



**MORNINGTON
PENINSULA**
Shire

AGENDA

COUNCIL MEETING

WEDNESDAY, 14 AUGUST 2024

6:30 PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL**WARDS AND COUNCILLORS**

Briars	Cr Steve Holland Cr Anthony Marsh Cr Despi O'Connor
Cerberus	Cr Lisa Dixon
Nepean	Cr Susan Bissinger Cr Sarah Race
Red Hill	Cr David Gill
Seawinds	Cr Simon Brooks Cr Antonella Celi Cr Debra Mar
Watson	Cr Kate Roper

EXECUTIVE TEAM

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

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

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

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1 OPENING AND WELCOME

Appointed Chairperson – Mayor, Cr Simon Brooks

1.1 Acknowledgement of Country

To be read by Cr Mar

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

2 PROCEDURAL MATTERS

2.1 Apologies

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

4 MANAGEMENT REPORTS

PLANNING & ENVIRONMENT

4.1 Planning application P23/0228 - 1 and 2 Marine Drive and 1/5 Nepean Highway, Safety Beach - The use and development of a service station and convenience restaurant, alteration of access to a Transport Zone 2, waiver of bicycle facilities (shower), removal of vegetation and display of signage

Prepared By	Graham Scott, Principal Planner
Authorised By	Acting Director - Planning & Environment
Document ID	A13125259
Briefing Note Number	BN1920 – 18 June 2024
Attachment(s)	1. Officer Assessment ⇒ 2. Development Plans ⇒ 3. Traffic Reports ⇒ 4. Landscape Plan ⇒ 5. Arboricultural Report ⇒ 6. Acoustic Report ⇒ 7. Site Management Plans ⇒ 8. Sustainability Management Plan ⇒ 9. Without Prejudice Public Works Plan ⇒ 10. VCAT Decision - AA Holdings Pty Ltd v Mornington Peninsula SC ⇒ 11. List of Objector Concerns ⇒ 12. Objections 001-150 (confidential) ⇒ 13. Objections 151-300 (confidential) ⇒ 14. Objections 301-450 (confidential) ⇒ 15. Objections 451-565 (confidential) ⇒

EXECUTIVE SUMMARY

The purpose of this report is to seek a decision from Council regarding planning permit application P23/0228 for the use and development of a service station and convenience restaurant, alteration of access to a Transport Zone 2, waiver of bicycle facilities (shower), removal of vegetation and display of signage at 1 and 2 Marine Drive and 1/5 Nepean Highway, Safety Beach. The application was called in by Seawinds Ward Councillors for a decision to be made by the Council.

The proposed development includes:

- A service station (including ancillary convenience store) which would operate 24 hours per day every day of the year.
- A convenience restaurant which would operate every day of the year and close at midnight, except at 1.00am on Saturday and Sunday mornings during peak season (summer and Easter).
- A convenience restaurant drive-thru which would operate 24 hours per day seven days per week but, during the peak season, the electronic ordering device would not operate between 10.00pm and 6.00am.

- Signage for the service station for the convenience restaurant.



The application received 565 objections, which can be summarised as:

- inappropriate uses and overdevelopment of the subject site
- inconsistent with the character of the area
- environmental impact, particularly from litter
- traffic, onsite vehicle circulation and insufficient parking
- road and pedestrian safety
- amenity impacts from noise, smells, fumes and light
- effects on local businesses
- effects on public health
- antisocial behaviour
- flood prone.

The application is a repeat application of P19/2462 which was refused by Council. Council's refusal was appealed by the applicant and the matter was heard before the Victorian Civil and Administrative Tribunal (VCAT). Council's refusal was affirmed in the VCAT decision *AA Holdings Pty Ltd v Mornington Peninsula SC* [2021] VCAT 1441 (30 November 2021). The application seeks to address the concerns which were raised in the VCAT decision with respect to the previous application. Whilst Council must consider this new application afresh, it must also give consideration to the previous decision of the VCAT with respect to 'repeat appeals' principles established by the VCAT.

The proposal is considered acceptable having regard to the relevant provisions of the Planning Scheme and the *Planning and Environment Act 1987*. It is recommended that Council supports the application and resolves to issue a Notice of Decision to Grant a Permit, subject to the conditions contained within this report.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act, 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves that Planning Permit Application P23/0228 for use and development of a service station and convenience restaurant, alteration of access to a Transport Zone 2, waiver of bicycle facilities (shower), removal of vegetation and display signage at 1 and 2 Marine Drive and 1/5 Nepean Highway, Safety Beach be supported and that a Notice of Decision to Grant a Planning Permit be issued subject to the following conditions:

Amended Plans

1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - A. Car parking spaces 01–03 provided with ‘staff parking’ signage.
 - B. The drive-thru waiting spaces provided with signage to remind patrons to be mindful and respectful of adjacent neighbours.
 - C. A speed hump for vehicles exiting the service station, provided immediately to the east of car space 12.
 - D. A ‘noise in area’ at the north corner of the site for use by trucks to assist with turning into the loading area consistent with the swept path diagram Sheet 01 by Traffic Group dated 16 August 2023.
 - E. The deletion or relocation of the ice box on the northern side of the crossing to ensure pedestrians stepping onto the pavement are not concealed from view of approaching vehicles.
 - F. Location and details of a secondary containment system and pollution control devices as required by the Environment Protection Authority requirements within conditions 37 and 38.
 - G. The pedestrian barrier around the curve of the southern boundary to be of open style construction to the satisfaction of the Responsible Authority.
 - H. Details of any exhaust fumes extraction devices required for the noise tunnel and kitchen, demonstrating measures to minimise potential offsite amenity impacts.
 - I. The Site Management Plans to:
 - i. Have the references to State Environment Protection Policy (SEPP) N-1 updated to refer to current Environment Protection Authority (EPA) requirements.
 - ii. A requirement that staff use the nominated staff car parking spaces before any other car space.

4.1 (Cont.)

- iii. Replace references to ‘the Arup Light Spill Report’ with ‘the endorsed ‘Detailed Lighting Design Plan’.
 - iv. Aligns with restrictions specified in conditions 4.
- J. The Service Station Site Management Plan to:
 - i. Include provision of a security camera that monitors and records vehicles exiting to Nepean Highway and propping in the Nepean Highway central median when turning right.
 - ii. A requirement that the area for the fuel delivery truck be cordoned-off with cones about 30 minutes before the anticipated time of the delivery.
- K. The Convenience Restaurant Site Management Plan to:
 - i. Expand the area of litter patrols to be both within 200 metres of the subject site, including the car park area at 10 Nepean Highway.
 - ii. Include waste collection time consistent with the times stated for the Service Station.
 - iii. Include strategies (including details of any necessary filter replacements) for addressing fumes emissions, and odour emissions consistent with condition 19.
- L. A Detailed Lighting Design Plan consistent with the recommendations of the Light Spill Report by Arup, job#274753 dated 12 December 2022, which satisfies the recommendations of AS4282.

Layout Not Altered

- 2. The approved development as shown on the endorsed plans (including the number of seats within the convenience restaurant) must not be altered without the prior written consent of the Responsible Authority (Unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).

Hours of Operation

- 3. The Service Station and Convenience Restaurant uses approved by this permit are permitted to operate 24 hours 7 days a week subject to restrictions of operational elements outlined in condition 4.
- 4. The following operational elements of the uses as described below must only operate in accordance with the below:

Convenience Restaurant:

- A. The convenience restaurant dining room to only operate from 6.00am to midnight (and until 1.00am the following day during Peak Season – one additional hour).
- B. The drive-thru electronic customer ordering devices to not operate outside the below hours:

4.1 (Cont.)

- i. 7.00am to 10.00pm (Monday to Sunday)

Deliveries and Waste Collection for the site

- C. Waste collection 7am to 6pm (Monday to Saturday). Sunday waste collection is allowed in Peak Season between 7.00am to 6.00pm.
- D. LPG Fuel deliveries 7.00am to 6.00pm (Monday to Saturday)
- E. Regular fuel deliveries 7.00am to 10.00pm (Monday to Sunday)

The definition of “Peak Season” when referenced in this permit is the period from:

- F. 1 December – 28 February (inclusive)
- G. from 7am Good Friday until 11.59pm on Easter Monday.

Use Operations

- 5. Prior to the occupation of the development, the Convenience Restaurant Site Management Plan and the Service Station Site Management Plan must be approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit.

The uses, including:

- A. Hours of operation
- B. the requirement for daily litter patrols
- C. deliveries and waste collection.

must be undertaken in accordance with the recommendations and requirements of the endorsed Site Management Plans to the satisfaction of the Responsible Authority.

Colours, Materials and Finishes

- 6. The materials and colours of the exterior finish of the development must be in accordance with the endorsed plans unless with the further written consent of the Responsible Authority.
- 7. Prior to the initial occupation of the development, external finishes and fences must be completed to a professional standard to the satisfaction of the Responsible Authority.

Landscaping

- 8. Prior to the occupation of the development (or other time agreed to in writing by the Responsible Authority) the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased, or damaged plants are to be replaced as soon as practicable.

4.1 (Cont.)**Tree Protection**

9. Prior to the commencement of any demolition, excavation or works; and during all stages of development, the Tree Protection Zones (TPZ), tree protection fencing, recommendations and tree protection measures identified in the approved Tree Assessment and Development Impact Report must be implemented and complied with to the satisfaction of the Responsible Authority.
10. All excavation for the 2 metres high acoustic fence within the TPZ of Trees 1, 2, 3, 4, 5, 6, 7, 8, 9 and 13 located on the adjoining land must be undertaken under the direct supervision of a Level 5 qualified Arborist using a method which is non-destructive to tree roots in compliance with Australian Standard AS 4970-2009 Protection of trees on development sites. Any tree roots which require pruning must be cut with a clean sharp cutting implement with a final cut to undamaged wood at an angle which minimises the size of the wound. No tree roots critical to maintaining tree health, structure or viability are to be cut. These tree roots must be retained undamaged and alternative design and construction methods used.
11. Any pruning of trees must be undertaken to the minimum extent necessary in compliance with the procedures and practices described in Australian Standard AS 4373-2007 - Pruning of amenity trees.
12. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained and are advised of any obligations in relation to the protection of those trees.
13. No trenching or soil excavation is to occur within the Tree Protection Zones of retained trees during development unless shown on the endorsed plans, without the prior written consent of the Responsible Authority.

Amenity

14. The use hereby permitted must not adversely affect the amenity of the neighbourhood, including through the:
 - A. Transport of materials, goods or commodities to or from the land.
 - B. Vehicle access or parking.
 - C. Appearance of any stored goods or materials.
 - D. Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil.
 - E. Presence of vermin.To the satisfaction of the Responsible Authority.
15. Air-conditioning, external fans or other like plant equipment as shown on the endorsed plans must be installed, screened, baffled and maintained to prevent loss of amenity to the area by its appearance, noise emission or otherwise to the satisfaction of the Responsible Authority.
16. All security alarms or similar devices installed on the land must be of a silent type approved by the Standards Association of Australia and be connected to a registered security service to the satisfaction of the Responsible Authority.

4.1 (Cont.)

17. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
18. Odour emissions must be controlled in accordance with the requirements of the *Environment Protection Act 2017*. Any complaints regarding odour should be assessed in accordance with the EPA Publication 1883, June 2022 – Guidance for assessing odour. Any offensive odours must be addressed to the satisfaction of the responsible authority.
19. Any extraction of exhaust fumes must not adversely impact the amenity of adjoining properties to the satisfaction of the responsible authority.
20. The emission of noise from the use and development hereby permitted must not exceed the noise limits determined in accordance with *EPA publication 1826.4, Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (Noise Protocol).

Acoustic

21. Within 3 months of the commencement of the operation of the convenience restaurant, acoustic testing shall be carried out and a report submitted to Council by a suitably qualified person to confirm compliance with the applicable environment protection regulations. The report must be submitted to Council to be endorsed as a part of the permit.

This testing and associated report will include, but not be limited to:

- A. an assessment of noise generated by the operation of the approved uses, car doors and general patron movement at the site against the established sleep disturbance criteria
- B. details of decibel (dB) thresholds that the site is to operate under during set periods of time and what dB readings are appropriate that Council will measure to if noise complaints are received
- C. any recommended mitigation measures which may be necessary to minimise impacts.

The operator must ensure that any recommended mitigation measures are implemented to the satisfaction of the Responsible Authority. If additional works or structures are required to ensure compliance with the report the endorsed plans are to be amended.

22. In the event that it is found that the drive-thru tunnel is not operating from 10pm to 7am within the thresholds specified in the endorsed documents, then the drive-thru component of the convenience restaurant will cease operation from 10pm to 7am until alterations are made and evidence is provided to the satisfaction of the Responsible Authority to ensure that the operation of the drive-thru is in accordance with the endorsed documents.

Litter

23. Daily litter patrols must occur in accordance with the requirements of the Convenience Restaurant Site Management Plans to the satisfaction of the Responsible Authority.

4.1 (Cont.)

Environmentally Sustainable Development

24. Prior to the occupation of the development, the Sustainability Management Plan by Frater Consulting Services dated 24 April 2023 must be approved by the Responsible Authority. When approved, the Sustainable Management Plan will be endorsed and will then form part of the permit.
25. The use and development must be undertaken in accordance with the recommendations and requirements of the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority, except where alterations to stormwater management and detailed drainage design including Sounding and Tracking Observatory for Regional Meteorology (STORM)/ Model for Urban Stormwater Improvement Conceptualisation (MUSIC) reports are approved under condition 46 of this permit.

Department of Transport and Planning

26. Prior to the commencement of works, amended plans must be submitted to and approved by the Head, Transport for Victoria. When approved by the Head, Transport for Victoria, the plans must be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions must be provided. The plans must be generally in accordance with the plans DWG G29423-01-01, issue B, prepared by Traffix Group date stamped 20 April 2023 but modified to show:
 - A. 'No-right turn' sign for extended vehicles more than 6m in length at Nepean Highway exit.
 - B. Location of the new Pedestrian Crossing along Marine Drive.
 - C. All the mitigation measures recommended within the Road Safety Audit (ref:15203 dated 8 December 2023).
 - D. Relocated position of an existing streetlight, side entry pit and other utilities as required.
27. Prior to commencement of works, the owner of the land must enter into an agreement with the Responsible Authority and the Head, Transport for Victoria under section 173 of the *Planning and Environment Act 1987* and make an application to the Registrar of Titles to have the agreement registered on the title of the land under section 181 of the *Planning an Environment Act 1987*. The agreement must provide that:
 - A. until the concurrent use of the land for both a service station and convenience restaurant permanently cease, right turn egress movements from the land to Nepean Highway must be prohibited for vehicles more than 6.0 metres in length (including any vehicle towing another vehicle which, together, have a total length exceeding 6.0 metres
 - B. the landowner acknowledges that:
 - i. should the location become a road safety blackspot at any time in the future, the Head Transport for Victoria may decide to modify the central median, including closing the median such that all right turn egress movements from the land are permanently removed
 - ii. in the event that such works are undertaken to the central median, no compensation will be payable by the Head Transport for Victoria to

4.1 (Cont.)

the landowner, the operator of the service station or the operator of the convenience restaurant for any loss arising from the changed egress.

28. The landowner must pay for the costs of the preparation, execution and registration of the section 173 agreement of the Head Transport for Victoria.
29. Unless otherwise agreed in writing by the Head Transport for Victoria, prior to the commencement of any roadworks, functional layout plans (FLPs) and functional stage Road Safety Audit with Public Lighting Plan generally consistent with the endorsed plans must be prepared and submitted to the satisfaction of the Head Transport for Victoria.
30. Subsequent to the approval of the FLPs and prior to the commencement of any roadworks within the arterial road reserve the applicant must submit the detailed engineering design plans to the Head Transport for Victoria for review and approval. The detailed design plans must be prepared generally in accordance with the approved FLPs to the satisfaction of the Head Transport for Victoria.
31. Prior to the occupation of the development, all disused or redundant vehicle crossings must be removed, and the area reinstated to kerb and channel, footpath, nature-strip to the satisfaction and at no cost to the Head Transport for Victoria.
32. Unless otherwise agreed in writing by the Head Transport for Victoria, prior to the occupation of the development, the required roadworks as per the approved detailed design plans must be constructed to the satisfaction of and at no cost to the Head Transport for Victoria.

Traffic Camera

33. Prior to the occupation of the development, a security camera must be installed to monitor and record vehicles exiting to Nepean Highway and propping in the Nepean Highway central median when turning right in accordance the Service Station Site Management Plan. Video footage from the security camera must be made available immediately upon request to authorised Council officers, the Head Transport for Victoria and Victoria Police.

Environmental Health

34. Prior to the use of the land the applicant must apply and be granted *Food Act* registration. This should be accompanied by a floor plan of the proposed fit out food premises which details the proposed fittings and fixtures of the premises.
35. All sewage and sullage must be discharged to the reticulated sewerage system to the satisfaction of the Responsible Authority.
36. Prior to the use of the development, the owner or occupier of the land must enter into a Commercial Trade Waste Agreement with South East Water. Any trade waste infrastructure on the land must be located to the satisfaction of the Shire's Environmental Health Team.
37. All goods and materials must be stored out of view or so as not be unsightly when viewed from nearby roads or lands to the satisfaction of the Responsible Authority.

4.1 (Cont.)

Environment Protection Authority

- 38. A secondary containment system must be provided for liquids which if split are likely to cause pollution or pose an environmental hazard.
- 39. Pollution control devices must be installed to prevent the discharge of waste to the environment and stormwater system.
- 40. The permit holder must not contaminate land or groundwater.

Environmental Contamination

- 41. Before the commencement of the use and/or development, the owner of the land to the satisfaction of the responsible authority must:
 - A. Engage an environmental auditor appointed under section 53S of the *Environment Protection Act 1970* to prepare and submit to the satisfaction of the responsible authority a scope of the proposed audit.
 - B. Have the environmental auditor conduct an audit under section 53X of the *Environment Protection Act 1970* in accordance with the agreed scope.
 - C. Implement any recommendations of the audit report.
- 42. The development and/or use allowed by this permit must strictly comply with the directions and conditions of the statement of environmental audit issued for the land. Any amendments must be approved by the Responsible Authority prior to the commencement of any works, use and development and may require further environmental assessment of the land.
- 43. Prior to the commencement of use/development of the land permitted by this permit, a letter must be submitted to Council prepared by the EPA appointed Environmental Auditor to verify that the conditions of the statement of environmental audit issued for the land has been satisfied.
- 44. If the audit report requires ongoing management or monitoring, the owner must enter into an agreement with the Responsible Authority made pursuant to section 173 of the *Planning and Environment Act 1987* prior to the commencement of use and/or development of the land permitted by this permit. The agreement must provide for the implementation of any and all ongoing requirements specified in the statement of the environmental audit.

All costs associated with the preparation, execution and registration of the 173 Agreement must be met by the permit holder

Vegetation Removal

- 45. The extent of clearing of vegetation as shown on the endorsed plans must not be altered or modified without the consent of the Responsible Authority.
- 46. All disturbed surfaces on the land must be revegetated and stabilised to the satisfaction of the Responsible Authority.

Engineering

- 47. After the endorsement of condition 1 plans and before any works associated with the development starts, a signed and completed 'Checklist for Development Engineering Plan Approval' along with engineering plans to the satisfaction of

4.1 (Cont.)

the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and shall be emailed to devengadmin@mornpen.vic.gov.au in pdf format.

The plans must show:

- A. All areas of the development, other than underneath the fuelling points canopy (this area to be a separate system to capture and treat run-off prior to discharging to the sewer, subject to the appropriate authority's conditions), being drained by means of an appropriate system to discharge to one of the existing drainage pits located just outside the boundary of the property(s) via suitably sized drainage pipes and pits.

All areas of the development being drained by means of an underground drainage system to retain a post-development 1% Annual Exceedance Probability storm event for the critical storm duration. Discharge from the site must be limited to an equivalent pre-development flow based on a 0.5 Exceedances per Year storm event for the critical storm duration

- B. A drainage system on the site being designed to ensure storm water runoff exiting the site meets the current best practice performance objectives for stormwater quality, as contained in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).
- C. Details, including levels of the sealed apron within the site.
- D. All surface areas being drained by a minimum 150-millimetre diameter drainage pipe connected to the stormwater system.
- E. The design of all vehicle movements entering and exiting the property being in a forward direction.
- F. Reinforced concrete vehicular crossings to Department of Transport and/or Council standards, with any redundant crossing or vehicle laybacks being removed and replaced with kerb and channel, including reinstatement of the nature strip fronting the site.
- G. Sight distance for vehicles and pedestrians not being unduly restricted at the exit from site by fencing or landscaping works.
- H. Tree Protection Zones (TPZs) impacted by the works, or as shown on any other development plans and documents.
 - i) Drainage works designed to avoid TPZs where possible.
- I. Proposed methodologies for complying with AS4970-2009 (Protection of trees on development sites) for any works that are required within TPZs.
- J. The provision of 2 *Disability Discrimination Act* (DDA) compliant picnic tables, rubbish bins, bollards and connecting path, with demonstration of no impacts to existing vegetation, generally in accordance with the Proposed Site and Floor Plan TP-03 Rev C by BCAI architecture dated 2 May 2024. It must include a minimum of 1.5-metre-long concrete pad connecting the path to the pram ramp to reduce the potential for gravel to be spread onto the road and maintain safe vehicle access to the beach for authorised vehicles only.

4.1 (Cont.)

- 48. Before the approval of engineering plans, drainage computations and documentation are required for:**
- A. The proposed drainage system.**
 - B. The consideration of any drainage catchment external to the development that may drain to the proposed drainage system.**
- 49. Prior to the approval of engineering plans the applicant must:**
- A. Demonstrate to the Responsible Authority that water quality features will be implemented in accordance with clause 53.18 of the planning scheme**
and/or
 - B. Subject to the approval of the Responsible Authority pay Mornington Peninsula Shire the monetary contribution calculated in accordance with the Shire's In-Lieu Stormwater Treatment Developer Contribution Scheme.**
- 50. Prior to the commencement of any works for this development, a project specific Major Construction Management Plan (CMP) using the standard Major CMP template found on the Mornington Peninsula Shire's website must be submitted to the Responsible Authority. The CMP shall be in accordance with the Preliminary Environmental Site Assessment Project No 20194107.001A by Kleinfelder dated 2 March 2020. The CMP must address:**
- A. Hours during which construction activity will take place which must not occur outside of the following hours (unless with the further consent of the Responsible Authority):**
 - i. Monday to Friday: 7.00am. and 5.00pm.**
 - ii. Saturday: 8.00am. and 1.00pm.**
 - B. The location of any temporary cabins and sheds.**
 - C. The location and storage of machinery on the site.**
 - D. Management of noise such as from pumps and any other machinery operating outside of normal working hours.**
 - E. On-site parking for worker's vehicles.**
 - F. Notation in the Traffic Management Plan section that if external traffic management is required, approval shall be obtained from Vic Roads.**
 - G. Discharge of dewatered groundwater is not permitted to Council's drainage system.**
- When approved the plans will be endorsed and will form part of the permit. The approved CMP must be implemented to the satisfaction of the Responsible Authority prior to and during construction of the works.**
- 51. Before the initial occupation of the development drainage works within the development and public infrastructure within the foreshore land must be constructed in accordance with approved engineering plans, and to the satisfaction of the Responsible Authority.**

4.1 (Cont.)

52. Before the initial occupation of the development, vehicle crossings, areas set aside for the parking of vehicles and driveways as shown on the endorsed plans must be constructed in accordance with approved engineering plans, surfaced with reinforced concrete and drained to the satisfaction of the Responsible Authority.

Car spaces, access lanes and driveways must always be kept available for these purposes.

Signage

53. The location and details of signs including those of the supporting structure, as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
54. Unless no permit is required under the Planning Scheme, other signs must not be constructed or displayed without a further permit.
55. All signs must be constructed and maintained to the satisfaction of the Responsible Authority.
56. The signs hereby permitted must not contain any flashing or intermittent flashing light.
57. The sign lighting must be designed, baffled and located to the satisfaction of the responsible authority to prevent any adverse effect on adjoining land.
58. All signage associated with the use and/or development hereby permitted must not:
- A. Dazzle or distract drivers due to its colouring.
 - B. Be able to be mistaken for a traffic signal.
 - C. Be able to be mistaken as an instruction to drivers
- all to the satisfaction of the Responsible Authorities and the Department of Transport.
59. The signage approved by this permit expires 15 years from the date of issue. All signage must be removed to the satisfaction of the Responsible Authority by this date.

Expiry

60. This permit will expire if:
- A. The development is not commenced within three years of the date of the issue of this permit.
 - B. The development is not completed within five years of the date of this permit.
 - C. The use has not commenced within five years of the date of this permit.

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

4.1 (Cont.)**Part B**

That Council resolves that Attachments 12, 13, 14 and 15 to this report be retained as a confidential items pursuant to section 3 (1) (f) of the *Local Government Act 2020* they contain personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

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

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

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

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

Theme 2: A robust, innovative and diverse economy.

- Strategic Objective 2.3: A thriving entrepreneurial economy, with a vibrant tourism sector, that provides accessible employment to our diverse community

GOVERNANCE PRINCIPLES

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

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

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION**Purpose**

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

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

4.1 (Cont.)

Proposal	The use and development of the land for a service station and convenience restaurant, alteration of access to a Transport Zone 2, waiver of bicycle facilities (shower), removal of vegetation and display of signage.
Zoning and Overlays	- General Residential Zone, Schedule 1 (GRZ1) - Designs and Development Overlay, Schedule 1 (DDO1). - Environmental Significance Overlay, Schedule 25 (ESO25) - Vegetation Protection Overlay, Schedule 1 (VPO1)
Permit Triggers	- General Residential Zone – To use the site as a service station and convenience restaurant and to construct a building and carry out works associated with a section 2 use. - Design and Development Overlay, Schedule 1 – To construct a building or construct or carry out works. - Environmental Significance Overlay, Schedule 25 – To construct a building or construct or carry out works and to remove vegetation. - Vegetation Protection Overlay, Schedule 1 – To remove vegetation. - Clause 52.05 (Signage) – To construct or put up for display a sign. - Clause 52.29 – To create or alter access to a road in a Transport Zone 2. - Clause 52.34 (Bicycle facilities) – To waive a requirement of Clause 52.34-5 (shower).
Advertising	The application was advertised by sending direct notice to adjoining and surrounding properties and erecting three signs on site for 14 days.
Submissions	565 objections have been received to date.
Consultation	A Planning Application Conference (PAC) was held on 20 June 2024.
Key Issues	- Whether the proposal has addressed the reasons for refusal by the VCAT, including vehicle access and circulation and landscaping. - Any new issues resulting from design modifications, such as removing vehicle exiting to Marine Drive and a reduction in fuel bowsers.

4.1 (Cont.)

	- Any matters unresolved in the previous application and the VCAT decision, such as pedestrian safety, public facilities and offsite amenity impacts. - Consideration of the matters raised in the objections.
Recommendation	Issue a Notice of decision to grant a planning permit subject to conditions.

BACKGROUND**Previous application**

Planning application P19/2462 to use and develop the land for a Service Station and Convenience Restaurant, remove vegetation, create and alter access to a road in Road Zone, Category 1, construct signs and associated works was refused by Council. Council's refusal was appealed by the applicant and the matter was heard before the Victorian Civil and Administrative Tribunal (VCAT). Council's refusal was affirmed in the VCAT decision *AA Holdings Pty Ltd v Mornington Peninsula SC* [2021] VCAT 1441 (30 November 2021). The VCAT decision provided extensive commentary on the proposal, including the suitability of the proposed land use, operation of the proposed uses and the built form. Planning Permit Application P23/0228 is a repeat application which responds to the previous VCAT decision.

Repeat Application Principles

There are well-established principles guiding the assessment of 'repeat appeals' where the VCAT is required to review an application similar to a proposal it has previously considered. Broadly these principles provide that, where VCAT has refused an earlier application but indicated a modified form of development or changes that might be acceptable and the repeat appeal constitutes a genuine attempt to address those issues, considerable weight should be given to VCAT's decision on the earlier application. This is known as a 'correcting' repeat appeal.

When considering the fresh application, in addition to the weight afforded to the previous decision, the following relevant factors should be considered:

- Significant changes in the application itself.
- Changes in the circumstances of the land and its surrounds.
- Changes in planning policy.
- Changes in the interpretation of the facts or law.

