the Urban Growth Boundary and at the commencement of the inter-urban break between Mount Eliza and Mornington and the natural, open and scenic qualities of the Site and their importance in the above strategic planning context.

### **The Ministerial brief**

14. Council acknowledges the briefing from DELWP to the Minister for Planning<sup>6</sup> tabled by Ryman regarding Council's authorisation request for Amendment C270morn. It is not a document previously provided to Council. Regarding the brief, Ryman submits:

*The officer's recommendation to exclude the Land stands as independent planning advice to exclude the Land from the Amendment, begging the question, in the absence of any other strategic advice, why the advice was rejected and the Land nonetheless included.<sup>7</sup>*

15. In Council's submission, the Panel must be careful about the weight it gives the officer's recommendation. The officer's recommendation ought not be given the same weight as an independent expert witness who has prepared an expert witness statement and made themselves available for examination and cross-examination before the Panel.
16. It must also be acknowledged that the DELWP officer's recommendation was not ultimately adopted by the then Minister for Planning and authorisation was ultimately given to Council to prepare the Amendment. Whilst authorisation to prepare and exhibit an amendment is not an indication that an amendment will ultimately be supported, it seems improbable that the Minister would authorise the preparation and exhibition of an amendment if he considered there to be no strategic justification whatsoever for the amendment.

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<sup>6</sup> Tabled Document 18 'Ryman Submission Attachment 2 – Supplementary Ministerial Brief'.

<sup>7</sup> Tabled Document 15 'Ryman Healthcare Submission', at [47].

### **Milner's recommendation regarding the Schedule to the Heritage Overlay**

17. In its Part B Submission, Council noted the recommendation of Mr Milner that Council Seek heritage advice on the merit of modifying the Schedules to HO 110 and Ho111 to enable consideration of prohibited uses on Site 1. Whilst Mr Milner's recommendation was that this can be investigated following any rezoning of the Site as part of a future strategic planning exercise, Council officers will be seeking that advice in the short-term.
18. If the Panel would be assisted by receiving that advice before writing its report and providing Council with its recommendations in relation to the Amendment, the Panel might consider not yet closing the hearing and providing Council with additional time to obtain that advice and provide it directly to the Panel for consideration (before Council considers the advice and forms a position on its merit). Obviously, if the Panel opted to receive the advice, natural justice would dictate that all parties be provided with an opportunity to consider the advice and make any submissions about it to the Panel.

### **SITE 2: 60-70 KUNYUNG ROAD, MOUNT ELIZA**

19. As Council has previously noted, one of the conditions on which the Minister authorised Council to prepare the Amendment was that Site 2 be rezoned to the PCRZ '*consistent with the zoning of adjoining parts of the coastal reserve*'.<sup>8</sup>
20. Since the Ministerial Brief considering Council's request for authorisation was tabled by Ryman, Council has received a copy of Attachment 2 to the Brief which comprises an updated assessment by a DELWP officer of the impact on the Amendment on existing uses excluding the 60-70 Kunyung Road (see **Appendix 1**). Interestingly, the DELWP comment in relation to Site 2 states:

*Land is owned by Mornington Peninsula shire Council.*

*Proposed condition of authorisation to require the council to rezone the land to the Public Park and Recreation Zone consistent with northern part of the foreshore.*

*The application of the PPRZ will ensure that consent from the public land manager is also required for any works on the land.*

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<sup>8</sup> Tabled Document 89, letter from the then Minister for Planning to Council authorizing the Amendment.

