



**MORNINGTON  
PENINSULA**  
*Shire*

**AGENDA**

**PLANNING SERVICES COMMITTEE MEETING**

**MONDAY, 15 AUGUST 2022**

**5.30PM**

**MUNICIPAL OFFICES  
BESGROVE STREET, ROSEBUD**

## MORNINGTON PENINSULA SHIRE COUNCIL

### WARDS AND COUNCILLORS

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

### SENIOR LEADERSHIP TEAM

<b>Mr John Baker Ms Pauline Gordon Ms Sam Stanton  Mr Mike McIntosh</b>	<b>Chief Executive Officer Director – Community Strengthening Director - Corporate Strategy and Business Improvement Director – Planning and Infrastructure</b>
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#### RECORDING

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

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

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# **1 OPENING AND WELCOME**

Appointed Chairperson – Cr McCafferty

## **1.1 Acknowledgement of Country**

To be read by Cr Dixon

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

## **2 PROCEDURAL MATTERS**

### **2.1 Apologies**

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

### **2.3 Confirmation of Minutes**

That the Minutes of previous Planning Services Committee held on 18 July 2022, be confirmed.

## **3 STRATEGIC PLANNING REPORTS**

Nil.

## 4 PLANNING SCHEME AMENDMENT REPORTS

### 4.1 Balcombe Estuary and associated reserves, Mount Martha: Ecological and Planning Study, community and stakeholder engagement outcomes and proposed planning provisions

Prepared By	Nadia Smith, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11319466
Briefing Note Number	BN1606 – 21 June 2022
Attachment(s)	<ol style="list-style-type: none"><li>1. Community and stakeholder engagement outcomes report</li><li>2. Final Study</li><li>3. Existing Zones</li><li>4. Existing Overlays</li><li>5. ESO32</li><li>6. Rezoning map</li><li>7. Proposed rezoning map (used for stakeholder and community engagement)</li><li>8. VPO1 deletion map</li><li>9. DDO deletion map</li><li>10. Schedule to Clause 72.08</li><li>11. Schedule to Clause 66.06</li><li>12. Schedule to Clause 72.03</li><li>13. Explanatory Report</li><li>14. Strategic Assessment Guidelines Checklist</li><li>15. Instruction Sheet</li><li>16. ESO32 map</li></ol>

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### EXECUTIVE SUMMARY

The ‘Balcombe Estuary and associated reserves’ is the collective term for several adjoining reserves in Mount Martha which are home to a range of sporting, recreational and community facilities as well as significant biodiversity and ecological values.

In 2020, the Mornington Peninsula Shire (Shire) engaged environmental consultants Biosis to undertake a study to identify and assess the area’s ecological values and draft new planning provisions that seek to better protect local biodiversity whilst maintaining existing sporting, recreation and community uses.

Biosis prepared the Balcombe Estuary and associated reserves: Ecological and Planning Study (the Study) which identified that the area contains various listed and bioregionally endangered flora and fauna species and recommended that planning controls affecting the reserves be modified to provide greater protection for these values. The Study also concluded that whilst some development may be appropriate, future sport and recreational development should be confined within existing footprints and/or areas of minimal to low ecological value.

A draft of the Study was released for community comment in mid-2021. Council received over 450 submissions with respondents indicating support for protecting the environment

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**4.1 (Cont.)**

whilst others raised concerns about the need for ongoing maintenance and upgrade of existing community infrastructure to meet growing local needs.

Following a review of all community feedback and further engagement with key internal and external stakeholders, the Study has been finalised and Planning Scheme Amendment C241morn prepared to implement the Study's recommendations. The amendment proposes to apply a bespoke Environmental Significance Overlay (ESO) to the area, rezone various parcels of land for a mix of public recreation and conservation purposes and remove redundant planning controls.

The proposed ESO allows for minor buildings and works, vegetation removal and other works (subject to appropriate environmental assessment and management plans) in support of existing facilities. Significantly, however, approval of the amendment would likely preclude the potential for major redevelopment of existing facilities beyond current footprints. Consequently, Council may need to investigate the purchase of alternative sites to accommodate any substantive future expansion of sport and recreation facilities to meet growing demand as identified in the Shire's Sports Capacity Plan: Volume 1 – Sports Fields (2019).

**RECOMMENDATION**

**That the Planning Services Committee:**

- 1. Receives, notes and considers all submissions as detailed in the Balcombe Estuary and associated reserves: Ecological and Planning Study Community and stakeholder engagement outcomes report (Biosis, 2022) as at Attachment 1.**
- 2. Adopts the Balcombe Estuary and associated reserves: Ecological and Planning Study (Biosis, 2022) as at Attachment 2 to this report.**
- 3. Seeks authorisation from the Minister for Planning pursuant to section 8A of the *Planning and Environment Act 1987* to prepare Amendment C241morn to the Mornington Peninsula Planning Scheme generally in accordance with Attachments 2, 5, 6, 8-16 of this report.**
- 4. Undertakes exhibition of Amendment C241morn to the Mornington Peninsula Planning Scheme in accordance with Section 19 of the *Planning and Environment Act 1987* following receipt of authorisation from the Minister for Planning.**
- 5. Authorises the Director of Planning and Building to make editorial changes and administrative changes to Attachments 2, 5, 6, 8-16 to this report as required.**

**COUNCIL and WELLBEING PLAN**

- Theme 1: A healthy natural environment and well-planned townships.
- Strategic Objective 1.2: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.

**RELEVANT COUNCIL DECISIONS AND POLICIES**

Council decisions:

- 19 November 2018 – adoption of the Mornington Peninsula Planning Scheme Review 2018 (the Review) on which recommends (R186) that further strategic work be undertaken to investigate the merits of applying an ESO to land within the Balcombe

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**4.1 (Cont.)**

Estuary Reserves to protect ecological values and, subject to the outcomes of these investigations, facilitate an associated planning scheme amendment.

- 4 May 2021 – endorsement of the draft Balcombe Estuary Reserves: Ecological and Planning Study for the purposes of community engagement.

Council policies:

- Mornington Peninsula Planning Scheme Review 2018
- Mornington Peninsula Shire Climate Emergency Response Plan – Ensuring Our Future from 2020 to 2030 (MPS, 2020)
- Mornington Peninsula Shire Biodiversity Conservation Plan (Ecology Australia, 2019)
- Mornington Peninsula Shire Sports Capacity Plan: Volume 1 – Sports Fields (2019).

## **DISCUSSION**

### **Purpose**

The purpose of this report is to present:

- The outcomes of community and stakeholder engagement on the draft Study as detailed in the Balcombe Estuary and associated reserves: Ecological and Planning Study Community and stakeholder engagement outcomes report (Biosis, 2022) (Attachment 1).
- The final Balcombe Estuary and associated reserves: Ecological and Planning Study (Biosis, 2022) (the Study) (Attachment 2) for adoption.
- Proposed Amendment C241morn (Attachments 2, 5, 6, 8-16) for submission to the Minister for Planning for authorisation.

### **Background**

The 'Balcombe Estuary and associated reserves' (see Figure 1) is the collective term for several adjoining reserves and recreational facilities in Mount Martha, including Balcombe Estuary Reserve, Balcombe Estuary Recreation Reserve, Balcombe Reserve, Citation Reserve, Ferrero Reserve, Victoria Reserve, Uralla Reserve and Seppelt Park Reserve.

Formal recreational and community facilities are located within the Balcombe Estuary and associated reserves and include sporting ovals, a pistol club, tennis courts and a bowling/petanque club and between the latter two, the Mount Martha Preschool and Mount Martha Maternal Child Health Centre. The study area also provides informal recreation opportunities such as playgrounds and the boardwalk etc.

Land within the area is a combination of Crown Land and Mornington Peninsula Shire Council owned land. Mornington Peninsula Shire Council is the Committee of Management for all Crown Land.

Balcombe Creek flows through the reserves and forms an estuary which intermittently opens to the Port Phillip Bay. The Melbourne Water Corporation are the waterway Manager for the Balcombe Creek Estuary which is a major waterway within the Mornington Peninsula Western Creeks Sub-Catchment (as identified by the Westernport – Healthy Waterways Strategy (a sub-strategy of the Healthy Waterways Strategy 2018-28)).



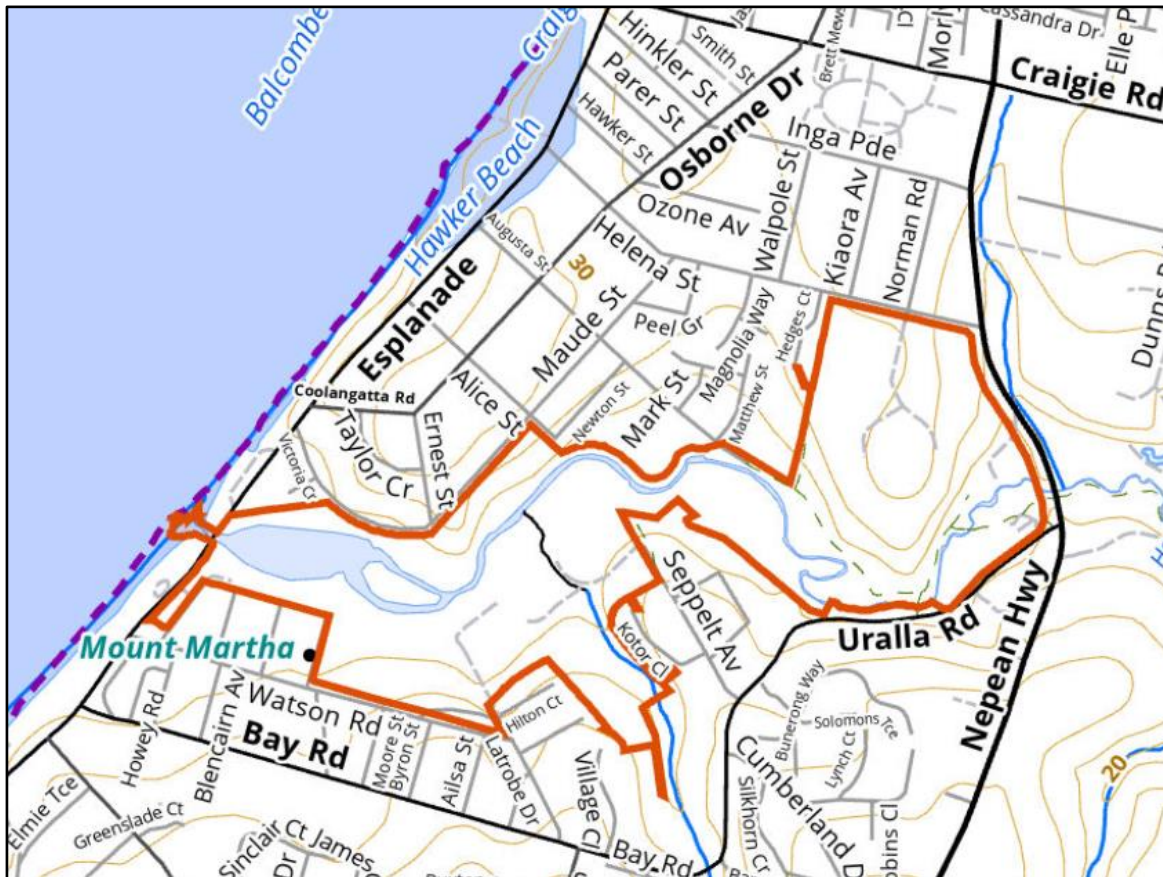


Figure 1: Balcombe Estuary Reserves, Mount Martha – area of study outlined in orange

As depicted in Attachment 3, land within the area is zoned a mix of Public Park and Recreation Zone (PPRZ), Public Conservation and Resource Zone (PCRZ), General Residential Zone (GRZ1), Low Density Residential Zone (LDRZ) and Transport Zone Road Zone 2 (TRZ2) (formerly known as Road Zone Category 1 – RDZ1).

The following overlays partly apply to the area (refer Attachment 4):

- Vegetation Protection Overlay (VPO1)
- Bushfire Management Overlay (BMO)
- Design and Development Overlay – Schedules 2, 4, 6 and 7 (DDO2, DDO4, DDO6 and DDO7)
- Heritage Overlay (HO372 – Former Mount Martha Campground and HO363 – Citation Reserve Oval, Memorial Stone and former Army Hut, Cypress Avenue).

Recommendation 186 of Council's adopted Mornington Peninsula Planning Scheme Review No. 4 (2018) recommended that strategic work be undertaken to determine whether an Environmental Significance Overlay (ESO) should be applied to the Balcombe Estuary and associated reserves on account of its ecological values. In response to this recommendation, the Shire engaged environmental consultants Biosis in 2020 to:

- Undertake a study to identify and assess the ecological values within the Balcombe Estuary and associated reserves ('Study area' as identified in Figure 1).

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4.1 (Cont.)

- Recommend and draft new planning provisions that balance the needs of protecting ecological values with maintaining the existing sport, recreation and community uses within the Study area.

**Draft Balcombe Estuary Reserves: Ecological and Planning Study (Biosis, 2021) (the draft Study)**

The draft Study was completed in early 2021 and identified that the 76.9-hectare Study area comprises:

- 164 indigenous plant species covering 51.7 hectares, five of which are bioregionally endangered.
- A total of 108 indigenous and 10 introduced vertebrate animal species was recently recorded from the Reserves with one aquatic species being nationally threatened.
- Native patch vegetation including ten ecological vegetation classes (EVCs).
- Habitat of threatened or near threatened fish and bird species.
- Significant orchid colonies.
- That the Balcombe Creek Estuary is a major waterway for the region.
- Some flora and fauna mapped are protected under the *Flora and Fauna Guarantee Act 1988* (Victoria) and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

Based on these findings, the draft Study concluded that:

- A bespoke ESO should cover the whole Study area given the mapped native vegetation and significant biodiversity values found.
- Any future sport and recreational development should be located in areas with low/minimal ecological value (i.e. in areas not mapped as native vegetation).
- Any future masterplan to expand sporting facilities should consider the detailed ecological mapping conducted as part of the Study.
- The existing VPO1 could be removed and replaced by the ESO to provide stronger planning protection against native vegetation removal.
- Certain exemptions for minor sport and recreation development would be appropriate to include within the ESO.
- No major alterations to existing PCRZ and PPRZ are recommended.
- The PPRZ allows for consideration of expanding sport and recreational facilities (albeit subject to the consideration of an ESO).
- Where the GRZ1 and LDRZ zoning is publicly owned land, these sites should be rezoned to PPRZ or PCRZ, as appropriate.
- The existing DDOs that apply to publicly owned land not zoned for residential development are redundant and can be removed. These areas can be covered by the new ESO to protect the environmental values within these locations.

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**4.1 (Cont.)**

- Appropriate enforcement of the planning scheme is required to ensure the protection of environmental values.

Other recommendations to address matters outside of the planning scheme include:

- Potentially prepare an operational environmental management plan (OEMP) for the Study area.
- Potentially prepare a communication strategy to manage human disturbances.
- Potentially develop landscape guidelines in consultation with key authorities/stakeholders that can be used in future developments and as part of an OEMP.
- Finalise the Balcombe Estuary long-term sedimentation plan (which is being prepared by the Climate Change, Energy and Water team of the Shire).

The draft Study was presented to Council at the 4 May 2021 Planning Services Committee (Committee) Meeting. The Committee resolved to release the draft Study for community comment.