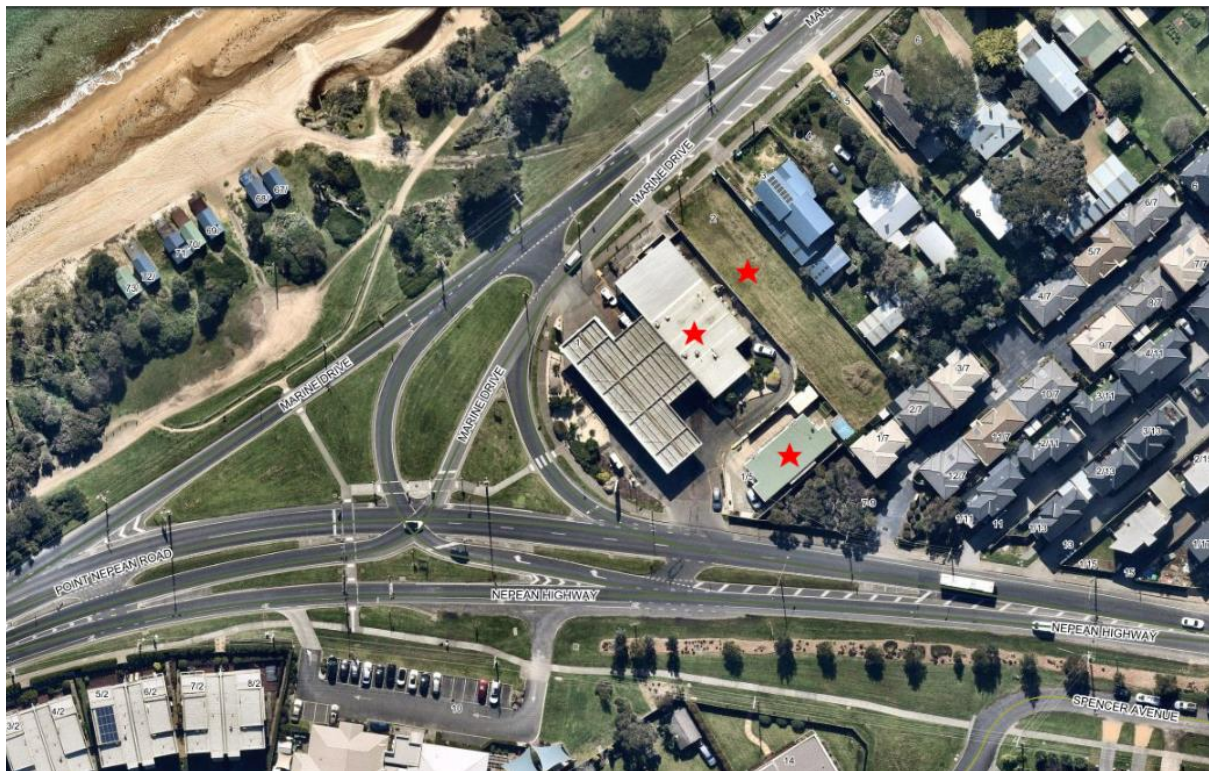
Whilst Council is not legally bound to restrict its consideration to matters that were considered previously unsatisfactory or of concern, and in fact is required to consider the new application afresh, the principles from previous VCAT decisions regarding repeat appeals are a prudent starting point for consideration of the relevant issues in order to narrow the scope of matters that are key and relevant for any particular 'repeat' application. With respect to the current application, there do not appear to be any significant changes in the circumstances of the site, planning policy and the interpretation of the facts or law relevant to consideration of the matter since the last consideration based on the repeat principles.

Refer to Attachment 10 - VCAT Decision - *AA Holdings Pty Ltd v Mornington Peninsula SC*.

4.1 (Cont.)

Existing Site Context

Site Conditions	
Lot:	The subject site is situated on the north-east side of the Marine Drive and Nepean Highway intersection. The site is an irregular shaped allotment which combines three properties comprising Nos. 1 and 2 Marine Drive, and 1/5 Nepean Highway. The combined lots comprise a total site area of 3,908 square metres.
Existing conditions:	No. 1 Marine Drive and 1/5 Nepean Highway are occupied by a BP service station and dwelling respectively, as well as associated buildings/structures. Whilst the service station exists predominantly within 1 Marine Drive, an accessway to the service station is situated at the front of 1/5 Nepean Highway. The service station currently operates 24 hours a day with four fuel bowsers and includes an ancillary convenience shop and car wash. No. 2 Marine Drive was previously occupied by a double storey dwelling, but is now vacant, the former dwelling having been demolished between September and December 2019.
Topography:	The subject site is relatively flat, with a fall of approximately 0.5 metres from north-east to south-west and is approximately 3 metres above sea level.
Vegetation:	Scattered vegetation exists around the service station, and the remaining land is clear of any substantial vegetation. When reviewing aerial imagery, it appears that canopy trees and shrubs were removed from No. 2 Marine Drive prior to the demolition of the dwelling.
Vehicle access:	The site currently has three crossovers to Marine Drive, being one to the vacant lot and two to the service station. There is also a single crossover to Nepean Highway.
Street trees:	There are no street trees near the subject site.
Impacts on adjoining land vegetation:	There are a number of small trees on the two abutting lots requiring protection.



Subject Land:



N ▲

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

Surrounding Land	
Abutting zone(s) / overlays	The abutting properties have the same controls as the subject site, except that the property to the south-east does not have the ESO25. Both Marine Drive and Nepean Highway are covered by the Transport Zone TRZ2.
General area	The subject site is situated at the interface of the Safety Beach township, with the land on the opposite side of Nepean Highway situated within the township of Dromana. The site is surrounded by land within the GRZ, which is used for both residential and non-residential uses, as well as land within a TRZ2. The Public foreshore opposite the site is within a Park and Recreation Zone. Approximately 650 metres southwest of the site is the Large Township Activity Centre of Dromana.
North-east:	Immediately to the north-east at No. 3 Marine Drive exists a residential property containing a double storey dwelling and associated outbuildings. The dwelling is setback approximately 8.2 metres from the front boundary and is built to the side common boundary with the subject site. Scattered vegetation exists within the rear area of secluded private open space and a first-floor covered deck exists at the front of the dwelling.
South-east:	Directly to the east and south-east of the site at 7–9 Nepean Highway is residential land, which was developed for twelve units under Planning Permit P14/2072. Units 1 and 2 are situated closest to the subject site, as well as a vegetated area of common property. These two dwellings (units 1 and 2) are both double

4.1 (Cont.)

	storey, with an area of secluded open space at the ground floor directly adjoining the subject site and habitable room windows orientated to face the subject site at both ground and first floor. The dwellings are set back a minimum of 1.97 metres from the common boundary with the subject site and the unit development has a front setback of 11 metres (measured to the front of unit 12) to Nepean Highway.
South:	South of the subject site (on the opposite side of Nepean Highway) is residential zoned land at 10 Nepean Highway. This property is used for the Dromana Early Learning Centre and Kindergarten. The building is set back approximately 15.5 metres from the front boundary, with a car parking area situated within the front setback.
North-West:	Opposite Marine Drive exists the Safety Beach/Dromana foreshore of Port Phillip Bay. This area includes scattered vegetation, an informal car parking area, a walking track and several beach boxes.

PROPOSAL

Refer to Attachments 2–9 for plans of proposal.

The application proposes the development of the site for a service station and convenience restaurant. Specifically, the key elements of the proposal include:

- A service station comprising of:
 - 6 bowsers (12 fuelling stations)
 - an ancillary convenience store of 259 square metres
- A convenience restaurant comprising of:
 - 59 seats
 - drive-thru with noise tunnel
- Site layout:
 - the site would reduce the number of crossovers to Marine Drive from two to three, both of which would be for entry only to the site.
 - the existing crossover to Nepean Highway is to be retained for exit only.
 - onsite provision of 22 parking spaces, with an additional space for air/water and the abovementioned 12 fuelling stations
 - provision of 12 bicycle spaces, including four spaces for customers and eight spaces for staff

4.1 (Cont.)

- Signage
 - service station signs including internally illuminated signs and retrospective approval for the electronic components of the pylon and price signs
 - convenience restaurant - four internally illuminated business identification signs
 - Removal of small-scale vegetation.
 - The Site Management Plans includes the following operation hours:
 - the use would operate 24 hours/day, 7 days/week
 - LPG fuel deliveries 7.00am to 6.00pm (Monday to Saturday)
 - regular fuel deliveries 7.00am to 10.00pm (Monday to Sunday)
 - waste collection 7.00am and 6.00pm Monday – Saturday or otherwise to time limits specified in the planning permit and the relevant EPA noise control guidelines.
 - the electronic customer ordering devices associated with the drive-through facility would not operate after 10:00pm or before 6:00am. Signage would be erected at the entry of the drive-through facility directing customers to the pay window for “after hours” ordering
 - unless otherwise approved in writing by the Responsible Authority, the restaurant drive-through would operate on a 24-hour basis throughout the year whereas the restaurant dining room would only operate from 6.00am to midnight (and until 1.00am during Peak Season).
- “Peak Season” means the period from:
- 1 December – 28 February (inclusive); and
 - from 11.59pm on the Thursday before Good Friday until 11.59pm on Easter Monday.

NOTIFICATION AND CONSULTATION**Notification**

The Application was advertised by sending direct notice to adjoining properties and erecting signs on site for 14 days.

Submissions

The application received 565 objections, which can be summarised as:

- inappropriate uses and overdevelopment of the subject site
- inconsistent with the character of the area
- environmental impact, particularly from litter

4.1 (Cont.)

- traffic, onsite vehicle circulation and insufficient parking
- road and pedestrian safety.
- amenity impacts from noise, smells, fumes and light
- effects on local businesses
- effects on public health
- antisocial behaviour
- flood prone.

For a more comprehensive list of objector concerns refer to Attachment 11 – List of Objector Concerns. All objections are included in Attachments 12–15 – Objections (confidential).

REFERRALS

The application was referred externally to the Department of Transport and Planning (DTP), South East Water, and Melbourne Water. Previous comments from the EPA were also considered.

Internal referrals were undertaken by Environmental Health, Development Engineering, Traffic Engineering, Waste Engineers, Urban Design, Coastal Planning, and Council's Senior Vegetation Officer.

Melbourne Water objected to a gross pollutant trap being added to their drainage asset. No other objections were received, and the queries raised within referrals have been addressed via permit conditions.

CONSIDERATION

The key issues of the application are summarised below:

- Use and development of the land for a service station and convenience restaurant.
- Car parking.
- Site access and onsite vehicle circulation.
- Waiver of a shower and change room facilities.
- Signage.
- Vegetation removal and landscaping.
- Issues raised by objectors.

Use and development of the land for a service station and convenience restaurant***Use***

The VCAT decision made positive findings on the original application with respect to the appropriateness of the proposed uses having regard to its location at an intersection of arterial roads. VCAT found in favour of the appropriateness of the out of centre location of

4.1 (Cont.)

the combined proposed uses and non-residential uses in a residential zone. This issue is further addressed in the attached officer assessment (pp.10–11).

VCAT found that:

161 After considering the submissions and evidence in relation to impact on the foreshore, we would not have been persuaded that the proposed development will result in unreasonable adverse impacts on the foreshore area. The impacts identified by the respondents can and should be appropriately managed by the respective land use operators, site management plans, compliance with other legislative requirements and permit conditions relevant to the proposed development.

Amenity and Environmental ImpactsLitter and Safety

A main concern regarding the proximity of the convenience restaurant to the foreshore is the potential for litter generated from the use being discarded on or making its way onto the foreshore. An additional issue of pedestrian safety from the site to the foreshore has also been raised in objections. The owner of a nearby business has also commented that beachgoers park on their site out of business hours and is concerned that beachgoers parking on their site will also dump rubbish from the convenience restaurant in the car park at that site.

It is noted that the development plans include four onsite bins, being one near the convenience restaurant and the convenience store, and one near where the onsite pedestrian paths reach the boundaries at Marine Drive and Nepean Highway. The Convenience Restaurant Site Management Plan also includes the following commitment:

- Regular litter patrols throughout each day are conducted both within the site itself and in public areas within 200m of the site. Staff on duty will collect and dispose of any rubbish that may have been discarded inappropriately by customers.

A condition of approval will require that the uses, including daily litter patrols, operate in accordance with the Site Management Plans.

Associated with both the issue of pedestrian safety and the potential for littering to occur within the foreshore, the applicant has also agreed to the provision of a pedestrian crossing to Marine Drive with a connecting path and protecting bollards, as well as three picnic tables and two bins in the foreshore, as shown on the attached Without Prejudice Plan (Attachment 9). The requirement for a pedestrian crossing has been discussed with the DTP, who has included it in their conditions for approval. This public infrastructure was negotiated with the applicant in consultation with the Shire's Coastal Planners, Waste Engineers, and Traffic Engineers, who were all supportive of the negotiated outcome. Specifically, it is noted that the new bins are conveniently located for collection by Shire waste contractors who already collect from bins at the nearby car park. The Shire's Traffic Engineers were supportive of both the provision of a pedestrian crossing and the bollards, which will restrict informal parking on the foreshore within the immediate vicinity of the new path. A requirement for the provision of the public infrastructure is recommended to be conditioned and detailed in the required engineering plans.

The applicant also made a commitment at the Planning Application Conference to include the collection of any associated rubbish dumped at the nearby business that raised the concerns. This is addressed in proposed permit conditions.

4.1 (Cont.)Noise

The proposal's response to noise impacts to abutting residential uses include the provision of a noise tunnel for vehicles using the drive-thru and acoustic fences. VCAT found that the use of the noise tunnel was an appropriate means of addressing noise impacts [179] (see p.12 of officer assessment). VCAT listed a number of conditions which were recommended by the acoustic expert at the hearing and stated that it would have included the recommendations of the expert had it issued a permit. The notations on the acoustic fence as shown on plans are in accordance with those recommendations. It is acknowledged that the setback of the acoustic tunnel to the south-east has been reduced by 1 metre from 2.9 – 4 metres, to 1.9 – 3 metres. This reduction is unlikely to increase any offsite impacts from noise and does not unreasonably impact on landscaping within the area.

Subject to the deletion of the words 'or otherwise to time limits specified in the planning permit and the relevant EPA noise control guidelines', all of the times detailed above in the Proposal section of this report are consistent with the recommendations of the acoustic expert as supported by VCAT. However, it is noted that the electronic customer ordering devices are proposed to start being used at 6 am, while deliveries are not to occur before 7.00 am. It is further note that the Environment Protection Regulations 2021 describe the night period as being from 10.00pm to 7.00am. To reduce potential noise impact to the abutting residential uses it is proposed that the use of the electronic customer ordering devices be prohibited for the entirety of the night period. It is accepted that these restrictions will assist with mitigating offsite amenity impacts from noise, with any other noise to be subject to compliance with the requirements of *EPA publication 1826.4, Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues (Noise Protocol)*.

It is proposed to include a condition that if the tunnel is unable to operate from 10.00pm to 7.00am with in the thresholds specified in the endorsed documents then the drive though component of the convenience restaurant would cease operation from 10.00pm to 7.00am until alterations are made and evidence is provided to the satisfaction of Council to ensure the operation of the drive through is in accordance with the endorsed documents.

Light spill

The application also included a Light Spill Report, which included a recommendation requiring a Detailed Lighting Design Plan as a condition for approval.

Odour

A potential offsite amenity issue is the impact to abutting residential properties from offensive odour emissions. Conditions have been proposed which address this issue.

Fumes

A potential offsite amenity issue is the impact to abutting residential properties from exhaust fumes extracted from the acoustic tunnel. Conditions have been proposed which address this issue.

Buildings and Works

The scale and form of the proposed development is very similar to the previous application.

The VCAT decision made positive findings on the original application with respect to the attractive presentation and contemporary materials of the development.

The application was referred to Council's Urban Designer who accepted the comments of VCAT, which stated that:

4.1 (Cont.)

167 ... we accept the urban design assessment provided by Mr Czarny and his opinion that the predominately single storey form of the new buildings, with a slightly higher canopy form and stepped building setbacks to all boundaries, is appropriate to the scale and setting of surrounding built form and foreshore setting opposite.

The development is proposed with floor levels which respond appropriately to the site being within a flood prone area and the available data does not indicate any threats from sea-level rise. The application includes a Preliminary Environmental Site Assessment which was peer-reviewed during the assessment of the previous application. Proposed conditions are included in line with the recommendations of the peer-review.

Car parking

The convenience restaurant is proposed to have 59 seats, which equates to a car parking demand of 17 spaces. There is no statutory car parking requirement for a service station, which must instead be to the satisfaction of the responsible authority.

The development provides for 22 spaces, which leaves five spaces for the service station. In addition to the 22 spaces there are also the 12 fuelling spaces, where customers generally leave their cars when they enter the service station and ancillary convenience store to pay for the fuel and additional purchases. There is also an additional space dedicated to air/water filling.

The previous application had provided 25 spaces, with 86 seats in the convenience restaurant, which was a statutory requirement of 25 spaces, leaving no parking spaces for the service station use.

VCAT advised that had it approved the previous application it would likely have supported the proposed car parking provision. It did however conclude that this statement was not a finding, that it was attracted to an alternative suggestion that five spaces should be provided for the service station and convenience store, and that an appropriate supply needs reconsideration in any future application.

Compared to the previous proposal the new proposal now has an additional five spaces for the service station. The application was referred to the Shire's Traffic Engineers who had no objection to the proposed car parking provision. This is an improved outcome compared to the previous application and is consistent with the sentiment of VCAT decision with respect to the issue.

Site access and onsite vehicle circulation

The shortcomings of the previous proposal with respect to vehicle access and circulation was the primary reason for VCAT refusing the previous application.

In response to these concerns the changes (as listed earlier) to the current application include:

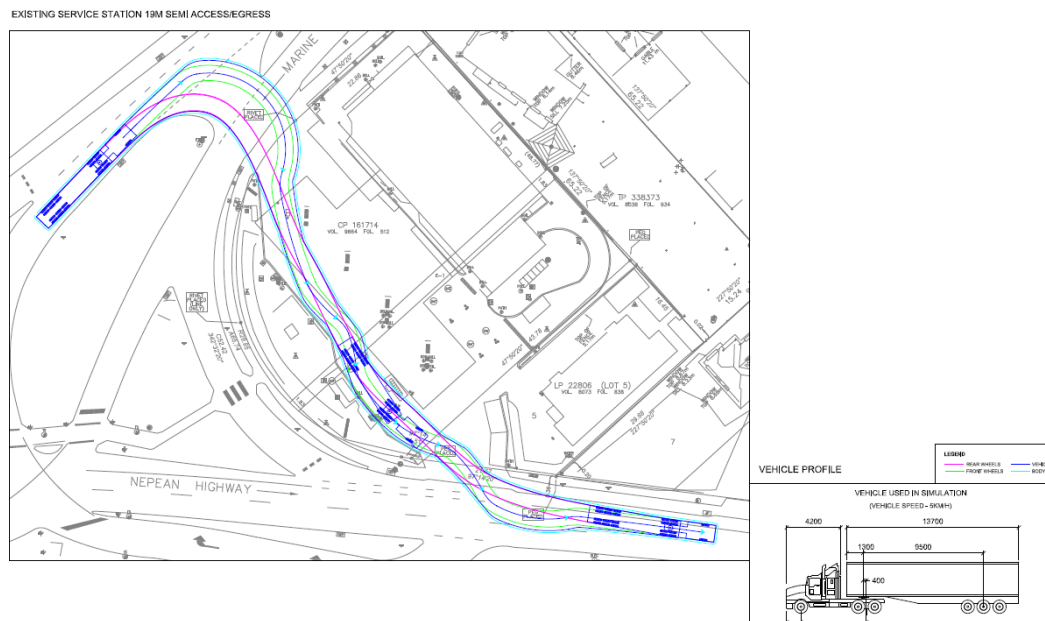
- Removal of egress to Marine Drive, including modifications to the traffic island in Marine Drive to prevent righthand turns.
- Increased width of the vehicle circulation isle between Marine Drive and the bowzers by 3 metres, from 6.6 metres to 9.6metres.
- Increased setback to Marine Drive of the drive-thru ordering stations by almost 2 metres.

The VCAT found that having heard the evidence of the experts and observed the operation of the current service station, it was evident that the service station currently has significant access, circulation, exit and delivery issues which the design had not suitably addressed.

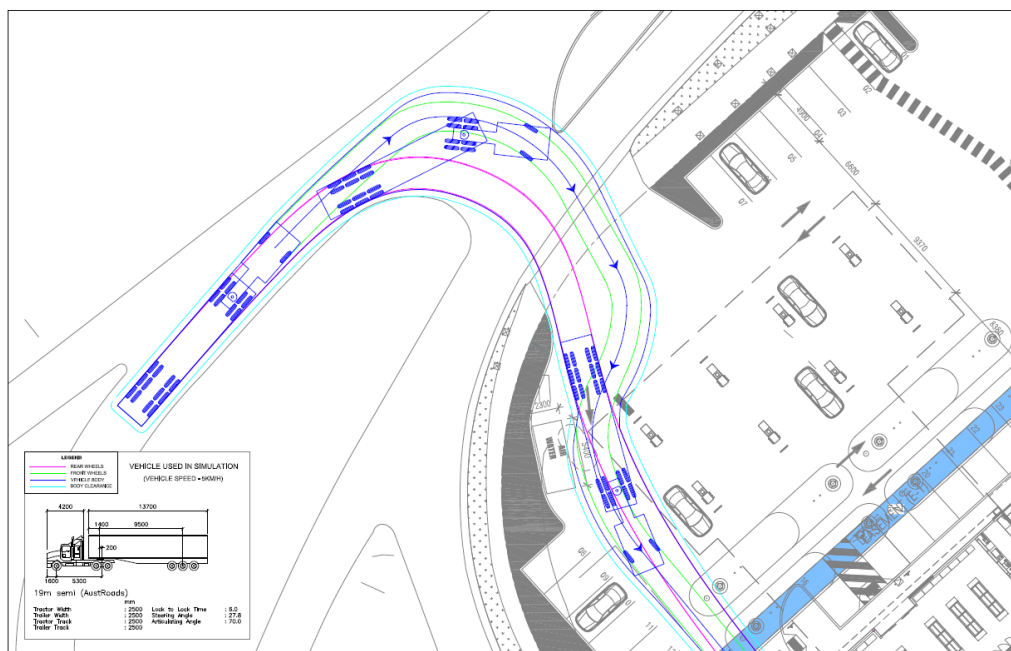
Fuel delivery

VCAT had found that the service station currently has significant fuel delivery issues, with trucks having to wait until there is available room to enter the site, and that this circumstance was replicated in the proposal as demonstrated below, with the additional issue that once onsite the trucks would block circulation around the site.

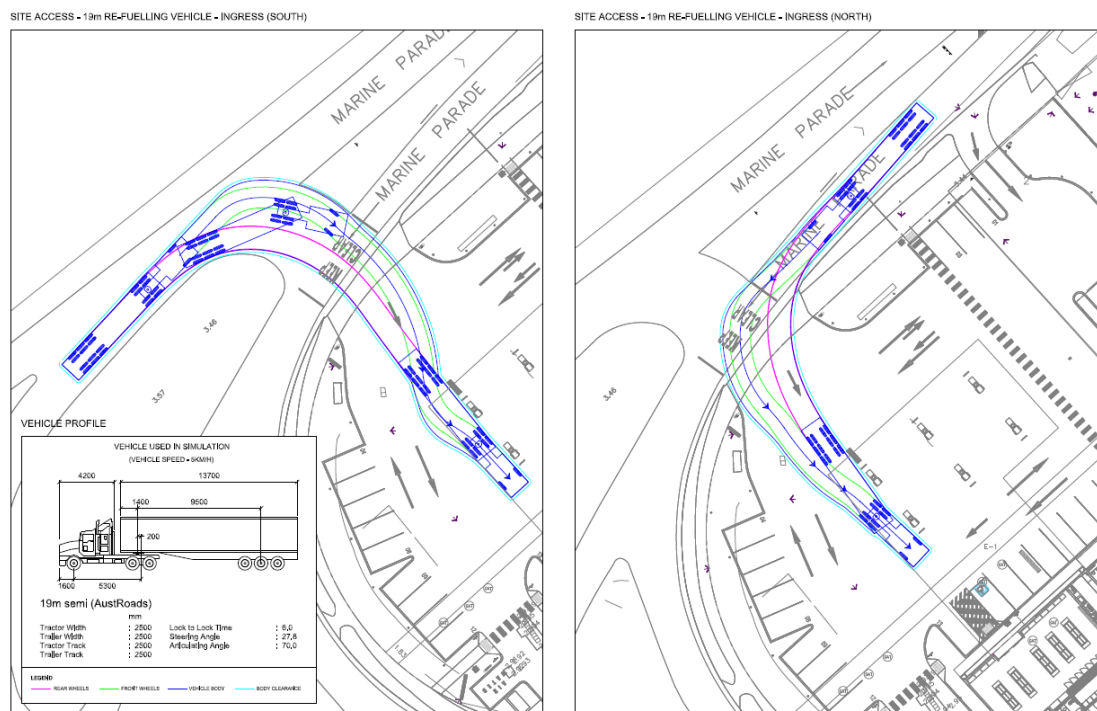
Fuel deliveries – current situation



Fuel deliveries – previous proposal



Fuel deliveries – current proposal



The new proposal has resolved this issue (see above) achieved by the loss of two bowsters and provision of two-way circulation lanes to the south-west, which would facilitate practical circulation around the site and ensure that access is maintained to the abutting adjacent car parking spaces during fuel deliveries.

It is noted that the truck is intended to park in the location of the two southernmost fuelling locations, which would therefore need to be vacant before the truck can enter the site. The applicant has advised that it is intended that that these spaces would be cordoned-off with cones before the anticipated time of the delivery. This operational requirement should be included in the Service Station Site Management Plan, which is addressed in recommended conditions. This is a significant improvement to both the current circumstance and the previous proposal and has been reviewed by the Shire's Traffic Engineers who are satisfied that the amended layout has suitably resolved this issue.

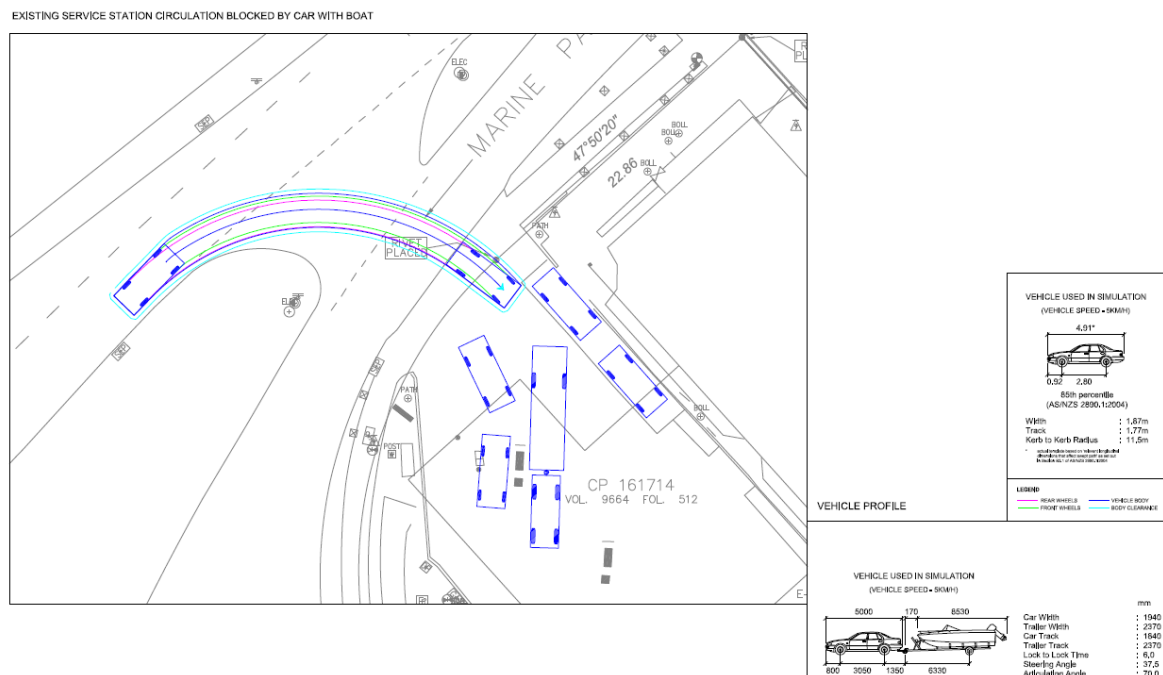
Vehicle circulation

The issue of circulation within both the current service station and the previous proposal was not confined to fuel deliveries but was broadly problematic around the entire site.