21. Council is unclear on what basis DELWP identified Council as the owner of the land noting it appears to be unreserved Crown land and there is no Crown folio or parcel to identify the Site.
22. In any case, Council observes that there appears to be an inconsistency between the DELWP officer assessment of the appropriate zone, being the Public Park and Recreation Zone and the zone ultimately specified in the conditions of authorisation, being the Public Conservation and Recreation Zone.
23. Further, the Panel has heard different opinions from the planning experts before it as to the most appropriate zone. In his oral evidence, Mr Milner ultimately recommended that the Green Wedge Zone Schedule be applied rather than a public use zone. On the other hand, Ms Jordan for Ryman recommended that the site be rezoned to the Public Park and Recreation Zone.
24. Council observes that there is some practical appeal in applying the same zone as the adjoining Site 1 given the ambulatory nature of the title boundary between Site 1 and 2 which will change over time with the high-water mark. However, it welcomes the advice of the Panel on the appropriateness of the proposed rezoning of Site 2.

#### **SITE 4: 60 HEARN ROAD, MOUNT MARTHA (SCOUT CAMP)**

##### **Impact of Amendment on existing use of the land**

25. In its submission to the Panel, the Scouts characterise their existing use of Site 4 as '*...an educational facility (primary role) with a hybrid of leisure and recreation/accommodation/camping.*'<sup>9</sup> There was a suggestion in the Scouts submission, that '*Council is actively seeking the education use of the land to be lost.*'<sup>10</sup> This is not the Council's intention.
26. From the Scouts submission, it is unclear whether the Scouts are aware that Clause 51.02 'Metropolitan Green Wedge Land – Core Planning Provisions' (**Core Planning Provisions**) currently applies to Site 4. The Core Planning Provisions have applied to Site 4 since their introduction into the Planning Scheme via Amendment VC18 on 13 June 2003. The Scouts submission makes no mention of the Core Planning Provisions and how they impacted the Site.

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<sup>9</sup> At [9].

<sup>10</sup> At [16].

27. Under the Core Planning Provisions, the use of Site 4 for the following purposes is currently prohibited unless the conditions opposite are met:

Use	Condition
<b>Education centre (other than a Primary or Secondary school)</b>	
<b>Accommodation (other than Camping and caravan park, Dependent Person's unit, Dwelling, Group accommodation, Host farm and Residential building)</b>	
<b>Dependent Person's unit (DPU)</b>	Must be the only DPU on the lot
<b>Dwelling (includes Caretaker's house)</b>	Must be the only dwelling on the lot. This does not apply to the replacement of an existing dwelling if the existing dwelling is removed or altered (so it can no longer be used as a dwelling) within one month of the occupation of the replacement dwelling
<b>Group Accommodation</b>	Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.  Must be no more than 40 dwellings.
<b>Place of Assembly (other than Carnival, Cinema based entertainment facility, Circus, Exhibition centre, Function centre, Hall, Nightclub, Place of worship and Restricted place of assembly)</b>	Must be used for no more than 10 days in a calendar year
<b>Residential building (other than Residential hotel)</b>	Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.  Must be used to provide accommodation for persons away from their normal place of residence.

28. This is also illustrated in **Appendix 2** to this submission which is a table comparing the allowable and prohibited uses for Sites 4, 5 and 6 under the Amendment with allowable and prohibited uses under the existing controls.

29. Accordingly, the use of Site 4 for any of these purposes would already need to rely on existing use rights under Clause 63 of the Planning Scheme or upon an existing planning

permit issued prior to 13 June 2003. This is noting that prior to that date, the use of Site 4 for an 'Education centre' was a discretionary use requiring a planning permit under the Special Use Zone Schedule 2 applying to the land.

30. In its Part B Submission, Council submitted that the planning permit history for Site 4 *'appears to be limited to a Planning Permit P17/1973 issued on 28 May 2018 authorising buildings and works (replacement of an amenities block and removal of vegetation).'*<sup>11</sup>

31. However, further searches of Council records have identified a further Planning Permit P02/1305 issued on 24 August 2002 allowing *'The development of a building and associated works to be used as an education centre in accordance with the endorsed plans'*. The address of the land subject of the Permit is described as *'80 Hearn Road (CA 45... CA46..., CA47..., CA48..., CA49..., CA 50...'*, being the same land contained in Lots 1 to 6 on TP 877884A and known as 60 Hearn Road, Mt Martha. A copy of the Permit, endorsed plans and delegate report are included at **Appendix 3** to this submission.