**Community and Stakeholder Engagement**

Community and stakeholder engagement commenced on 17 May 2021 and concluded on 28 June 2021. Due to COVID-19 public health restrictions, consultation occurred in an online forum. Engagement methods and outcomes are outlined in the Balcombe Estuary and associated reserves: Ecological and Planning Study Community and Stakeholder Engagement Outcomes Report (Biosis, 2022) (Attachment 1).

In total, 449 individuals completed the online survey, and nine written submissions were received. Submissions were reviewed by both the Shire and Biosis. Of the feedback received:

- 26.3% of respondents frequented the Study area on a daily basis.
- 57.2% of respondents identified that they walked/ran to the Study area, which was the highest mode of transport, and 79.7% lived within five kilometres of the study area.
- 77.7% of respondents supported an environmentally focussed planning control being applied to the Study area.

Key themes arising from feedback included:

- A strong emphasis on protecting the environment; more so than clearing land and developing further sports and recreation facilities within the Study area.
- A desire for development, if any at all, to be within existing cleared areas and should respect the natural environment.
- The importance of sport and recreation for the community, including for mental health and physical wellbeing, noting that the COVID-19 pandemic has highlighted this importance and associated need for continued sport and recreation within the Study area.
- A desire to balance both sport and recreation and the natural environment, noting that each can co-exist as they have already done so for a long time, with each providing different values to the community/users.

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**4.1 (Cont.)**

- A desire for better quality sport and recreation facilities noting that current facilities are of a poor standard.

It is noted that further direct engagement with local sports clubs identified that clubs are concerned that increased environmental protection of the reserves will limit club operations and future redevelopment potential.

**Final Balcombe Estuary and associated reserves: Ecological and Planning Study (Biosis, 2022)**

Following a review of community and stakeholder feedback and further engagement with internal officers from Statutory Planning, Natural Systems, Community Infrastructure, Open Space and Recreation teams, the following changes were made to the Study:

- Deletion of the suggestion to rezone part of the pistol club site from PCRZ to PPRZ.
- Identification of appropriate exemptions from permit requirements within the proposed ESO.
- Deletion of the reference to rehabilitate or regenerate sites in the absence of the Study identifying areas that need to be rehabilitated/regenerated.
- Updated information regarding the bowls/petanque club based on updated data provided by the club.
- Clarification of commentary regarding redundant provisions (i.e. DDOs and VPO1) given the recommendation to rezone residential land and apply the ESO within the Study area.
- Inclusion of a map depicting where the proposed ESO is recommended to apply.
- Amended references to outdated provisions within the Mornington Peninsula Planning Scheme following the Planning Policy Framework (PPF) translation.
- Amended references to ensure consistency with the revised *Flora and Fauna Guarantee Act 1988* – Threatened List (June 2022).

The final version of the Study, reflecting the above changes, is provided at Attachment 2.

**DRAFT AMENDMENT C241MORN**

Amendment C241morn has been drafted to give effect to the recommendations of the Study. The amendment documents are contained in Attachments 2, 5, 6, 8-16. In summary, Amendment C241morn:

- Deletes existing VPO1 and introduces a bespoke Schedule 32 to the Environmental Significance Overlay (ESO32) to strengthen biodiversity protection beyond minimising native vegetation removal. The ESO32 identifies native vegetation specific to the area that should be protected and requires planning approval for buildings and works having regard to environmental systems, native fauna, habitat areas, land and soil stability, drainage patterns, and water quality.
- Provides appropriate exemptions within the ESO32 for minor works and maintenance activities to support the continuation of existing sporting, recreation and community uses and development.

#### 4.1 (Cont.)

- Rezones land currently within the GRZ1 and LDRZ to PPRZ or PCRZ to reflect its public ownership, conservation and recreational values as appropriate.
- Deletes existing DDO2, DDO4, DDO6 and DDO7 from residentially zoned land as these overlays relate to residential development, which would not be supported under the proposed PPRZ or PCRZ.

The following is a more detailed discussion of the planning controls proposed by Amendment C241morn.

#### Schedule 32 to the Environmental Significance Overlay (ESO32)

Planning Practice Note 07: Vegetation Protection in Urban Areas (PPN07) identifies that an ESO should be applied to land where there are environmental constraints on development or other important ecological values, such as in coastal or riparian habitat, and vegetation protection is part of a wider objective to protect the environmental significance of the area. The ESO has broader applicability than a VPO1 which is confined to addressing vegetation alone.

Based on the identified environmental significance of the area, the Study concluded that an ESO should be applied to the whole study area (see Figure 2 below). An ESO generally triggers the need for planning approval for buildings and works (including earthworks), subdivision and vegetation removal.

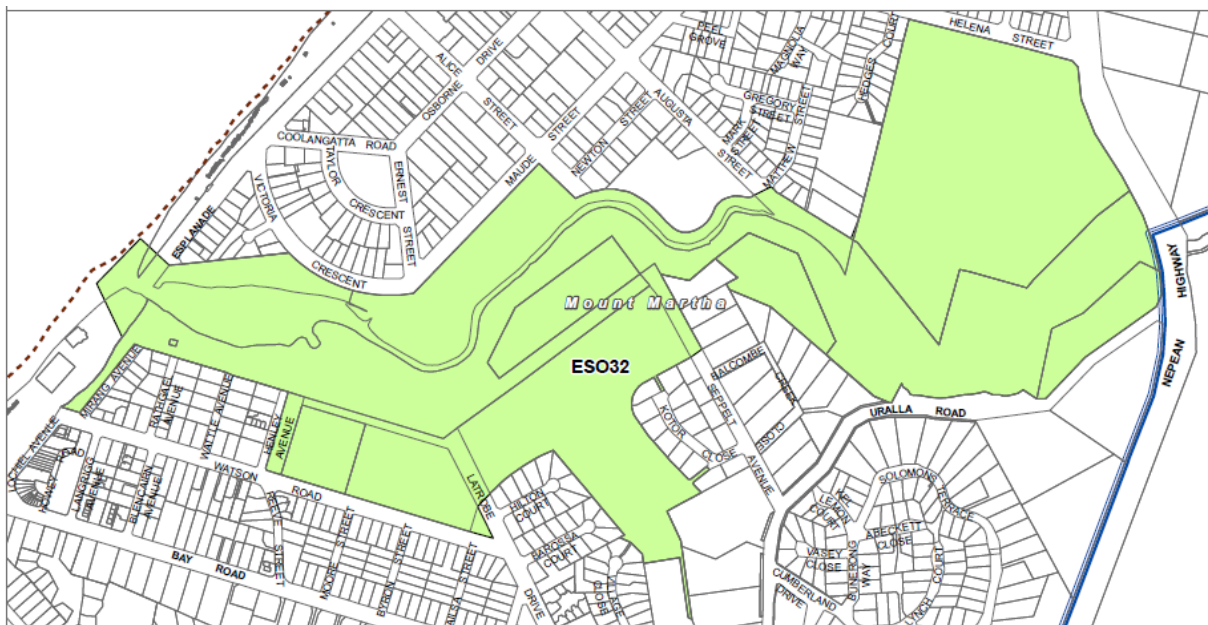


Figure 2 – Proposed extent of ESO32

The Study determined that broad application of an ESO, as opposed to confinement to patches of native vegetation, is required to ensure that the biodiversity values of the area are properly protected, beyond just native vegetation. In this regard, the Study finds that the ESO is the most appropriate planning control to address impacts on biodiversity in the following contexts:

- The Balcombe Creek Estuary mouth and Balcombe Creek Estuary due to high value native vegetation along the creek line.
- To protect five bioregionally endangered ecological vegetation classes and the significant orchid colonies identified in the PPRZ.

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4.1 (Cont.)

- Where development or works may have a significant impact on high value biodiversity, through earthworks or the construction of buildings, tracks, trails and the like.
- Where indirect impacts from buildings and works within existing cleared areas may impact on areas of native vegetation or the health of the Balcombe Creek Estuary from sedimentation discharge or the like.

Based on the Study, the 'Statement of Environmental Significance' within proposed ESO32 (Attachment 5) recognises:

- That the Balcombe Creek Estuary is a major waterway for the region and the reserves support a range of critically important ecological values including indigenous flora and fauna; some of which are protected under the *Flora and Fauna Guarantee Act 1988* (Victoria) and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).
- The recreation opportunities that the Balcombe Estuary and associated reserves provide, along with existing sporting, recreation and community facilities.
- The regulation of development and works within the reserves is necessary to protect and maintain its ecological values and environmental systems whilst still allowing reasonable use of the area for formal and informal sports and recreation uses and community facilities.
- There are threats to the biodiversity values of the area including, decline in native vegetation and habitat areas, water quality, land and soil stability, and accelerated sedimentation discharge.

The planning requirements within the proposed ESO32 have been developed recognising the need to balance potentially competing priorities between biodiversity conservation and providing recreation, sporting and community facilities within the reserves for a growing population.

### **Constraint on major redevelopment potential**

Overall, proposed Amendment C241morn presents a constraint on future development potential within the area given the significantly high biodiversity values that have been identified. As recognised in the Study, "the introduction of an ESO schedule may restrict major sport and recreational development from extending beyond the footprints they currently exist in, depending on the extent of the development and the impact on the environmental values which would need to be considered in the ESO decision guidelines".

In this regard, it is noted that existing PPRZ zoned land – where existing facilities are located – contains 44% of the mapped 51.7 hectares of native vegetation, including orchid colonies, highlighting the potential such competing conflicts<sup>1</sup>.

As was expressly identified during community and stakeholder engagement period, application of the ESO to the area would mean that large amounts of vegetation removal to accommodate major redevelopment of existing sporting, recreation or community facilities would not likely be supported.

Consequently, if Amendment C241morn proceeds, Council would likely need to investigate the purchase of an alternative site to accommodate any substantive future expansion of sport and recreation facilities to meet the growing demand. The Shire's Sports Capacity Plan:

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<sup>1</sup> The PCRZ contains 49% whilst the remaining 7% is contained within residential and road zones.

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**4.1 (Cont.)**

Volume 1 – Sports Fields (2019), recommends the acquisition and development of a large centrally located sporting precinct at a green field site to accommodate the long term demand for sports and associated facilities.

**Planning permit exemptions in support of existing uses and facilities**

Despite the constraint on future major redevelopment potential, the ESO32 provides appropriate planning permit exemptions for minor works and maintenance activities that would have minimal impact on ecological values and environmental systems and are reasonably required to support the continuation of existing sporting, recreation and community uses within existing footprints and areas of low/minimal ecological value. Exemptions relate to:

- Removing, destroying or lopping native vegetation, including for:
  - The reasonable maintenance of existing sporting, recreation and community facilities in the Public Park and Recreation Zone.
  - Any tree or branch of a tree which impairs the access of motor vehicles along any existing or approved access track or road.
  - Conservation works carried out by or on behalf of Council (to minimum extent).
- Works for shared pathways and trails, provided they do not occupy more than 10 square metres.
- Maintaining landscaping (including pruning) which does not affect the stability, general form and viability of the vegetation (excluding the pruning or lopping of the trunk of a native tree or native vegetation on a roadside).
- Construction of fences that are used for conservation purposes or the replacement of an existing fence associated with an existing minor sports and recreation facility, education centre or office so long as it is contained to the footprint of the existing fence.

The above exemptions are provided in addition to those contained in the parent clause of the ESO, which allow activities like emergency works, fire protection, noxious weeds, pest animal burrows, planted vegetation and regrowth, road safety, and vegetation removal by Traditional Owners under relevant legislation.

It is also noted that, regardless of whether the ESO32 is applied, Council will also continue to benefit from the planning permit exemptions provided at Clause 62.02 – Buildings and works, including the exemption of buildings or works with an estimated cost of \$1,000,000 or less carried out by or on behalf of a municipality on land outside of the PCRZ. Exemptions of this nature provide continued flexibility for Council to conduct minor buildings and works without the administrative burden of planning approval.

For context, Table 1 below identifies examples of buildings and works that might be required for existing facilities, noting which would require planning approval under the proposed ESO32.



4.1 (Cont.)

Table 1: Examples of exempted buildings and works under ESO32

Type of buildings or works	Planning permit required under ESO32?	Justification
Repairs and maintenance to an existing building	No	The ESO32 does not specifically require a planning permit for the repairs and routine maintenance to an existing building or works, as exempted by Clause 62.02-2.
Internal rearrangement of an existing building	No	The ESO32 does not specifically require a planning permit for the internal rearrangement of a building or works, provided the gross floor area of the building, or the size of the works, is not increased as exempted by Clause 62.02-2.
Extend existing club room outside existing footprint (cost over \$1,000,000)	Yes	The ESO32 would require a planning permit application as the parent ESO states that a planning permit is required to “construct a building or construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required”.  The ESO32 does not exempt such works and the Clause 62.02-1 exemption would not apply as the works would be over \$1,000,000.
Replace existing tennis court fence	No	So long as the replacement fence is contained to the footprint of the existing fence.

**NOTE:** The above examples do not include an assessment of other planning permit triggers contained in other applicable zones or overlays (such as the PPRZ, PCRZ, HO or BMO) that would apply regardless of whether Amendment C241morn is approved or not.

**Additional implications (planning application requirements)**

Given the ecological values identified in the Statement of Environmental Significance, the ESO32 identifies application requirements for future buildings and works to be accompanied by the following:

- A Flora and Fauna Assessment which considers the *Flora and Fauna Guarantee Act 1988* and the *Environment Protection and Biodiversity Conservation Act 1999*.
- A Site Environmental Management Plan that describes measures to avoid or mitigate impacts to the ecological values of the Reserves during construction or carrying out works in relation to the proposal.
- A Land Management Plan which identifies appropriate ongoing measures for the continued protection of the ecological values of the Balcombe Estuary and associated reserves.

Significantly, these requirements are to be provided at Council's discretion and may not always be required, depending on the location and nature of proposed buildings or works. Regardless, preparation and implementation of the above plans, where required, would incur an additional financial and administrative cost to facilitating future buildings and works to



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**4.1 (Cont.)**

support existing community facilities (where works are subject to planning approval under the ESO32).

Overall, officers consider that the cost implications of the above application requirements are outweighed by the benefits that the findings and recommendations of the relevant assessments and plans would have on protecting the bioregionally significant ecological values identified within the Study area.

**Proposed Rezoning**

As per recommendations of the Study, Amendment C241morn seeks to rezone publicly owned land that is currently within a residential zone (i.e. the GRZ1 or LDRZ) to either PPRZ or PCRZ as follows:

- 16 Mirang Avenue, Mount Martha (also known as Balcombe Estuary Reserve) from part GRZ1 to part PCRZ.
- Latrobe Drive, Mount Martha (road reserve) from part GRZ1 to part PPRZ.
- 37 Seppelt Avenue, Mount Martha (also known as Ferrero Reserve) from part LDRZ to part PPRZ.
- 37 Seppelt Avenue, Mount Martha (also known as Ferrero Reserve) from part GRZ1 to part PPRZ.
- Seppelt Avenue, Mount Martha (also known as Seppelt Park Reserve) from part LDRZ to PCRZ.
- Augusta Street, Mount Martha (road reserve) from part GRZ1 to part PCRZ.
- 499 Nepean Highway, Mount Martha (also known as Balcombe Estuary Reserve) from LDRZ to PPRZ.
- Hedges Court, Mount Martha (reserve) from GRZ1 to PPRZ.