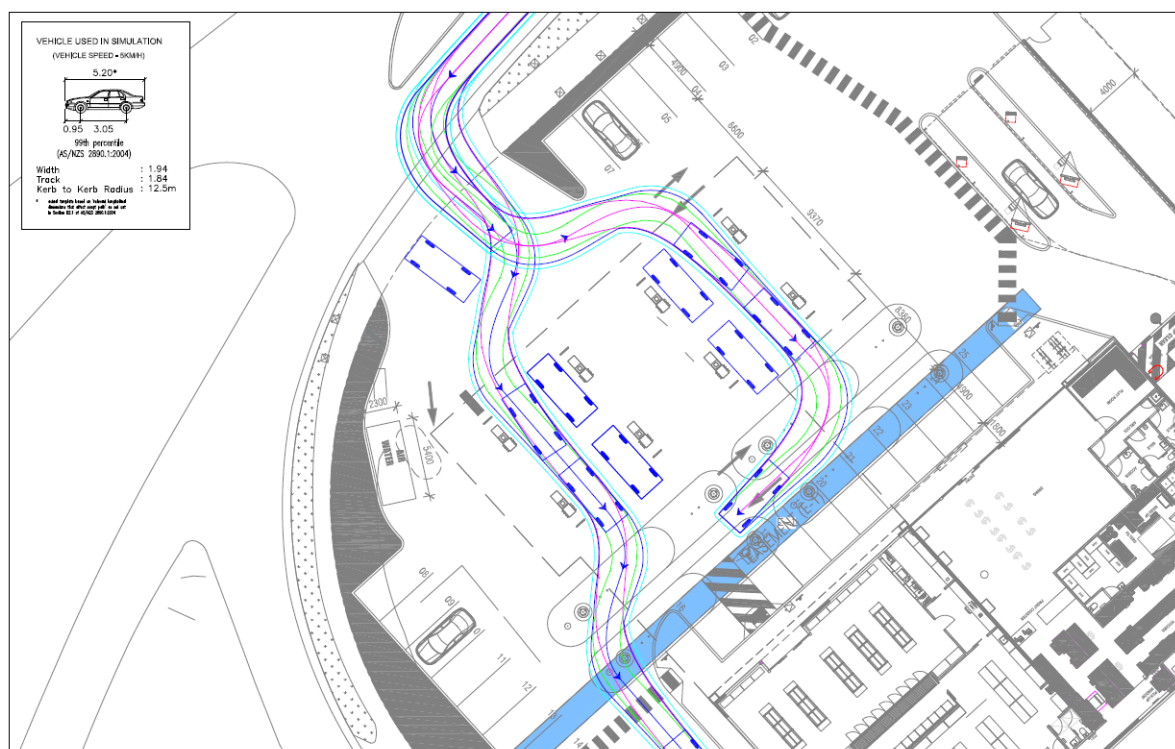
The below swept path diagrams for customer cars demonstrate a significant improvement regarding access to the site and circulation within the site as compared to both the current circumstance and the previous proposal. These changes not only improve access to the fuel bowsters, but also improve access to the onsite car parking spaces as well as the convenience restaurant drive-thru. Specifically, it is noted that the layout of the current service station has a propensity to create a bottleneck at the entry to the site, which is no doubt contributing to the current significant queuing problem in Marine Drive. The provision in the new layout of wider and multiple circulation options including in both clockwise and anti-

clockwise directions and improved opportunity to enter the site is expected to resolve this current problem.

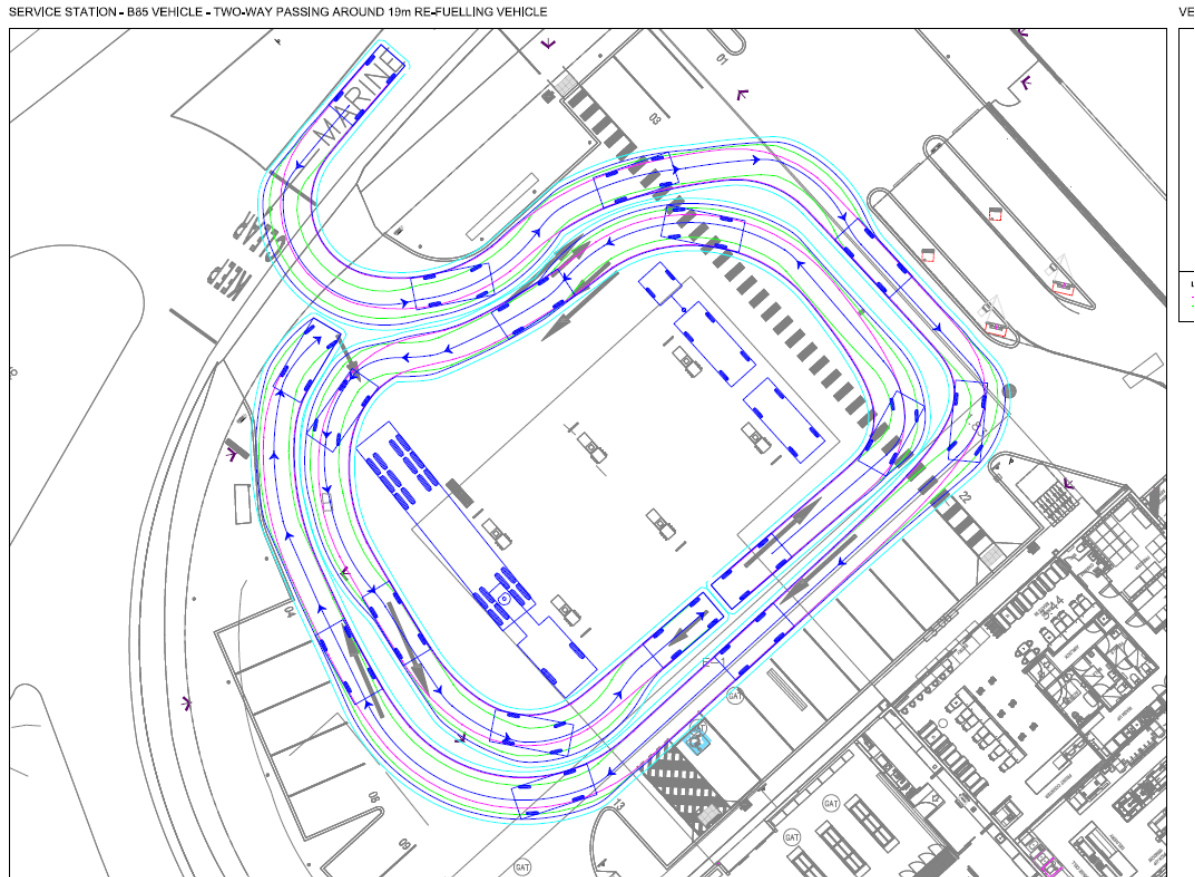
Circulation – current situation



Circulation – previous proposal

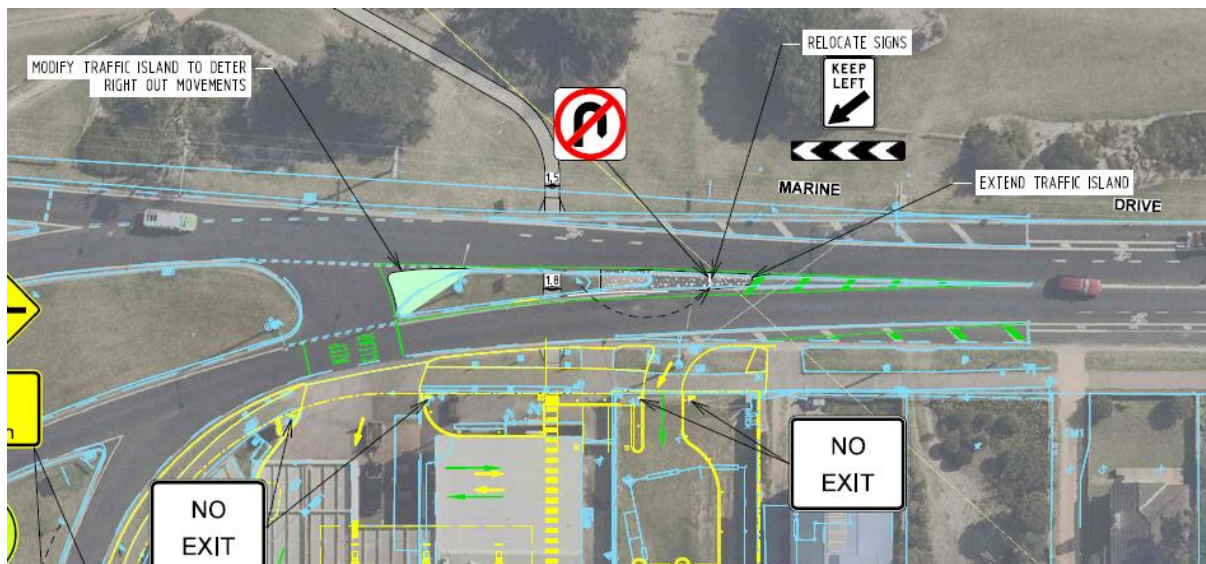


Circulation – current proposal

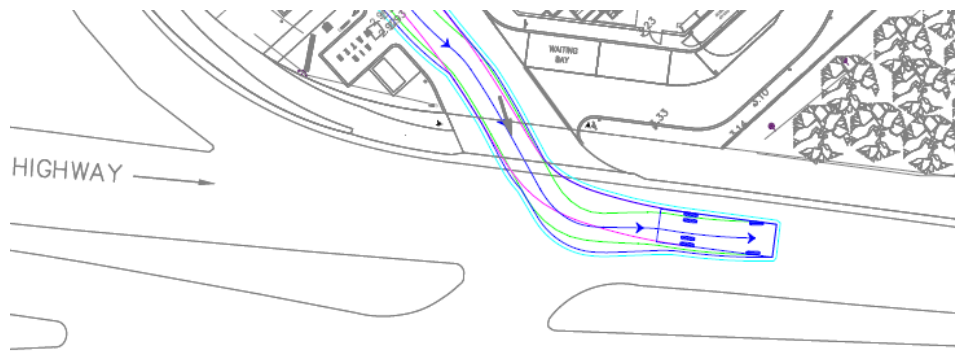


The traffic report submitted with the application provided data on traffic and queuing potential based on the number of bowzers, current and projected traffic numbers and vehicle types and current customer behaviours, which was provided to the DTP and the Shire's Traffic Engineers. Both the DTP and the Shire's Traffic Engineers are satisfied that based on the data provided, the proposed layout would adequately accommodate the anticipated customer demand for bowzers without resulting in offsite queuing under reasonable circumstances. Specifically, it is considered that unlike the previous proposal, it is likely that the current proposal would significantly improve the current queuing problem and therefore would be a positive outcome for the site and the road network.

The VCAT had observed that vehicles currently exiting to Marine Drive are impacting vehicles entering the site, contributing to queuing issues on Marine Drive. The current application has responded to this issue by proposing the installation of no exit signs and modifications to the traffic island in Marine Drive (see plan below) to prevent right turn exits from both crossovers to Marine Drive (noting that the alteration opposite the drive-thru entry was also required to prevent right turn entry into that driveway).



Shire officers raised questions regarding consequences of increasing the volume of vehicles exiting to the Nepean Highway. Specifically, the issue is with respect to longer vehicles seeking to go to Marine Drive and the boat ramp. These vehicles may be using the existing exit to Marine Drive because of the lack of available room within the central median for longer vehicles to prop within the middle of Nepean Highway, in order to give way to vehicles turning right from Nepean Highway to Marine Drive (compare available room to length of a car in the image below).



VCAT, the DTP, the Shire's Traffic Engineers, and the applicant, all acknowledge that there are current issues with exiting from the site, and all agree that the current circumstance of exiting to Marine Drive is unacceptable and needs to be resolved. The current application is the means by which to resolve this current problem. This, however, needs to be achieved without creating a new problem or inappropriately increasing another existing problem.

In discussions with the DTP, Shire officers advised the DTP that they do not support closing the central median as this would likely have an inappropriate impact by directing traffic into the local road network. The DTP accepted this position and concluded that it was appropriate to restrict vehicles longer than 6m from turning right onto Nepean Highway via the provision of onsite signage and a Section 173 Agreement, including an acknowledgement from the owner that should the location become a road safety blackspot at any time in the future, the Head, Transport for Victoria (DTP), may decide to modify the central median, including closing the median such that all right turn egress movements from the land are permanently removed. The Shire's Traffic Engineers have advised that based on past traffic behaviour and the recommended conditions restricting right hand turns for vehicles longer than 6

4.1 (Cont.)

metres exiting the site, this should not result in any additional risk from site egress and further note that the DTP's first preference in such an event is to consider modifications rather than closing the central median. Shire officers acknowledge that this would require vehicles longer than 6m to either do a U-Turn on Nepean Highway near the freeway, or alternatively use Dromana Parade if they are wishing to head to Marine Drive.

The applicant provided traffic data for 25 January 2022. This data shows that the periods of the day which experience the highest number of vehicles towing jet-skis and boats/caravans correlates with the periods of the day which experience the lowest number of vehicles turning right at Marine Drive.

Hour Beginning	7am	8am	9am	10am	11am	12pm	1pm	2pm	3pm	4pm	5pm	6pm	Average
Passenger Vehicles	71	95	116	110	104	117	99	91	103	94	93	94	99
	89%	91%	91%	90%	90%	91%	85%	89%	91%	95%	92%	97%	90.9%
Passenger Vehicles With Jetskis	6	5	8	6	7	10	10	4	6	2	5	1	6
	8%	5%	6%	5%	6%	8%	9%	4%	5%	2%	5%	1%	5.3%
Passenger Vehicles With Boat/Caravan	1	2	3	6	0	1	4	6	2	3	2	1	3
	1%	2%	2%	5%	0%	1%	3%	6%	2%	3%	2%	1%	2.4%
Trucks	2	2	1	0	4	1	3	1	2	0	1	1	2
	3%	2%	1%	0%	3%	1%	3%	1%	2%	0%	1%	1%	1.4%
Total	80	104	128	122	115	129	116	102	113	99	101	97	109
Hourly traffic volume recorded at Nepean Highway/Marine Parade intersection by SCATS, expressed as a percentage of the peak hour													

Hour Beginning	7am	8am	9am	10am	11am	12pm	1pm	2pm	3pm	4pm	5pm	6pm	Average
Right Turn Exit to Marine Drive													
22 nd January, 2022	6%	1%	4%	1%	1%	2%	5%	3%	0%	1%	2%	5%	3%
23 rd January, 2022	2%	7%	3%	1%	3%	3%	2%	2%	3%	4%	2%	3%	3%
25 th January, 2022	3%	0%	0%	1%	2%	1%	3%	4%	4%	2%	1%	4%	2%
26 th January, 2022	10%	7%	8%	3%	7%	2%	2%	0%	7%	3%	4%	4%	5%

This suggests that currently there is not a significant number of long vehicles turning right onto Marine Drive and therefore the proposed removal of this exit combined with the restriction of right turn to Nepean Highway for vehicles longer than 6 metres is unlikely to result in a significant diversion of long vehicles to the local road network. Shire officers agree that the proposed restrictions are the most appropriate means of responding to the current unacceptable problems of existing right turns into Marine Drive, and any existing behaviours of long vehicles turning right onto Nepean Highway.

It is noted that the service station intends to have security cameras, which are a normal tool used at service stations to help address the issue of people not paying for fuel. Conditions of approval would require the installation of an additional camera that monitors and records vehicles exiting to Nepean Highway and propping in the Nepean Highway central median when turning right.

Pedestrian crossing

As discussed earlier the applicant has agreed to the provision of a pedestrian crossing to Marine Drive which is supported by the DTP, who has included it in their conditions for approval. The applicant has provided a without prejudice plan (Attachment 9) which shows

4.1 (Cont.)

the pedestrian crossing. The crossing is not a zebra crossing but is instead a staged pram crossing which is consistent with the request of the DTP, who have advised that they do not support an additional zebra crossing at this location. While the DTP has not provided an explanation as to why they do not support a zebra crossing, the Shire's Transport Engineers have confirmed that they too would have concerns with a standard zebra crossing in this location due to the width of the Marine Drive roadway at this point (approx. 6m north-east bound and 5m south-west bound), as compared to the existing zebra crossings where the road widths are less than 4m. The safety concern of giving priority to pedestrians under such circumstances was articulated in an objection, where the objector stated, '*At present traffic travels at high speeds to merge from Point Nepean Rd on to Marine Parade (sic) and adding a zebra crossing would give people a false sense of security.*' DTP is the determining referral authority and relevant road management authority under the *Road Management Act 2004*. Therefore, the crossing is required to be to their satisfaction, and they have indicated that a staged pedestrian crossing is acceptable. The Shire's Traffic Engineers are accepting of the provision of a staged pedestrian crossing, despite the preference being for a pedestrian operated signal crossing.

The Shire's Traffic Engineers were supportive of both the provision of the pedestrian crossing as proposed and the bollards, which would restrict informal parking on the foreshore within the immediate vicinity of the new path. A requirement for the provision of the public infrastructure is recommended to be conditioned and detailed in the required engineering plans.

Other minor onsite traffic and pedestrian safety issues identified by the Shire's Traffic Engineers are addressed in permit conditions.

Waiver of a shower and change room facilities

The application proposes the provision of 12 bicycle spaces, comprising of four spaces for customers and eight spaces for staff. This exceeds the statutory requirement of two spaces for customers and five spaces for employees for the convenience restaurant. The application seeks a waiver of the shower/changeroom for staff, advising that the operator of the convenience restaurant encourages its staff not to change on the site due to the general age of its employees. The rationale for waiving the shower requirement is accepted and the waiver is supported.

Signage

The proposed signage is comparable to the current signage associated with the existing service station on the site and is proportional to the scale of the proposed building and the size of the site. It would not detrimentally impact on the surrounding area in terms of impacting on views or the streetscape and is acceptable.

Vegetation removal and landscaping

The application proposes to remove all current vegetation on the site, all of which are recorded in the submitted arborist report as being low growing shrubs, grasses, and succulents. The vegetation removal is acceptable.

One of the concerns which Council had with the previous proposal was the lack of meaningful setbacks and landscaping having regard to the site's coastal setting. While VCAT did not have any concerns with the built form it did support Council's concerns regarding landscaping.

4.1 (Cont.)

The current application has responded to this issue by increasing the depth of a substantial part of the garden bed to Marine Drive from 1.3m to approx. 4.5m. This has enabled the planting of an additional two native trees at this interface, which has suitably addressed this concern.

Overall, the submitted landscape plan proposes 31 trees, nine of which are adjacent to the road boundaries and the remainder are adjacent to the residential boundaries. This is an appropriate landscape response which was supported by the Shire's Senior Vegetation Officer and is an improvement on the previously endorsed landscape plan for the site.

Issues raised by objectors

Refer to:

- Attachment 11 – List of objector concerns.
- Attachments 12–15 – copy of objections.

Council has received 565 objections, a summary of which was provided in the earlier submissions section of this report.

Issues raised by objectors with respect to use, built form, amenity impacts, litter, car parking, and traffic have already been addressed in this report.

Other issues**Impacts to local businesses**

Whilst there may be overarching Council strategies to support local economies, the Shire's lawyer who represented Council at the previous VCAT hearing advised that beyond the discussion earlier relating to out-of-centre commercial development, the scale and origin of a business is not a planning consideration nor can economic competition in a free market be controlled through a planning permit.

Impacts to public health

Council is not required to know which food premises is looking to occupy the convenience restaurant and the specific food served is therefore, not able to be assessed as part of Council's consideration.

Antisocial behaviour

Any issues related to crime or anti-social behaviour are speculative matters which are within the remit of the Victoria Police and are not planning considerations for use and development applications.

Options for consideration

Council has the option to either refuse the application, support the issue of a Notice of Decision (NOD) containing the conditions recommended in this report, or issue a NOD with amended conditions.

ENGAGEMENT

The application was advertised, and a Planning Application Conference (PAC) was held on 20 June 2022.

4.1 (Cont.)**COMMUNICATIONS PLAN**

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Council's decision is subject to its responsibilities under the *Planning and Environment Act 1987*.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

See issue as responded to in the body of this report.

FINANCIAL CONSIDERATIONS

The matter is likely to proceed to VCAT and incur legal expense. Depending on Council's decision and depending on the number of experts it could call to give evidence would determine the costs incurred. It is not possible to quantify this cost until a decision has been made and all potential parties have lodged their statement of grounds with the VCAT.

CONCLUSION

The proposed use and development of a service station and convenience restaurant, alteration of access to a Transport Zone 2, waiver of bicycle facilities (shower), removal of vegetation and display of signage is considered acceptable outcome with regard to the relevant provisions of the Planning Scheme and the Act, subject to appropriate conditions. It is therefore recommended that Council resolve to support the application and issue a Notice of Decision to Grant a Permit, subject to conditions contained in the recommendation section of this report.

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 permit application P23/0665 - 21 Balnarring Beach Road Balnarring - Development of a shed

Prepared By	Warrick Gorman, Planner
Authorised By	Director - Planning & Environment
Document ID	A13168425
Briefing Note Number	BN1939 – 30 July 2024
Attachment(s)	1. Officer Assessment ⇒ 2. Development Plans ⇒ 3. Original development plans and planning submission ⇒ 4. Submissions (confidential) ⇒ 5. Planning provisions ⇒

EXECUTIVE SUMMARY

The purpose of this report is to seek a decision from Council regarding planning permit application P23/0665 (the application) for the proposed development of a shed and associated works at 21 Balnarring Beach Road, Balnarring.

The application is located in the Red Hill Ward. This application was called in by Councillor Gill for a decision to be made by Council.

The application received 36 objections and one submission of support. The grounds of objection can be summarised as:

- land use of a farm
- future use and size of the proposed building
- setback of the proposed building
- impact on landscape and scenic route
- noise
- traffic and vehicle movements.

The proposal is considered acceptable having regard to the objectives and purposes of the applicable planning controls, which are the Green Wedge Zone Schedule 2 (GWZ2) and the Significant Landscape Overlay Schedule 6 (SLO6).

It is recommended that Council supports the application and resolves to issue a Notice of Decision to Grant a Permit, subject to the conditions contained within this report.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters under Section 60 of the *Planning and Environment Act 1987*, hereby resolves that Planning Permit Application P23/0665 for the development of a shed, be supported and that a Notice of Decision to Grant a Permit be issued subject to the following conditions:

4.2 (Cont.)**Council Conditions****Amended Plans**

- 1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:**
 - A. Deletion of the indicative floor plan layout.**
 - B. The species of the proposed tree planting to be shown as a locally indigenous canopy tree species (Ecological Vegetation Class (EVC)- Grassy Woodland or EVC- Swamp Scrub).**
 - C. All trees must to be installed at a minimum height when planted of 1.5 metres.**
 - D. Vegetation along the north boundary to be marked with protection barriers.**

Approved development not altered

- 2. The approved development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (Unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).**

Colours/Materials

- 3. The materials and colours of the exterior finish of the building must be in accordance with the endorsed plans unless with the further permission of the Responsible Authority.**

Disturbed Surfaces

- 4. All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.**

Landscaping and Vegetation Protection

- 5. Within 6 months of the practical completion of the development (or other time agreed to in writing by the Responsible Authority), the landscaping works shown on the endorsed plans must be carried out and completed, to the satisfaction of the Responsible Authority.**
- 6. The landscaping referred to in Condition 5 above must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced as soon as practicable.**
- 7. Prior to the commencement of any building or works appropriate tree protection fencing must be erected in accordance with Australian Standard AS4970 – 2009 (Protection of trees on development sites). The tree protection fencing must remain in place until the completion of any works are hereby approved.**

4.2 (Cont.)

8. Any plant equipment associated with the permitted development must comply with the noise requirements of the *Environment Protection Act 2017* and the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority.

Expiry

9. This permit will expire if the development is not completed within three years of the date of this permit.

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

Notes:

Any installation of wastewater fixtures will require an application to install an onsite wastewater management system to be submitted to and approved by the Responsible Authority.

Part B

That Council resolves that Attachment 4 to this report be retained as a confidential item pursuant to Section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

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

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

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

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

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

GOVERNANCE PRINCIPLES

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

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

4.2 (Cont.)

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION

Purpose

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

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

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

The key planning considerations are summarised in the below table:

Proposal	The development of a shed.
Zoning and Overlays	Zone: • Green Wedge Zone Schedule 2 (GWZ2) Overlays: • Environmental Significance Overlay Schedule 7 (ESO7) • Environmental Significance Overlay Schedule 17 (ESO17) - not applying to development site • Environmental Significance Overlay Schedule 19 (ESO19) - not applying to development site • Significant Landscape Overlay Schedule 6 (SLO6)
Planning Permit Triggers	Clause 35.04-5 (GWZ2): A planning permit is required to construct a building within 100 metres of a dwelling or a small second dwelling that is not in the same ownership. Clause 42.03-2 (SLO6): A planning permit is required to construct a building or to construct or carry out works.
Advertising	The application was advertised by sending direct notice to all adjoining and opposite properties and erecting a sign on the site for 14 days.
Submissions	Thirty-six objections have been received to date.

	One submission in support of the application has been received to date.
Consultation	A Planning Application Conference (PAC) was held at Balnarring Community Hall on 30 May 2024.
Key Issues	• Whether the proposed development is acceptable having regard to the Green Wedge • The siting and design of the building and whether it is acceptable having regard to landscape considerations, including the streetscape • Consideration of the matters raised in the objections
Recommendation	A Notice of Decision to Grant a Permit be granted, subject to conditions.

Background

Subject site

The subject site is Lot 3 on Plan of Subdivision 125344 and is known as 21 Balnarring Beach Road, Balnarring. The site occupies an area of approximately 22 hectares and is irregular in shape. The site has a frontage to Balnarring Beach Road of approximately 333.02 metres and a depth of approximately 685.30 metres.

Access to the site is provided via two crossovers. At the northern end of the road frontage is an unsealed crossover and driveway. The driveway is tree-lined on its south side. This driveway branches off to provide access to the main dwelling to the south and a second dwelling to the east.

There are three sheds located along the driveway branch to the main dwelling. There is a driveway area to the rear of these sheds that is accessible from the eastern branch of the driveway. There are also informal access tracks from this driveway into the farm paddock to the rear of the main dwelling. The second crossover is located centrally along the frontage and provides access to the main dwelling. The crossover accesses a circular driveway around the main dwelling.

The site is currently used to cut hay.

The open space between the road and the existing buildings and driveways contains a substantial amount of vegetation. There is also row of cypress trees along the north boundary and the boundaries of various paddocks.



Figure 1: Aerial photo showing the subject site and surrounding properties – Council Intramaps August 31 2022.

Locality and surrounding properties

The site is located on the eastern side of Balnarring Beach Road, approximately 375 metres south of the intersection of Frankston-Flinders Road and Balnarring Beach Road. The site is bordered by Balnarring Beach Road to the west; and rural properties to the north, south and east. On the opposite side of the road are residential properties that each contain one dwelling.

The adjoining land can be summarised as:

West	Balnarring Beach Road – Collector, Council-maintained sealed road. Across Balnarring Beach Road there are 17 single dwellings occupying the opposite and equivalent frontage.
North	1 Balnarring Beach – Rural lot of 20.4 hectares, containing farm paddocks with a driveway and sheds along the common boundary to the subject site. There is a cluster of sheds setback approximately 60 metres to the road and 36 metres in length.
South	121 Balnarring Beach - Rural lot of 21.1 hectares, containing a dwelling and scattered trees at the front part of the property. Dwelling setback to road of 60 metres.
East	22 Luxton Drive – Rural lot of 19.9 hectares, containing farm paddocks and a dwelling.