32. The Permit contains the following use related conditions:

- *Condition 4 – 'The approved use must not cause any nuisance or annoyance to persons beyond the land because of the emission of noise or otherwise to the satisfaction of the Responsible Authority.*
- *Condition 5 – 'The amenity of the area must not be detrimentally affected by the use or development, through the:*
  - (a) Transport or materials, goods or commodities to or from the land.*
  - (b) Appearance of any buildings works or materials.*
  - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.*
  - (d) Presence of vermin.*

33. The Council delegate report regarding the Permit Application describes the site as containing *'several buildings with varying uses, as well as many activity sites, a lake and an oval....'*. The proposal is described as being *'to develop a shed to be used for the training of adult leaders and youth members'*.

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<sup>11</sup> At [27].

34. Under a heading 'Summary' and sub-heading 'Proposal/Permit Req.' the report describes the permit requirements as including '*to construct a building, and to use it as an education centre*'. Under the sub-heading 'Advertising' in the same section, the report describes the proposed use and development as being '*fully consistent with the well established use of the site*'.
35. Provided the Scouts acted on the Permit and constructed the building within the requisite time, they can continue to take the benefit of and rely on the Permit regardless of this Amendment.
36. Additionally, under the SUZ2 which currently applies to Site 4, 'camping' and 'accommodation (other than caretaker's house, residential building and retirement village)' are also prohibited uses.<sup>12</sup> The only use described by the Scouts as part of the existing uses of the Site which is actually permissible (with a permit) under the planning controls which currently apply to Site 4 is 'Leisure and recreation facility'. That broad land use 'Leisure and recreation (other than Indoor recreation facility, Informal outdoor recreation, Major sports and recreation facility and Motor racing track)' would remain a discretionary use on Site 4 under the Green Wedge Zone Schedule 3 if Amendment C270morn is approved. 'Informal outdoor recreation' would become as-of-right.
37. Additionally, regarding the use of the Site 4 for camping, a heritage citation for the site in the *Shire of Mornington Heritage Study 1994* states that the use of the land for a scout camp site was first noted in November 1954.<sup>13</sup>
38. In the circumstances, it is difficult to see how the Amendment will significantly impact on the existing use of Site 4 or, in the Scouts words, how the Amendment will cause '*substantial detriment to the ongoing viability of the use of Bay Park*.'<sup>14</sup>
39. To the extent the Scouts already rely upon an existing use right established under Clause 63 of the Planning Scheme in relation to its current uses of the Site 4 but is unsure about the extent of those rights, Council reiterates that they can apply for a Certificate of Compliance under section 97N(1)(a) of the Act. Council is not suggesting that this is necessary. Rather, it is a course of action open to the Scouts if they are unsure about the extent of their existing use rights.

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<sup>12</sup> At [9].

<sup>13</sup> By Graham Butler & Associates (1994), at pg. 210.

<sup>14</sup> At [16].

### Suitability of Site 4 for the Green Wedge Zone

40. The Scouts acknowledge that Site 4 already performs a role as ‘green wedge’ land with its ‘high landscape and heritage values’<sup>15</sup> but assert that the Green Wedge Zone itself is not a suitable fit for the site. They seem to consider the sole purpose of the Green Wedge Zone to be about protecting agricultural uses. Of course, Council acknowledges that providing for agricultural land uses and sustainable farming are both purposes of the Green Wedge Zone. However, they are not the only purposes of the Zone and they do not confine the other purposes of the Zone including:

- *To recognise, protect and conserve green wedge land for, agricultural, environmental, historic, landscape, recreational and tourism opportunities.*
- *To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.*
- *To protect and enhance the biodiversity of the area.*

41. The rezoning of the site to Green Wedge Zone, would ensure that the high landscape and heritage values of Site 4 acknowledged by the Scouts, along with its recreational opportunities are ‘*recognised, protected and conserved*’ by the specific purposes in the Zone. Currently, these particular values of the site are not specifically recognised or protected by the purposes of the Special Use Zone Schedule 2.