The rezonings are depicted in the map as at Attachment 6.

Rezoning the above sites to the PPRZ is intended to allow greater connectivity of the existing sports and recreation facilities and uses. The PPRZ is considered appropriate given this zone seeks to recognise areas for public recreation and open space whilst protecting and conserving areas of significance where appropriate.

Rezoning the above sites to the PCRZ is intended to provide greater connectivity with the Balcombe Creek Estuary alignment. Significant future development or land use changes in these areas, would be discouraged given the higher ecological values found in these areas.

Officers have consulted with the Shire's Sport and Recreation, Natural Systems and Property teams in determining the above rezonings. Officers also consulted with the Planning and Approvals team of the Department, Environment, Land, Water and Planning (DELWP) which supported the proposed rezonings of Crown Land parcels.

**Rezoning of land at 499 Nepean Highway (Site 8)**

As shown in the map used for public consultation (refer Attachment 7), a proposed zone for land at 499 Nepean Highway was not identified. Instead, Council sought feedback from the community as to the preferred zoning of the land as part of the engagement process. Site 8

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**4.1 (Cont.)**

has a cleared field adjacent to the Balcombe Creek Estuary that has been used as overflow sport and recreation in the past and is a gazetted all year dog leash-free area.

A total of 77.3% of online survey respondents supported rezoning the land for public conservation purposes (i.e. PCRZ) over public park and recreation (i.e. the PPRZ).

Noting community feedback, officers from the Strategic Planning, Sport and Recreation and Natural Systems teams reviewed the implications of both zones for the site. Sport and Recreation officers identified a preference for applying the PPRZ to provide flexibility for future community use, noting that the preference would be for interconnected and co-located sport and recreation uses and development. Natural Systems officers identified a preference for the PCRZ given the conservation values of the area but acknowledged that the PPRZ in combination with proposed ESO32 would provide strong consideration of ecological values in any future proposals for the site.

Overall, officers recommend that the PPRZ be applied to the land as:

- The PPRZ aligns more appropriately with existing community uses and environmental values.
- The purpose of this zone is to recognise areas for public recreation and open space, protect and conserve areas of significance, and provide for commercial uses where appropriate.

Under the PPRZ, private dog obedience classes may be permissible to operate in the area subject to a planning permit. The zone therefore provides an appropriate level of flexibility for potential use of the site, recognising that any use and development would be constrained by the significant native vegetation coverage, proximity to the Balcombe Creek Estuary and Uralla Road and Nepean Highway intersection.

The PCRZ is considered less appropriate given its primary purpose is to protect and conserve the natural environment, provide facilities which assist in public education and interpretation of the natural environment. The PCRZ only allows uses that are conducted by or on behalf of the public land manager (i.e. Council). Under this zoning, private dog obedience classes would be prohibited.

Finally, community feedback identified traffic and road safety concerns at the intersection of Uralla Road and Nepean Highway, adjacent to Site 8. Officers understand that planning is underway by the Department of Transport (DoT) to improve safety and access for all road users at this intersection.

**Removal of existing VPO1**

Amendment C241morn proposes to remove the existing VPO1 that partly covers the Study area (Attachment 8). Removal of the VPO1 is recommended by the Study given that the overlay:

- Is limited to protecting 'township vegetation' and does not identify native or indigenous vegetation of specific value to the Study area.
- Does not address key broader ecological considerations such as requiring planning approval for buildings and works having regard to environmental systems, native fauna, habitat areas, land and soil stability, drainage patterns, and water quality.
- Requires a planning permit to remove non-native vegetation which is not supported by the Study.

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**4.1 (Cont.)**

As previously discussed, the proposed ESO32 addresses the above matters more comprehensively and is therefore the appropriate planning control. Removal of the VPO1 is therefore recommended to strengthen biodiversity protection and avoid unnecessary duplication of planning controls.

**Removal of existing DDOs**

Amendment C241morn also proposes to remove the DDO2, DDO4, DDO6 and DDO7 (refer to Attachment 9) from properties proposed to be rezoned from GRZ1 and LRDZ to PPRZ and PCRZ. Deletion of these overlays is proposed given they relate to residential built form outcomes which would no longer be supported under the PPRZ or PCRZ. Accordingly, the overlays become redundant and should be removed to improve the overall efficiency of the planning scheme.

**Schedule to Background Documents (Clause 72.08)**

As the Study provides the strategic justification for proposed Amendment C241morn, the amendment proposes to include the Study as a Background Document to the Mornington Peninsula Planning Scheme (Attachment 10).

**Notice to Melbourne Water Corporation (Melbourne Water)**

Melbourne Water is the waterway Manager for the Balcombe Creek Estuary. The Healthy Waterways Strategy 2018-28 provides strategic direction towards a regional vision for the health of rivers, estuaries and wetlands in the Port Phillip and Western Port region. The Westernport – Healthy Waterways Strategy identifies that Balcombe Creek Estuary is a major waterway within the Mornington Peninsula Western Creeks Sub-Catchment.

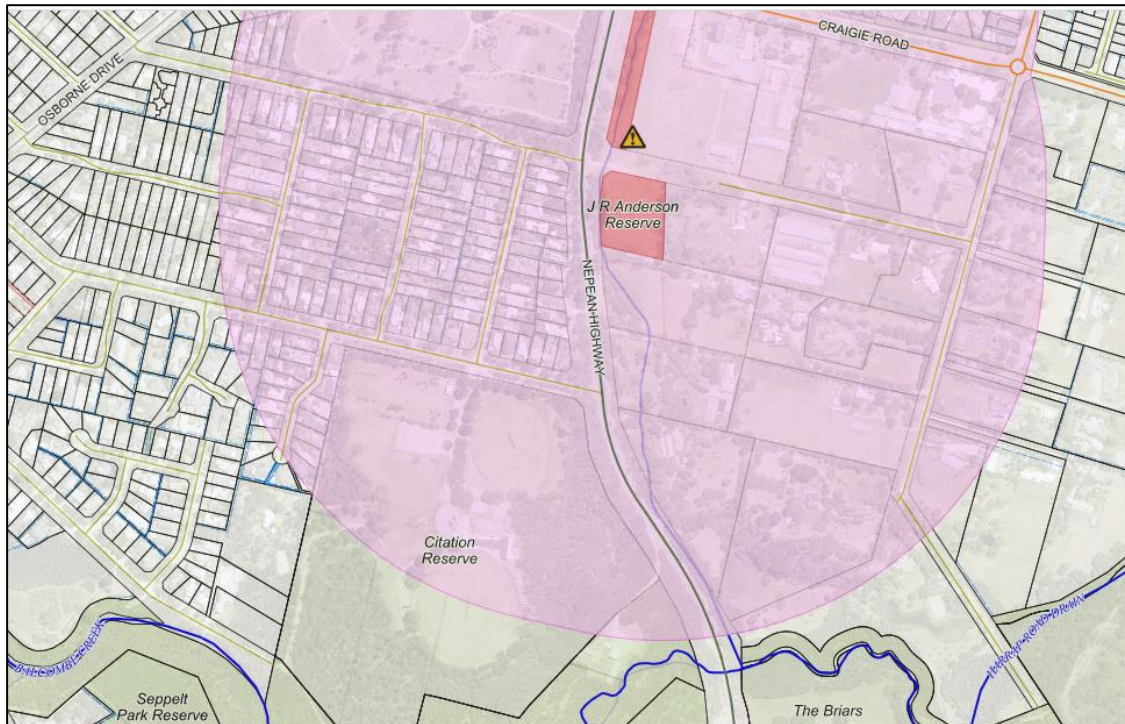
Shire officers consulted Melbourne Water during development of the Amendment C241morn. Melbourne Water indicated their support for the ESO32, but advised that, out of concern for unnecessary resourcing implications, notice of planning permit applications under the ESO32 be referred to them pursuant to Clause 66.06: Referral and notice provisions of the Mornington Peninsula Planning Scheme.

Notification, rather than a formal referral, provides Melbourne Water with discretion as to whether they comment on future planning applications or not. Melbourne Water specifically requested that it receive notice of applications related to earthworks and/or native vegetation removal for them to consider. Amendment C241morn therefore seeks to amend the Schedule to Clause 66.06 to reflect the above reasonable request (refer to Attachment 11).

**Other matters – contaminated land**

In preparing a planning scheme amendment, Council must have regard to the effects of potentially contaminated land on sensitive uses pursuant to Ministerial Direction No. 1 Potentially Contaminated Land.

In this regard, the northern section of Citation Reserve is proximate to the J R Anderson Reserve at 626 Nepean Highway, Mount Martha. J R Anderson Reserve contains potentially contaminated land as it was formerly used as a landfill for approximately one year from 1965-66.



*Figure 3: 500-metre landfill buffer from John Anderson Reserve*

The Environment Protection Authority (EPA) Victoria publication 788.3: Siting, Design, Operation and Rehabilitation of Landfills requires that sensitive uses should not establish with a 500-metre buffer of contaminated land of this nature.

The Shire is currently investigating the nature and extent of potential contamination within J R Anderson, including conducting a Landfill Gas Risk Assessment (LFGRA). Whilst the LFGRA findings are yet to be finalised, preliminary gas monitoring results indicate very low levels of landfill gas that are unlikely to extend beyond the boundaries of the reserve. As such, the final findings are not expected to result in any significant implications for Amendment C241morn, particularly given the amendment does not seek to introduce any new sensitive uses within the Study area.

### **Referral to Country Fire Authority (CFA)**

Officers proactively referred a draft of proposed Amendment C241morn to the CFA for comment on 13 April 2022 given majority of the Study area is within a Bushfire Management Overlay (BMO) and is bushfire prone. The CFA responded on 26 May 2022 and suggested that Council considers:

- The level of change in revegetation being sought as a result of this amendment and any factors that may affect bushfire behaviour.
- How any change in vegetation will be monitored to ensure the bushfire risk will be managed and avoid increasing the bushfire risk over time.
- Whether there may be a conflict with existing settlement policy principles set out by Council as the proposed amendment has a focus primarily on retention and enhancement of biodiversity. The amendment should also explore the consequences, outcomes and potential change this may have on existing development and their fire risk.

#### 4.1 (Cont.)

In summary, officers consider that Amendment C241morn addresses the CFA's advice given:

- The amendment does not propose controls that would alter the use or development of the land in a way that may create a bushfire hazard, particularly given the land is within public ownership and no changes are proposed to existing fire management practices undertaken by the Shire.
- The parent provision of the proposed ESO32 provides fire protection exemptions which cannot be overridden.
- The amendment provides for the ability to remove, destroy or lop non-native vegetation without the need for a planning permit, reducing existing potential barriers to necessary vegetation modification.

The above matters are addressed more fully in the Explanatory Report and Strategic Assessment Guidelines (Attachments 13 and 14 respectively). It is noted that in the event proposed Amendment C241morn proceeds to formal public exhibition, the CFA would have additional opportunities to comment on the amendment if necessary.

#### Options for consideration

Given the above issues outlined, officers have identified the following options for Council's consideration:

- Option 1: adopt the Study and request Ministerial authorisation to prepare and publicly exhibit Amendment C241morn.
- Option 2: adopt the Study but do not request Ministerial authorisation for Amendment C241morn.
- Option 3: do not adopt the Study and do not request Ministerial authorisation for Amendment C241morn.

The likely benefits and potential disbenefits of each option are discussed in Table 2 below. Overall, officers recommend that Council proceeds with Option 1.

*Table 2: Options for consideration*

<b>Option 1 – adopt the Study and request Ministerial authorisation for Amendment C241morn (recommended)</b>	
Likely Benefits	<ul style="list-style-type: none"> <li>• The Study provides a contemporary, evidence-based identification and analysis of the ecological values of the Balcombe Estuary and associated reserves and is based on community and stakeholder input.</li> <li>-</li> <li>• Amendment C241morn: <ul style="list-style-type: none"> <li>○ Gives statutory effect to the key recommendations of the Study to provide better protection and enhancement of identified significant biodiversity and ecological values, environmental systems and character of the Balcombe Estuary and associated reserves</li> </ul> </li> </ul>

4.1 (Cont.)

	<ul style="list-style-type: none"> <li>○ Provides appropriate planning permit exemptions within proposed ESO32 for vegetation removal and minor buildings and works in support of maintaining existing sporting, recreation and community uses within the reserves.</li> <li>○ Aligns the zoning of land with its existing public ownership and intended purposes for a mix of recreation and conservation purposes.</li> <li>○ Improves the overall efficiency of the Mornington Peninsula Planning Scheme by deleting redundant provisions to avoid unnecessary duplication of controls.</li> <li>○ Is consistent with community feedback in support of greater environmental protection of the reserves balanced against the need to provide for the ongoing use of the reserves for much-needed sporting, recreation and community infrastructure.</li> <li>○ Is consistent with key objectives and strategic actions with the Council and Wellbeing Plan 2021-2025, Climate Emergency Response Plan (2020) and Biodiversity Conservation Plan (2019).</li> <li>○ Delivers on a key recommendation (R186) of Council's adopted 2018 Planning Scheme Review.</li> <li>● The planning scheme amendment process (including public exhibition and potential review by an independent planning panel) would provide further opportunity for community engagement to resolve appropriate planning controls for the reserves.</li> </ul>
Potential Disbenefits	<ul style="list-style-type: none"> <li>● Amendment C241morn: <ul style="list-style-type: none"> <li>○ Will likely constrain or potentially preclude the ability to undertake major redevelopment or expansion of existing sporting, recreation or community infrastructure, potentially necessitating the need for Council to investigate the purchase of alternative sites to accommodate growing demand for such facilities.</li> <li>○ May create additional financial and/or administrative costs for the Shire should it seek to undertake vegetation removal, buildings or works that require planning approval and associated accompanying environmental assessments and/or management plans under the proposed ESO32. (These additional costs, however, are considered proportional to protect and enhance significant biodiversity and ecological values within the reserves).</li> <li>○ Proposes to rezone 499 Nepean Highway, Mount Martha to PPRZ instead of the PCRZ – the latter of which was the preferred zoning of the majority of community members who provided feedback on this matter during the community and stakeholder engagement process. (As noted, however, the PPRZ provides for the protection of ecological values whilst</li> </ul> </li> </ul>

4.1 (Cont.)

	allowing greater flexibility for future uses of the site to accommodate community needs.)
<b>Option 2 – adopt the Study but do not seek Ministerial authorisation for Amendment C241morn (<i>not recommended</i>)</b>	
Likely Benefits	<ul style="list-style-type: none"> <li>• The Study provides a contemporary, evidence-based analysis of the ecological values of the Balcombe Estuary and associated reserves and is based on community and stakeholder input.</li> <li>• Not proceeding with Amendment C241morn would avoid statutory planning barriers and/or any additional financial or administrative costs to facilitating vegetation removal, buildings and works within the reserves to maintain or possibly expand existing sporting, recreation and community facilities (where planning approval would otherwise be required).</li> </ul>
Potential Disbenefits	<ul style="list-style-type: none"> <li>• Not proceeding with Amendment C241morn would result in: <ul style="list-style-type: none"> <li>○ Failure to implement key recommendations of the adopted Study within the planning scheme.</li> <li>○ Not addressing the identified threats.</li> <li>○ The Study having limited weight in statutory planning decision-making as it would not be listed as a Background Document to the planning scheme.</li> <li>○ Retention of existing planning controls which, as identified in the Study, provide inadequate protection of identified high-value biodiversity assets and ecological systems of bioregional significance.</li> <li>○ Loss of an opportunity to implement strategically justified planning controls to provide better protection and enhancement of ecological values in line with Council's adopted Council and Wellbeing Plan 2021-2025, Climate Emergency Response Plan (2020) and Biodiversity Conservation Plan (2019).</li> <li>○ Failure to act on community feedback in support of greater environmental protection of the reserves balanced against the need to provide for the ongoing use of the reserves for sporting, recreation and community infrastructure.</li> <li>○ Failure to fully action Recommendation R186 of Council's adopted 2018 Planning Scheme Review.</li> <li>○ Publicly owned land remaining within residential zones that are not fit for the current and intended public conservation and recreation uses.</li> <li>○ Redundant planning controls (namely DDOs) continuing to apply to affected land parcels resulting in planning scheme inefficiencies.</li> </ul> </li> </ul>

4.1 (Cont.)