The streetscape of Balnarring Beach Road contains a combination of residential land and rural land. The residential land is all located on the west side of the road (except for the small portion of the road within the Balnarring Beach township). The east side of the road comprises four rural lots the subject site, the north-adjointing property- 1 Balnarring Beach, the south-adjointing property- 121 Balnarring Beach and a property further south, 163 Balnarring Beach. There is one rural lot on the west side of Balnarring Beach Road, 100 Balnarring Beach Road. The rural lots on the east side of the road are all similar in size.

4.2 (Cont.)

163 Balnarring Beach Road is 21.1 hectares in area and contains a dwelling and two sheds. The dwelling and one of the sheds are setback approximately 30 metres from the road. The length of each shed is sited parallel with the road. The front shed is 15 metres in length and 6 metres in width (90 square metres). The rear shed is 18 metres in length and 9 metres in width (162 square metres).

100 Balnarring Beach Road is 18.3 hectares is area and contains a dwelling, a horse menage and two sheds. The farm paddocks are small, and tree lined. The two sheds are approximately 21 metres in length and approximately 9-10 metres in width.

Proposal

Please refer to the following for further details:

- Attachment 1 – Officer Assessment
- Attachment 2 – Development Plans
- Attachment 3 – Original Development Plans and Planning Submission
- Attachment 4 – Submissions (confidential)
- Attachment 5 – Planning Provisions.

The application seeks planning permission for the development of the subject site for a shed. Its intended use is for the purpose of supporting a cherry farm on the land. The use of the land for a cherry farm (agriculture) does not require a planning permit. As such, the consideration of the proposal relates to the development of a shed only.

The shed is proposed with a 40 metre setback from the Balnarring Beach Road frontage and 10 metres from the north boundary. The proposed shed has a length of 33.5 metres and width of 15 metres, with a floor area of 502.5 square metres. The shed is single storey with a maximum overall height of 5.845 metres. The shed contains solar panels on the roof. Two 10,000 litre water tanks are also proposed.

The shed includes earthworks of no more than 1.5 metres of excavation and 600 millimetres of fill that are to be stabilised by batters. A new driveway is proposed to branch off from the existing driveway and the existing driveway is to be extended. Four new car parking spaces are proposed as part of the driveway works.

The development requires removal of non-native vegetation. This vegetation does not require a planning permit to be removed. Two rows of vegetation planting are proposed between the shed and the road.

NOTIFICATION AND CONSULTATION**Notification**

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

Submissions

Please refer to Attachment 4- Submissions.

Thirty-six objections and one submission of support was received, and the matters raised in those submissions are discussed further in this report.

4.2 (Cont.)**REFERRALS**

Referrals were undertaken by internal departments including Environmental Health and Agribusiness Officer. No objections were received.

The response from Environmental Health advised that any installation of wastewater fixtures will require an application to install an onsite wastewater management system.

The response from the Agribusiness Officer advised that the revised size of the shed is a typical farm shed. There were concerns raised about the viability of the farm. It was advised that while cherries will be able to grow on the site, the growing of cherries is more suited to land in Red Hill where the soil is deep rich clay and winter is cooler.

CONSIDERATION

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

The following key issues are summarised below:

- Whether the proposed development is acceptable having regard to the Green Wedge
- The siting and design of the building and whether it is acceptable having regard to landscape considerations, including the streetscape
- Consideration of the matters raised in the objections.

Whether the proposed development is acceptable having regard to the Green Wedge

The land is considered capable of accommodating the proposed development, noting that the use does not require a planning permit. The development relates to rural land use by virtue that it will be used as an ancillary component of a proposed agricultural use of the land (crop raising). The site is considered suitable for the development and is compatible with adjoining agricultural land uses. It is noted that there is an interface with residential land to the west, however, this is considered acceptable given the ample proposed setback and its use ancillary to an agricultural use that does not require planning permission.

The proposal is considered to minimise adverse impacts on the character and appearance of the area or features of natural scenic beauty. The landscape contains a topography with moderate undulation and does not contain hilltops or long-distance views. The land slopes from the north west corner of the site down to the eastern boundary that contains the Tulum Creek, within an easement located within the property boundary.

The proposal is not considered to have any adverse environmental impact given that no native vegetation removal is required (vegetation that will be removed is exempt from planning permission as it is planted, non-native and exempt under bushfire requirements). The proposal is over 500 metres from the nearest waterway.

In the immediate vicinity of the proposed building footprint, there is a row of 12 cypress trees of 40 metres in length located along the north boundary that are 10-15 metres in height. This row of trees will mostly screen the shed when viewed from northern vantage points. There is also a cluster of sheds located on the abutting property to the north (1 Balnarring Beach Road) and another row of cypress trees further along the north boundary, which further limit the proposed building from being visually dominant in the landscape. Whilst there is a gap in the tree line when approaching from the north, the building will also be cut into the slope of the site by approximately 1.5 metres and thereby reducing its height and appearance when viewed from Balnarring Beach Road to less than 5 metres in height.

4.2 (Cont.)

For the above reasons, the proposal is considered acceptable having regard to all relevant Green Wedge considerations.

The proposed building will be used as part of a farm that grows cherries on the land. It is acknowledged that cherries are not currently grown on the land and that under the provisions of the Green Wedge Zone 'crop raising' is a Section 1 (i.e. no permit required land use). As the growing of cherries is 'as of right' – Council does not have any discretion to consider land use matters. Many of the submissions (including internal referral comments) raised issues with the proposed cherry farm, including: the viability of cherries, the use sprays and chemicals, impact of farming operations on the flora and fauna, traffic etc, which all sit outside the bounds of this assessment.

Additionally, submissions also raised concerns in regard to the future use of the building, e.g. restaurant, rural industry, primary produce sales. The application is simply for an agricultural shed. These discretionary land uses have not been applied for under this application and further planning permission would be required from the Responsible Authority if they were ultimately sought by the permit applicant. It is noted the applicant included an indicative floor plan as part of their submission to justify the scale of the building and plan for potential expansion of their business. To allay concerns it is recommended that the indicative floor plan be removed from the endorsed plans, as per the recommended conditions of this report.

As detailed in Attachment 1- Officer Assessment, under Clause 52.06 of the Planning Scheme, there is no specified car parking ratio for agriculture. Four car parking spaces have been provided. This level of car parking is considered adequate for the proposed development. Given the growing of cherries is "as of right", Council's assessment does not extend to the traffic operations of this land use.

The siting and design of the building and whether it is acceptable having regard to landscape considerations, including the streetscape

The proposed 40 metre setback of the shed from the road frontage boundary is reasonable in terms of the streetscape. It should be noted that the building exceeds the 20 metre front setback requirement of the Green Wedge Zone. Additionally, the building is set further back than other rural buildings in the immediate vicinity. For example, the shed at 163 Balnarring Beach Road is setback approximately 30 metres from the road and does not enjoy the benefit of established vegetation to assist with screening.

Figure 2 below shows the area of the southern Peninsula that is covered by the Significant Landscape Overlay – Schedule 6 (SLO6) 'National Trust Classified Landscapes'.

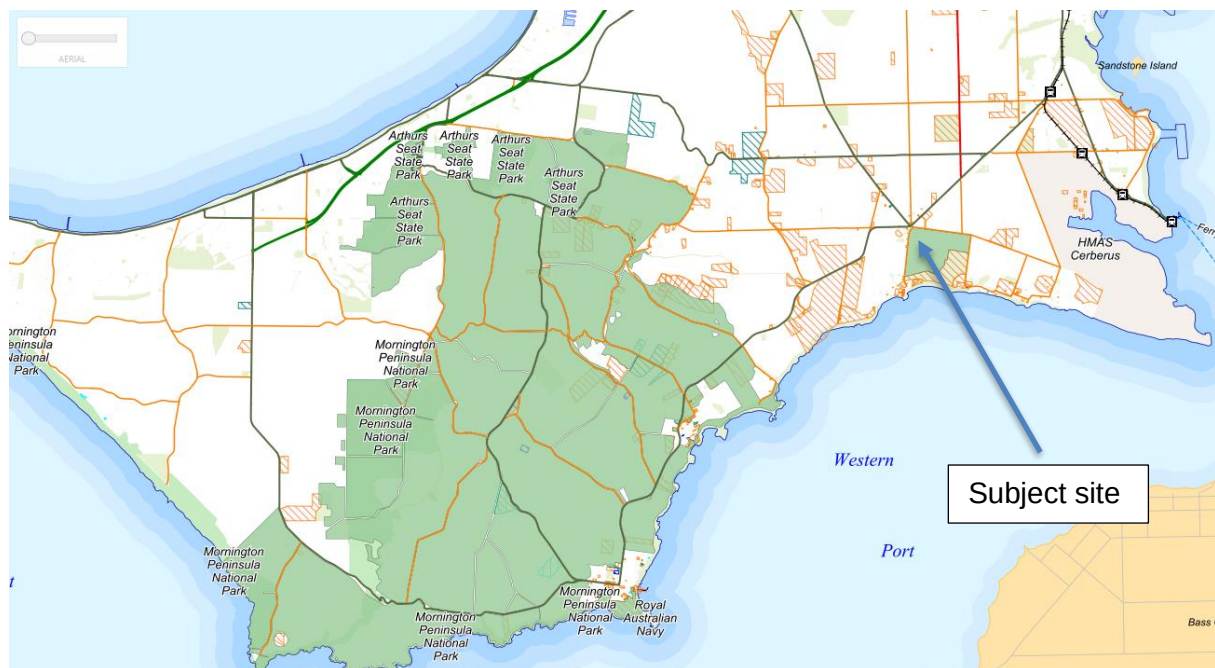


Figure 2: Shows extent of SLO6 in green and location of subject site.

The size and height of the shed is reasonable and will not have a detrimental impact on the streetscape. Whilst the shed might be larger than other agricultural outbuildings in the immediate vicinity of Balnarring Beach Road – it is still considered of a scale commensurate to other agricultural buildings in Green Wedge Zone. Further the building is well setback from the road, not of a significant height and would not be visually dominant in the landscape. The proposed Woodland Grey cladding is considered to satisfy the ‘muted tone’ requirements of the SLO6 and complement the rural landscape. The planting of trees in the front setback will also assist in minimising the visual impact of the building.

The proposed siting location is in an existing cleared area of the site that is not actively used as part of existing farm operations. In this regard it is considered to be responsive to existing vegetation as well as rural infrastructure of the property. The siting location has also been chosen due to its proximity to existing accessways and services.

The enclosed nature of the landscape where the building is proposed to be located in combination with the height of the building would ensure that the development will not have a detrimental impact on the landscape. Figure 3 and Figure 5 highlight that the existing vegetation will largely screen and/or filter views of the proposed development, as well as preventing longer distance views beyond the subject site. Additionally, landscaping is proposed in the front setback of the building to further reduce its visual impact, where vegetation screening is not currently present (refer to Figure 4).

The Shire notified the Mornington Peninsula Branch of the National Trust of Australia (Vic) of this application due to SLO6 applying across the subject site. The National Trust Mornington Peninsula Branch responded that there was no objection to the proposal. The submission acknowledged that while the shed is close to the road, the surrounding vegetation will screen the height and bulk of the building to ensure there is not a detrimental impact on the landscape.



Figure 3: Photo taken from road looking south-east to the row of cypress trees along the north boundary. The proposed building would sit below the canopy line in the background.



Figure 4: View of subject site from the road looking east into the property. The shed would be visible from this perspective although screen landscaping is proposed.



Figure 5: View of subject site from opposite side of the road looking north east.

Consideration of the matters raised in the objections.

Refer to Attachment 4 – Submissions.

Below are the matters of submissions that have not been previously addressed in this report:

- Impacts to property value

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

- Noise from shed, machinery, heating, refrigeration, extractor fans.

Any plant equipment associated with the shed would need to comply with (Environment Protection Regulations) EPA regulations. A standard condition will be placed on the permit to ensure compliance. However, given that the shed is proposed to be used in association with a section 1 use, it is not considered appropriate to specify conditions restricting use, including noise as it is beyond the scope of this assessment.

- Vegetation clearing has occurred.

It is evident that some vegetation is shown on the aerial photograph from 2022 located between the proposed building footprint and the existing driveway that no longer exists on the site. There was a Planning Enforcement Case (PE0700/22) that investigated this matter in 2022 and determined that a planning permit is not required for the vegetation removal.

There has not been any vegetation clearance that has occurred since the application has been submitted. A site inspection occurred during the preliminary assessment of the application in 2023. A further site inspection occurred in June 2024. There was no change identified in the vegetation on the site.

4.2 (Cont.)

- There is a caveat on the land regarding height of tree growth.

There is no caveat or other restriction on the land that has a control on how high trees on the site can grow.

- Setting a precedent

The proposal will not set a precedent for other developments in the immediate area as each planning permit application is assessed on its merits and future applications would be subject to their own assessment against the planning scheme.

CONCLUSION

The proposed development of a farm shed is considered to be an acceptable outcome with regard to the relevant provisions of the Planning Scheme and, subject to appropriate conditions. It is therefore recommended that Council resolve to support the application and issue a Notice of Decision to Grant a Permit, subject to conditions contained in the recommendation section of this report.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.3 Planning Permit Application P23/1240 - 2083 Frankston-Flinders Road, Hastings - Development of an electronic and floodlit major promotion sign

Prepared By	Daniel Balkin, Team Leader - Planning Services
Authorised By	Director - Planning & Environment
Document ID	A13115538
Briefing Note Number	BN1942 – 30 July 2024
Attachment(s)	1. Officer Assessment ⇒ 2. Plans ⇒ 3. Application Report ⇒ 4. Submissions (confidential) ⇒ 5. Lighting Impact Assessment ⇒ 6. Traffic Assessment ⇒ 7. DTP Consent ⇒ 8. Planning Provisions ⇒

EXECUTIVE SUMMARY

The purpose of this report is to seek a position from Council regarding planning permit application P23/1240 for the proposed development of an electronic and floodlit major promotion sign at 2083 Frankston-Flinders Road, Hastings. The application has been called in by Councillor Dixon for a decision by Council.

The application received two objections generally relating to the setback of the existing building on the site and impeding views to existing signs.

The Department of Transport and Planning (DTP) is a Determining Referral Authority under Section 55 of the *Planning and Environment Act 1987 (the Act)*. The DTP has considered the proposal with regard to road safety and as relevant road management authority and provided its conditional consent to the application.

The proposal is considered acceptable having regard to the objectives and purposes of the applicable planning controls, being clause 52.05 – Signs of the Planning Scheme. It is recommended that Council supports the application and resolves to issue a Notice of Decision to Grant a Permit, subject to the conditions contained within this report.

RECOMMENDATION**Part A**

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves to support Permit Application P23/1240 for the development of an electronic and floodlit major promotion at 2083 Frankston-Flinders Road, Hastings and that a Notice of Decision to grant a Planning Permit be issued, subject to the following conditions:

COUNCIL CONDITIONS**Amended Plans**

4.3 (Cont.)

- 1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:**
 - A. The floodlights associated with the north facing display face to be removed from the western and northern elevations.**
 - B. Show the existing sign on the adjoining property to the south accurately on the site plan and elevations, including setback from Frankston-Flinders Road, height and dimensions.**
 - C. The proposed sign to be setback 4 metres from the front boundary (Frankston-Flinders Road).**
 - D. Any resultant reduction in width of the sign from 8.3 metres to ensure that it does not go further east into the site than the existing building line.**

Approved Development not Altered

- 2. The approved development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (Unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).**

Maintenance

- 3. All signs hereby approved must be designed to a professional standard, constructed and maintained in good condition to the satisfaction of the Responsible Authority.**

Illumination

- 4. Sign illumination must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.**
- 5. The intensity of the external lighting and lighting in the signage must be limited so as not to cause glare or distraction to motorists or other persons or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.**
- 6. Any wiring, cabling or anything similar must be concealed from view to the satisfaction of the Responsible Authority.**
- 7. The signage must be wholly located within the subject property. No part of the sign may encroach into the road reserve.**

Major Promotion Signs (mandatory condition)

- 8. The signs must not:**
 - A. Dazzle or distract drivers due to its colouring.**
 - B. Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles.**

- C. Be able to be mistaken as an instruction to drivers.

DEPARTMENT OF TRANSPORT AND PLANNING CONDITIONS

Luminance Standard

- 9. During the operation of the sign, the maximum average luminance and threshold increment values as specified in below must not be exceeded:
 - A. Maximum average luminance:
 - i. Full sun on face of signage: no limit
 - ii. Daytime luminance: 6,000 candela per metre squared
 - iii. Morning and evening twilight and overcast weather: 700 candela per metre squared
 - iv. Night time: 350 candela per metre squared
 - B. Threshold increment max percentage:
 - i. Night time: 20%
 - C. Adaptation luminance:
 - i. Night time: 5%

Brightness levels

- 10. The signs must be dimmable and have a suitable control system to enable maximum lighting levels to be set or adjusted if deemed necessary by the Responsible Authority and the Head, Transport for Victoria.
- 11. Where illuminated during the day, the sign must be fitted with Photocell/s (light sensor/s) that measure the ambient light and control system technology that enables the luminance of the sign to automatically adjust relative to the measured ambient light level.
- 12. Any change in brightness levels must be applied during an image transition, not while an image is being displayed.

Image transitions

- 13. Where the graphical content or colours can change (such as for digital/electronic signage), any changes in image must occur in 0.1 seconds or less.

Externally illuminated signage

- 14. Retro-reflective material or high glossy surfaces must not be used.

Compliance with Lighting effect assessment report

- 15. The sign must operate in accordance with the Lighting Impact Assessment Report submitted with the application prepared by Electro Light, dated 14 December 2023, Rev A to the satisfaction of and at no cost to the road manager, Transport for Victoria and the Responsible Authority.

Lighting compliance report

- 16. Prior to the operation of the sign, a Lighting Compliance Report must be submitted to and approved by the Responsible Authority and the Head, Transport for Victoria. The Lighting Compliance Report must demonstrate that the sign has been commissioned according to the requirements of the Lighting Impact Assessment Report. The Compliance Report must include the following:**
- A. On site luminance measurements for Daytime, Evening/Morning Twilight and Night Time, based on a 100% white screen set to the maximum value for each lighting condition.**
 - B. Date and times of luminance measurements for the relevant lighting conditions. Details of the luminance meter used, including serial number. The luminance meter must have been calibrated by an appropriately certified Lab within the last 12 months. The date of calibration and Calibration Report Number shall be provided.**
 - C. A description of the luminance methodology used, including location and orientation of the luminance meter relative to sign, the image/content displayed on sign and number of measurement points taken. The signage should be measured with a 100% white image displayed, unless signage is a fixed colour/design.**
 - D. Photos of the sign for each sky condition measured, taken from the meter location.**

Indicative elevation plans of the signage showing the values of luminance at each measurement point.
 - E. A summary showing the final average luminance of the signage for each relevant sky condition.**
 - F. A certification signed by a suitably qualified lighting consultant to undertake luminance measurements.**

Compliance record

- 17. The operator must keep a Compliance Record of the operation of the sign. This must be provided to Transport for Victoria within 5 days of a written request. The Compliance Record must include:**
- A. The sign's luminance (cd/m² or as a percentage of its maximum luminance) in minimum 10-minute intervals.**
 - B. The sign's photocell (light sensor) reading of the ambient light in minimum 10-minute intervals.**
 - C. The dwell time and transition time between successive images. All record information must be time and date stamped to show the time of measurement.**

Compliance Records must be maintained for a minimum of 12 months.

Operational Parameters for Electronic Signs

- 18. No advertisement or message shall be displayed for less than 30 seconds.**

4.3 (Cont.)

- 19. The transition from one advertisement to another must be instantaneous.**
- 20. The sign must not display content, images or text:**
 - A. Giving the illusion of continuous movement.**
 - B. Capable of being mistaken for traffic signals or traffic control devices, including red, amber or green circles, octagons, crosses or triangles.**
 - C. Capable of being mistaken as an instruction to a road user, including the wording stop, give way, slow down, turn left or turn right.**
 - D. With a flashing background, flashing text, flashing images, blinking or fading elements that create the illusion of movement.**
 - E. Containing any animation.**
 - F. Capable of being interpreted as projections beyond the face of the advertising screen such as through 3D technology.**
 - G. Consisting of present time or other contemporary update information relating to news, weather or time.**
 - H. Containing video, movie or television broadcasts.**
- 21. The advertising area must not be split into two screens with different messages.**
- 22. The sign and any displayed advertisement must not include any ancillary extension, embellishment or accessories within or outside the permitted advertising area unless the Head of Transport for Victoria has agreed to in writing prior to its installation.**
- 23. The use of sound or motion to activate the sign is not permitted.**
- 24. The use of sound to interact with road users is not permitted.**
- 25. The sign must not dazzle or distract road users due to its colouring.**
- 26. In the event of an attack by a computer hacker or similar resulting in unauthorised display of visual images or any other display malfunction, the electronic sign must shut down and cease any form of visual output until the malfunction is repaired.**

Expiry

- 27. This permit expires 15 years from the date of issue, at which time the sign and all supporting structures must be removed, and the site made good to the satisfaction of the Responsible Authority.**

Part B

That Council resolves that Attachment 4 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.

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

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

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

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

GOVERNANCE PRINCIPLES

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

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

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION**Purpose**

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

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

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

The key planning considerations are summarised in the below table:

Proposal	Development of an electronic and floodlit major promotion sign
Zoning and Overlays	Zone: Industrial 3 Zone (IN3Z) – Clause 33.03-5 - Sign requirements are at Clause 52.05. This zone is in Category 2. No overlays apply to the subject site.
Permit Triggers	52.05-2 - A permit is required to construct or put up for display a sign in Section 2 of the relevant category. 52.05-12 – Category 2 – Office and Industrial – A permit is required for an ‘electronic sign’, ‘floodlit sign’ and a ‘major promotion sign’ as they fall within Section 2.
Notification/Advertising of proposal	The application was advertised by sending direct notice to all adjoining properties as well as those that have line of site to the subject site and erecting a sign on site for 14 days.
Submissions	Two objections have been received to date.
Consultation	No Planning Application Conference (PAC) was held.
Key Issues	• Will the proposal have an impact on residential amenity? • Will the proposed sign have an appropriate built form and visual presence in this context and is the sign appropriate for this site? • Is the proposal acceptable from a Road Safety perspective? • Consideration of the matters raised in the objections
Recommendation	A Notice of Decision to Grant a Permit be granted, subject to conditions.

Background

Subject Site and Surrounds

The site is formally described as CP 109021 It has a square shape with a site frontage of 31.34 metres to Frankston-Flinders Road and a maximum depth of 37.41 metres. The overall land size is approximately 1,172 square metres.

The site is relatively flat but slopes from the western boundary (road frontage) to the eastern boundary by about 0.5 metres. The proposed siting of the sign is on land that is approximately 14metres Australian Height Datum, in the south-western corner.

There are business identification signs located within the front setback of the adjoining properties to the north and south. The sign is proposed on the south western corner of the Hastings Produce and Rural Supplies store site, which does not contain any other freestanding business identifications sign currently.

The site is on the east side of Frankston-Flinders Road in Hastings, between High Street and Cool Store Road. The site is amongst a strip of existing businesses which include Tyrepower, Westernport Exhausts, Mornington Peninsula Rendering and Short Fuse Auto Electrics. Each building contains business identification signage on the facades.

The subject site is located just outside the Hastings Activity Centre. Land on the eastern side of Frankston-Flinders Road is located within the Industrial 3 Zone, whereas land located to the north west and south west of Frankston-Flinders Road is located within the General Residential Zone 1 and Commercial 2 Zone, respectively.

The site is located within the southern portion of an approximately 850 metres long industrial strip containing various industrial activities and businesses from vehicle repair and maintenance, marine boat repairs, construction supply stores, food and drink premises, equipment hires, warehouses and industry.

The closest residential receptors are located approximately 55 metres to the north west on Frankston Flinders-Road and then approximately 260 metres to the east across the Stony Point train line in Station Street.

Refer to Attachment 1 – Officer Assessment for detailed description of site and surrounding environs.



Figure 1: Aerial Photo showing subject site and surrounding properties (Nearmap February 2024)

Sign location ★

Proposal

This application seeks approval for the development of an electronic and floodlit major promotion sign. The proposed sign includes one electronic display face (north facing) and one floodlight display face (south facing), each measuring 8.3 metres wide by 2.2 metres high. Each display face is 18.26 square metres, without the skirting board and logo box. The overall height of the structure is 5.15 metres.

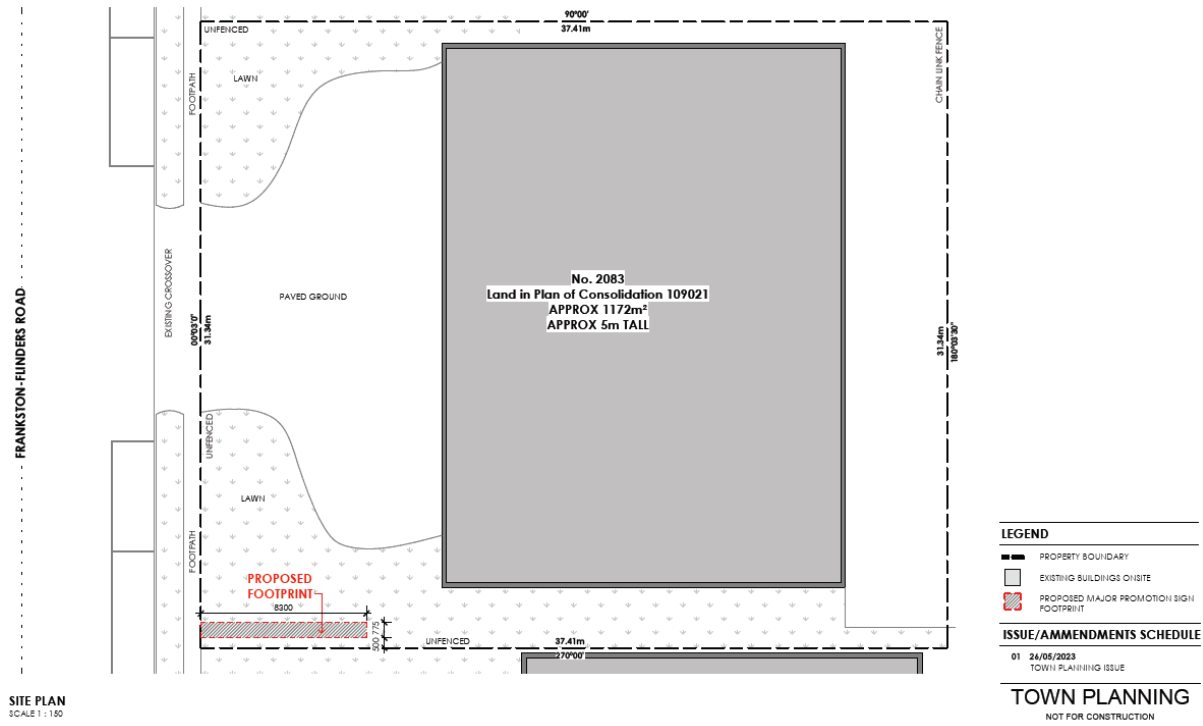


Figure 2: Site Plan

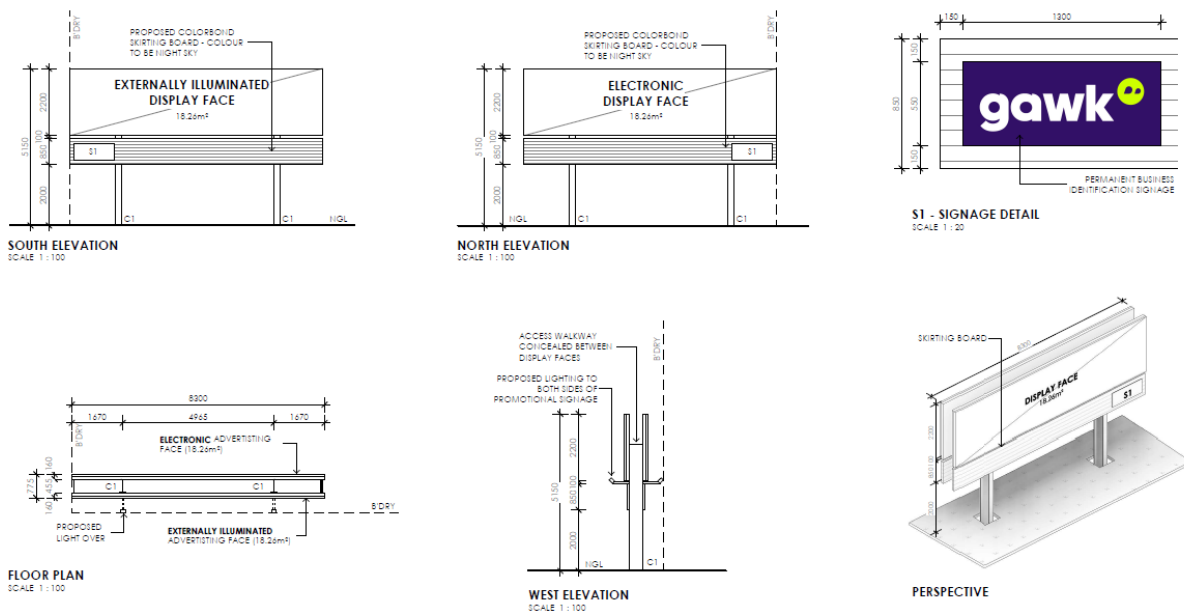


Figure 3: Development Plans

Please refer to the following for further details:

- Attachment 1 – Officer Assessment
- Attachment 2 – Plans
- Attachment 3 – Application Report.