42. The Scouts’ concern that the zoning of Site 4 as Green Wedge Zone would create land use conflicts with immediately abutting residential uses if Site 4 were used for agricultural uses is not a realistic concern. Site 4 does not need to be used for agriculture simply because providing for the use of land for agriculture is one of a number of purposes of the Green Wedge Zone. Indeed, given the extent of vegetation cover on the Site and the fact it is affected by a Vegetation Protection Overlay Schedule 1, it seems unlikely to be suitable for an agricultural use.

43. Noting the environmental and vegetated attributes of the site, the Scouts representative queried in her oral submissions to the Panel whether the Rural Conservation Zone had been considered for the Site. Noting that the Site is already subject to the Core Planning Provisions, Council observes that the range of permissible and prohibited land uses if the

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<sup>15</sup> At [19].

Rural Conservation Zone was applied to the Site would be more limited compared to if the Green Wedge Zone applied. Most relevantly, use of the Site for 'Leisure and recreation (other than informal outdoor recreation)' would be a prohibited use. 'Informal outdoor recreation' would be a section 1 as-of-right use in the Rural Conservation Zone.

### **Response to bushfire planning policy**

44. This part of Council's closing submissions responds to Tabled Document no 14 being a letter from the CFA to Council dated 2 September 2022 concerning the Amendment.
45. The CFA's only remaining concern with Amendment C270morn relates to Site 4: 60 Hearn Road, Mount Martha (**Site 4**). Site 4 is approximately 32.23 ha in size and comprises Lots 1 to 6 on TP 877884A, which are contained within a single Certificate of Title Volume 3873 Folio 508 and owned by The Boy Scouts Association Victorian Branch.
46. Site 4 is currently located in the Special Use Zone 2 and subject to the following overlays:
- Bushfire Management Overlay (**BMO**)
  - Design and Development Overlay Schedule 3 (**DDO3**)
  - Heritage Overlay – Schedule HO95.
47. Council understands the CFA's concern to be whether the rezoning of Site 4 to the Green Wedge Zone Schedule 3 could allow a dwelling or dependent persons unit to be constructed on the Site (and presumably on each lot within the Site if the existing buildings were demolished) without adequate setbacks from bushfire hazards to ensure that exposure to radiant heat is no greater than 12.5kW/m<sup>2</sup> (i.e. a BAL-12.5 rating).
48. Pursuant to Clause 13.02-1S 'Bushfire planning', which applies to land subject to a BMO, a planning scheme amendment should not be approved if it will result in the introduction or intensification of development in an area that has or will on completion have, more than a BAL-12.5 rating under *AS 3959-2009 Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009).
49. The intent of the strategy is for the required setback from bushfire hazards to be implemented at a planning scheme amendment or strategic planning stage instead of a

permit application stage.<sup>16</sup> This is noting that that a lesser setback may otherwise be allowed under the BMO and Clause 53.02 Bushfire Planning. In the absence of a change to the Victorian Planning Provisions to address this inconsistency, Council acknowledges that a further amendment to the Planning Scheme will be required to ensure that any Dwelling or Dependent Persons Unit (**DPU**) constructed on the Site will be setback from a bushfire hazard consistent with the separation distances specified in Table 2, Column A of Clause 53.02-5 to enable a BAL12.5 rating to be achieved for such Dwelling or DPU. for Council will liaise with the Department of Environment, Land, Water and Planning and the CFA about the most appropriate strategic planning tool to achieve this as part of Amendment C270morn. In the meantime, Council officers have identified two potential alternative mechanisms to achieve this, being:

- i. Amending the DDO3 to include the following additional 'Mandatory requirement'<sup>17</sup>:

***Bushfire protection measures***

*For land at 60 Hearn Road, Mount Martha, a building must be set back from a bushfire hazard consistent with the separation distances specified in Table 2, Column A of Clause 53.02-5 to enable a BAL12.5 for completed development.*

A copy of the current DDO3 is attached as **Appendix 4** to this submission with tracked-change to show the proposed additional requirement in the context of the current DDO3.