**Option 3 – Do not adopt the Study and do not seek Ministerial authorisation for Amendment C241morn (*not recommended*)**

Likely Benefits	<ul style="list-style-type: none"><li>• No further Council expenditure on the project.</li></ul>
Potential Disbenefits	<ul style="list-style-type: none"><li>• All the disbenefits identified for Option 2.</li><li>• Waste of Council resources in commissioning the Study.</li><li>• Reputational damage to the Shire for failure to act on evidence-based recommendations and community feedback.</li></ul>

**Next steps**

If Council resolves to proceed with Option 1 as recommended, Amendment C241morn would be submitted to the Minister for Planning for authorisation. Should authorisation be granted, the amendment would be placed on public exhibition for community comment. Details of exhibition are noted below.

Following exhibition, Council would need to consider all submissions before determining next steps in the amendment process.

**ENGAGEMENT**

As detailed earlier in this report, community and stakeholder engagement was undertaken on the draft Study from 17 May 2021 until 28 June 2021. The outcomes of engagement are detailed in the Balcombe Estuary and associated reserves: Ecological and Planning Study Community and Stakeholder Engagement Outcomes Report (Biosis, 2022) (Attachment 1).

Additional internal and external stakeholder engagement was undertaken between July 2021 to July 2022 to finalise the Study, including with key internal departments within Council such as the Statutory Planning, Natural Systems, and Community Infrastructure, Open Space and Recreation teams.

Should Amendment C241morn be submitted to the Minister for Planning and authorised, the amendment would be placed on public exhibition for a period of 4-6 weeks for community feedback.

Public notice of the exhibited amendment would be given pursuant to the requirements of Section 19 of the *Planning and Environment Act 1987*, including (as a minimum):

- Direct mailout to local landowners, occupiers, prescribed Ministers, relevant government authorities, community groups and other stakeholders (such as local sporting clubs).
- Placement of advertisement(s) in local newspaper(s).
- Public display of amendment and supporting documentation within each of the Shire's Customer Service centres in Mornington, Rosebud and Hastings.
- Publication of amendment and supporting documents on the Shire's website.

Public notice will include instructions on where community members can inspect amendment and supporting documentation and how to make a submission for Council's consideration.



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4.1 (Cont.)

## COMMUNICATIONS PLAN

Not applicable as community engagement for Amendment C241morn would be undertaken as per the aforementioned requirements of Section 19 of the *Planning and Environment Act 1987*.

## LEGAL AND REGULATORY FRAMEWORK

- Section 8A of the *Planning and Environment Act 1987* – to seek Ministerial authorisation to prepare Amendment C241morn to the Mornington Peninsula Planning Scheme.
- Section 19 of the *Planning and Environment Act 1987* – to undertake public exhibition of Amendment C241morn following authorisation.

## SUSTAINABILITY CONSIDERATIONS

Amendment C241morn seeks to provide for the protection and enhancement of significant ecological values identified within the Balcombe Estuary and associated reserves whilst supporting the ongoing functioning of existing recreation, sporting and community facilities. The likely constraint on major expansion or redevelopment of existing facilities is considered justified given the findings and recommendations of the evidence-based Study which has been prepared with input from various stakeholders including the community and relevant internal Shire departments.

Further, Amendment C241morn aligns with the following Summits/Action Steps of Council's adopted 'Our Climate Emergency Response from 2020 to 2030':

- Summit 6: Sustainable Land Use and Environmental Restoration
- Action 5: Mobilise and Strengthen Community Action
- Action 11: Generate a Thriving Peninsula-wide Natural Environment
- Action 12: Connect Communities and Nature in Precinct Planning.

## FINANCIAL CONSIDERATIONS

- The Study and associated community engagement have been completed within the approved project budget.
- Preparation and exhibition of Amendment C241morn can be facilitated within existing available budgets.
- If Amendment C241morn is ultimately implemented:
  - Council may need to investigate the purchase of alternative sites to accommodate any substantive future expansion of sport and recreation facilities to meet growing demand as identified in the Shire's Sports Capacity Plan: Volume 1 – Sports Fields (2019).
  - Satisfaction of some planning permit application requirements within proposed ESO32 (i.e. those requiring the preparation of environmental assessments and/or management plans) would incur financial costs for Council for future buildings and/or works that require planning approval under the ESO32. The extent of such costs will be dependent on the nature of the development or works and would need to be factored into future project budgets of affected proposals.

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**4.1 (Cont.)**

- The potential for additional financial and/or administrative costs for Council to maintain existing facilities within current footprints have been minimised through the development of appropriate planning permit exemptions for select vegetation removal and minor buildings and works.

**OFFICER DIRECT OR INDIRECT INTEREST**

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

#### 4.2 Planning Scheme Amendment C232morn - Local Environmentally Sustainable Development policy

Prepared By	Evan Krausgrill, Principal Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11320439
Briefing Note Number	BN1613 – 19 July 2022
Attachment(s)	<ol style="list-style-type: none"><li>1. Proposed ESD local planning policy (exhibited version)</li><li>2. Submissions (redacted)</li><li>3. Submissions review and officer responses</li><li>4. Proposed ESD local planning policy (post-exhibition version)</li><li>5. ESD project comparison table (summary)</li><li>6. ESD project comparison table (detailed)</li><li>7. Exhibited Explanatory Report</li></ol>

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#### EXECUTIVE SUMMARY

The Council and Wellbeing Plan 2021-2025 and Climate Emergency Plan – Ensuring Our Future: Our Climate Emergency Response from 2020 to 2030 (CEP) specifically commit Council to advocate for the integration of Environmentally Sustainable Development (ESD) principles into the Mornington Peninsula Planning Scheme. Council's adopted 2018 Planning Scheme Review recommends that the current lack of local ESD policy be addressed as a matter of priority.

Implementation of a local ESD policy would strengthen Council's capacity to consider ESD when assessing planning permit applications to help ensure that new development on the Mornington Peninsula achieves best practice in energy performance, integrated water management, indoor environment quality, transport, waste management and urban ecology from the design stage through to construction and operation. Local ESD policies are commonplace across Victoria with over 20 other councils having introduced such a policy.

On 16 March 2020, the Planning Services Committee resolved to seek Ministerial authorisation to prepare and exhibit Amendment C232morn to introduce a local ESD policy into the planning scheme. Following two deferrals due to the anticipated release of State Government ESD planning reforms (still yet to be fully implemented), Amendment C232morn was exhibited from 18 March 2022 until 20 May 2022. A total of 12 submissions were received indicating both support and opposition to the amendment, including requests for changes to the proposed policy.

Officers recommend that all submissions be referred to a Planning Panel for independent review and recommendations, and that Council's submission to the Panel provide support for several requested changes, including the application of the proposed ESD policy to single dwellings. Council originally drafted Amendment C232morn with a single dwelling threshold, however, the Minister required removal of this threshold as a condition of authorisation.

4.2 (Cont.)

**RECOMMENDATION**

That the Planning Services Committee:

1. **Receives, notes, and considers in accordance with section 22 of the *Planning and Environment Act 1987*, all submissions received in response to Amendment C232morn at Attachment 2 to this report.**
2. **Notes and endorses the summary of submissions and Mornington Peninsula Shire (Shire) officer responses to submissions at Attachment 3.**
3. **Requests that the Minister for Planning appoint a Planning Panel to consider all submissions in relation to Amendment C232morn referred in accordance with section 23 of the *Planning and Environment Act 1987*.**
4. **Refers all submissions in relation to Amendment C232morn to the Planning Panel.**
5. **Endorses the proposed post-exhibition version of 'Clause 15.01-2L: Environmentally Sustainable Development' at Attachment 4 for the purpose of Council's advocacy position before the Planning Panel in addition to the Shire officer responses to submissions at Attachment 3.**
6. **Delegates authority to the Director of Planning and Infrastructure to determine the form of Council's submissions to the Planning Panel, with the assistance of legal representatives and expert advice (as necessary), including negotiating proposed changes to the endorsed version of Amendment C232morn in order to resolve matters between Council and submitters generally in accordance with documents contained in Attachments 3 and 4 and adopted Council policy.**
7. **Notifies all submitters to Amendment C232morn to the Mornington Peninsula Planning Scheme in writing of the Committee's decision.**

**COUNCIL AND WELLBEING PLAN**

Amendment C232morn aligns with:

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

Amendment C232morn specifically delivers on Action 1.3.5: Advocate for ESD principles to be integrated into the Mornington Peninsula Planning Scheme.

**RELEVANT COUNCIL DECISIONS AND POLICIES**

**Council policies**

- Ensuring Our Future: Our Climate Emergency Response from 2020 to 2030 (Mornington Peninsula Shire [MPS], 2020) (Action 16)
- Beyond Zero Waste Strategy 2030 (MPS, 2020)
- Sustainable Transport Strategy 2015-2020 (MPS, 2014)

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**4.2 (Cont.)**

- Mornington Peninsula Planning Scheme Review 2018 (MPS, 2018) (Recommendation 80)
- ESD Policy for Council Buildings and Civil Works (MPS, 2020).

**Council decisions**

- 13 August 2019 Council Meeting – Council resolved to declare a climate emergency, commit to developing a Climate Emergency Action Plan, raise community awareness of the need to mitigate greenhouse gas emissions and build climate resilience.
- 16 March 2020 Planning Services Committee (PSC) Meeting – Council resolved to seek authorisation for Amendment C232morn and exhibit the amendment once authorisation is received.
- 9 March 2021 PSC Meeting – Council resolved to defer exhibition of Amendment C232morn until State Government ESD reforms are implemented and advocate for the Minister to approve Amendment C232morn concurrent with any reforms.
- 25 October 2021 PSC Meeting – Council resolved to defer exhibition of Amendment C232morn until March 2022.

**DISCUSSION**

**Purpose**

The purpose of this report is to:

- present all submissions received following exhibition of Amendment C232morn and associated officer responses to issues raised,
- recommend that Council refer all submissions to a Planning Panel for independent review and recommendations, and
- recommend that Council include in its submission to the Panel endorsement for certain changes to Amendment C232morn in response to submissions.

**Background**

Amendment C232morn has a lengthy history owing to a confluence of State and local ESD initiatives, including:

- The release of the State Government's 'Environmentally Sustainable Development of Buildings and Subdivisions: A Roadmap for Victoria's Planning System' (ESD Roadmap) and implementation of the first stage of associated planning reforms via Amendment VC217.
- Council's engagement in the Council Alliance for a Sustainable Built Environment (CASBE) 'Elevating ESD Targets Planning Project' alongside numerous other Victorian councils.

Below is a summary of this history and key milestones affecting Amendment C232morn's progress:

- 18 June 2019, Council was briefed on the need to prepare and implement a local ESD policy, following which Sustainable Development Consultants (SDC) was engaged to

**4.2 (Cont.)**

- prepare the policy on Council's behalf with input from a Project Reference Group (PRG) comprising internal and external stakeholders.
- 16 March 2020, Council resolved to seek Ministerial authorisation for Amendment 232morn to introduce the local ESD policy into the Mornington Peninsula Planning Scheme.
  - 8 September 2020, Council adopted its ESD Policy for Council Buildings and Civil Works (MPS, 2020) which seeks to apply ESD principles to the design, construction, refurbishment, operation and demolition of Council owned facilities and civil works.
  - 18 November 2020, Amendment C232morn was authorised by the Minister for Planning (the Minister) on the condition that the policy did not apply to single dwellings or non-residential development less than 100 square metres in size. The policy was revised to satisfy these conditions such that it reflected the 'industry standard' ESD policies implemented by other councils across Victoria.
  - 11 January 2021, the State Government released its ESD Roadmap proposing reforms to planning policy and provisions within all Victorian planning schemes to embed and provide clear direction on ESD expectations. Stage 1 of the reforms is to include new State planning policies, whilst Stage 2 will deliver specific ESD objectives and standards in new and expanded 'Particular Provisions' of all planning schemes. Owing to the mooted nature of the proposed reforms, it was unclear at this time whether Amendment C232morn would still be required.
  - 9 March 2021, Council resolved to make a submission in support of the State Government's ESD Roadmap and defer exhibition of Amendment C232morn assuming that the Roadmap's reforms would be implemented within the following 12 months rendering Amendment C232morn redundant.
  - 15 June 2021, Council resolved to partner with 30 other Victorian councils and CASBE to undertake Stage 1 of the 'Elevating ESD Targets Planning Project' which sought to investigate the merits of strengthened ESD standards to achieve zero carbon and climate-resilient development.
  - 25 October 2021, Council resolved to further defer exhibition of Amendment C232morn pending implementation of the Roadmap reforms.
  - 18 March 2022, as implementation of the Roadmap reforms had been delayed, exhibition of Amendment C232morn commenced, finishing on 20 May 2022.
  - 9 May 2022, Council resolved to join Stage 2 of the CASBE 'Elevating ESD Targets Planning Project' alongside 23 other Victorian councils to draft new planning provisions to implement zero carbon development.
  - 10 June 2022, The Minister gazetted Planning Scheme Amendment VC216 which implemented changes to all Victorian planning schemes to embed ESD objectives and strategies into State policies for building and subdivision design (i.e. Clause 15) and introduced a new 'Purpose' of planning schemes 'to support responses to climate change'. Whilst Amendment VC216 introduces foundational support for ESD in all planning schemes, it does not render Amendment C232morn redundant as it does not provide guidance for the localised application of ESD.
  - 21 July 2022, alongside 23 other Victorian councils, Council sought Ministerial authorisation for Amendment C246morn to implement a new Particular Provision to

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## 4.2 (Cont.)

achieve zero carbon development as part of the CASBE 'Elevating ESD Targets Planning Project'.

At the time of preparing this report, the Minister is yet to respond to Council's Amendment C246morn authorisation request, and the second stage of planning reforms from the State Government's ESD Roadmap are yet to be released or implemented.

Attachments 5 and 6 of this report provide comparative analyses of ESD themes and components addressed by Amendment C232morn, the State Government's ESD Roadmap planning reforms and the CASBE 'Elevating ESD Targets Planning Project'. For additional context, the analyses also demonstrate the similarities and differences of these initiatives against the existing National Construction Code (which operates within the Building System) and Council's ESD Policy for Council Buildings and Civil Works.

Overall, these analyses demonstrate the ongoing relevance of Amendment C232morn given ongoing uncertainties around pending State Government ESD reforms and the fact that the CASBE project aims to achieve a higher level of ESD performance that is yet to be approved.