Relevant permits and history

The proposed sign being considered in this application is located within the same road corridor and locality of two other major promotion signs, being previously approved under planning permit P17/1628 at 2063 Frankston-Flinders Road and another approved by

planning permit P19/0514 at 2057 (2061) Frankston-Flinders Road. Both are for the display of single sided externally illuminated major promotion signs, with one of them facing south and the other north, respectively. These signs have been erected and are in use.

Both are substantially larger signs than the one being proposed here, measuring approximately 42 metres square in display area, each. They are both located behind or in line with the building line of the building on the same site or adjoining site.

The subject site is approximately 170 metres to the south of the sign at 2063 Frankston-Flinders Road and 186 metres south of the sign at 2057 (2061) Frankston-Flinders Road.

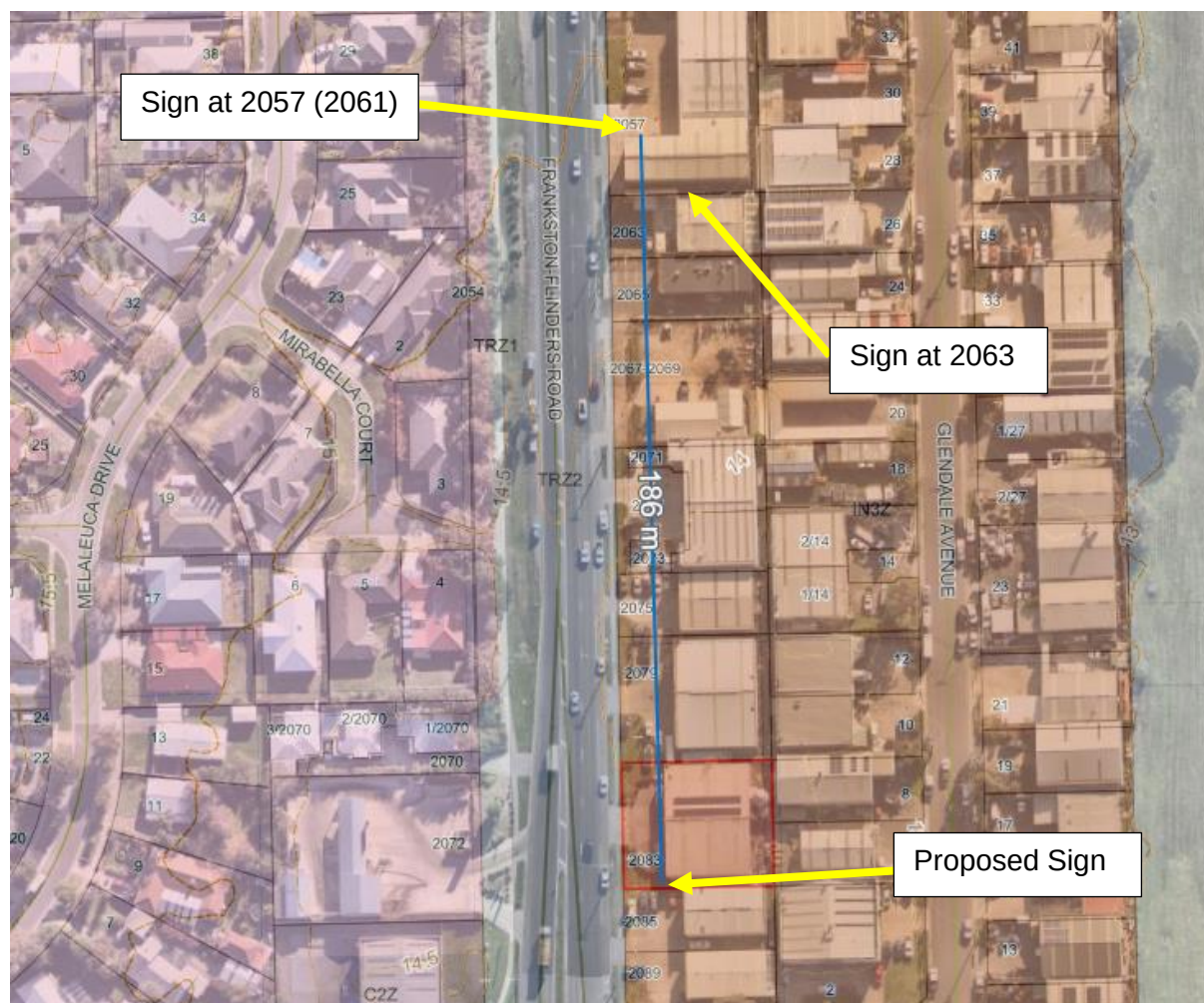


Figure 4: aerial showing existing approved signs in context of the subject site

NOTIFICATION AND CONSULTATION

The application was advertised by sending direct notice to all adjoining properties as well as those that have line of site to the subject site and erecting a sign on site for 14 days.

Submissions

Please refer to the following for further details:

Refer to Attachment 1 – Officer Assessment for detailed assessment of concerns.

Refer to Confidential Attachment 4 – Submissions.

To date, two objections have been received. The concerns raised can be summarised as:

4.3 (Cont.)

- Impeding views to existing signs.
- Front setback of the existing warehouse on the subject site.

These are addressed in summary below.

Consultation

No formal mediation has been undertaken with those who made submissions to the application.

REFERRALS

A referral was undertaken to the Department of Transport and Planning. It provided conditional consent to the application. These conditions are considered reasonable.

Please refer to Attachment 7 – Department of Transport and Planning consent.

CONSIDERATION

Refer to Attachment 1 – Officer Assessment for detailed assessment against all relevant criteria.

Refer to Attachment 8 – Planning Provisions for all relevant planning scheme provisions.

The proposed sign is considered to be consistent with the objectives and strategies of the relevant Planning Policy Framework (PPF) and objectives and decision guidelines of Clause 52.05. The following key issues are summarised:

Will the proposal have an effect on residential amenity?

As previously discussed in the site context section, the proposal will be approximately 55 metres from the nearest residential receptor. The applicant has submitted a Lighting Impact Assessment that provides an assessment of the proposal in compliance with the Department of Transport and Planning requirements and Guidelines for Illuminated Outdoor Advertising Signage and AS4282-2019 Control of the Obtrusive Effects of Outdoor Lighting.

From the perspective of residential amenity, the assessment against the criteria in AS4282-2019 is considered most relevant to determine the acceptability of the sign. Where residential properties are within 100 metres from signage displaying dynamic content, the maximum illuminance is 2.5 lux for Zone A4 (High district brightness) and 1 lux for Zone A3 (Medium district brightness). The maximum illuminance for Zone A4 properties within 100 metres from the signage is 0.79 lux at 2070 Frankston-Flinders Road, and the maximum illuminance for Zone A3 properties within 100 metres from the signage is 0.35 lux at 5 Mirabella Court.

Under the Standard, the maximum allowable illuminance to residential properties at a distance of 100 metres or greater from signage displaying dynamic content is 5 Lux for Zone A4 and 2 Lux for Zone A3. The maximum illuminance for Zone A3 properties at or greater than 100 metres from the signage is 0.23 lux at 7 Mirabella Court, and the maximum illuminance for Zone A4 properties at or greater than 100 metres from the signage is 0.18 lux at 2 Mirabella Court.

Refer to Attachment 5 – Lighting Impact Assessment.

The surrounding dwellings have also all been designed to ‘face’ away from the commercial area as there would be limited desire to address the commercial interface from a dwelling. The proposal is not considered to have a negative effect on residential amenity. The three dwelling development at 2070 Frankston-Flinders Road is well screened with vegetation and

4.3 (Cont.)

high fences such that there would be limited or no views to the proposed signs from those dwellings. It is likely they were deliberately designed this way given the main road environment and interface with commercial and industrial zones.

Will the proposed sign have an appropriate built form and visual presence in this context and is the sign appropriate for the site?

This area of Hastings is typically defined by industrial and commercial properties which face and run parallel along this section of Frankston-Flinders Road. Opposite (west) the subject site is a General Residential Zone, however, the majority of residences are not accessed from, nor face, Frankston-Flinders Road with the exception of three dwellings at 2070 Frankston-Flinders Road. The predominant character is of a commercial and industrial area that has a wide variety of front setbacks, frontage treatments, extent of landscaping, number of crossovers, and rhythm and spacing of buildings. It is considered that the proposed signage can be accommodated within this location without causing detrimental amenity or character outcomes.

The site is not within a significant view corridor, viewline, gateway location or landmark site identified in a framework plan or local policy. Whilst a major promotion sign must be prominent by its inherent nature, the sign is not considered to unreasonably dominate any part of the road corridor or surrounding environment, subject to being setback appropriately from the frontage. As highlighted previously, there are approvals for two other major promotion signs within 200 metres of the subject site. They are both located behind or in line with the existing or adjoining building line on the same site. They are both setback at least 4 metres from the respective frontages so as not to dominate the streetscape. In the current proposal, it is acknowledged that the site characteristics are different, however, due to a number of factors it is considered reasonable to require the sign to be moved back in to the site by four (4) metres from the frontage. As discussed below, this is also in consideration of one of the objections relating to obscuring existing signage on the adjoining lot to the south, which is not currently shown on the plans as it should be.

Frankston-Flinders Road in this location is quite wide, where the extent of panorama that is available will mean the sign will only ever take up a relatively small proportion of the overall view, particularly if setback from the road frontage is increased as per the recommended conditions. The height of the proposed signage is to be lower than that of what a typical major promotion sign and will therefore only be visible to those who are on Frankston-Flinders Road and not nearby roadways.

The proposal could be considered to be a progression toward visual clutter or a cumulative impact in terms of congestion of signage in the surrounding area. However, it is not considered to be that yet. It is the third major promotion sign in an approximately 850 metre long industrial strip. The proposed sign would be nestled among other business identification signage if setback 4 metres which is a prominent feature within this strip.

The sign will not tower over any important viewing point, nor dominate any streetscape or intersection. While the sign will appear partly above the skyline on certain views to north and southbound traffic, this skyline does not form an important landscape. As such, the proposed sign is not considered to unreasonably change the nature and extent of skyline views available from these locations.

Is the proposal acceptable from a Road Safety perspective?

The electronic nature of the signs means that a range of static images can be projected, and it is proposed that the images displayed will remain static and do not change on any form of predictable schedule or pattern, however, it is suggested that the minimum dwell time of the images displayed be set at a minimum of 16 seconds. There will be no flashing lights and no imitation of other traffic control or regulatory signs. The siting and angle of the signs ensures that while it will be directly visible to both inbound and outbound drivers, it will not form a

4.3 (Cont.)

background to any traffic signal or interfere in anyway with the reading of traffic signals. As a result, the sign will not distract drivers or pedestrians.

Mandatory conditions in the planning scheme and the 18 conditions from DTP (determining referral authority) ensures the proposal will not unreasonably or unsafely distract drivers or pedestrians in this locality.

Consideration of the Submissions (Objections) received

Please refer to confidential Attachment 4 – Submissions (confidential).

Impeding views to existing signs

Given the height proposed of the major promotion sign, it does have the potential to impede views to existing signs, particularly the sign to the south. The area is predominantly industrial and commercial businesses, with business identification signage being a dominant feature of these properties, it is not unreasonable to propose signage that is associated with advertising that may obscure views to some existing signage. However, in consideration of other factors relating to the appropriateness of the sign in relation to setbacks and relationship to buildings on the land and adjoining land, it is considered reasonable to ensure that the proposed sign does not impede views of the existing adjoining sign when vehicles or pedestrians are travelling south bound along Frankston-Flinders Road. Clause 52.05-8 specifically requires consideration to be given to this issue and in combination with other considerations is considered reasonable to address via permit conditions. It is considered that the sign will still be visible and perform its intended function adequately.

The sign is otherwise considered appropriate in its size and scale in relation to existing signs or likely future signs so as to not adversely affect or increase the visual dominance of signs comparative to the buildings in the locality. Whilst it may be possible to allow uninterrupted views to the existing sign by elevating the proposed sign higher of the ground to create clearance under it, this is not desirable, nor supported as it would make the sign protrude above the existing building heights on the property and surrounding properties and that is not considered an acceptable outcome.

Front setback of the existing warehouse on the subject site.

A submission was received which relates to the setback of the existing building on the subject site from Frankston-Flinders Road. This does not form part of the proposal and is therefore not considered within the assessment.

CONCLUSION

The proposed development is considered to be an acceptable outcome with regard to the relevant provisions of the Planning Scheme and *the Act*, subject to appropriate conditions. It is therefore recommended that Council resolve to support the application and issue a Notice of Decision to Grant a Permit, subject to conditions contained in the recommendation section of this report.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.4 Planning Permit Application P23/1571 - 21 Skinner Street Hastings - Buildings and works associated with the Western Port Marina

Prepared By	Charlotte McGillivray, Senior Planner
Authorised By	Director - Planning & Environment
Document ID	A13036243
Briefing Note Number	BN1908 – 4 June 2024
Attachment(s)	1. Officer Assessment ⇒ 2. Development Plans ⇒ 3. Submitted Planning Report ⇒ 4. Submissions (confidential) ⇒ 5. DEECA Consent ⇒ 6. Melbourne Water Consent ⇒ 7. Planning Provisions ⇒ 8. Site Context ⇒ 9. Renders and Conceptual Landscaping ⇒

EXECUTIVE SUMMARY

The purpose of this report is to seek Council's decision regarding planning permit application P23/1571 for the development of buildings and works associated with the Westernport Marina at 21 Skinner Street Hastings. The application has been called in by Councillor Dixon for a decision by the Council.

The proposed development includes:

- Four boat storage buildings with space for 200 boats in a stacked configuration (two x two storey and two x three storey buildings)
- A new boat ramp and forklift launching area, to allow for secondary access to the marina and bay
- Construction of service rows.

All works, including access, are proposed within the existing lease area and boundary of the marina, which is reclaimed land.



The application was advertised and received eight objections, which can be summarised as:

- Change to, or loss of views,

4.4 (Cont.)

- Environmental impacts,
- Amenity impacts (noise/light); and
- Perceived conflicts of interest.

There are numerous State and Local Government policies, strategies, guidelines and plans that are relevant to the consideration of the application including the Marine and Coastal Policy 2020, Marine and Coastal Strategy 2022, Siting and Design Guidelines for Structures on the Victorian Coast 2020, Victorian Recreational Boating Strategy 2021–2030, Hastings South Coastal Management Plan 2015 and Hastings Foreshore Master Plan 2023. Within these guiding documents there can be at times competing objectives or outcomes sought. However, in the context of the site, the existing marina use and this application, it is considered that the majority of provisions provide support for the application.

The proposal is considered acceptable having regard to the relevant provisions of the Planning Scheme and the *Planning and Environment Act 1987*. It is recommended that Council supports the application and resolves to issue a Notice of Decision to Grant a Permit, subject to the conditions contained within this report.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act, 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves that Planning Permit Application P23/1571 for the development of buildings and works associated with a marina, be supported and that a Notice of Decision to Grant a Permit be issued subject to the following conditions:

COUNCIL CONDITIONS**Amended Plans**

- 1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:**
 - A. Vehicle access to the boat storage area to the satisfaction of the Responsible Authority.**
 - B. A notation that there will no vehicle, boat, or trailer parking outside the lease and/or licence area to the satisfaction of the Responsible Authority.**
 - C. Reinforced concrete surfacing to the south of the boat ramp to enable vehicle movements within the lease and/or licence area to the satisfaction of the Responsible Authority.**
 - D. The extent of reinforced concrete surfacing to align on all plans.**

Approved Development not Altered

- 2. The approved development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (unless otherwise specified by a condition of this permit, consent is not required for any buildings**

4.4 (Cont.)

or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).

Colours/Materials

3. The materials and colours of the exterior finish of the buildings must be in accordance with the endorsed plans unless with the further permission of the Responsible Authority.

Disturbed Surfaces

4. All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.

DEPARTMENT OF ENERGY, ENVIRONMENT AND CLIMATE ACTION CONDITIONS

5. The works are to be carried out generally in accordance with:
 - A. *The Marine and Coastal Act* consent application titled 'WESTERN PORT MARINA' dated 2 June 2023, prepared by Tract Consultants.
 - B. Amended plans submitted via email by Tract Consultants on 25 October 2023, prepared by Search Studio CO Pty Ltd, dated 24 October 2023, drawing numbers TP-01, TP-02, TP-03, TP-04.
 - C. Plans submitted in response to the further information request titled 'PLAN – BOAT RAMP' and 'SECTION – BOAT RAMP' prepared by Search Studio CO Pty Ltd, dated 19 December 2023 and 14 December 2023, respectively.
6. Any modification to the works proposed will require further approval by the Regional Director, Port Phillip Region, Department of Energy, Environment and Climate Action (DEECA).
7. Prior to works commencing, a Construction Environmental Management Plan (CEMP) must be prepared to the satisfaction of DEECA. The CEMP must include:
 - A. A detailed construction methodology for the proposed boat ramp and negative launching area, with reference to excavation, fill deposition and pile installation requirements.
 - B. Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction.
 - C. Measures to control erosion and sediment and sediment laden water runoff including the design details of structures.
 - D. The location of trenching works, boring, and pits associated with the provision of services.
8. Access and egress to the boat storage area and boat ramp/launching area is only permitted via the lease and/or licence area.
9. Indigenous vegetation must not be damaged or removed as a result of the works.
10. Any clearing or construction activity associated with the works, should be carried out in accordance with the with EPA Publication No. 275 Construction Techniques for Sediment Pollution Control (May 1991).

4.4 (Cont.)

11. The construction site must be managed in accordance with EPA Publication 1834: Civil construction, building and demolition guide (26 November 2020).
12. Construction equipment, building materials, refuse and site run-off must be contained and controlled and not permitted to impact on the marina or enter Western Port Bay.
13. All works must be completed, the site reinstated, and the works maintained to the satisfaction of DEECA.
14. This consent under the *Marine and Coastal Act 2018* will expire if the works are not completed within two years of the date of issue, unless an extension of time is applied for and granted by the Regional Director, Port Phillip Region, DEECA.

MELBOURNE WATER CONDITION

15. Sediment and contaminant laden runoff during construction must be contained. Such runoff is not permitted to enter the bay. Prior to commencement of construction, a Site Environmental Management Plan (SEMP) must be produced and adopted on site.

COUNCIL CONDITIONS**Landscaping and Coastal Land**

16. Within 12 months of the issue of the permit the following must be completed:
 - A. Any unauthorised infrastructure within the Council-managed coastal Crown land must be removed, including but not limited to; gates, fences, solar panels and hard stand areas (gravel and asphalt).
 - B. All landscaping works shown on the endorsed plans, including landscaping within the coastal Crown land, carried out and completed to the satisfaction of the Responsible Authority.

Once the fencing and landscaping is completed and within 12 months of the issue of the permit, the owner must arrange for Council's Planning Compliance Officer and Coastal Planner to attend the site and inspect the works and revegetation.

17. If there is any dead or dying vegetation within 12 months of its planting, it must be replanted with the same (or similar) species by the permit holder, to the satisfaction of the Responsible Authority.

Engineering

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

The plans must show:

- A. All areas of the development being drained by means of an underground drainage system with discharge to the Western Port Marina.

4.4 (Cont.)

- B. Reinforced concrete surfacing to the boat storage area and boat ramp access and turning area.
 - C. A drainage system on the site being designed to ensure storm water runoff exiting the new development meets the current best practice performance objectives for stormwater quality, as contained in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).
19. Before the approval of engineering plans, drainage computations and documentation are required for:
- A. The proposed drainage system.
 - B. The consideration of any drainage catchment external to the development that may drain to the proposed drainage system.
 - C. A Model for Urban Stormwater Improvement Conceptualisation (MUSIC) Report.
20. Prior to the approval of engineering plans, the applicant must:
- A. Demonstrate to the Responsible Authority that water quality features will be implemented in accordance with clause 53.18 of the planning scheme.

Drainage Works

21. Before the initial occupation of the new development, all drainage works associated with the new development must be constructed in accordance with approved engineering plans, and to the satisfaction of the Responsible Authority.
22. The owner must operate and maintain the drainage works including any on-site stormwater treatment system at their own cost and must allow the system to be inspected by an authorised officer of the Responsible Authority from time to time. The owner must not modify any on-site stormwater treatment system without prior written approval from the Responsible Authority.

Vehicle Access

23. Before the initial occupation of the new development, all driveways and vehicle turning areas as shown on the endorsed plans must be constructed in accordance with approved engineering plans, surfaced with reinforced concrete, and drained to the satisfaction of the Responsible Authority.

Expiry

24. This permit will expire if the development is not completed within four years of the date of this permit.

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

Part B

That Council resolves that Attachment 44 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains

personal information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

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

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

- Strategic Objective 1.2: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.
- Strategic Objective 1.3: A sustainable built environment that respects the natural environment and protects the community from the impacts of the climate emergency.
- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

Theme 2: A robust, innovative and diverse economy.

- Strategic Objective 2.3: A thriving entrepreneurial economy, with a vibrant tourism sector, that provides accessible employment to our diverse community

GOVERNANCE PRINCIPLES

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

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

DISCUSSION

Purpose

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

- The relevant background of the site
- The proposal
- The key issues
- Submissions and officer response

4.4 (Cont.)

- The assessment against the relevant provisions of the *Planning and Environment Act 1987 (the Act)* and Mornington Peninsula Planning Scheme.

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

The key planning considerations are summarised in the below table:

Proposal	Buildings and Works Associated with an existing Marina
Zoning and Overlays	Zone: Public Park and Recreation Zone (PPRZ) Overlays: Land Subject to Inundation Overlay Schedule 1 (LSIO1)
Permit Triggers	Clause 36.02-2 (PPRZ): A permit is required to construct a building or construct or carry out works. Clause 44.04-2 (LSIO): A permit is required to construct a building or to construct or carry out works. Schedule 1 contains a relevant exemption for the two open sided buildings as they are located within a Public Land Zone.
Advertising	The application was notified by sending written notice to adjoining properties and erecting a sign on site for 14 days.
Submissions	Eight objections have been received to date.
Consultation	No Planning Application Conference (PAC) was held.
Key Issues	• Is the proposal acceptable having regard to relevant policy regarding use and development of marine and coastal Crown land? • Is the proposal acceptable having regard to impact on views? • Is the environmental impact acceptable? • Consideration of the matters raised in the objections.
Recommendation	Notice of Decision to Grant a Permit, subject to conditions.

BACKGROUND

Subject Site and Surrounds

Westernport Marina is roughly 16 hectares in size, and is located on Western Port Bay, approximately 450 metres to the south-east of the town centre of Hastings. The site is formally described as Crown Allotment 17 Section D Township of Hastings. The site is also part of the designated 60,000 hectare Western Port Ramsar Wetland area however, the Marina is constructed on reclaimed land as can be seen in Figures 1 and 2 below.

Primary vehicle access to the site is via Mullet Street. The site is used as a marina for recreational boating with associated facilities. The marina is primarily for public use, with the facilities and amenities available to the general public.

The site contains:

4.4 (Cont.)

- Car parking with approximately 400 parking spaces.
- Dry boat storage to the north of the site, which compromises both outdoor and undercover storage. Currently the site has 160 places for outside dry berthing and 23 undercover storage places.
- Two boat repair business, a chandlery, a café, a restaurant, the Dolphin Research Centre and the Coastguard.
- A wet berthing area which can accommodate 300 boats. Access to this area is currently via two boat ramps to the north of the site.
- Pedestrian paths.
- A vegetated breakwater located along the east boundary. This area is inaccessible to the public.
- The site is largely surrounded by public foreshore land used for recreational and environmental purposes.

The recreational boating facilities within the wider area include both private and public amenities such as the Hastings Yacht Club and Hastings Boat Ramp. Recreational facilities within the precinct include the jetty, public boat ramp, playgrounds and skate park, off-leash dog exercise area, picnic facilities, the Pelican Park Recreation Centre, and Western Port Bay access.

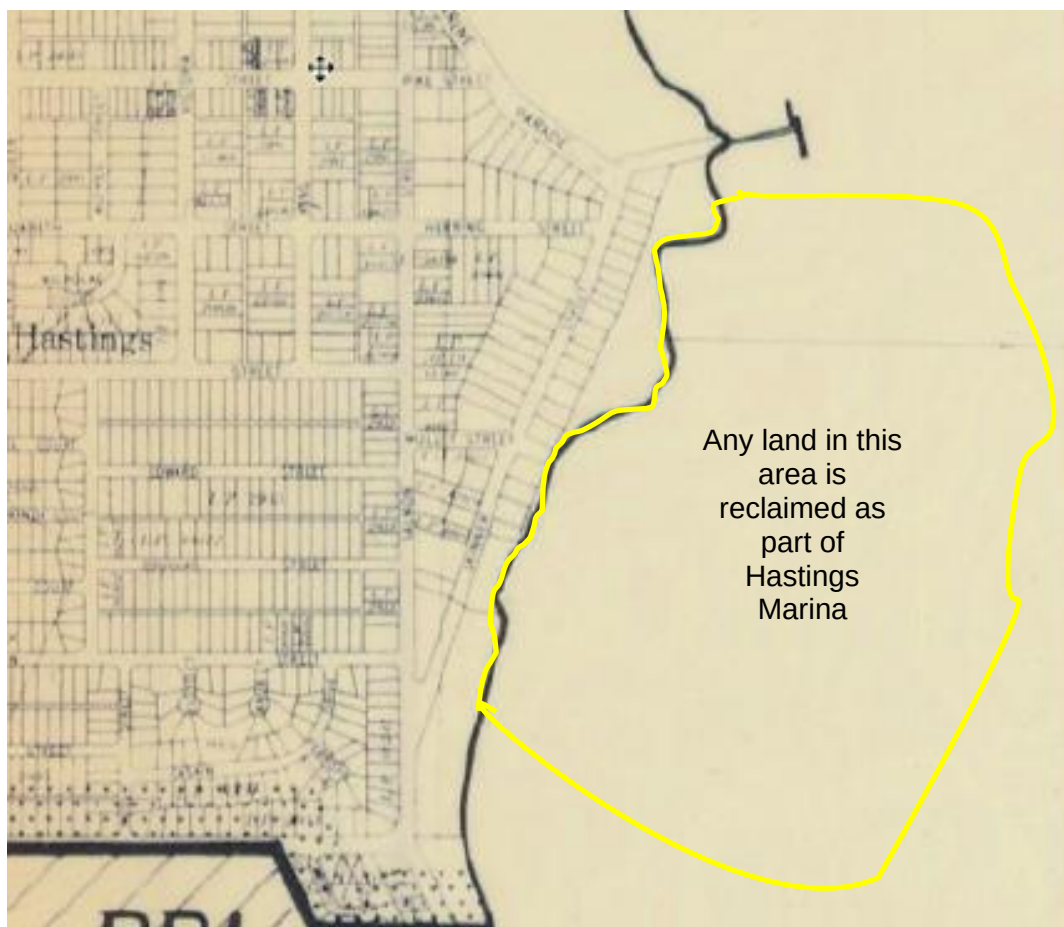
The site's immediate surrounds include:

North	Recreational boating facilities associated with the Hastings Yacht Club and Hastings Boat Ramp. Further north is the Pelican Park Recreation Centre and the Fred Smith Reserve.
East	Western Port Bay. This part of the Bay includes intertidal mud, sand or salt flats, intertidal marshes and intertidal forested wetlands.
South	Western Port Bay. This part of the Bay includes intertidal mud, sand or salt flats, intertidal marshes and intertidal forested wetlands.
West	Western Port Bay Trail. The Trail is a shared use path for pedestrians and cyclists and follows the coastline of Western Port Bay. Further west is the Hastings Township. There is a helicopter landing area just outside the boundary of the marina. The nearest residential buildings to the existing Marina building are approximately 200 metres to the west.