- ii. Introducing a new Schedule 3 to the BMO, identical to Schedule 2 to the BMO except that:
  - The title of the Schedule would be '60 Hearn Road, Mount Martha', and
  - The second requirement under 44.06-5 will be updated to the following wording (new wording underlined)

*Defendable space is to be provided consistent with the separation distances specified in Table 2, Column A of Clause 53.02-5 to enable a BAL12.5 for*

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<sup>16</sup> *Bushfire Planning Made Clearer: Options for Victoria's Planning System, Discussion Paper (DELWP, 2021)*

<sup>17</sup> The 'Mandatory Requirements' in the DDO3 are expressed to apply 'to all buildings and works, whether or not a permit is required'.

*completed development, and maintained in accordance with the vegetation management requirements of Clause 53.02...*

A copy of the proposed BMO Schedule 3 is attached as **Appendix 5** to this submission which shows the above listed alterations as track changes over the current version of BMO Schedule 2.

50. Council welcomes any advice from the Panel on the appropriateness of the above alternative mechanisms or any other changes recommended to the Amendment to address this issue.

#### **SITE 6: 46 LONDON BRIDGE ROAD, PORTSEA (PORTSEA GOLF CLUB)**

51. Council appreciates the further information and submissions made by the Club including in relation to the ownership of Lot 3 on TP 889533 and the Club's future plans for that land and Lot 1 on PS 814285S. Council also agrees that the legal status of Lot 3 on TP 889533 is not a matter that the Panel needs to determine as part of its consideration of the Amendment.
52. However, Council maintains that the Amendment should proceed as exhibited in relation to Site 6. The fact is that Lot 3 is already bisected by two different zones, being the Special Use Zone Schedule 2 and the General Residential Zone Schedule 1. If the proposed rezoning was approved, the Site would continue to be bisected by two different zones, but these would be the Green Wedge Zone Schedule 3 and the General Residential Zone Schedule 1.
53. Importantly, the Club did not submit that the rezoning of Lots 1 and Lot 3 would prohibit the re-subdivision of those lots. Rather, their concern appeared to be that Council might decline to exercise its discretion to permit the re-subdivision. Regarding an application for re-subdivision under Clause 35.04-3 of the Green Wedge Zone Schedule 3 (extracted below), Council observes that a permit may be granted to subdivide land in that Zone despite the each lot being less than the minimum lot size of 40 hectares if the subdivision is a re-subdivision of existing lots and the number of dwellings that the land could be used for does not increase.

**35.04-3 Subdivision**  
31/07/2018  
VC148

A permit is required to subdivide land.  
Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 40 hectares.

A permit may be granted to create smaller lots if any of the following apply:

- The subdivision is the re-subdivision of existing lots, the number of lots is not increased, and the number of dwellings that the land could be used for does not increase.
- The subdivision is by a public authority or utility service provider to create a lot for a utility installation.

54. In Council’s submission, if the Club does not intend to increase the number of lots or the number of dwellings that the land could be used for it should not be troubled by the application of the Green Wedge Zone to Lots 1 and 3.

**CONCLUSION**

55. This concludes Council’s closing submissions.



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Kate Morris, Principal  
**HARWOOD ANDREWS LAWYERS**  
**On behalf of Mornington Peninsula Shire Council**

**APPENDICES TO CLOSING SUBMISSION**

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