## ENGAGEMENT

As noted above, Amendment C232morn was exhibited from 18 March 2022 until 20 May 2022. Notice of the amendment was given in accordance with Section 19 of the *Planning and Environment Act 1987* (the Act), including:

- A notice in the Victorian Government Gazette.
- Advertisements in local newspaper articles.
- Publication of a project webpage on the Shire's website.
- Letters to stakeholders including community groups, environmental organisations, and regular planning permit applicants/developers.

During exhibition, members of the community could enquire with Shire officers via phone, email or in writing. Submissions to the amendment could be made in writing via letter, email or online via the submission portal on the project webpage. Shire officers responded to a small number of phone and email enquiries from people wishing to discuss the amendment in further detail.

## Submissions

In total, 12 submissions were received, including one late submission (refer to Attachment 2). A detailed review and officer response to all 12 submissions is contained in Attachment 3. In summary:

### ***Submissions seeking no changes***

Submissions 2 and 8 (interested community members) provide support for the amendment with no requested changes. (It is noted that Submission 8 was revised post-exhibition to clarify the submitters intent).

Submissions 3-7 (associated with a school in Mount Eliza) and Submission 12 (Country Fire Authority) do not state support or opposition to the amendment or request changes. Officers sought clarification of the contents of these submissions but did not receive any replies from submitters.

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4.2 (Cont.)

***Submission opposing the Amendment (not supported)***

Submission 9 (Housing Industry Association (HIA)) opposes Amendment C232morn on the grounds that ESD should be implemented through the Building System alone to minimise unnecessary construction costs – that is, through the National Construction Code (NCC). The HIA noted that the NCC is currently under review for potentially higher environmental construction standards.

Officers do not support the HIA's grounds of opposition which were also presented to, and refuted by the State Government's 2014 Environmentally Efficient Design Advisory Committee (EEDAC) which concluded that (in summary):

- Both the planning and building systems have a legitimate role to play in delivering ESD outcomes without conflict or duplication.
- The NCC sets minimum standards for a building's energy performance alone and does not address other ESD matters (such as integrated water management, urban ecology and landscaping, waste management, construction practices that facilitate recycling materials, sustainable transport measures such as bicycle parking facilities, etc).
- Planning policy can encourage applicants to exceed minimum construction standards to achieve best practice environmental outcomes, including across a wider range of building design and operation measures as noted above.
- Many ESD measures (particularly for single dwellings) are cost-neutral or can be offset in savings gained by reduced overall running costs, and that housing affordability considerations need to go beyond construction cost alone and must also consider ongoing energy and living costs to the occupant.

***Submissions seeking changes (supported)***

Submission 1 (Environment Protection Authority (EPA)) suggests that the ESD policy be revised to include reference to the EPA's new stormwater guidance publication which officers support.

Submission 10 (Shoreham Community Association) requests that the ESD policy be revised to apply to single dwelling development. Officers support this requested change for reasons detailed later in this report.

Submission 11 (CASBE) included a preferred version of the policy with wording changes including a clearer communication of 'best practice' and replacement of the word 'comparable' with 'equivalent' at the sunset clause. Officers support these changes as they would help to make policy outcomes more certain, provide flexibility to applicants regarding how they can respond to the policy, and prevent future replacement of the policy with a version that achieves lower ESD outcomes than currently proposed.

The above supported changes are highlighted in tracked changes in Attachment 4.

***Submissions seeking changes (not supported)***

Submission 10 (Shoreham Community Association) contains additional requested changes which are not supported by officers for reasons outlined in Attachment 3. In summary:

- The request to apply the ESD policy to all planning permit applications is not feasible or appropriate as the policy concerns development outcomes and not all permit applications relate to development (e.g. liquor license application, removal of a title restriction, etc.).



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4.2 (Cont.)

- The request to change the Mornington Peninsula Shire Environmentally Sustainable Development (ESD) Policy Project, Background Research (July 2019, SDC) which underpins Amendment C232morn is not supported because the requested data about the percentage of land that new houses cover was not investigated as part of this work and is therefore unknown.

***Justification for re-introducing the single dwelling threshold***

The guidelines within the proposed ESD Policy specify thresholds for the type and size of development that should respond to the objectives and strategies of the policy. These thresholds are a critical feature of the policy as they indicate the extent to which the policy should be applied which in turn affects the potential impact that the policy may have on facilitating ESD outcomes across the Peninsula.

As previously noted, Council originally resolved to seek authorisation for a policy that applied to single dwellings and small-scale commercial/industrial development, however these thresholds were rejected by the Minister. With a submitter requesting a change to the amendment to reintroduce the single dwelling threshold, officers recommend Council test support for the threshold with an independent Planning Panel for the following reasons:

1. Council's original resolved position on Amendment C232morn (when seeking authorisation) was that it applies to single dwellings.
2. The State Government has previously confirmed that locally tailored policy thresholds can be supported where sufficient strategic justification is provided which is consistent with the 2014 EEDAC's recommendations that "the ability of the individual councils to set particular thresholds should be retained". There is precedence for a single dwelling threshold with the recent approval of this threshold for the Hepburn Planning Scheme (Amendment C280hepb, 10 February 2022).
3. Council's proposed single dwelling threshold is based on evidence from the ESD Policy Project: Issues and Options Paper (SDC, 2019), presented to Council in March 2020, which confirmed that:
  - Development on the Mornington Peninsula is dominated by single dwellings. For the policy to have meaningful impact, therefore, SDC concluded that it ought to apply to single dwellings. SDC also observed that the Shire is uniquely placed to influence ESD outcomes due to the prevalence of single dwelling permit triggers within the planning scheme that could be leveraged to apply the policy.
  - Impact on housing costs would be minimal, noting that many ESD interventions are cost-neutral and only require a more considered approach to building design (which would be facilitated by implementation of the ESD Policy in the planning permit process). This view is shared by the 2014 EEDAC. Those ESD initiatives that require greater initial capital investment (such as solar panels, solar hot water systems or rainwater tanks) are cost-beneficial in the medium to long-term due to significantly reduced utility costs.
  - The policy is discretionary and can therefore be applied flexibly to ensure development feasibility is not unfairly impacted.
  - Many ESD assessment tools to demonstrate compliance of proposed development with the policy are free for the community to access, relatively easy to use and do not require the assistance of privately commissioned experts.
4. If the Panel does not support revising the threshold for reasons that the ESD requirements are considered onerous for 'typical' single dwelling applicants, Council

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**4.2 (Cont.)**

could request that the Panel recommend a set of less onerous ESD requirements that could apply to single dwellings.

5. The requested change to a single dwelling threshold is not considered to amount to a 'transformative change' to the amendment or defect in procedure (under section 29 of the Act) that would otherwise warrant re-exhibition of the amendment. This is essentially because the amendment relates to a policy (which is discretionary in nature), and reintroduction of the single dwelling threshold is only in the form of a policy guideline which cannot be mandated (unlike a zone or overlay provision might be). Furthermore, as part of Council's submission to the Panel, it could request that the Panel not make any recommendation to Council to consider changes to the amendment that would trigger re-exhibition.

**Options for consideration**

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

- Change the amendment in the manner requested (Option 1).
- Refer submissions to a panel appointed by the Minister (Option 2).
- Abandon the amendment or part of the amendment (Option 3).

For reasons set out below, officers recommend that Council proceed with Option 2.

- Option 1 is not available to Council because it is not possible to change the amendment in the manner(s) requested and resolve all submissions. That is, even if Council agreed to all requested changes, Submission 9 opposes the amendment altogether.
- Option 2 is recommended because there are unresolved submissions and the Panel process provides the appropriate forum for independent review of the amendment and submissions with participation from both Council and submitters. For reasons outlined earlier, officers recommend that Council's submission to the Panel endorse the requested changes supported by officers, including re-introduction of the single dwelling trigger.
- Option 3 is not recommended because the amendment is strategically justified, backed by a strong evidence base and received community support. In addition, abandoning the amendment would mean that Council would fail to deliver on its key commitments in the Council and Wellbeing Plan, CEP and 2018 Planning Scheme Review.

**Next Steps**

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

- Directions Hearing – to commence in the week beginning 26 September 2022.
- Panel Hearing – to commence in the week beginning 24 October 2022.

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

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

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**4.2 (Cont.)**

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

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

**COMMUNICATIONS PLAN**

Not applicable. All notice regarding Amendment C232morn is carried out as per the requirements of the Act.

**LEGAL AND REGULATORY FRAMEWORK**

As per the Act, under:

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

It is further noted that Amendment C232morn aligns with:

- The overarching governance principles at section 9 (2) (c) of the *Local Government Act 2020* which obligate Council to promote mitigation and planning for climate change risks.
- The imperatives of the *Climate Change Act 2017* which is to manage climate change risks and drive Victoria's transition to a climate-resilient community and economy with net-zero emissions by 2050.

**SUSTAINABILITY CONSIDERATIONS**

The environmental, social and economic effects of Amendment C232morn are outlined in the exhibited Explanatory Report (Attachment 7).

**FINANCIAL CONSIDERATIONS**

If Council decides to refer the amendment and submissions to a Planning Panel, appointment of the Panel will cost approximately \$10,000.

If submitters register to speak, a public hearing will be held. Council may need to appoint an ESD expert to provide an expert witness statement on Council's behalf, and/or an external advocate (such as a lawyer) to represent Council. The precise costs of such representation

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**4.2 (Cont.)**

are as yet unknown and will depend on factors such as how many days the hearing will run for. Nevertheless, it is estimated that engagement of an ESD expert is likely to cost in the order of \$8,000 to \$15,000 + GST, whilst a legal representative may be \$15,000 to \$20,000 + GST.

The above costs can be accommodated within existing budgets.

The broader cost implications of implementing Amendment C232morn for both Council and the community were identified in the 16 March 2020 report to the Planning Services Committee and can be summarised as follows:

- Administrative costs for Council including:
  - The need to appoint a dedicated staffing resource responsible for ESD assessment, referrals and compliance.
  - The need for licenses and subscriptions to ESD assessment tools (e.g. Built Environmental Sustainability Score [BESS], Model for Urban Stormwater Improvement Conceptualisation [MUSIC], Stormwater Treatment Objective Relative Measure [STOMR], etc.) noting that Council has already committed funding to licence CASBE ESD fact sheets and BESS.
  - Training for relevant Council staff (planning, planning compliance, building, engineering, etc) in basic ESD assessment processes, tools and compliance.
- Potential additional upfront development costs for permit applicants, noting that (as previously outlined) many ESD measures are cost-neutral or can be offset against gains in reduced overall operating costs, and many ESD assessment tools are free for the community to access, relatively easy to use and do not require the assistance of privately commissioned experts. Significantly, the 2014 State Government EEDAC concluded that local ESD planning policies were 'unlikely to impose an unreasonable regulatory cost burden on applicants' (Panel Report, 2014, page 65).

**OFFICER DIRECT OR INDIRECT INTEREST**

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

## 5 STATUTORY PLANNING REPORTS

### 5.1 P16/0953.01 - 161 and 189 Old Cape Schanck Road, Boneo

Prepared By	Lachlan Howard, Principal Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11323865
Attachment(s)	<ol style="list-style-type: none"><li>1. Plans</li><li>2. Arboricultural Assessment</li><li>3. Permit</li><li>4. VCAT Decision</li><li>5. VCAT Decision Plans</li><li>6. Planning Scheme Excerpts</li><li>7. Objections (confidential)</li></ol>
Application No.	P16/0953.01
Proposal	Amendment to the existing Planning Permit for use and development of the land for a camping and caravan park and a caretaker's house and associated works; tree removal; and works within the Old Cape Schanck Road, road reserve in accordance with the endorsed plans.
Melway Reference	170E8
Zoning	Special Use Zone, Schedule 4 (SUZ4)
Applicant	Long Lane Pty Ltd C/- Fastnet Consulting
Date of Application	9 February 2021
Item Called in?	Yes

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### EXECUTIVE SUMMARY

The purpose of this report is to seek a decision from the Planning Services Committee regarding Planning Permit Amendment Application P16/0953.01 at 161 and 189 Old Cape Schanck Road, Boneo.

The existing planning permit P16/0953 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) and allows use and development of the land for a camping and caravan park and a caretaker's house and associated works; tree removal; and works within the Old Cape Schanck Road, road reserve.

The application is an amendment pursuant to section 72 of the *Planning and Environment Act 1987* (the Act), which seeks to amend the permit as follows:

- Amend the plans required to be endorsed under the Permit generally involving:
  - Removal of all existing buildings including the caretaker's house.
  - Expand pitch sides and associated internal access layout into 189 Old Cape Schanck Road.
  - Deletion of 12 motorhome sites.
  - Increase of 12 pitch sites.

**5.1 (Cont.)**

- Redesign and relocation of the reception centre to the south.
  - Movement of recreation facilities to the east.
  - Removal of additional trees.
  - Make other alterations to comply with Condition 1 of the Permit.
- Amend the conditions of the Permit by:
  - Amending Conditions 1 and 16 to revise references to updated plans.
  - Deleting Conditions 1 (b), (d), (e), (f), (k), (l), (n), (p), (q), (r), (s), (t), (u), (v), and (w) as they are satisfied or made redundant by the proposed amendments.
- Amend the description of what the Permit authorises by:
  - Deleting the words 'and a caretaker's house'.

The proposed amendment has been considered against the zone, relevant overlays and particular provisions, the Municipal Planning Strategy and relevant State, Regional and Local Planning Policies. Subject to new conditions that would prevent intensification of the use, the amendment is an appropriate response to the purpose of the zone, the subject site and its surrounds.

As the Permit has already been issued, consideration is limited to the changes sought to the Permit with reference to what has already been approved. In the context of the layout already approved, the proposed amended layout provides an appropriate response to the surrounding rural landscape character.

It is therefore recommended that the Committee resolves to issue a Notice of Decision to Amend a Permit.

**RECOMMENDATION**

**Part A**

**That the Planning Services Committee resolves to issue a Notice of Decision to Amend a Permit for P16/095.01 at 161 and 189 Old Cape Schanck Road, Boneo to:**

- 1. Amend the plans required to be endorsed under the permit by way of the following:**
  - A. Removal of all existing buildings including the caretaker's house.**
  - B. Expand pitch sides and associated internal access layout into 189 Old Cape Schanck Road.**
  - C. Deletion of 12 motorhome sites.**
  - D. Increase of 12 pitch sites.**
  - E. Redesign and relocation of reception centre to the south.**
  - F. Movement of recreation facilities to the east.**
  - G. Removal of additional trees.**

5.1 (Cont.)

- H. Make other alterations to comply with Condition 1 of the Permit.
2. Amend the conditions of the permit by way of the following:
- A. Amending Condition 1 to read:
    - 1. Before the development starts, amended plans and documents to the satisfaction of the responsible authority must be submitted to, and be approved by, the responsible authority. When approved, the plans and documents will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans identified as TP03 Revision M, TP03A Revision K, TP03B Revision C, TP04 Revision I, TP05 Revision H, TP06 Revision I, prepared by Peter L Brown Architects Pty Ltd dated 15/01/2021 but modified to show:
      - A. Deletion of signs in the road reserve.
      - B. Deleted.
      - C. Lighting of the entrance and exit within Old Cape Schanck Road and the left and right turn treatments to the relevant Australian Standard.
      - D. Deleted.
      - E. Deleted.
      - F. Deleted.
      - G. Cross-sections of all access roads, to the satisfaction of the Country Fire Authority (CFA).
      - H. Any modifications required by the approved Operation Management Plan (refer to Condition No. 3 of this permit).
      - I. Any modifications required by the approved Bushfire Management Plan (refer to Condition No. 40 of this permit).
      - J. Any modifications required by the approved Waste Management Plan (refer to Condition No. 12 of this permit).
      - K. Deleted.
      - L. Deleted.
      - M. Lighting along internal roads and footpaths.
      - N. Deleted.
      - O. A landscape plan in accordance with Condition No. 16 of this permit.
      - P. Deleted.
      - Q. Deleted.