Please refer to Attachment 1 – Officer Assessment for a more detailed description of the site and surrounding area, including site photographs.



Figures 1: Aerial photograph showing the subject site and surrounding properties (Nearmap February 2024)



Figures 2: Plan showing area of original landform without reclaimed land now forming part of Hastings Marina (Western Port Regional Planning Authority 1978, State Library of Victoria)

The site is not specifically within the area covered by the Hastings South Coastal Management Plan 2015 (HSCMP), as the HSCMP applies specifically to Council managed land and the Western Port Marina land is managed by DEECA. However, the HSCMP does include reference to the Western Port Marina, which directly abuts and highlights the strategic significance of the whole area for recreational and boating purposes. This is discussed further in the report.



Figure 3: Land Management Responsibilities – DELWP now DEECA (Hastings South Coastal Management Plan 2015)

The site is not technically a part of the *Hasting Foreshore Masterplan 2023* (HFM) area, however, it is recognised and discussed as being a significant consideration of the existing landscape and importance to the Hastings foreshore. The HFM has been adopted by Council, which included publicly advertising it as part of the consultation process. As part of adopting the HFM, Council agreed to consider a revision of the boundary of the Western Port Marina as a High Priority (see page 66) and as shown in Figure 4 below. The permit applicant and Council's Property Team are negotiating on extension of the lease area, but this has not yet been finalised. Notwithstanding, all of the works proposed by this application are contained within the existing Westernport Marina Lease Boundary (red outline in Figure 4 below). This is discussed further in the report.

As per the HFM, the lease and licence areas are shown in Figure 4 as follows:

- **Red:** Existing Westernport Marina Lease Boundary (all buildings and works proposed by this application are within this area).
- **Green:** Vegetation Buffer (8m wide) funded in partnership with Westernport Marina.
- **Blue:** 2 Year license area to allow the marina maintenance works to occur.
- **Orange and Blue:** Long term inclusion within the marina lease boundary.



Figure 4: Westernport Marina lease and license boundaries (Hastings Foreshore Masterplan 2023)

Proposal

Please refer to the following for further details:

- Attachment 2 – Development Plans
- Attachment 3 – Planning report submitted by the Applicant
- Attachment 9 – Renders and Conceptual Landscaping

The application seeks approval for buildings and works associated with the existing marina. This includes:

- Four boat storage/stacker sheds with an associated hardstand area.

- A new 38.5m long boat ramp and forklift launching area, to allow for secondary access to the Marina's wet-berthing area and Western Port Bay, and allow for 'negative lifting' below ground level to drop boats in and out of the water; and
- Construction of service rows (one to the north of the proposed boat ramp, one to the south and east of the proposed boat ramp, along the internal side of the breakwater).

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Figure 6: Taken from Attachment 9 – Renders and Conceptual Landscaping - shows the appearance of the buildings when viewed from the foreshore area with indicative landscaping as proposed in the Hastings Foreshore Masterplan.



Figure 7: Taken from Attachment 9 – Renders and Conceptual Landscaping - shows the appearance of the buildings when viewed from Skinner Street with indicative landscaping as proposed in the Hastings Foreshore Masterplan.

NOTIFICATION AND CONSULTATION

Notification

The application was notified by sending direct notice to adjoining properties and erecting a sign on the site for 14 days. The sign was erected at the entrance to the marina on Mullet Street.

Submissions

Please refer to Attachment 4 – Submissions (Confidential).

To date, eight objections have been received. The concerns raised can be summarised as:

- Perceived change to, or loss of, views
- Environmental effects
- Noise
- Perceived conflicts of interest

These are addressed further below.

4.4 (Cont.)

REFERRALS

External Notification

A referral was sent to Melbourne Water under Section 55 of *the Act* as a Determining Referral Authority under the provisions of the Land Subject to Inundation Overlay. Melbourne Water provided conditional consent to the application.

Notification of the application was sent to the Department of Energy, Environment and Climate Action (DEECA) under section 52 of *the Act*. DEECA provided conditional consent to the application. DEECA is also the landowner of the Coastal Crown Land and provided consent under the *Marine and Coastal Act 2018*.

Please refer to Attachment 5 – Department of Energy, Environment and Climate Action Consent and Attachment 6 – Melbourne Water Consent.

Internal Council Referrals

Referral	Comments
Development Engineering	No objection, subject to conditions relating to vehicle access and stormwater capture and treatment.
Coastal Planning	No objection, subject to conditions relating to landscaping of the foreshore area.
Property	No objection.

CONSIDERATION

Refer to Attachment 1 – Officer Assessment for a detailed assessment against all the relevant criteria.

Refer to Attachment 7 – Planning Provisions for all relevant planning scheme provisions.

The proposal is consistent with the objectives and strategies of the relevant Planning Policy Framework (PPF) and objectives and decision guidelines of the PPRZ and LSIO1.

The following key issues are summarised:

Is the proposal acceptable having regard to relevant policy regarding use and development of marine and coastal Crown land?

Apart from the Public Park and Recreation Zone (PPRZ), the Planning Policy Framework (PPF) within the Planning Scheme contains multiple relevant clauses that contain objectives and strategies as well as policy documents to guide decision making with respect to this application. These are summarised below and addressed in order of appearance:

- 12.02-1S - Protection of the marine and coastal environment
 - Protect coastal and foreshore environments and improve public access and recreation facilities around Port Phillip Bay and Western Port by focusing development in areas already developed or in areas that can tolerate more intensive use.
 - Encourage revegetation of cleared land abutting coastal reserves.

4.4 (Cont.)

- Protect and enhance natural features, landscapes, seascapes and public visual corridors.
- Plan for marine development and infrastructure to be sensitive to marine national parks and environmental assets.
- Consider as relevant:
 - Any applicable environmental *management plan or coastal and marine management plan approved under the Marine and Coastal Act 2018 (MACA)*:
 - Hastings South Coastal Management Plan 2015 – Council Plan adopted under predecessor legislation to *MACA being the Coastal Management Act 1995*.
 - Hastings Foreshore Master Plan 2023 – Council Plan
 - Marine and Coastal Policy (DELWP, 2020)
 - Marine and Coastal Strategy (DELWP, 2022) – Activity 4.5 seeks to implement the Victorian Recreational Boating Strategy Victorian Recreational Boating Strategy 2021–2030
 - Siting and Design Guidelines for Structures on the Victorian Coast (DELWP, 2020)
- 12.02-2S - Marine and coastal Crown land
 - Design, locate and maintain buildings and structures to effectively manage:
 - Any increase in exposure to coastal hazard risk, including rates of sea level rise, erosion, accretion or inundation.
 - Exposure to public health and safety risks.
 - Any detrimental impacts (in particular increased hazard risk) on neighbouring Crown or private land.
 - Adverse effects on the environment and associated uses and values.
 - Impact on marine and coastal functions and processes.
 - Ensure the siting and design of development on marine and coastal Crown land:
 - Facilitates shared infrastructure and the use of land for more than one use.
 - Uses materials and finishes that are sympathetic to the coastal environment.
 - Is durable in the long term.
 - Minimises the environmental footprint.
 - Ensures that use and development on or adjacent to marine and coastal Crown land:
 - Maintains safe, equitable public access.

4.4 (Cont.)

- Improves public benefit.
- Demonstrates need and has a coastal dependency.
- Minimises loss of public open space.

This clause also references all of the above Policies, Strategies and Guidelines

- 17.04-2S - Coastal and maritime tourism and recreation
 - Ensure development is of an appropriate scale, use and intensity relative to its location and minimises impacts on the surrounding natural, visual, environmental and coastal character.
 - Develop a network of maritime precincts around Port Phillip and Western Port that serve both local communities and visitors.
 - Maintain and expand boating and recreational infrastructure around the bays in maritime precincts at Frankston, Geelong, Hastings, Hobsons Bay, Mordialloc, Mornington, Patterson River, Portarlington, Queenscliff, St Kilda, Stony Point/Cowes and Wyndham
 - Support a sustainable network of facilities for recreational boating and water-based activities that respond to:
 - Identified demand.
 - Use and safety considerations.
 - The carrying capacity of the location.
 - Coastal processes.
 - Environmental values.
 - Consider as relevant:
 - Recreational Boating Facilities Framework July 2014 - Central Coastal Board

The proposal is considered acceptable having regard to the majority of the PPF provisions as it will maintain and expand an existing boating and recreational facility in Hastings and Western Port, which are identified in numerous policies and strategies as being of State and Regional significance and of high economic value to the State in terms of their recreation and tourism value.

The proposal is considered to improve recreational facilities around Western Port by focusing development in areas already developed or in areas that can tolerate more intensive use, being within an existing marina.

The proposal includes revegetation of the coastal reserves, which enhances the natural landscape. It is acknowledged that the proposal will be visible from the seascape and from public visual corridors and this is addressed in greater detail below with regard to the relevant policies and strategies. The proposal is considered to be infrastructure that is sensitive to the marine national parks and environmental assets as it is located fully within an existing disturbed and man-made environment.

4.4 (Cont.)

The proposal is not considered to have an increase in exposure to coastal hazard risk, including rates of sea level rise, erosion, accretion or inundation. The proposal will not have detrimental impacts (in particular increased hazard risk) on neighbouring Crown or private land, given its location and design not contributing to potential erosion or landslip along the coast. The proposal is not considered to have any adverse effects on marine and coastal environment functions and processes given its location within a man-made coastal structure (reclaimed land for a marina). This area is not natural, and the land area is devoid of any environmental qualities. The aquatic environment in the marina would be limited to species that have inhabited it since it was built and given it is a functioning marina, it is unlikely to be habitat for any vulnerable or endangered species. Construction of the infrastructure within the marina can be appropriately managed to avoid adverse environmental impacts through the construction management plans required by DEECA, Melbourne Water and Council.

As is discussed in detail below, the proposal is considered to:

- Maintain safe, equitable public access.
- Improves public benefit.
- Demonstrates need and has a coastal dependency.
- Minimises loss of public open space.

The proposal is considered to meet the identified demand and the carrying capacity of the location within the boundaries of the existing Marina. Whilst arguments could be made for or against the size or type of structures, there is a clear demand for recreational boating facilities within State policy in Western Port and Hastings plays a clear and distinct role in meeting that demand. The Marina is one key part of that, with the Yacht Club and public boat ramp being the other elements. The Marina proposal would help alleviate pressure on the boat ramp.

Hastings South Coastal Management Plan 2015 – Council Plan adopted under predecessor legislation to *MACA being the Coastal Management Act 1995*.

The Hastings South Coastal Management Plan 2015 (HSCMP) does not specifically include the Western Port Marina within the HSCMP boundaries as the plan applies specifically to Council managed land and Western Port Marina is managed by DEECA. However, it does include reference to the Western Port Marina and highlights the strategic significance of the whole area. The vision for HSCMP was developed through consultation with the community and is relevantly stated as:

The Hastings Foreshore is a coastal recreation zone that attracts and welcomes visitors and residents to the Western Port region to enjoy a wide range of recreational opportunities involving coastal, marine, boating and eco-tourism experiences. It makes a crucial contribution to the sense of place of the Hastings community and is the gateway to Western Port.

The key objectives are:

- To promote and enhance the role of the Hastings South foreshore as a Regional Boating Precinct
- To connect and enhance the Western Port Trail
- To improve the landscape amenity of the foreshore
- To protect and enhance the biodiversity values of the foreshore.

4.4 (Cont.)

Key actions relevant to this application that are outlined within the HSCMP are:

- Improved public boat ramp and associated access and trailer parking facilities.
- Improved public amenity and landscaping based on a Landscape Master Plan.
- Revegetation of protected areas to enhance the biodiversity values of the foreshore.

In section 3 of the HSCMP which outlines the Strategy for Boating, the range of boating facilities recognises the existence and importance of the Marina as a Regional Boating Facility. It also notes that the Victorian Coastal Strategy 2014 also identifies Hastings as both a State Marine Precinct and a Regional Boating Precinct.

Western Port Marina is a significant piece of coastal infrastructure and offers:

- Permanent and casual berthing (wet and dry)
- Travel Lift
- Hard Stand
- Boat ramp
- Fuel pump
- Laundry and bathroom facilities
- Sewerage pump out facilities.

The definition and criteria for a Regional Facility are listed below:

Description/Definition	Types of Facility	Criteria
Regional Boating Facility		
A regional boating facility will either provide a range of services and facilities at one location (e.g. at a harbour or marina), or be one regional facility such as a regional boat ramp that, due to its size, provides for a large catchment.	Regional boat ramps, marina, piers/jetties, moorings, maintenance and services facilities, harbours.	A high level of significance that provides a boating destinations; A high level of investment as a key boating activity centre; An exceptional level of service provision that caters for a wide range of boating activity and skill levels; Provision of a safe harbour; Provision of maintenance and service facilities; Wide catchment area, with an even spatial distribution, at major population centres; All tide access; Public access to the facility and coastal environment; and A key boating destination within the network.

Hastings Foreshore Master Plan 2023 – Council Plan

The Hastings Foreshore Masterplan aims to build on the foundations of the previous Hastings South Coastal Management Plan, and the Mornington Peninsula Shire Arts and Culture Plan 2020 – 2024. However it seeks to engage more comprehensively and consider the marine and coastal environment more broadly as detailed in the *Marine and Coastal Act 2018* and Marine and Coastal Policy 2020.

As with the HSCMP, the plan does not specifically include the Western Port Marina. However, it does contain multiple references to it and also acknowledges and foreshadows the potential expansion of the Marina that has been raised earlier in this report. The relevant sections of the HFM considered relevant to the consideration of the application are:

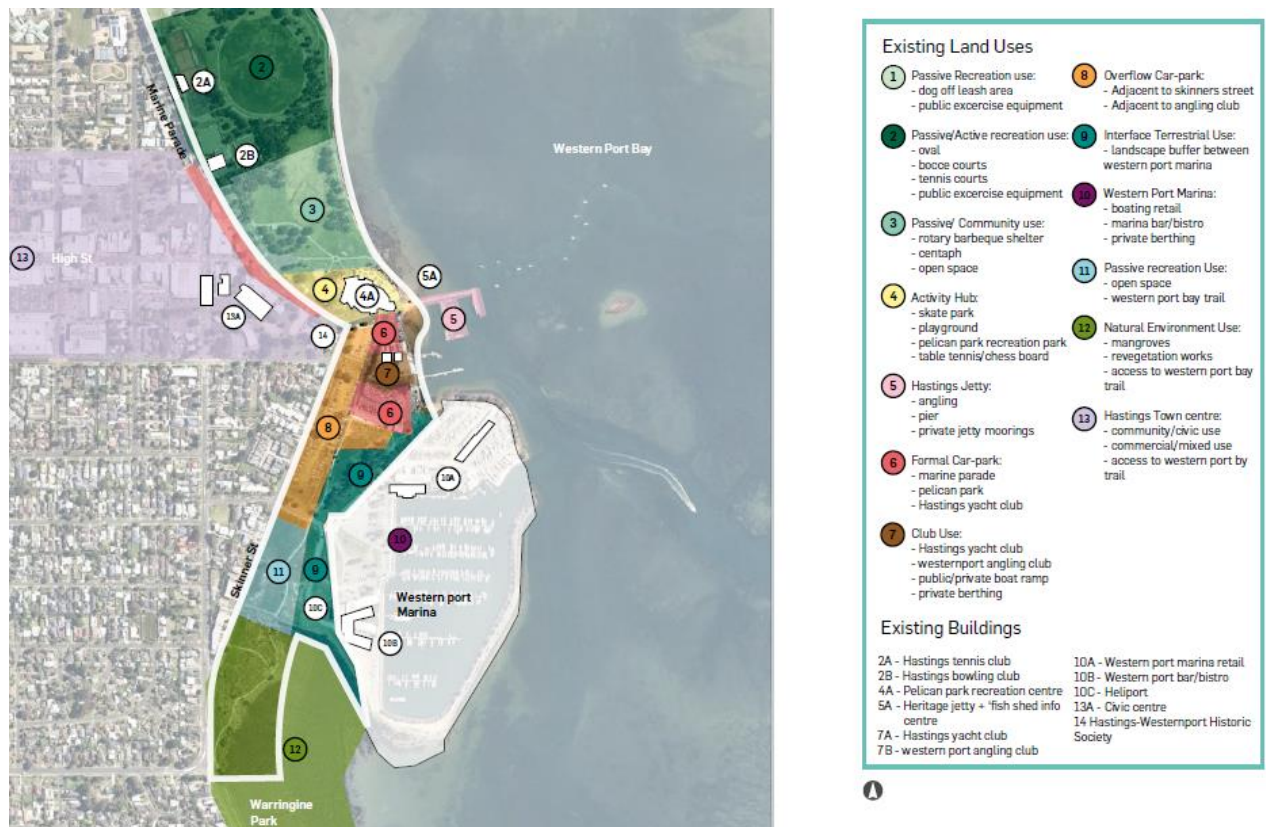


Figure 8: Map showing existing conditions, including landscape buffer area between the Marina and Skinner Street

PRIORITISED ACTIONS OVERVIEW

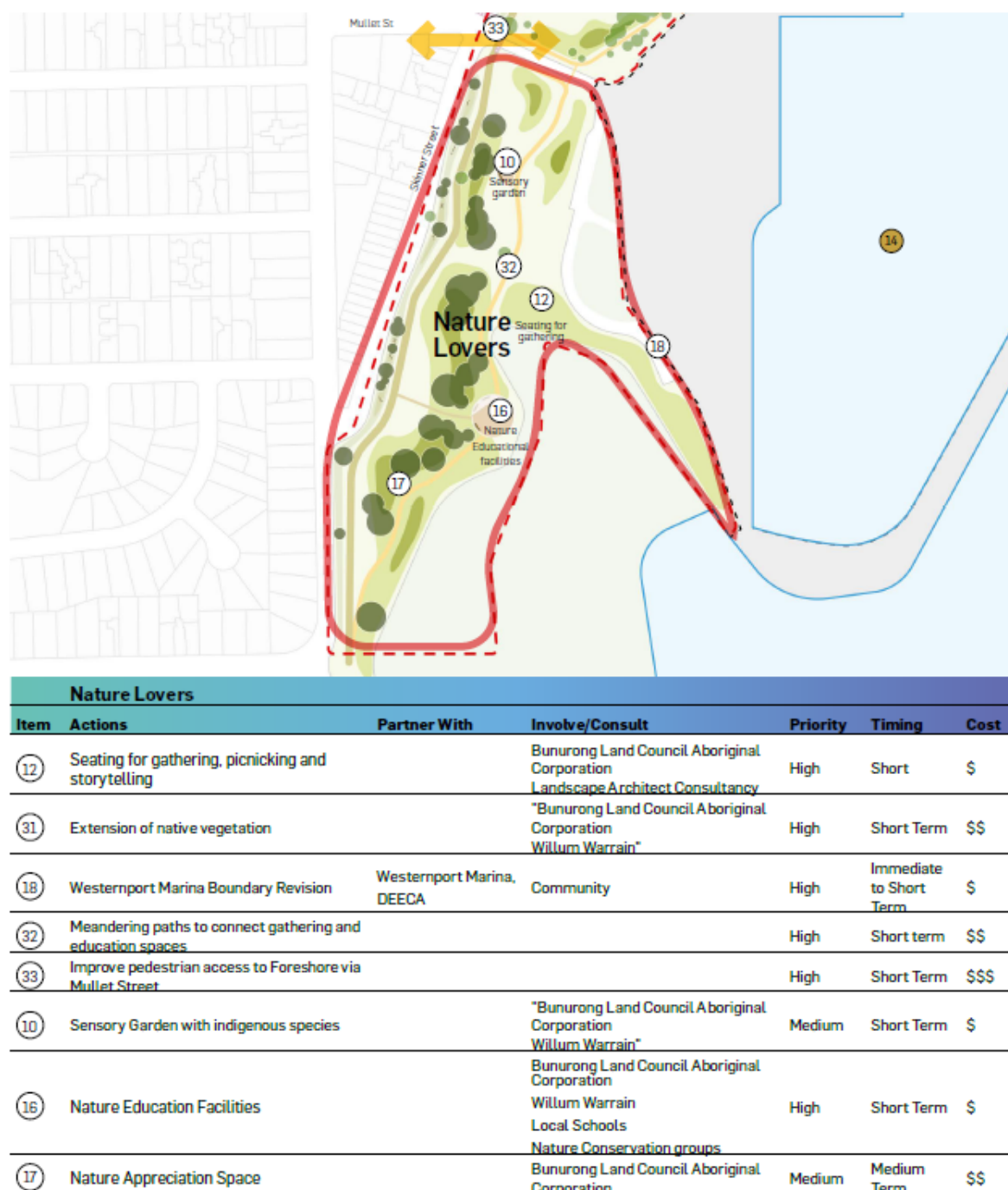


Figure 9: Map showing proposed actions in 'Nature Lovers' precinct adjoining the Western Port Marina. Note action 18 being the relevant 'Boundary Revision' area noted earlier and that the current proposal does not impede into this.



Figure 10: Map showing proposed approach or actions with regard to improving connections. Note the HFM does not seek to maintain or improve views from private property through the Western Port Marina. The focus of the HFM is to improve and maintain corridors from town. The proposal does not sit within the identified view corridors.

Marine and Coastal Policy (DELWP, 2020)

The MACA requires a Marine and Coastal Policy (the Policy) to set out policies for planning and managing the marine and coastal environment, and to provide guidance to decision makers in achieving the MACA's objectives. The Policy must also include a Marine Spatial Planning Framework (this will set out steps for achieving integrated and coordinated planning and management of Victorian's marine environment).

The Policy sets out key policy considerations. Amongst these includes how to assess and consider buildings and structures on marine and Coastal Crown land. As discussed previously, the application has been referred to DEECA as the relevant Coastal Crown land manager and they have provided consent based on consideration of these policy

4.4 (Cont.)

considerations. Nonetheless, Shire officers have also considered the application against these policies and consider the application is acceptable having regard to them.

Relevantly, it should be noted that the Policy does require consideration to be given to (amongst other things) retaining public views to and from the water and/or along the coast. The proposal is considered to retain public views as much as practicable, as demonstrated in the photomontages provided by the applicant.

The Policy also seeks to relocate existing buildings and structures that are not functionally dependent on being located on marine and coastal Crown land, away from that land if suitable opportunities arise. This is not considered one of those opportunities and a Marina is specifically listed as an example of buildings and structure types that are functionally dependent on being located on marine and coastal Crown land.

Another relevant policy provision is to not impede access to marine and coastal Crown land, except where access control is the main purpose. It is considered that whilst the proposal may inhibit direct access to this part of the foreshore via an operational component of a Marina to maintain public safety and for security purposes. However, public access would still be available to the land via the rest of the foreshore area and the proposal would not inhibit this.

Marine and Coastal Strategy (DELWP, 2022) – Activity 4.5 seeks to implement the Victorian Recreational Boating Strategy**Victorian Recreational Boating Strategy 2021–2030**

This Marine and Coastal Strategy (Strategy) identifies actions to achieve the Policy's vision, and is the first of three, five-year strategies. It outlines priority actions for the next five years that lay the foundations to achieve the intended outcomes of the Policy over the next 15 years. It also outlines timeframes and responsibilities for delivery. The Strategy does not contain any specific guidelines or assessment criteria, but of its key priority actions (Activities) is to implement the Victorian Recreational Boating Strategy 2021–2030 (VRBS).

The VRBS identifies the significance of boating in Victoria as a social and recreational activity as well as economic. Boating is a key economic driver, generating nearly \$8 billion in economic activity and employing thousands of Victorians. It is also a key component of the visitor economy to the State and Mornington Peninsula Shire. However, with this comes pressures and challenges. The VRBS aims to set a pathway to ensure that opportunities are recognised at the same time as dealing with the challenges of growth that more boaters brings.

For context, the Shire has the equal highest registration of recreational boats in the State as any other Local Government area. Hastings/Western Port Marine is a Regional Facility that attracts recreational boating and fishing from surrounding Councils and from across the State (see Recreational Boating Facilities Framework July 2014 - Central Coastal Board).

One of the key objectives of the VRBS is to enhance the Victorian boating experience by renewing existing facilities and building new ones. Within this strategic objective, reducing congestion is one of the actions. The VRBS states:

4.4 (Cont.)

Solutions to reduce congestion will be explored and where possible may include:

- dry stacks and seasonal moorings
- partnership arrangements with asset/land managers.

The VRBS also seeks partnership opportunities to support dry stacking ventures, to alleviate the demand on State or Local launch facilities, such as the Hastings Boat Ramp.

The proposal is considered generally consistent with the VRBS.

Siting and Design Guidelines for Structures on the Victorian Coast (DELWP, 2020)

The Siting and Design Guidelines for Structures on the Victorian Coast (Guidelines) provides a clear set of guidelines that consider siting and design challenges in response to pressures of population growth and climate change. The Guidelines identify successful practices to reduce the vulnerability of the coastline while managing coastal land and infrastructure, maintaining public access and enhancing visitor experience. The Guidelines establish first principles, being 'Purpose and need,' 'Climate adaptation' and 'Footprint.'

High demand for use and development of a limited and precious resource dictates that only structures that functionally need to be near water and that significantly contribute to social values, such as public enjoyment and appreciation of the coast, should be on marine and coastal Crown land. The Guidelines identify that Marinas are a type of structure that is functionally dependent on being near the water, consistent with the Marine and Coastal Policy, which satisfies the 'Purpose and need' considerations.

Whilst the area is identified as being subject to inundation under current and proposed planning controls (see discussion of Planning Scheme Amendment C271), the proposal is considered satisfactory having regard to them. This includes consideration of sea level rise. The buildings are not likely to be adversely impacted by or impact the flow of flood water and Melbourne Water has given its consent to the proposal as the relevant referral authority with respect to flooding. The proposed planning controls effectively retain the same considerations as existing controls because the land is not being identified in new planning controls to address or deal with coastal erosion process. This is because the subject land (Marina break wall) has been constructed to a standard that is unlikely to be impacted by future flood events up to the year 2100 and because modelling does not suggest this area of the coastline will be impacted. It is noted that areas adjacent to the site are proposed to be within the new erosion controls.

In terms of 'Footprint,' the key consideration with respect to the proposal is that the design of new structures should minimise the footprint (area and height). The proposal seeks to do this, while still achieving its functional requirements as a dry berth boat storage facility.

The development has been appropriately located and designed, having regard to the relevant 'Site and Design Considerations' within the Guidelines, being:

- Views
 - Does the structure enrich and not impede views to and from the coast?
 - Does the structure maintain important public views, vistas and sightlines?
- Public Open Space
 - Does the development contribute to an uncluttered, clear and usable environment?

- Landscape Character and sense of place
- Identify the local coastal character of the surrounding buildings and township.
- Does the structure blend with and complement the local coastal character?
- Public Access
 - Does the structure enhance public access to the coast and minimise loss of open space?
 - Does the structure provide adequate connections to and from the site?
 - Does the structure impede public access to the coast?
 - Does the structure provide adequate access?
- Increased function and adaptability
 - Identify opportunities to combine the uses of buildings and structures of the site and structures surrounding the site.
 - Does the structure make efficient use of the site and demonstrate multiple use?
 - Can the structure be adapted for future change?
- Materials and finishes
 - Identify the materials, colours and textures in the surrounding natural
 - and built environments.
 - Are the materials, colours and textures representative of the coastal environment and setting?
 - Are the materials durable in the coastal environment?
 - Are the materials sustainable?

The proposal is not considered to satisfy all of the relevant considerations. However, having regard to the first principles, there are instances where a proposal that has a dependent and functional relationship with the water cannot meet all criteria, such as those in relation to views. As can be seen in the attached photomontages, the proposal would impede some views to and from the coast. However, this must be considered in the context of the site and its use. The two x three storey open sided structures have been designed with open sides so as to avoid solid built form and to allow for views from the public realm, through the site and to the water. In addition, these views and vistas are not identified in any strategic documents or policies as being of specific importance. That is not to diminish the relevance of this consideration, but it is to recognise that it is not of the same significance as some other comparable water and coastal views on the Peninsula that are recognised for specific qualities. As noted in the discussion regarding the Hastings Foreshore Masterplan 2023, the proposal does not sit within the identified public views sought to be protected in that document.

The proposed materials, colours and finishes are considered appropriate and to fit in with the surrounding natural and built environment, given that half of the cladding on the two storey buildings are to be natural timber finish and a darker charcoal cladding.

4.4 (Cont.)

The Hastings township does not currently have any form of built form or character controls, except for the activity centre, which is approximately 500 metres north west of the proposed development site. As such, there is no distinct or identifiable local coastal character of the surrounding buildings. Opposite the road in Skinner Street there is a mix of single and two storey development of ranging architectural design and age. The newer housing stock in this location is predominantly two storeys with contemporary design. Those with frontage to Skinner Street usually feature a second storey balcony facing the water (south east). There is an example of a three storey development in Mullet Street. The proposed buildings, being two and three storeys, with a height of 6.6 metre and 9.9 metre, respectively. The proposed two storey buildings are lower than most contemporary two storey dwellings and the proposed three storey buildings are consistent with contemporary two or three storey residential development.

The proposed structures do not directly enhance public access to the coast and would provide a physical barrier for general public access to this part of the foreshore. However, as is evident in the Hastings Foreshore Masterplan 2023, the Marina is not identified as an area in which to improve or provide public access to the foreshore. This is because the Marina serves a specific function and is dependent on being sited near the water. The buildings also do enhance accessibility to the water for recreational boaters, which are a large cohort of users of the coast as identified in the multiple policies and strategies discussed above.

This proposal does not directly affect open space in the typical sense of open space that is used for open air sports or recreation. This part of the site is overflow parking/hardstand area. As such, it does not lead to the loss of open space, which is accommodated for in the adjoining Council managed reserve and that has a clear and distinct plan in place for improvements for that purpose.

In terms of increased function and adaptability, the proposed buildings cannot readily fulfill this criterion given the nature and very specific purpose they are designed to serve. The proposal would also not lend itself to mimic the adjoining building as that would likely make there a more dominant and visible structure. Given their modest complexity, the buildings could likely be adapted in future, although it is considered unlikely.

Recreational Boating Facilities Framework (RBFF) July 2014 - Central Coastal Board (CCB)

The RBFF – CCB identifies recreational boating as a significant activity on the central coast, especially on Port Phillip and Western Port Bays, which offer diverse boating opportunities. Hastings is listed as a Regional Facility within the 'North-West Western Port' precinct. The RBFF does not identify Hastings as a location for redevelopment of facilities at this stage. The Framework does more broadly suggest several options to address the increasing demand for boating infrastructure with one of those options being:

“Off-the coast” storage facilities (i.e. dry berths) can facilitate boat maintenance, slipping and retrieval (a boat valet service) for many of the smaller classes of recreational boats

This is in the context of relieving pressure on congested areas. The RBFF -CCB does not identify the Hastings Boat Ramp as congested, however, as is seen with the additional detail contained within the HSCMP 2015 and HFM 2023, there is a desire to improve Hastings Boat Ramp and facilities due to its high usage and Regional importance. One of the available options is to increase dry berth boat storage in the vicinity to provide alternative options for recreational boating.

Public Park and Recreation Zone (PPRZ)

The proposal is considered to be consistent with the purposes of the PPRZ, which are:

4.4 (Cont.)

- To recognise areas for public recreation and open space.
- To protect and conserve areas of significance where appropriate.
- To provide for commercial uses where appropriate.

The area is recognised in many State and Regional level policies, strategies and plans for the purpose of recreation.

The surrounding significant conservation area and habitat (Ramsar Wetlands) are not being disturbed by the proposal, which is located wholly on reclaimed and disturbed land. Appropriate measures can be put in place during construction (erosion and sediment control) to protect this area of significance.

The proposal is considered an appropriate commercial use (commercial boating facility) within an existing marina boundary, and in accordance with a use that is recognised in all of the above-mentioned policies, strategies and guidelines.

Is the proposal acceptable having regard to impact on views?

By their nature as part of a functional marina, all buildings and work areas need to be in or near the water. Sheds 1A and 1B are on the boundary between the marina and the adjoining reserve and are lower in height than the sheds that are more internal to the marina. They have timber cladding to the upper half to blend in with the surrounding environment and charcoal coloured cladding on the lower half. Sheds 2 and 3 will be open on all sides.

The service rows, launching area, and boat ramp are consistent with the established character of the marina. These will be largely obscured from the public realm, other than the waterfront.

The boat sheds have been designed in a way that is generally visually sympathetic to their context at an established and functional marina. The triple level sheds are open on all sides, and thus present an open view of the function as well as light through the buildings, as seen in Figure 8 below. The sheds are separated, and in this way allow some views of the water and foreshore between buildings. The lower buildings are sited away from the water, closer to the public foreshore areas, in order to minimise the visual impact of the buildings within the landscape.

As can be seen in Figures 6 and 7 earlier in the report and the attached photomontages, the buildings will be visible from parts of Skinner Street and the adjoining reserve. However, from this aspect they will not be a dominant feature as there is intervening vegetation and distance. They will also be sited adjacent to the existing built form on the land.

Shire officers note that the objections about loss of views have come from the dwellings on the other side of Skinner Street, which are approximately 230 metres from the site of the proposed buildings and works. The planning scheme does not protect or seek to provide a reasonable sharing of private views in this instance, as may exist in other parts of the Shire through controls such as the Design and Development Overlay. Even if there were such controls, an assessment would need to be conducted to determine if any loss of views was reasonable in the circumstances. In this case, the proposal is not considered to result in any unreasonable loss of views from private property, given that:

- There are no planning scheme provisions seeking such an outcome.
- The topography of the land surrounding the development inhibits open views or vistas to the water and surrounding coastal landscape from ground level.

- The views into or through the marina are not identified as a significant view or vista in any strategic documents (Figure 10 above shows the public views considered to be significant and requiring consideration).
- The majority of properties in Skinner Street that are of two storeys would be likely to retain views and vistas from any second storey viewing area, across or to the south east of the site to enjoy views of Western Port (as seen below).

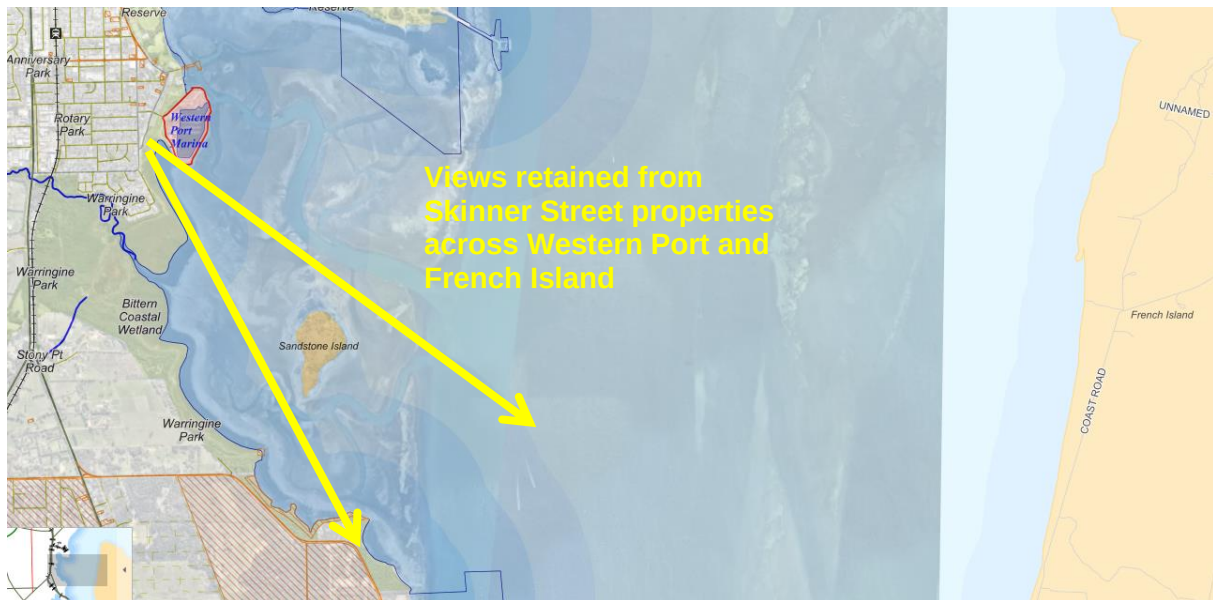


Figure 11: Plan showing views likely to be retained by any two storey properties in Skinner Street.

The photographs in Figures 12-13 below were taken from Skinner Street, facing the proposal, and show that the development will be mostly obscured by the topography and vegetation of the foreshore reserve/bay trail.



Figures 12: View of the development site as viewed from Skinner Street (facing east)



Figures 13: View of the development site as viewed from Skinner Street (facing south east)

The photograph in Figure 14 was taken from the subject site, looking back towards the dwellings in Skinner Street. The majority of each dwelling is obscured from vision at lower level with some of the second storeys being visible.



Figure 14: View of dwellings on Skinner Street from the development site of proposed Shed 3 (facing west).

4.4 (Cont.)**Is the environmental impact acceptable?**

The proposal supports the development of coastal areas whilst ensuring that the environmental values are protected. All works are located within the existing marina boundaries and are able to be appropriately managed. Any runoff caused by the proposed buildings and works will be managed within the site. There will be no impacts on the mangroves to the south of the marina.

The ramp, service rows and launching area will be designed and constructed to withstand flood risk as inherently required in a marina. The buildings and works have been appropriately designed to ensure they do not redirect or obstruct floodwater or cause increasing flood levels and flow velocities.

All of the buildings are proposed within the boundaries of the existing marina, on an area that has previously been surfaced with gravel. The boat ramp is within the marina, contained by the existing breakwater, and an additional boat ramp and footpaths are not considered to have any impact on the broader environment of Western Port Bay as discussed earlier in this report.

The application was referred to DEECA, which has provided conditional consent to the proposal. Conditions from DEECA, Melbourne Water and Council requiring Construction or Environmental Management Plans are considered reasonable to ensure the land and marine environment is protected during construction.

Consideration of the matters raised in the objections

In terms of noise, the noise generated by the proposal is not expected to be any different from the noise generated by the existing marina, or the adjacent helicopter landing area. Given the topography, with a slight rise between the nearest dwellings and the proposed buildings, and the distance from these dwellings, officers did not have any concerns about an unreasonable increase in noise from the proposal.

An objector has raised concerns that Council is both the decision maker for the planning application, and land manager for the coastal Crown land. It should be noted that DEECA is the public land manager as the built form part of the proposal relates to land managed by DEECA, not Council. The area of land managed by Council (as shown earlier in Figure 4) is providing access to the site and the area that will require planting.

Nevertheless, clause 72.01 of the Planning Scheme sets out who is the Responsible Authority for administering and enforcing the provisions of the scheme. The Mornington Peninsula Shire Council is the responsible authority. It is common for Council's across the State to be a proponent and responsible authority and if that occurs, provisions exist for considering the application. In this case, Council is not the proponent and the lease or licensing arrangements do not prevent Council from being the decision maker with respect to this application. The application is objectively assessed against the planning scheme, regardless of who owns or manages the land, as is the case for road reserves and many other instances of non-private land tenure.

There were also concerns raised by objectors about the extent of notification letters. Letters were sent to all adjoining land, as required by s52(1)(a) of *the Act*, but as this would only include the foreshore area, a public notice sign was also erected at the entry to the land. The application was also advertised on the Shire's website. Letters were not sent to the dwellings on Skinner Street due to their distance from the subject site (approximately 225 metres).

Planning Scheme Amendment C271morn

Mornington Peninsula Planning Scheme Amendment C271morn seeks to introduce planning controls along Western Port to ensure development in coastal areas protects local township

4.4 (Cont.)

character and is responsive to erosion and inundation hazards from predicted sea level rise. Amendment C271morn is informed by the Western Port Coastal Villages and Surrounding Settlements Strategy, 2019, which mapped the area proposed for inclusion in the Significant Landscape Overlay (SLO2) and the Western Port Local Coastal Hazard Assessment, 2014, which mapped the extent of the Land Subject to Inundation Overlay (LSIO) and the Erosion Management Overlay (EMO) proposed to be introduced by the Amendment. Amendment C271morn is a 'seriously entertained' planning scheme amendment, which means Council must give it weight when assessing the application. The following new or amended overlays would apply to the subject site:

- Significant Landscape Overlay – Schedule 2 – Coastal and Foreshore Landscape – A new permit requirement for buildings and works
- Land Subject to Inundation Overlay – Schedule 2 – revising an existing requirement

Erosion Management Overlay – Schedule 6 is proposed to be applied adjacent to the area where works are proposed, but none of the works are proposed within the EMO6, which has been articulated previously in the report when discussing coastal hazard and inundation issues.

SLO2

Amendment C271morn would amend the existing SLO2 and apply it to areas identified as 'foreshore' land in Balnarring, Crib Point, Bittern and Hastings, including the subject site.

The proposed provisions of the SLO2 effectively seek to include controls specifically to protect the coastal and foreshore landscape. However, the objectives and provisions effectively mimic the considerations already contained within State and Local policy regarding views, vistas, visual, natural and cultural heritage values of the coastal landscapes.

The proposed objectives are:

- To protect and enhance the visual, natural and cultural heritage values of coastal and foreshore landscapes.
- To protect coastal and foreshore landscapes from visual intrusion resulting from the inappropriate siting, design or materials of buildings and works, including infrastructure service lines.
- To encourage siting, design and landscaping of buildings and works that is responsive to the coastal and foreshore landscape character, including the use of natural materials and muted colours to reflect the coastal setting.
- To maintain and enhance vegetation and landscape setting as an important element of coastal and foreshore landscapes, including the use of vegetation buffers adjacent coastal reserves and alongside public thoroughfares.
- To ensure new development positively responds to the coastal settings and to the threats of coastal hazards including erosion and inundation.

As can be seen, the provisions have already been discussed and considered through other existing policy. The effective difference would be that a site specific control would require consideration of these matters and provide potential exemptions from a planning permit. However, the proposal would not qualify for the proposed exemptions. It is considered that the proposal would satisfy the objectives and relevant considerations within the SLO2 if it did require a planning permit.

4.4 (Cont.)**LSIO2**

Amendment C271morn would introduce new Schedule 2 to the LSIO and apply it to land along Western Port Bay, including the subject site. The LSIO would remain a permit trigger for the two shed that have walls. The main difference in the application of Schedule 2 is that applications would be required to submit a Coastal Hazard Vulnerability Assessment (CHVA) if considered reasonable or necessary. In this case, a CHVA was not considered necessary, due to the nature of the buildings and works proposed. The buildings are open, and the other works are required to be located close to the sea by their nature. The development has been designed to respond appropriately to the identified flood hazard within an existing marina. Melbourne Water have provided conditional consent as the relevant referral authority under the current and proposed control.

CONCLUSION

The proposed buildings and works are considered acceptable having regard to all the relevant provisions of the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*. It is therefore recommended that a notice of decision to grant a permit be issued.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.5 Planning Permit Application P17/1892.02 - 101 Harrisons Road Dromana - Amendment to operation and layout of host farm

Prepared By	Alex Harrison, Senior Planner
Authorised By	Acting Director - Planning & Environment
Document ID	A13188197
Briefing Note Number	BN1940 – 30 July 2024
Attachment(s)	1. Development Plans ⇒ 2. Submitted Planning Report ⇒ 3. Land Management Plan and work program ⇒ 4. Land Capability Assessment by Eco Vision ⇒ 5. Aboricultural statement by Sustainable Tree Management ⇒ 6. Officer report ⇒ 7. Objections (confidential) ⇒ 8. Advertised documents under P17/1892 - 16 February 2018 ⇒ 9. Photo Location Map ⇒ 10. Officer photos ⇒ 11. Statutory Planning Report - Planning Service Committee Meeting Minutes 29 October 2018 ⇒

EXECUTIVE SUMMARY

The purpose of this report is to seek a decision from Council regarding planning permit application P17/1892.02 (the Application) for an amendment to the layout of an approved host farm and rural industry at 101 Harrisons Road Dromana. Planning permit P17/1892 was issued on 17 December 2018. The application has been called in by Councillor Gill for a decision by Council.

The application was on public notice in accordance with Section 52 of the *Planning and Environment Act 1987* (the Act) from 17 August 2023. Council received nine objections.

The application was amended on 31 January 2024 by reducing the size of the proposed pavilion building, additional planting, deletion of the proposed tennis court lighting and a slight increase in the size of the proposed 'Lake House' building. These amendments were circulated to objectors. The amended plans will form the basis of the Officer recommendation.

Council's assessment of the application is confined to the amendments being proposed and whether they are acceptable. The proposal is considered acceptable having regard to the relevant provisions of the Planning Scheme and *the Act*. It is recommended that Council supports the application and resolves to issue a Notice of Decision to Amend a Permit, subject to the conditions contained in the below recommendation.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and *the Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves that planning permit amendment application P17/1892.02 at 101 Harrisons Road Dromana, be supported and that a Notice of Decision to Amend a Permit be issued as follows:

Conditions Nos. 1 to 32 inclusive

- 1. Prior to the commencement of any use and development approved by this permit, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Plans will be endorsed and will then form part of the permit. The Plans must be drawn to scale with dimensions and three copies must be provided. The Plans must include:**
 - A. An amended Land Management Plan (LMP) that must:**
 - i. Provide additional details relevant to weed eradication within the bush regeneration area, indigenous/ riparian species recruitment and planting methods and timeframes. The bush regeneration component of the LMP must provide for a minimum 10-year timeframe to achieve goals, with ongoing maintenance in perpetuity.**
 - ii. Outline details of the proposed booking system (as referenced in the planning submission) confirming the suite of farm experience activities on offer for patrons of the accommodation units.**
 - iii. Provide for a reporting regime requiring the landowner to report back to Council on a regular basis (after the first 12 months and then every two years thereafter for as long as the land use continues to operate) detailing ongoing implementation of the LMP.**
 - iv. Detail proposed dust suppression method(s) in instances whereby a dust nuisance may be caused by vehicles utilising the unsealed driveway access to the property between Harrisons Road and the car parking areas.**
 - v. Make reference the requirements of Planning Permit P09/2621 and clarify that this LMP has been prepared to respond to the requirements of both the current permit and P09/2621 and supersedes any previous LMP endorsed under P09/2621.**
 - B. An updated Landscaping Plan prepared by a suitably qualified landscape professional, that must show:**
 - i. The layout updated to be consistent with the planning drawings in terms of location of built form, accessways and car parking area.**
 - ii. A survey (including botanical names) of all existing vegetation to be retained and / or removed in the vicinity of all buildings and works proposed under this permit.**
 - iii. Details of surface finishes of pathways and driveways.**
 - iv. A 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.**
 - v. Screening vegetation to occur in the western setback of the permitted pod buildings without causing disturbance to approved wastewater fields.**

- vi. All selected species to be indigenous.
- vii. Vegetation marked for retention to be marked with protection barriers in accordance with the recommendations of an arborist in accordance with condition 1d of this permit.

All species selection must be to the satisfaction of the Responsible Authority.

- C. Dimensioned setbacks of all buildings and works from relevant lot boundaries, and details of any excavation/fill required to accommodate the works.
 - D. A lighting plan for any external lighting to the accommodation units, the car park, and the pathway to the accommodation units. Such lighting must be designed to have limited intrusion on the rural landscape and include details of cut-off times for externally illuminated areas associated with the approved land-use to preserve the rural amenity during evening hours.
 - E. An arborist report prepared by a suitably qualified professional demonstrating that all building and works associated with the rural industry and host farm will not impact on any vegetation and provide recommendations as to any tree protection requirements necessary to be established to ensure this during construction.
 - F. Deletion of the proposed tennis court.
 - G. Both Pod buildings and associated wastewater systems to be setback at least 30 metres from the nearby waterway without any corresponding reduction of the setback to the western boundary.
 - H. Vehicle Turning circles near Pods 1 and 2, appropriately sized and parking with the same profile of compacted gravel medium.
 - I. Pod numbering to be consistent across all plans.
- 2. The approved development, including the materials of construction and colours of the exterior finish of the buildings, as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.
 - 3. The approved land uses as detailed on the endorsed plans must not be altered without the consent of the Responsible Authority.
 - 4. Once the development has commenced under this Permit, it must be continued and completed to the satisfaction of the Responsible Authority.
 - 5. The use of the site for host farm accommodation must cease if the accommodation is not operated in conjunction with the approved agricultural and land management outcomes as detailed in the endorsed LMP to the satisfaction of the Responsible Authority.
 - 6. Unless with the further written consent of the Responsible Authority, the use of the land for rural industry are limited to the following hours:

4.5 (Cont.)

- A. Between 9.00am to 6.00pm on any day
 - B. Not at all on Good Friday and Christmas Day.
7. All disturbed surfaces on the land resulting from the development must be revegetated, battered and stabilised to the satisfaction of the Responsible Authority.
8. The amenity of the area must not be detrimentally affected by the use or development, through the:
- A. Transport of materials, goods or commodities to or from the land.
 - B. Appearance of any buildings works or materials.
 - C. Emission of noise, artificial light, vibration, smell, fumes, dust, waste water or other waste products.
9. Nuisance dust must not be discharged beyond the boundaries of the premises.
10. Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.
11. Outdoor or external lighting including that of the buildings and car park areas must be suitably baffled to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
12. No external or internal amplified music, public address or speaker systems shall be installed or operated on the land.
13. Prior to the commencement of any of the land uses approved by this permit, the landowner/occupier must demonstrate commencement of the endorsed LMP to the satisfaction of the Responsible Authority. Once commenced, the endorsed LMP must be implemented and maintained to the satisfaction of the Responsible Authority.
14. Prior to the commencement of any works associated with the approved use and development (or other such time as approved in writing by the Responsible Authority), the owner must enter into an Agreement with the Responsible Authority pursuant to Section 173 of the *Planning and Environment Act 1987*. The Agreement must be prepared and registered on the title to the land to the satisfaction of the Responsible Authority. The Agreement must require the owner or occupier to undertake the following to the satisfaction of the Responsible Authority:
- A. Implement and maintain in perpetuity, the endorsed LMP (or other approved plan as may be endorsed under this permit) to the satisfaction of the Responsible Authority and specify that should the landowner/occupier fail to operate in accordance with an approved LMP which offers a genuine 'farm experience' to guests, then the host farm accommodation land-use must cease.

- B. Continuously protect and enhance the indigenous native vegetation and fauna habitat on the land.**
 - C. Construct fencing or freestanding walls that have a rural character and allow for the free passage of native indigenous animals.**
 - D. Not plant any new hedges (with existing hedges to be managed) to ensure scenic views across the site are not obscured.**
 - E. Not construct any bund wall or similar earthworks or artificial barriers that obstruct view lines.**
 - F. The permit holder must responsibly manage farming practices including spray drift so as not to impact on neighbouring properties farming practices.**
 - G. Livestock must not be permitted in remnant vegetation conservation areas at any time.**
 - H. All costs associated with the drafting and registration of this Agreement on title, are to be borne by the permit holder.**
 - I. This Agreement must be registered by the Applicant on title, prior to the commencement of works approved under this permit (or other such time as approved in writing by the Responsible Authority), pursuant to section 181 of the Planning and Environment Act 1987.**
- 15. Within six months of the commencement of the use hereby approved (or other such time as approved in writing by the Responsible Authority), landscape works as shown on the endorsed plans must be completed and then maintained in a healthy condition, to the satisfaction of the Responsible Authority. Any dead or diseased trees or shrubs must be replaced as soon as possible.**
- 16. Prior to commencement of the use, the applicant must submit a Waste Management Plan to the satisfaction of the Responsible Authority which addresses: the storage and disposal of waste generated through all activities carried out on the property; the control of any odour emanating from the site when undertaking any manufacturing process associated with the Rural Industry. When approved, the management plan will be endorsed and will then form part of the permit.**
- 17. All wastewater from the proposed development must be discharged into an on-site secondary wastewater treatment and irrigation system which is approved by the Environment Protection Authority, retains all waste within the boundaries of the land, and is installed in accordance with Council's Wastewater Management Policy.**
- 18. The wastewater system must be maintained to the satisfaction of the Responsible Authority.**
- 19. The wastewater disposal field must be fenced or landscaped to prevent vehicle access and be kept as a grassed or vegetated area.**

4.5 (Cont.)

20. Buildings, outdoor areas and pathways to provide for all abilities access in accordance with Australian Standard (AS) 1428, including AS 1428.2-1992, AS/NZS 1428.4.1:2009 and AS 1428.5:2010 all to the satisfaction of the Responsible Authority.
21. After the endorsement of condition 1 plans and before any works associated with the development starts, detailed construction plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and two copies must be provided. Alternatively, plans in pdf format may be emailed to devengadmin@mornpen.vic.gov.au The plans must show:
 - A. All areas of the development being drained to the satisfaction of the Responsible Authority.
 - B. Details, including levels of all internal access aisles and parking areas.
22. Before any works associated with the development starts, drainage computations are required for the drainage system, including consideration of any drainage catchment external to the development that may drain to the drainage system.
23. Before the initial occupation of any part of the approved development or commencement of the land use, the development drainage works within the development must be constructed in accordance with approved construction plans, and to the satisfaction of the Responsible Authority.
24. Before the initial occupation of the development, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be constructed in accordance with approved construction plans, surfaced and drained to the satisfaction of the Responsible Authority.
25. Car spaces, access lanes and loading zone must be kept available for these purposes at all times.
26. This permit will expire if either one of the following applies:
 - A. The development is not completed within four years of the date of this permit.
 - B. The use is not commenced within four years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.
27. Prior to the commencement of the development, including any excavation or works; and during all stages of development, the recommendations and tree protection requirements identified in the approved arborist report must be implemented and complied with to the satisfaction of the Responsible Authority.
28. No stormwater (from any roofs and other hand stand areas) is to enter the wastewater envelopes. Diversion drains are required to ensure this objective.

4.5 (Cont.)

29. Dedicated rainwater tanks must be provided for toilet flushing activities and must be installed prior to occupation of the permitted buildings.
30. All stormwater run-off generated must be retained on site.
31. No wine may be offered for sale and/or consumption until separate planning permission has been granted by the Responsible Authority.
32. The landowner and/or property manager must be present on the subject site whilst the accommodation buildings are being occupied.

Part B

That Council 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, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

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

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

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

Theme 2: A robust, innovative and diverse economy.

- Strategic Objective 2.3: A thriving entrepreneurial economy, with a vibrant tourism sector, that provides accessible employment to our diverse community

GOVERNANCE PRINCIPLES

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

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION**Purpose**

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

- The relevant background of the site

4.5 (Cont.)

- The proposal
- The key issues
- Submissions and Shire officer response
- The assessment against the relevant provisions of the *Act* and the Planning Scheme.

For a detailed assessment of the all the relevant matters please see Attachment 6 – Officer Report.

The key planning considerations are summarised in the below table:

Proposal	Amending the plans and associated documents (LMP) to be endorsed for a host farm and removal of rural industry.
Zoning and Overlays	Zone: Green Wedge Zone Schedule 3 (GWZ3) Overlays: • Environmental Significance Overlays (ESO) Schedules 3, 8, 17 and 28 • Significant Landscape Overlay (SLO) Schedules 1 and 6 • Vegetation Protection Overlay schedule 2 (VPO2) • Bushfire Management Overlay (BMO). The proposed works are located outside of the following overlays - SLO6, ESO8, BMO and VPO2.
Permit Triggers	Clause 35.04-5 (GWZ3) – Buildings and works associated with a Section 2 use and 100 metres from a waterway, Clause 42.01-2 (ESO3) - Buildings and works Clause 42.01-2 (ESO17) - Buildings and works Clause 42.01-2 (ESO28) - Buildings and works Clause 42.03-2 (SLO1) – Buildings and works Clause 52.21 – Private Tennis Court
Advertising	The application was advertised on 17 August 2023 by sending direct notice to all properties and erecting a sign on site for 14 days.
Submissions	9 objections have been received to date.
Consultation	A Planning Application Conference (PAC) was held on 22/11/2023 at the Mornington Office. No formal resolutions were substantiated as a result of this meeting.
Key Issues	1. Does the amendment align with approved uses of Host Farm and Rural Industry? 2. Design and siting of buildings.