5.1 (Cont.)

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- R. Deleted.
  - S. Deleted.
  - T. Deleted.
  - U. Deleted.
  - V. Details (including elevations) of all fences.
  - W. Deleted.
  - X. Barriers/bollards/fencing to restrict access to the buffer to Drum Drum Alloc Creek by vehicles other than emergency services or maintenance vehicles.
  - Y. Any infrastructure features to be included in the buffer to Drum Drum Alloc Creek to be a permeable material such as gravel or grass, and constructed or supported with reinforcement to ensure that cars or motorhomes are accommodated without damage to the ground surface.
  - Z. Barriers/bollards/fencing around Tree group 137.
    - AA. Nominated landscape areas within each caravan and camping pitch shown in accordance with Revision J to TP 03 (dated 6 April 2021).
    - BB. The children's play area and barbecue area adjoining the southern property boundary of 189 Old Cape Schanck Road relocated away from the property boundary, with no resultant changes to the setbacks of the reception, community centre and facilities building.
- B. Amending Condition 16 to read:
16. Before the development starts, three (3) copies of a landscape plan to the satisfaction of the responsible authority and the CFA must be submitted to, and be approved by, the responsible authority.
- When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be generally in accordance with the landscape concept plan dated 21 December 2021 prepared by CDA Design Group Pty Ltd titled 'Illustrative Concept Masterplan' and identified as Revision B. The landscape plan must show:
- A. The existing vegetation to be retained, including Tree 106.
  - B. Details of surface finishes of pathways and driveways.
  - C. Planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
  - D. Provision of mulch beneath the canopy of Tree Group 137 to discourage use or occupation of this area.



5.1 (Cont.)

- E. Additional tree planting throughout the site, including within the area of the pitch sites and around the recreation facilities. Tree species selection must be appropriate to the use of the land as a camping and caravan park, having regard to the planting of trees adjacent to pitch sites.
  - F. A notation that any excavation or digging (including for planting) within the heritage parks required under the approved Cultural Heritage Management Plan must be undertaken by hand and that there must not be any excavation below 15 centimetres.
- C. Adding new Condition 44 to read:
  - 44. No more than one caravan or one motorhome may be placed or parked within each caravan camping pitch site, unless with the further written consent of the Responsible Authority. Caravans or motorhomes must not be placed or parked within nominated landscape areas unless with the further written consent of the Responsible Authority.
- 3. Amend the conditions of the permit by way of the following:
  - A. Deleting the words 'and a caretaker's house'.

Part B

That the Committee resolves that Attachment 7 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

DISCUSSION

Purpose

This application seeks to make several amendments pursuant to section 72 of the *Planning and Environment Act 1987* (the Act) specific to an existing Planning Permit P16/0953 (the Permit) for use and development of the land for a camping and caravan park and a caretaker's house and associated works; tree removal and works within the Old Cape Schanck Road, road reserve at 161 and 189 Old Cape Schanck Road.

Section 72 of the Act allows a person who is entitled to use or develop land to apply to the Mornington Peninsula Shire (Shire) to amend a permit. Any permit may be amended through any of the following:

- Amendments to the layout of the approved use or development.
- Amendments to the description of the approved use or development.
- Amendments to the conditions of the Permit.
- Amendments to the land to which the Permit applies.

Section 72 of the Act does not limit the scope of how amendments can be sought, however as a general principle, consideration of a permit amendment is limited to the amendments themselves. Matters considered originally in granting a permit cannot be reconsidered if they

5.1 (Cont.)

are not affected by the amendment. For example, a section 72 amendment application may seek approval to change the subject land, what the permit allows, the permit conditions or the plans endorsed or considered previously.

<b>Proposal</b>	<ul style="list-style-type: none"> <li>Amend the plans required to be endorsed under the Permit generally involving: <ul style="list-style-type: none"> <li>Removal of all existing buildings including the caretaker's house.</li> <li>Expand pitch sides and associated internal access layout into 189 Old Cape Schanck Road.</li> <li>Deletion of 12 motorhome sites.</li> <li>Increase of 12 pitch sites.</li> <li>Redesign and relocation of the reception centre to the south.</li> <li>Movement of recreation facilities to the east.</li> <li>Removal of additional trees.</li> <li>Make other alterations in accordance with Condition 1 of the Permit.</li> </ul> </li> <li>Amend the conditions of the Permit by: <ul style="list-style-type: none"> <li>Amending Conditions 1 and 16 to revise references to updated plans.</li> <li>Deleting Conditions 1 (b), (d), (e), (f), (k), (l), (n), (p), (q), (r), (s), (t), (u), (v), and (w) as they are satisfied or made redundant by the proposed amendments.</li> </ul> </li> <li>Amend the description of what the Permit authorises by: <ul style="list-style-type: none"> <li>Deleting the words "and a caretaker's house".</li> </ul> </li> </ul>
<b>Zoning and Overlays</b>	<ul style="list-style-type: none"> <li>Special Use Zone, Schedule 4 (SUZ4)</li> <li>Environmental Significance Overlay Schedule 28 (ESO28).</li> <li>Vegetation Protection Overlay Schedule 2 (VPO2).</li> </ul>
<b>Permit Triggers</b>	No new permit triggers.
<b>Advertising</b>	The application was advertised twice. Both times it was advertised by letters to surrounding properties and by erecting two notice signs on Old Cape Schanck Road. The second notice period ended on 16 February 2022.
<b>Submissions</b>	25 objections were received.

5.1 (Cont.)

<b>Consultation</b>	A Planning Application Conference was held virtually between the applicant and objectors on 29 July 2021.
<b>Key Issues</b>	<ul style="list-style-type: none"><li>• Whether the changes to the layout of the approved camping and caravan park are appropriate.</li><li>• Whether changes to the siting and design of approved buildings are appropriate.</li><li>• Whether additional vegetation removal is appropriate.</li><li>• Whether the landscaping outcome would be acceptable.</li><li>• Whether the amendments proposed to the Permit conditions are appropriate.</li></ul>
<b>Recommendation</b>	It is recommended that the application be approved and that Planning Permit P16/0953.01 be amended.

## BACKGROUND

### Permit History

The existing Planning Permit P16/0953 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 22 April 2020 and allows:

- Use and development of the land for a camping and caravan park and a caretaker's house and associated works.
- Tree removal.
- Works within the Old Cape Schanck Road, road reserve.

A copy of the Permit is found in Attachment 3.

Council originally decided to refuse the original application P16/0953 at a Planning Services Committee Meeting on 7 February 2017 on the following grounds:

1. The use and development of the land as proposed fails to adequately respond to the intent of the Mornington Peninsula Localised Planning Statement referred to within the State Planning Policy Framework at Clause 11.14-1, particularly in relation to Strategies 4, 14, 39 and 40.
2. The proposal results in an overdevelopment of the site and detracts from the landscape character of the area, which is inconsistent with Clause 22.07 (Commercial and Industrial Uses in Rural Areas), Clause 57 (Metropolitan Green Wedge Land) and the decision guidelines under the Special Use Zone – Schedule 4.
3. The proposal results in unacceptable traffic risks, particularly regarding the insufficient sight lines for vehicles to egress the site onto Old Cape Schanck Road.
4. The proposal results in unacceptable risks associated with the location of large pine trees on the adjacent property (along the south-western boundary of the site) which have previously fallen across the site where the 'pitched tent zone' is located.

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**5.1 (Cont.)**

5. The setback of the cabins from the northern boundary of the site does not provide sufficient opportunity for a vegetated riparian buffer to the Drum Drum Alloc Creek and does not meet the 30 metre setback required under Clause 14.02-1 (Catchment Planning and Management). The applicant has not provided any valid justification to warrant a reduced setback to the creek.
6. The proposal does not provide sufficient opportunity for meaningful landscape integration since the majority of proposed planting is to occur above the underground services.
7. The promotion signage located within the road reserve to the front of the site is prohibited as it exceeds the maximum two square metres allowable under Clause 52.05 (Advertising Signs).

The Permit Applicant sought a review of the Shire's decision to refuse the original application. In its order dated 9 April 2020, VCAT set aside the Shire's decision and directed that a permit be granted. In its decision, *Long Lane Pty Ltd v Mornington Peninsula Shire Council* [2020] VCAT 401 (9 April 2020), VCAT found that (in summary):

- The proposed use was an integrated residential and recreational use that is consistent with the purpose of the SUZ4.
- The proposal responded to and accords with the Mornington Peninsula Localised Planning Statement.
- Four motel rooms provided within the reception and community centre building would be ancillary to the overall land use.
- Buildings associated with the proposal would not result in unacceptable impacts to Old Cape Schanck Road and Grasslands Road.
- Vegetation removal associated with the proposal was acceptable, however protection should be given to a semi-mature Moreton Bay Fig Tree located on 189 Old Cape Schanck Road.
- Further planting of large and medium evergreen trees would be required to protect and enhance the values of the Green Wedge.
- Amenity impacts resulting from noise or dust could be managed by way of measures adopted by Permit conditions.
- Car parking and vehicle access were acceptable.
- Bushfire risk could be adequately mitigated by way of measures adopted through Permit conditions.

A full copy of VCAT's reasons is found in Attachment 4.

A copy of the plans VCAT used to determine the application is found in Attachment 5.

Since the grant of the Permit, the use and development has not commenced. Plans have not been endorsed in relation to the Permit.

An extension of time was granted on 24 March 2022. The Permit will expire if the development does not commence before 22 April 2024, or if the use does not commence and the development is not completed by 22 April 2026.

## 5.1 (Cont.)

### Existing Conditions

The subject site consists of two lots comprising 161 and 189 Old Cape Schanck Road. The site is located on the eastern side of Old Cape Schanck Road, Boneo. The site is irregular in shape and has an overall area of approximately 6.11 hectares.

161 Old Cape Schanck Road is currently vacant and contains some scattered sheds and shipping containers throughout. 189 Old Cape Schanck Road contains a single dwelling with several associated outbuildings. The site has a fall of approximately 5.5 metres from the eastern boundary of the site to the Old Cape Schanck Road frontage (western boundary).

Scattered vegetation is located throughout the site. On 161 Old Cape Schanck Road, a row of eucalypts run in a north/south axis in the eastern half of the site. A cluster of native and exotic vegetation is located within the front setback area and the adjacent road reserve. 189 Old Cape Schanck Road features a denser mix of exotic and planted native vegetation, including boundary vegetation consisting of Monterrey pines and grey poplar.



Figure 1: Photograph of the subject site and immediate surrounds.

### Surrounding Land

The surrounding land is zoned SUZ4 and consists of a mix of agricultural, residential and recreational land uses.

To the north the subject site adjoins 145 Old Cape Schanck Road which is used for the purposes of a camping and caravan park, referred to as the 'Tudor' caravan park. The land is approximately 1.9 hectares in size and contains predominantly cabins, scattered throughout the site. Drum Drum Alloc Creek runs through the southern section of this adjoining property.

To the south is 201 Old Cape Schanck Road. This land operates as an organic farm and market garden and produces organic crops in the eastern section of the land. The land is approximately 7.6 hectares and is accessed via Old Cape Schanck Road.

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**5.1 (Cont.)**

To the immediate east is the unmade road reserve of Grasslands Road. Across this is 45 Grasslands Road, which is 11.4 hectares in area and contains an operating farm which is referred to as 'Peninsula Growers'. The land is used for productive agriculture and also for an associated dwelling.

To the immediate west is Old Cape Schanck Road. Located across Old Cape Schanck Road are residentially used properties in Cleek Crescent and Westwood Drive. These are smaller lots each used for a single dwelling.

**PROPOSAL**

The application is an amendment pursuant to section 72 of the Act. The application seeks to amend the Permit in the following manner:

- Amend the plans required to be endorsed under the Permit generally involving:
  - Removal of all existing buildings including the caretaker's house.
  - Expand pitch sides and associated internal access layout into 189 Old Cape Schanck Road.
  - Deletion of 12 motorhome sites.
  - Increase of 12 pitch sites.
  - Redesign and relocation of the reception centre to the south.
  - Movement of recreation facilities to the east.
  - Removal of additional trees.
  - Make other alterations in accordance with Condition 1 of the Permit.
- Amend the conditions of the Permit by:
  - Amending Conditions 1 and 16 to revise references to updated plans.
  - Deleting Conditions 1 (b), (d), (e), (f), (k), (l), (n), (p), (q), (r), (s), (t), (u), (v), and (w) as they are satisfied or made redundant by the proposed amendments.
- Amend the description of what the Permit authorises by:
  - Deleting the words "and a caretaker's house".

Each component of the amendment is described in detail below.

**Changes to Plans**

The proposal, generally, seeks to expand the pitch sites that form the camping and caravan park into 189 Old Cape Schanck Road, which were previously contained solely to 161 Old Cape Schanck Road, with consequent alterations to the layout of internal accessways.

The proposal seeks to increase the total number of pitch sites to 140 (from 128), while removing 12 dedicated motorhome sites. As a result, there is no net increase in the number of available sites. The proposal results in an increase in the spread of pitch sites and their size, but a reduction in their overall density. While the pitch sites vary in size, the 'standard'

5.1 (Cont.)

pitch site would increase from 123.75 square metres to 247.5 square metres, with space for a caravan with annexe, two vehicles and an open landscaping area.

The application also proposes a relocation and redesign of the approved Reception and Community Facilities building, which also contains an approved Manager's Residence and four motel rooms. The building is proposed to be relocated south from 161 Old Cape Schanck Road to 189 Old Cape Schanck Road, adjacent to the site entrance.

The Reception and Community Facilities building is proposed to be setback 24.5 metres from the Old Cape Schanck Road reserve (from 30 metres originally approved), and 16.25 metres from the southern boundary. Its overall height would decrease to 7.05 metres (from 8.61 metres approved), and an additional storey would be added for part of the Manager's Residence. A children's play area and barbecue area would be relocated with the Reception and Communities Facilities building, while two additional swimming pools and a communal kitchen are proposed to be sited to the east of the building.

A collection of recreation facilities located in the north-east of the subject site, consisting of a gymnasium, swimming pool, bowls court, tennis court and laundry are proposed to be reconfigured. The gymnasium and laundry building is proposed to be flipped, with its setback to the unmade Grassland Road reserve reduced to 27 metres (from 30 metres). The tennis court is proposed to be relocated to the eastern side of the gymnasium.

As a result, all buildings located on 189 Old Cape Schanck Road would be demolished and 73 additional trees are nominated to be removed, of which 17 require planning permission, all of which are Monterrey pine. The trees requiring planning permission to be removed are listed in the table below:

Tree Group Number	Species	Permit requirement
Group 138	10 x Monterrey pine ( <i>Pinus radiata</i> )	VPO2 – Only applies to southern four
Group 141	9 x Monterrey pine ( <i>Pinus radiata</i> )	VPO2 – All trees in group.
Group 179	6 x Monterrey pine ( <i>Pinus radiata</i> )	VPO2 – Only applies to southern four

There are no changes to the location of the site access. The number of visitor car parking spaces (located outside of the pitch sites) would increase from 28 to 32.



Figures 2 and 3 below show the layout considered by VCAT and the proposed new layout:



Figure 2: VCAT-determined site plan.





Figure 3: Proposed site plan.

## Amendments to Conditions

Condition 1 is proposed to be amended to update the references to plans, while deleting Subconditions 1 (b), (d), (e), (f), (k), (l), (n), (p), (q), (r), (s), (t), (u), (v), and (w) as the Applicant states they are satisfied. Condition 1 of the Permit is copied below, with proposed new wording shown in red, and conditions proposed to be deleted struck out:

- 1 Before the development starts, amended plans and documents to the satisfaction of the responsible authority must be submitted to, and be approved by, the responsible authority. When approved, the plans and documents will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. **The plans must be generally in accordance with the plans identified as TP03 Revision M, TP03A Revision K, TP03B Revision C, TP04 Revision I, TP05 Revision H, TP06 Revision I, prepared by Peter L Brown Architects Pty Ltd dated 15/01/2021 but modified to show:**
  - (a) Deletion of signs in the road reserve.
  - (b) ~~An intersection treatment within Old Cape Schanck Road that complies with the Traffic Group Review of Vehicle Access Arrangements for 167-189 Old Cape Schanck Road, Boneo, Reference G26755M-01A, dated Tuesday 24th September 2019, and the relevant Austroads Guidelines for the posted speed of 80 Kph to the north of the proposed entry location and for the posted speed of 100 Kph to the south of the proposed entry location.~~

5.1 (Cont.)

- (c) Lighting of the entrance and exit within Old Cape Schanck Road and the left and right turn treatments to the relevant Australian Standard.
- ~~(d) The access and egress driveways from Old Cape Schanck Road to 189 Old Cape Schanck Road located within the road reserve being asphalt sealed pavements capable of accommodating the vehicles expected to enter and exit the site.~~
- ~~(e) The access driveway within 189 Old Cape Schanck Road being shown as a 6 metre wide two-way and constructed with a resilient permeable surface that will minimise dust, or sealed with an all-weather seal and provided with lateral drainage to the ground either side~~
- ~~(f) a notation to the effect that all other driveways within the site will be constructed with a resilient permeable treatment that will minimise dust.~~
- (g) Cross-sections of all access roads, to the satisfaction of the Country Fire Authority.
- (h) Any modifications required by the approved Operation Management Plan (refer to Condition No. 3 of this permit).
- (i) Any modifications required by the approved Bushfire Management Plan (refer to Condition No. 40 of this permit).
- (j) Any modifications required by the approved Waste Management Plan (refer to Condition No. 12 of this permit).
- ~~(k) A notation stating that there is no access or egress from the site via Grasslands Road other than for Emergency Vehicles or otherwise in accordance with the approved Operation Management Plan.~~
- ~~(l) Internal footpaths being a minimum of 1.5 metres wide and surfaced with:
  - ~~i Concrete or other material to the satisfaction of the responsible authority adjacent to the reception community centre facilities, swimming pool, bowls court, tennis court and gymnasium.~~
  - ~~ii A resilient permeable surface on other areas.~~~~
- (m) Lighting along internal roads and footpaths.
- ~~(n) The accurate location of tree rows 139 and 140.~~
- (o) A landscape plan in accordance with Condition No. 16 of this permit.
- ~~(p) Deletion of the overflow car parking area within the 30 metre wide landscape buffer to Drum Drum Alloc Creek, and the provision of any additional visitor car parking within the site in locations satisfactory to the responsible authority.~~
- ~~(q) The location of a waste disposal point/s for disposal of wastewater (grey and black water) cassettes/cartridges/tanks from motorhomes and caravans.~~
- ~~(r) The retention of Tree 106 and the consequential realignment of the internal access driveway within 189 Old Cape Schanck Road.~~
- ~~(s) Removal of Tree 112.~~

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**5.1 (Cont.)**

- ~~(t) The relocation of the underground service lines to be outside the heritage parks required under the approved Cultural Heritage Management Plan.~~
- ~~(u) The relocation of motorhome site No. 9 so that no part is within the heritage park required under the approved Cultural Heritage Management Plan.~~
- ~~(v) Details (including elevations) of all fences.~~
- ~~(w) Construction materials, external finishes and colours of all buildings.~~
- (x) Barriers/bollards/fencing to restrict access to the buffer to Drum Drum Alloc Creek by vehicles other than emergency services or maintenance vehicles.
- (y) Any infrastructure features to be included in the buffer to Drum Drum Alloc Creek to be a permeable material such as gravel or grass, and constructed or supported with reinforcement to ensure that cars or motorhomes are accommodated without damage to the ground surface.
- (z) Barriers/bollards/fencing around Tree group 137.

In addition, Condition 16, which relates to landscaping, is proposed to be amended to reflect updates to the plans.

**Amendments to what the Permit authorises**

As a result of the demolition of the buildings at 189 Old Cape Schanck Road, there would no longer be a caretaker's house distinct from the manager's residence. As a result, the words "and a caretaker's house" are proposed to be removed from the Permit description.

**NOTIFICATION AND CONSULTATION**

**Notification**

Two rounds of advertising were undertaken in relation to the Application.

The first notice period involved letters to surrounding properties and erecting two notice signs on Old Cape Schanck Road. The first notice period ended on 7 May 2021.

The second notice period occurred following an amendment to the Application made in December 2021. Letters were sent to surrounding property owners and occupiers, as well as objectors to the first round of advertising. The second notice period ended on 16 February 2022.

**Submissions**

To date, the Shire has received 25 objections against the application.

The concerns raised in the objections are summarised as follows:

- Whether the Shire is able to consider an amendment.
- Potential for permanent occupation of the camping and caravan park.
- Intensity of the use.
- Inappropriate location relative to services (shops, restaurants, etc.).

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**5.1 (Cont.)**

- Visual impact of buildings.
- Impacts to adjoining rural properties.
- Vegetation removal.
- Environmental impacts to Drum Drum Alloc Creek.
- Drainage and stormwater management.
- Noise and light impacts.
- Lack of toilets/ablutions facilities.
- Traffic impacts to Old Cape Schanck Road.
- Lack of car parking.
- Lack of pedestrian facilities along Old Cape Schanck Road.
- Potential for access to Grasslands Road.

**Consultation**

A Planning Application Conference was held between the applicants and objectors virtually on 29 July 2021.

Following the Planning Application Conference, the Applicant agreed to relocate some of the recreation facilities away from the southern boundary and adjust the layout of other recreational facilities located in the north-eastern portion of the subject site. These alterations were formalised in an amendment to the Application submitted to the Shire in December 2021, which also included a redesign of the Reception and Community Facilities building.

**REFERRALS**

**External Referrals**

The Application was not referred externally.

**Internal Referrals**

*Development Engineering*

The Application has been referred to Council's Development Engineering Team, who do not object to the proposed amendments.

*Environmental Health*

The Application has been referred to Council's Environmental Health Team, who did not object subject to the implementation of conditions on the Permit relating to ventilation, noise management, waste management and amenity protection. The Environmental Health Team's recommended conditions are already incorporated as Conditions 20, 21, 22 and 23 of the Permit.

5.1 (Cont.)

Senior Vegetation Officer

The Application has been referred to Council's Senior Vegetation Officer, who did not object to the proposed additional vegetation removal. All vegetation which is subject to planning permit requirement is considered an environmental weed.

**PLANNING SCHEME PROVISIONS**

**Permit Triggers**

The permit triggers for the use and development are as follows:

- To use the land for a camping and caravan park pursuant to Clause 37.01-1 (SUZ4).
- To construct a building or construct or carry out works pursuant to Clause 37.01-4 (SUZ4).
- To construct a building or construct or carry out works and to remove native vegetation pursuant to Clause 42.01-2 (ESO28).
- To remove vegetation pursuant to Clause 42.02-2 (VPO2).

There are no additional permit triggers resulting from the proposed amendments.

<b>Municipal Planning Strategy</b>
Clause 02.01 Context
Clause 02.02 Vision
Clause 02.03 Strategic Directions
Clause 02.04 Strategic Framework Plan
<b>Planning Policy Framework</b>
Clause 11 – Settlement
Clause 12 – Environmental and Landscape Values
Clause 13 – Environmental Risk and Amenity
Clause 15 – Built Environment and Heritage
Clause 17 – Economic Development
Clause 18 – Transport
Clause 19 – Infrastructure
<b>Other</b>
Clause 65 – Decision Guidelines

Attachment 6 provides a summary of the relevant policies, as well as zones and overlays.

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5.1 (Cont.)

**Mornington Peninsula Localised Planning Statement (July 2014)**

The Mornington Peninsula Localised Planning Statement ('Localised Planning Statement') is an incorporated document referenced under Clause 11.03-5S (Distinctive areas and landscapes) of the Planning Scheme. The Localised Planning Statement recognises the important role that recreation and tourism play on the Mornington Peninsula but acknowledges that such uses must be balanced against environmental and landscape considerations within rural land. The Localised Planning Statement sets out a number of objectives with various strategies to achieve each objective. Of particular relevance to this proposal are the objectives around integrated planning, conservation of natural systems and provision for recreation and tourism.

**CONSIDERATION**

**Permit amendment**

Section 72 of the Act allows a person who is entitled to use or develop land to apply to the Shire to amend a permit. Section 72 of the Act states that VCAT may direct that a permit issued at VCAT's direction cannot be amended by the responsible authority, however VCAT did not make such a direction in granting the Permit. As section 72 does not limit the scope of what changes are able to be made to the Permit, the application must be considered on its merits. For example, a Section 72 amendment application may seek approval to change the subject land, what the permit allows, the permit conditions or the plans endorsed or considered previously.

The scope of consideration of the amendments is limited by the fact that a Permit has already been issued. The amendments sought to the Permit must be considered with reference to what the Permit currently allows and how the amendments themselves weigh against relevant Planning Policy.

While the Shire refused to grant the Permit originally, VCAT ultimately set aside the Shire's decision and directed that the Permit be granted. Matters that VCAT considered in granting the original Permit that would not be materially affected by the amendment cannot be reconsidered, including the Shire's grounds for refusing the original permit application.

Given the scope of the amendment, the fundamental suitability of the use of the land for a camping and caravan park cannot be reconsidered. Issues arising out of the intensity of the land use (e.g. traffic impacts) have not been reconsidered due to recommended additional permit conditions which would restrict how each pitch site could be used, discussed in detail below.

**Are the changes to the layout of the approved camping and caravan park appropriate?**

The proposal seeks to alter the layout of the permitted camping and caravan park so that pitch sites are provided within 189 Old Cape Schanck Road. The permitted use is approved on both lots the Permit applies to, but under the approved layout 189 Old Cape Schanck Road would have been used for access to the land, the provision of a caretaker's dwelling and maintenance/storage facilities associated with the camping and caravan park. 189 Old Cape Schanck Road is not currently used for productive agricultural purposes.

The land and its immediate surrounds are zoned SUZ4. The purpose of the SUZ4 is as follows:

- Provide for integrated recreational and residential development in appropriate locations.



## 5.1 (Cont.)

The proposal retains the mix of accommodation and recreational facilities features in the approved development, as envisaged by the SUZ4. In this manner, the use of 189 Old Cape Schanck Road for recreation and accommodation is broadly consistent with the stated purpose of the SUZ4, subject to consideration of broader policy and the decision guidelines of the Zone.

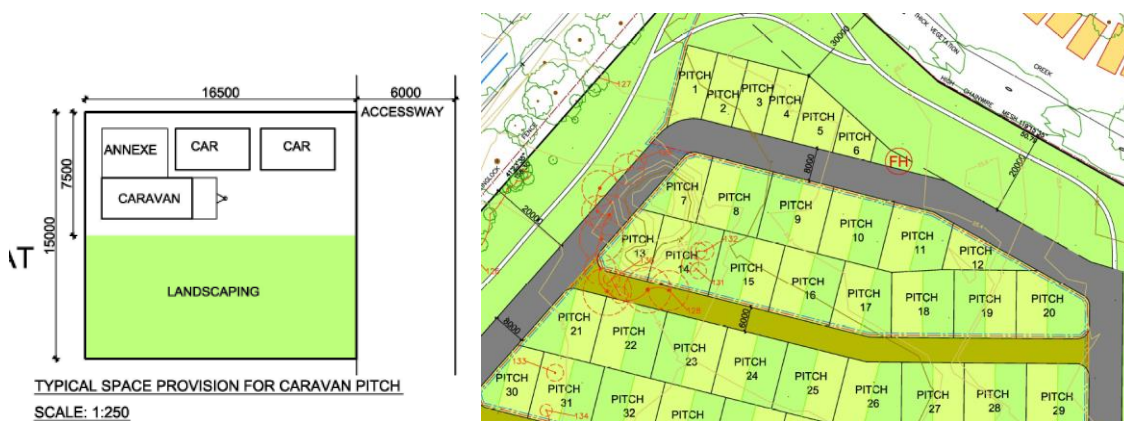
### *Intensity of use*

The proposal would not result in an increase in the number of sites available for caravans and motorhomes (though 12 sites previously dedicated for motorhome use would be converted to 12 sites for caravan pitches) and the plans do not show an increase in the number of caravans or motorhomes to be accommodated within each pitch site. While the overall area taken up by the pitch sites and associated accessways would increase, the overall density of the pitch sites across the land would decrease through the expansion into 189 Old Cape Schanck Road.

Under the approved layout, the number of caravans, motorhomes or tents that could be placed on each pitch site was functionally bound by the size of the pitch site. While the number of sites is not proposed to increase, with the enlargement of the pitch sites, this functional limitation is removed.

It is recommended that measures be adopted to ensure that the proposed amendments do not result in potential for the intensification of the land use with the increase in the size of each pitch site.

The plans submitted to Council originally with the amendment application showed each pitch site as having a nominated 'landscape area' where caravan and camping facilities would not be placed within each pitch site. These 'landscape areas' were removed in the application amendment lodged in December 2021. Figure 4 below shows these landscaping areas.



*Figure 4: Excerpt of revision J of the Site Plan showing pitch sites with internal landscaping areas.*

It is understood that removal of the 'landscape areas' would provide flexibility to the placement of caravans, motorhomes or tents within each pitch site, however such an outcome reduces the means to ensure the land use does not intensify as a result of the amendment. Therefore, it is recommended that these be reinstated by way of amended permit condition to ensure the number of caravans, motorhomes and tents that are able to be placed within each pitch site are limited.

In addition, it is recommended that a new condition be added to the permit which would prohibit the placement of more than one motorhome or caravan on each pitch site. As discussed, the enlargement of the pitch sites removes the functional limitation that their

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**5.1 (Cont.)**

previous size imposed on what could be placed within them. As a result, it is necessary to limit what can be placed within each pitch site by way of permit condition.

**Landscape**

One of the key considerations of the SUZ4, as well as broader policy at Clause 12.05-2S (Landscapes) and the Localised Planning Statement is the impact of the proposal on the landscape qualities of the surrounds. The surrounding area consists of a low density semi-rural landscape that is predominantly characterised by open grasslands, stands of native and exotic vegetation and some market gardens. There are examples of caravan parks within the immediate area (including the abutting site to the north), however they are well screened from all adjoining boundaries and do not visually dominate the surrounding rural landholdings.

The primary issue with respect to the landscape impacts of the proposed changes is whether a layout that takes up a larger area of land outside of the Urban Growth Boundary but would result in a less dense built form outcome is acceptable over a layout which take up less land but is denser.

In considering the proposal against the approved layout, officers consider that the proposed alteration to the layout of the camping and caravan park is broadly acceptable, subject to the limitations on each pitch site discussed previously.

The greater separation between caravans and motorhomes that would be provided by the larger pitch site areas is a more appropriate response to the surrounding landscape character. The proposal would result in the built form resulting from caravans, motorhomes and tents presenting as more scattered across the land and would provide increased opportunities for landscaping to punctuate the built form resulting from caravans, motorhomes and tents being placed on the land.

It is acknowledged that the amended layout of the proposal results in additional length of pitch sites along the Old Cape Schanck Road boundary; however, on balance officers consider the reduction in the density of the pitch sites would mitigate the visual impacts and result in an acceptable landscape outcome.

**Environment**

The SUZ4 requires consideration of the protection and enhancement of the natural environment. This is supported by State-level policy at Clause 12.05-1 (Environmentally sensitive areas) and Strategy 14 of the *Localised Planning Statement* which seeks to maintain and enhance environmental quality and protection against pollution and degradation.

The subject site is located in close proximity to Drum Drum Alloc Creek. Policy at Clause 14.02-1S (Catchment planning and management) stipulates that buffer zones of 30 metres should be maintained from the waterway. In granting the permit, VCAT required the removal of an overflow car parking area from this 30 metre buffer but allowed eight motorhome sites to be located within the buffer. The amended plans now seek to remove these motorhome sites from the buffer area and reduces the overall number of sites immediately adjacent to the buffer. It is considered that removing these motorhome sites would reduce the potential impacts to the adjacent waterway.

Proposed additional vegetation removal is discussed later in this report.



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5.1 (Cont.)

***Impact on surrounding rural land uses***

The decision guidelines of the SUZ4 address the impact of use and development on surrounding rural uses. The subject site is located within close proximity of two properties that are used for productive agriculture, 201 Old Cape Schanck Road to the south and 45 Grasslands Road to the east.

The proposal results in the number of pitch sites immediately adjacent to the southern boundary increasing from 9 to 16, while the number of pitch sites immediately adjacent to the eastern boundary would decrease from 21 to 8. A six metre buffer is maintained to both the southern and eastern boundaries.

It is not considered that the proposal would substantially alter impacts to surrounding rural land uses from the approved layout. With respect to the eastern boundary, the proposal reduces the number of pitch sites directly adjacent to the boundary.

With respect to the southern boundary, while the length and number of pitch sites adjacent to the boundary would increase, it is noted that the approved layout already included pitch sites immediately adjacent to the most actively cropped portions of the adjoining land to the south. The plans also note the construction of boundary fencing (fencing is exempt from permit requirement) which together with the six metre buffer would serve to moderate impacts to adjoining rural land uses.

A children's play area and barbecue area are proposed to be located to the south of the main Reception Building less than six metres from the southern boundary. It is considered that having these more actively used recreation facilities in close proximity to an adjoining property is inappropriate, and they should be relocated to another portion of the site by way of permit condition.

**Are the changes to the siting and design of approved buildings appropriate?**

SUZ4 requires consideration of the location of any buildings with respect to the natural environment, major roads, vistas and water features and the measures undertaken to minimise any adverse impacts. The massing, scale and colour of buildings forms a relevant consideration.

At a policy level, 15.01-6S (Design for rural areas) seeks to protect the visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring new development is sympathetically located. This is supported by Strategy 26 of the *Localised Planning Statement* which seeks to ensure all development is designed to enhance the natural environment, the rural landscape and scenic values of the Green Wedge. As Old Cape Schanck Road forms an entry to a township, the visual impact of the proposed amended buildings from the public realm forms a key consideration.

***Reception and Community Centre & Facilities Building and associated facilities***

The Application seeks to relocate and redesign the Reception and Community Facilities building to the south-western corner of 189 Old Cape Schanck Road. Through this relocation, the front setback to Old Cape Schanck Road would be reduced by 5.5 metres to 24.5 metres which would increase the visual presence of the building on the public realm.

The proposal would result in an overall net reduction in the extent of permanent built form across the subject site through the demolition of existing buildings on 189 Old Cape Schanck Road. While this is beneficial from a broader landscape context, this does not serve to ameliorate the impacts of the proposed building on Old Cape Schanck Road.

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**5.1 (Cont.)**

Despite this, Shire Officers do not consider that the relocated and redesigned building is incompatible with the surrounding landscape character. The setback proposed remains sufficient to moderate the building's visual prominence to Old Cape Schanck Road. The building retains its single-storey-with-pitch-roof presentation to the roadway, while a row of pines within the road reserve would serve to filter views to the building.

The proposal results in a reduction of the building's overall height by 1.56 metres, which would moderate its visual impact. While the redesign results in the upper storey of the Manager's Residence would now be externally visible, it is considered that the upper storey is appropriately designed and located in a manner to moderate visual impacts on the public realm and adjoining properties. Colour and material selections remain sympathetic to the surrounding rural landscape.

***Gymnasium and associated facilities***

The Gymnasium and Laundry building is proposed to have its setback to the adjoining Grasslands Road reserve reduced by three metres to 27 metres. Officers consider the reduced setback to be sufficient relative to the scape of the building, noting the single storey pitch roof form of the building.

The tennis court is proposed to be relocated to the eastern side of the gymnasium, with a setback of eight metres from the eastern property boundary. While this results in it being placed substantially closer to the boundary, it is considered that fencing associated with the tennis court would not yield substantial visual impacts on the surrounds, with the setback providing sufficient landscaping opportunities to filter views to the tennis court from the road reserve. No lighting is nominated for the tennis court.

**Is the additional vegetation removal appropriate?**

The application seeks approval to removal 17 additional trees located within 189 Old Cape Schanck Road. While 73 trees within 189 Old Cape Schanck Road are nominated for removal, only 17 require planning permission under VPO2. None of the trees nominated for removal are naturally occurring trees and do not trigger permit requirement under Clause 52.17 (Native vegetation). 34 trees within 189 Old Cape Schanck Road are nominated to be retained.

The trees that require planning permission to be removed consist of three planted windrows of Monterrey pines (*Pinus radiata*). VPO2 seeks to recognise significant tree lines along road reserves and property boundaries, recognising the cultural values of these three lines to the Mornington Peninsula. Despite this, Monterrey pine is listed on the Shire's Environmental and Noxious Weeds Guide. The removal of vegetation in VPO2 must balance the cultural value of the trees against the environmental value of the trees.

Council's Senior Vegetation Officer has reviewed the trees proposed to be removed and does not object to their removal, noting that none of the Monterrey pines are significant trees with high retention values. Officers do not consider that the cultural value the 17 trees contribute to the broader rural landscape is sufficient to offset Monterrey pine's status as an environmental weed. Subject to appropriate replanting, the removal of these trees is recommended to be appropriate.

It is noted that no additional trees within the more visually significant row of Monterrey pines within the Old Cape Schanck Road reserve are proposed to be removed.

***Protection of Tree 106***

In granting the Permit, VCAT applied conditions requiring the retention and protection of Tree 106, a Moreton Bay Fig (*Ficus macrophylla*) located towards the front boundary of 189 Old

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**5.1 (Cont.)**

Cape Schanck Road, including modifications to the location of the primary accessway, which runs to the east of this tree. Council's Senior Vegetation Officer notes that this tree has significant surface roots which radiate out from the base of the tree. To prevent the destruction of the tree, the Application proposes to bridge over the surface roots. Council's Senior Vegetation Officer does not object to this measure.

**Would the landscaping outcome be acceptable?**

In granting the Permit, VCAT was critical of an absence of landscaping within the pitch sites as originally proposed and applied conditions requiring canopy trees to be planted within the areas of the site set aside for pitch sites. The SUZ4 emphasises consideration of enhancement of the natural environment and character of the area. With the extent of (exotic) vegetation to be removed, the ability of compensatory landscaping to preserve and enhance the natural qualities of the surrounds is a relevant consideration.

The Applicant has submitted an Illustrative Landscape Masterplan (by CDA Design Group Pty Ltd, Revision B dated 22 December 2021) showing the planting of additional native vegetation throughout the subject site. Trees are distributed at regular intervals along the boundaries of each pitch site, with denser plantings along the site boundaries within the nominated buffer areas.

Officers consider that the extent of proposed planting, plus the retention of vegetation within 189 Old Cape Schanck Road is sufficient to maintain and enhance the natural landscape character in the manner sought by the SUZ4 and as intended by VCAT. A further detailed landscaping plan is required to be submitted to the Shire by Condition 16 of the Permit.

**Are the amendments proposed to the Permit appropriate?**

The application seeks to amend Conditions 1 and 16 to revise references to the plans which are now the subject of the amendment application. As plans have not yet been endorsed, these are administrative amendments of no consequence.

The Applicant seeks the deletion of Conditions 1 (b), (d), (e), (f), (k), (l), (n), (p), (q), (r), (s), (t), (u), (v), and (w) as the changes required by these conditions are shown on the plans.

Officers have assessed the amended plans against the conditions proposed to be deleted and confirm that the requirements are met, with the exception of Condition 1(v).

Condition 1(v) requires the submission of fencing details, including elevations. No elevations of any fencing have been provided. As Condition 1(v) is not satisfied, it is recommended that it be retained. Otherwise, the deletion of the other conditions is appropriate to enable the endorsement of the plans against the updated plan references.

Conditions 1 (a), (c), (g), (h), (i), (j), (x), (y) and (z) are proposed to be retained and would necessitate further amendments to the plans to be resubmitted to the Shire prior to endorsement of any plans.

**What additional conditions are necessary?**

It is recommended that two new requirements (aa) and (bb) be added to Condition 1, requiring the nomination of landscape areas to each pitch site and the relocation of the children's play area and barbecue area away from the southern boundary as discussed above.

In addition, it is recommended that a new condition be added to the permit which would prohibit the placement of more than one motorhome or caravan on each pitch site. As discussed previously, the enlargement of the pitch sites removes the functional limitation that

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**5.1 (Cont.)**

their previous size imposed on what could be placed within them. As such, it is necessary to limit what can be placed within each pitch site.

**Response to objections**

The Shire has received 25 objections to the Application following two rounds of notice. A response to the key issues raised within the objections not specifically addressed above is outlined below.

***Potential for permanent occupation of the camping and caravan park***

The potential for the camping and caravan park to be permanently occupied was a key concern of the Shire in determining to refuse the original Application. Section 518 of the *Residential Tenancies Act 1997* prevents the Shire from imposing conditions limiting the length of tenancy at caravan parks. The Shire's concern was that the proposal would effectively form a residential village and would result in a de-facto expansion of urban uses outside of the Urban Growth Boundary.

Officers agree that there remains potential for permanent occupation of the site, however as VCAT set aside the Shire's initial refusal and the land has the benefit of the Permit, there is now no lawful means to prevent permanent occupation of site by caravans. The amendments proposed do not alter the land use in a manner that this issue is able to be revisited.

It is noted that installation of cabins would require further planning permission from the Shire.

***Inappropriate location relative to services (shops, restaurants, etc.)***

As the permit has already been issued, matters relating to the fundamental appropriateness of the use are beyond the scope of consideration for this application.

***Drainage and stormwater management***

Condition 25 of the permit requires the subsequent submission of detailed engineering plans to the Shire's Development Engineering Team for review prior to the commencement of works. These plans must detail the management of drainage and stormwater generated by the proposal. The design of drainage is required to be to the satisfaction of the Shire's Development Engineering Team.

***Noise and light impacts***

In considering impacts relating to noise, VCAT imposed conditions requiring the submission of an Operation Management Plan for Council's further approval. The Operation Management Plan would require details of hours of operation for the facilities, procedures to minimise noise emissions from the site, and the presence of a person who will be responsible for ensuring that the use complies with the requirements of the Operation Management Plan. It is not considered that the scope of the amendment requires further divergence from this condition. In addition, Conditions 21, 22 and 23 impose amenity conditions relating to noise control.

With respect to light impacts, compared to the approved layout officers do not consider that the proposed amendments would increase lighting impacts to sensitive receptors and the surrounding environment significantly. While light impacts would vary with how each pitch site is occupied, Condition 1(m) of the permit requires lighting locations along accessways and footpaths to be nominated, for safety and operational reasons. The location, type and distribution of lights will be subject to further review.

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5.1 (Cont.)

***Lack of toilets/ablutions facilities***

The number of toilets and showers provided complies with the requirements of the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2020, with one shower and one toilet provided per 10 pitch sites.

***Traffic impacts to Old Cape Schanck Road.***

The amendment would not increase the number of pitch sites available for caravans, motorhomes or tents. As discussed above, additional Permit conditions are recommended to be applied to limit the available space within each pitch site to ensure the increase in pitch site area does not allow for additional accommodation beyond what has already been approved. As such, the amended proposal would not induce additional traffic impacts to Old Cape Schanck Road.

No changes to the access location from the approved layout are proposed, except to comply with Condition 1(b) of the Permit.

***Lack of car parking***

There is no stipulated car parking rate for a camping and caravan park within Clause 52.06 (car parking) of the Planning Scheme. The proposed layout nominates two car parking spaces within each pitch site. In addition, a visitor car parking provision is proposed to increase from the approved layout, from 28 spaces to 32 spaces.

As the extent of available accommodation facilities is not proposed to increase, officers are satisfied that appropriate car parking is provided.

***Lack of pedestrian facilities along Old Cape Schanck Road***

The amendment would not increase the number of pitch sites available for caravans, motorhomes or tents. As the permit has already been issued for the use, it is not considered that this matter can be revisited.

***Potential for access to Grasslands Road***

Condition 35 of the permit prohibits access or egress from the site via Grasslands Road except for 'Emergency Vehicles or otherwise in accordance with the approved Operation Management Plan.'

Condition 35 as written allows for variance if outlined in an Operation Management Plan. Condition 3 of the permit requires the subsequent submission of an Operation Management Plan to the Shire's satisfaction, which is to include an Emergency Management Plan.

Officers agree that Grasslands Road should only be utilised for emergency vehicle access, however if an Emergency Management Plan recommends that it also be made available for emergency egress, this will be considered in conjunction with the CFA's recommendations. Officers oppose general access and egress through Grasslands Road, but there is no indication that this is being sought by the Applicant.

**OFFICER DIRECT OR INDIRECT INTEREST**

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

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**5.1 (Cont.)**

**CONCLUSION**

While the Shire originally refused to grant the Permit, as VCAT set aside the Shire's decision, the land benefits from the existing Permit. In considering the proposal against the approved layout, the amended proposal remains an appropriate form of use and development for the subject site.

Subject to conditions, the proposed changes sought within this amendment will not result in an intensification of the land use, while enabling buildings and pitch sites to be distributed across the site with greater provision of landscaping.

It is therefore recommended that the Planning Services Committee supports the proposal and determines that a Notice of Decision to amend a planning permit for Planning Permit Application P16/0953.01, subject to the conditions shown in the Recommendation.

## **6 NOTICES OF MOTION**

Nil.

## **7 URGENT BUSINESS**

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

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