	3. Consideration of submissions.
Recommendation	A Notice of Decision to Amend a Permit

Background

Subject Site and Surrounds

The subject lot is located on the eastern side of Harrisons Road and comprises a battle axe style layout of 15.8 hectares. The land rises from the front of the site towards the rear (eastern) boundary and falls across the north-western side of the lot towards the north-western property boundary.

The site is currently developed with a dwelling and typical rural outbuildings. The land currently supports three separate primary production outcomes, including growing of grapes (vines) and olives.

The expansive single storey dwelling is located towards the north-east corner of the allotment, together with usual outbuildings. The dwelling is sited to maximize views and vistas across the site, elevated to taking in the sloping topography to the west.

A dam is located towards the middle section of the site where the land slopes down from the eastern and southern boundaries forming a catchment point. A distinct corridor of established native trees also aligns the perimeter of the dam extending north south and further east into neighbouring lots.

A horse ménage has been constructed amongst the vines toward the northern boundary.

The lot is accessed via Harrisons Road, with the battle-axe driveway being approximately 600 metres length, and running adjacent to the boundaries of 97 and 115 Harrisons Road either side of the driveway.

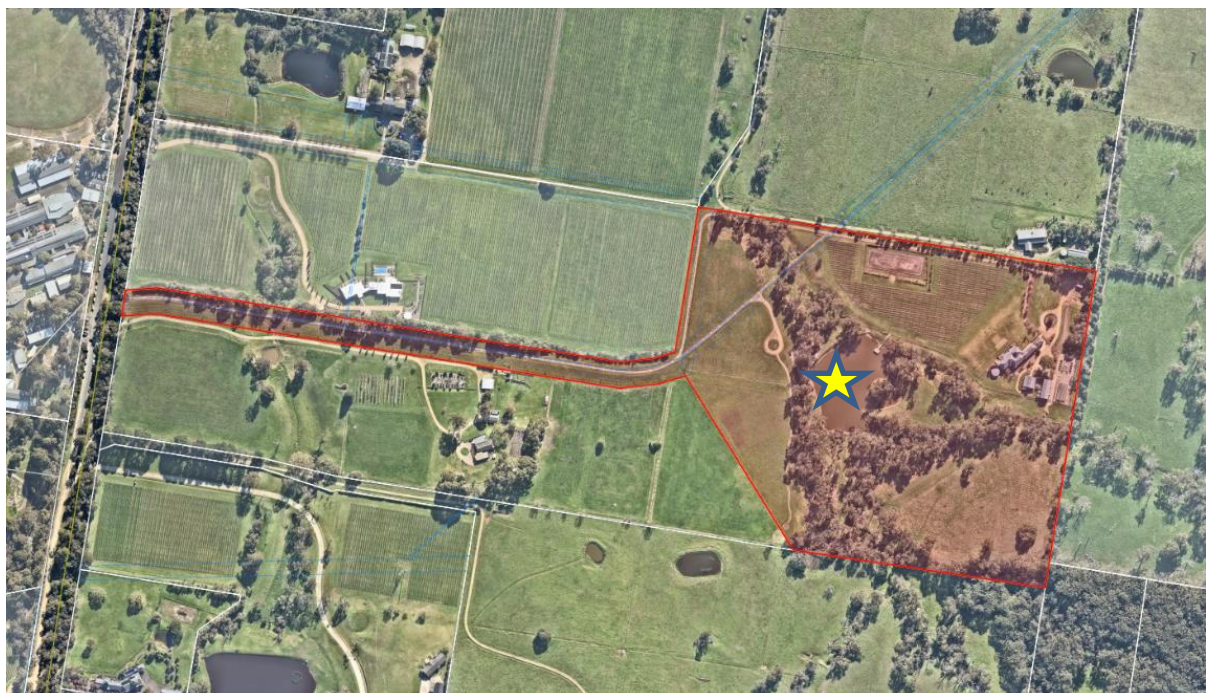


Figure 1: Aerial Photo showing subject site and surrounding properties (source: Nearmap 2024)

Subject site 

The general locality reveals a mix of lot sizes and land uses in the area. It is evident that surrounding land includes uses such as vineyards with some lots being used for rural lifestyle living. All land to the north, east and south is located within the Green Wedge Zone.

The land to the western side of Harrisons Road is located within Public Use Zone 2 and Public Conservation and Resource Zone and operates as Dromana Secondary College.

Further to the south is Bald Hill Flora Reserve, a heavily vegetated site owned by the Department of Sustainability and Environment.

The properties immediately adjacent to the site include:

- North-west: 85 Harrisons Road, Dromana – agricultural land (vineyard) and dwelling
- North: 57 Harrisons Road – agricultural land and dwelling
- East: 2 Gibb Road, Red Hill - agricultural land (with remnant bushland) and dwelling
- South-east: 91 Browne Lane, Red Hill - bushland and dwelling
- South – 135 Harrisons Road, Red Hill – agricultural land and dwelling
- West: 97 Harrisons Road – agricultural land (vineyard) and dwelling; 115 Harrisons Road – agricultural land and dwelling.

Proposal (Attachment 1, 2, 3, 4 and 5)

The applicant seeks to amend plans and associated documents (LMP) to be endorsed for a host farm and rural industry use. Specifically, this entails:

- Construction of three (3) new accommodation buildings being two (2) pods and a 'Lake House'.
 - The proposed two (2) pods will have a maximum height of 5.6m from natural ground level (NGL), 76 metres squared (approximately) in total floor area (each) with an open plan area consisting of a kitchen, living room and bedroom, separate bathroom and robe with exterior decks area facing north, east and west. Each will have one car space. They will be clad in muted tones consisting of Colorbond 'Monument' and metal cladding with 'Basalt' coloured composite decking.
 - Pod 1 will be setback 9 metres from the southwestern boundary whilst Pod 2 will be setback 46.2 metres from the southwestern corner of the subject site. Both Pods will be located well away from any existing vegetation. No vegetation removal and, minimal excavation will be required to facilitate their construction.
 - The 'Lake House' will be located in a cleared area on the eastern side of the lake / dam. It will have a maximum height of 7.4 metres from NGL and will consist of an entryway, two bedrooms with walk in robes each, two bathrooms and an open

plan multipurpose room with kitchen. It will be 218.2 metres squared in total floor area and clad in muted tones consisting of Colorbond 'Monument' and weatherboard wall cladding with exterior decks. A 2.5 metres driveway culminating in six (6) car spaces will lead from the existing 'house paddock' providing for vehicular access.

- Construction of a pavilion building and tennis court within existing horse menage.
 - The Pavilion will consist of a large open plan area with a separate toilet and fireplace. It will be set back 20 metres from the northern title boundary, 5 metres from the western most edge of the existing horse menage, 19.6 metres to the west from the proposed tennis court and 105 metres to the southwest from the nearest neighbour (57 Harrisons Road Dromana). It will be approximately 4.8 metres high from NGL with a 'Mansard' style roof and clad in muted tones consisting of weatherboards and Colorbond corrugated iron roof and rendered chimney. It will be 79 metres squared in total floor area a pergola located on its eastern side. New retaining walls and steps are located to the south adjacent to the proposed lavender planting.
 - The proposed tennis court will be located between the proposed pavilion building (19.6 metres the west) and further proposed vines on its eastern side. It will be fenced on its north and south sides with 3 metres high cyclone mesh and timber posts and fenced on its east and west sides with 1.5 metre high mesh. No lighting is proposed, and no vegetation removal is required for these works.
- Deletion of carparking and re siting of internal accessways.
- Amending the agricultural activities (and associated buildings and works) on the land including:
 - Amending the LMP (to be endorsed).
 - Deletion of the production shed (rural industry).
 - Deletion of machinery shed.
 - Deletion and re siting of areas for lavender growing.
 - Deletion of car parking for users of the host farm and the primary produce sales area.

NOTIFICATION AND CONSULTATION

Notification / Advertising

The application was on public notice in accordance with Section 52 of *the Act* from 17 August 2023.

Objections (Attachment 7)

Council received 9 objections to the proposed amendment with the following concerns being raised in their submissions:

- Visual impact
- Amenity loss
- Construction effects
- Infrastructure capacity
- Effect on flora and fauna
- Out of character
- Incommensurate with Green Wedge Zone and existing approved land use
- Loss of agricultural land
- Overdevelopment
- Potential for illegal dwelling uses
- Duration of guest stays is problematic
- Dust
- Proposed helicopter pad
- Car parking requirements are unsatisfactory
- Location of driveway adjacent to northern boundary and associated vehicle noise.

Consultation

A Planning Application Conference (PAC) was held on 22/11/2023 at the Mornington Office. No formal resolutions were substantiated as a result of this meeting.

REFERRALS

Environmental Health

A referral was undertaken to the Shire's Environmental Health Officers who were satisfied that the property had adequate room to treat and contain wastewater on site subject to the following conditions:

1. All sewage and sullage wastewater from the proposed development must be discharged into an on-site septic tank system which is approved by the Environment Protection Authority, retains all waste within the boundaries of the land, and is installed in accordance with Council's Wastewater Management Policy. This system must be maintained to the satisfaction of the Responsible Authority.
2. Any existing wastewater disposal system located on the subject site must be de-sludged, cracked and backfilled prior to use of the development.
3. Works on the proposed dwelling or dwelling alterations must not commence until a permit to install the septic tank system is issued by Council's Environmental Health section.

4.5 (Cont.)

4. Land application area must be located no closer than 30 metres from the uphill of any surface waters (Dams, creeks and the like).

Engineering

A referral was undertaken to the Shire's Engineers who did not object to the application subject to the following conditions:

1. No stormwater (from any roofs, tennis court and other hard stand areas) is to enter the Land Capability Assessment areas. Provision of diversion drains are to ensure this objective.
2. Dedicated rain water tanks must be provided for toilet flushing activities.
3. Extensions to driveways, including near Pod 1 and 2, must be appropriately sized for the provision of turning circles and parking with the same profile of compacted gravel medium.
4. All stormwater run-off generated must be retained on site.

Vegetation

A referral was undertaken to the Shire's Senior Vegetation Officer who recommended that a new condition on permit be included requiring the recommendations of the arborist report (via existing condition 1(e)) be implemented given there was no such existing condition.

Tree protection

1. Prior to the commencement of any demolition, excavation or works; and during all stages of development, the recommendations and tree protection requirements identified in the approved arborist report must be implemented and complied with to the satisfaction of the Responsible Authority.

The Shire's Senior Vegetation Officer stated:

'Whilst it does not appear that vegetation removal is proposed or required; and to a large extent the proposed development is clear of the existing vegetation on the site, it does appear that there will be some construction of buildings and access tracks in proximity to the existing vegetation on the site...The arborist's report when submitted should identify any potential impacts. This will need to be submitted prior to the endorsement of any plans.'

CONSIDERATION

The following key issues are discussed below:

- Does the amendment align with approved uses of Host Farm and Rural Industry?
- Design and siting of buildings.
- Consideration of submissions.

Does the amendment align with approved use of a Host Farm and Rural Industry?***Agriculture***

The proposed LMP and work program (Attachment 3) outlines the various agricultural pursuits that will be carried out on the property, which has some variations to the operations put forward in the original application (Attachment 8 and 11). Agricultural activities still

4.5 (Cont.)

include the cultivation and harvesting of olives and lavender, but now also include a vineyard for the purpose of wine making. Apiculture and Yabby production are also intended to be pursued into the future.

Concerns have been raised from several submitting parties that the proposed amendment does not have a 'solid agricultural basis' or is the 'commercialisation of green wedge land'. It is important to stress that although production elements may have altered, the land still continues to be utilised for agricultural pursuits which underpins its definition of that of an agricultural property. Section 73 (Land use terms) of the Mornington Peninsula Planning Scheme defines 'Agriculture' as 'Land used to propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf, and vegetables. There is no issue with the scope of the changes to the productive agricultural use of the land. In fact, the proposal will allow for more of the land to be utilised for agriculture than previously approved.

Host farm

The proposed LMP and work program (Attachment 3) further outlines the various 'host farm' activities that the landowners propose. This includes olive and wine tastings, olive grove / vineyard / lavender and wetland tours whilst educating patrons on the health benefits of olive oil, grapes and lavender products together with wetland conservation.

Coupled with the continued use of the property for agricultural purposes (outlined above) and the proposed construction of the accommodation buildings (discussed further in this report) the use of the property will still legitimately meet the Planning Scheme definition of 'host farm'. Section 73 (Land use terms) of the Mornington Peninsula Planning Scheme defines 'Host Farm' as 'an agricultural property used to provide accommodation for persons, away from their normal place of residence, to experience living on land used for agricultural purposes'.

It is important to note that the definition of host farm does not specify that farming operations need to be of a certain scale or intensity to be considered an agricultural property. The farming pursuits are articulated in Attachment 3 and are considered to be genuine. Furthermore, existing conditions of the permit shall ensure that the farming operations are satisfactorily implemented, e.g. condition 5 and 4.

Rural Industry

Section 73 (Land use terms) of the Mornington Peninsula Planning Scheme defines Rural industry as '*land used to handle, treat, process, or pack agricultural produce*'.

It is noted that all the processing of lavender oil, olive oil and wine production is now proposed to be carried out off-site. The revised LMP outlines that rural industry processing on-site is now limited to drying and bud processing of lavender. This is considered to be a much less intensive form of rural industry with fewer by products and processing being required on-site. This shall greatly reduce potential adverse amenity from the rural industry component of operations.

Primary Produce sales

The sale of agricultural products made from the primary product of the subject land is proposed to take place within the new pavilion building. The applicant has outlined that the display area will occupy less than 50 square metres of the building and is sited more than 100 metres from neighbouring dwellings, as to satisfy the Section 1 (no permit required) requirements under the Green Wedge Zone.

It is important to note that the owners have not applied for the sale and consumption of liquor under this application. Separate planning permission will be required under Clause 52.27 of

the Mornington Peninsula Planning Scheme before they offer wine for sale and/or consumption.



Figure 2: Proposed Agricultural pursuits (source: Development Plans 2024)

Design and siting of buildings

Accommodation Units

Planning permit P17/1892 issued on 17/12/2018 allowed for six (6) detached accommodation units located in the south-west portion of the site (between the dam and the lavender gardens) including a DDA accommodation unit. The southern-most unit was to be setback seven metres from the south-west boundary. Refer to attachment 8.

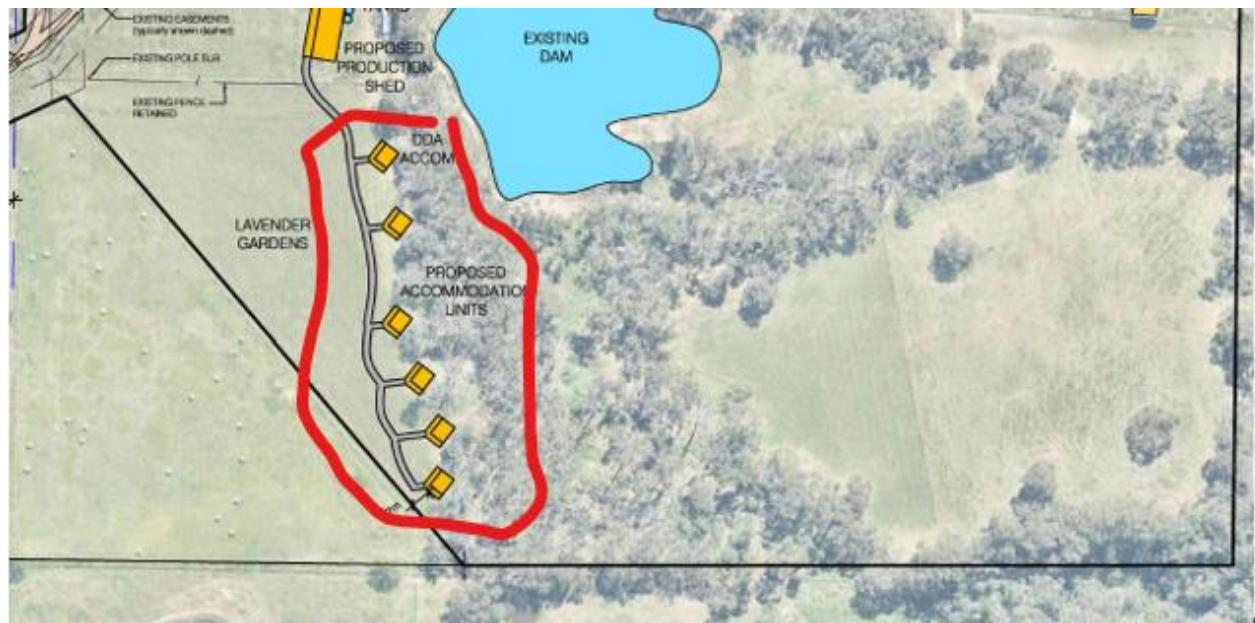


Figure 3: Location of approved accommodation buildings under P17/1892 (source: Advertised plans under P17/1892 16 February 2018)

The proposed amendment seeks to reduce this number of accommodation units from six (6) to three (3) via the construction of the three (3) new accommodation buildings.



Figure 4: Location of proposed new accommodation buildings (2 pods and 'Lake House') (source: Nearmap 2024)

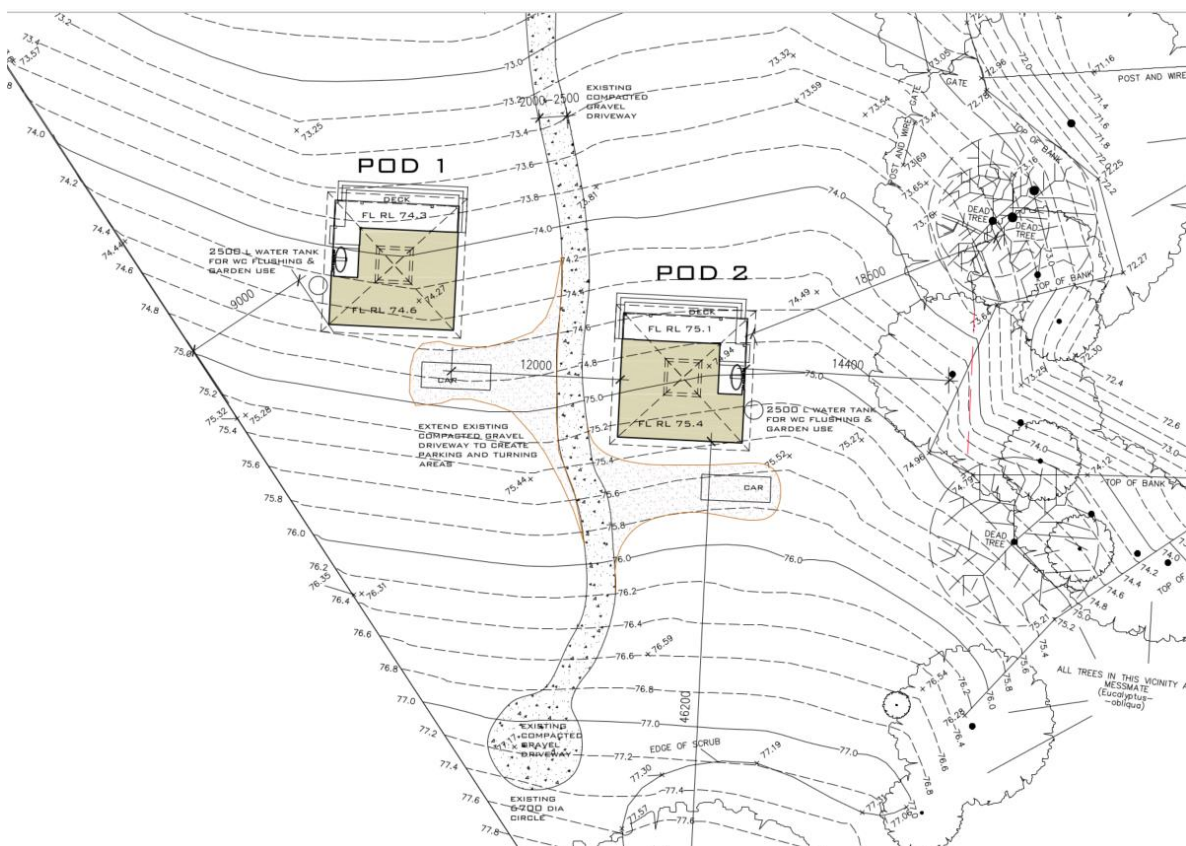


Figure 5: Location of proposed accommodation pods (source: Development Plans 2024)



Figure 6: Looking northeast towards approximate location of proposed pod 1 (source: Officer photos 2024)



Figure 7: Looking north towards approximate location of proposed pod 1 (source: Officer photos 2024)



Figure 8: Looking northwest towards approximate location of proposed pod 2 (source: Officer photos 2024)

Council deems this a better outcome in terms of the impact to the rural character of the site and the impact on views from adjoining properties namely those located to the west (115 Harrisons Road, Red Hill) and south (135 Harrisons Road, Red Hill). Given the existing topography and undulation of the land they will not be visible from the existing dwelling at 115 Harrison Road Red Hill nor overtly visible from the existing dwelling at 135 Harrisons Road, Red Hill. They will be located some 300m from these adjoining dwellings.



Figure 9: Distance from pods to adjoining dwellings (source: Nearmap 2024)

The proposed accommodation units (pods 1 and 2) will be located in areas void of vegetation and sited well away from existing vegetation (including mature trees). The submitted Land Capability Assessment (Attachment 4) identifies that the structures must be located at least 30 metres from the watercourse. The plans currently specify that Pod 2 is to be located 14.4 metres from the waterway, thereby the pod(s) will need to be re-configured to comply with this requirement. There is ample space for this to occur without interrupting the proposed farming operations and without causing any noticeable change to the visual impact from adjoining properties,

The units are slightly larger in footprint to that of the previous accommodation units, but they will be of a similar height from natural ground level and are still relatively modest and low in scale. They will also be clad in muted, non-reflective tones which will respect the rural context of their surroundings. Lastly it is recommended that planting is to occur the western setback of the buildings to further integrate them into the rural landscape.

The proposed accommodation units do not interrupt the agricultural operations or potential of the property. Although visible within the landscape from the property boundaries of various properties this is not unusual occurrence with the Green Wedge where it is not a prerequisite for approval that such buildings be 'invisible' per se.

As such Council deems that the proposed accommodation units respond favourably to the objectives of the ESO3, ESO17, ESO28 and SLO1. The reduction in the number of these accommodation pods and, their sensitive re-siting also allows for more of the land to be utilised for agricultural purposes.

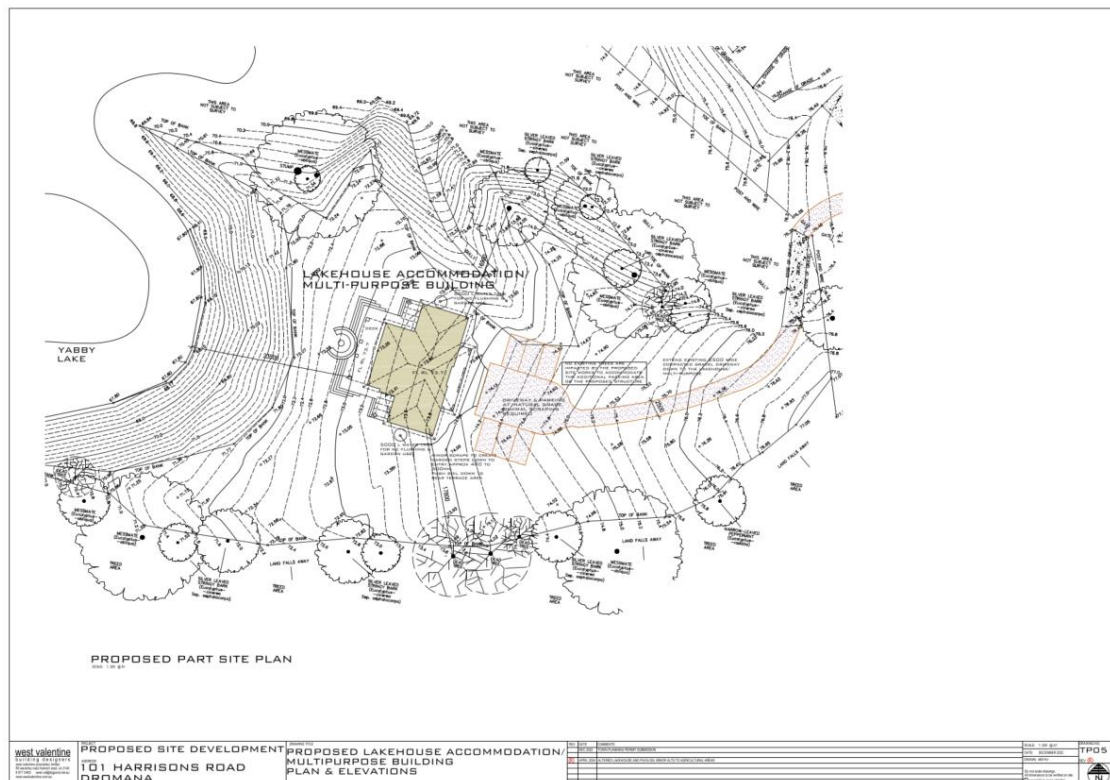


Figure 10: Location of proposed 'Lakehouse' (source: Development Plans 2024)



Figure 11: Looking west towards 'Lake House' site with dam / lake in background (source: Officer photos 2024)

The proposed 'Lakehouse' will also be located well away from any existing vegetation and will not require any vegetation removal. Minimal excavation will also be required to facilitate

the building and driveway construction. It will be accessible via an upgrade to the existing, informal track that currently provides access to the clearing it will reside in.

Although larger than the previous approval of the pods located on the western side of the property (discussed above) this building will still form an 'accommodation unit' commensurate with the use of the land for a host farm. Screened via existing vegetation on all sides and clad in muted, non-reflective tones it will generally not be visible to adjoining properties or the wider landscape. Council deems that the proposed 'Lakehouse' also responds favourably to the objectives of the ESO3, ESO17, ESO28 and SLO1.

It should be noted that the host farmland use definition does not prescribe the form that the accommodation must take place. In this regard it may be offered as part of an existing dwelling, separate buildings (e.g. pods) or in the form of a self-contained building such as the Lakehouse. The key is to ensure that there is a nexus between farming operations and the hosting, which has been demonstrated through the submitted LMPs.

Pavilion and tennis court

This amendment also seeks permission for a new 'pavilion building' and tennis court to be located on the existing horse menage area near the northern boundary of the subject site.

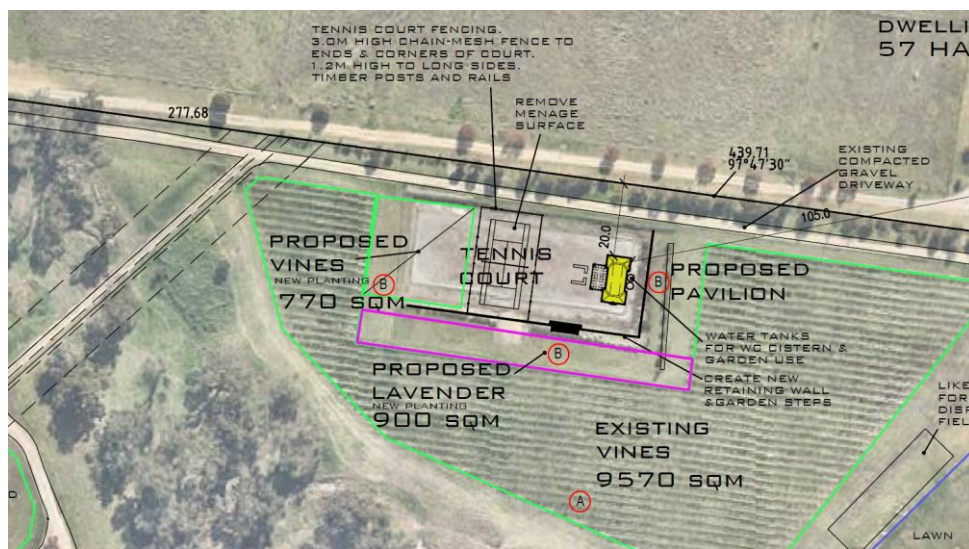


Figure 12: Layout of proposed tennis court and pavilion (source: Development Plans 2024)

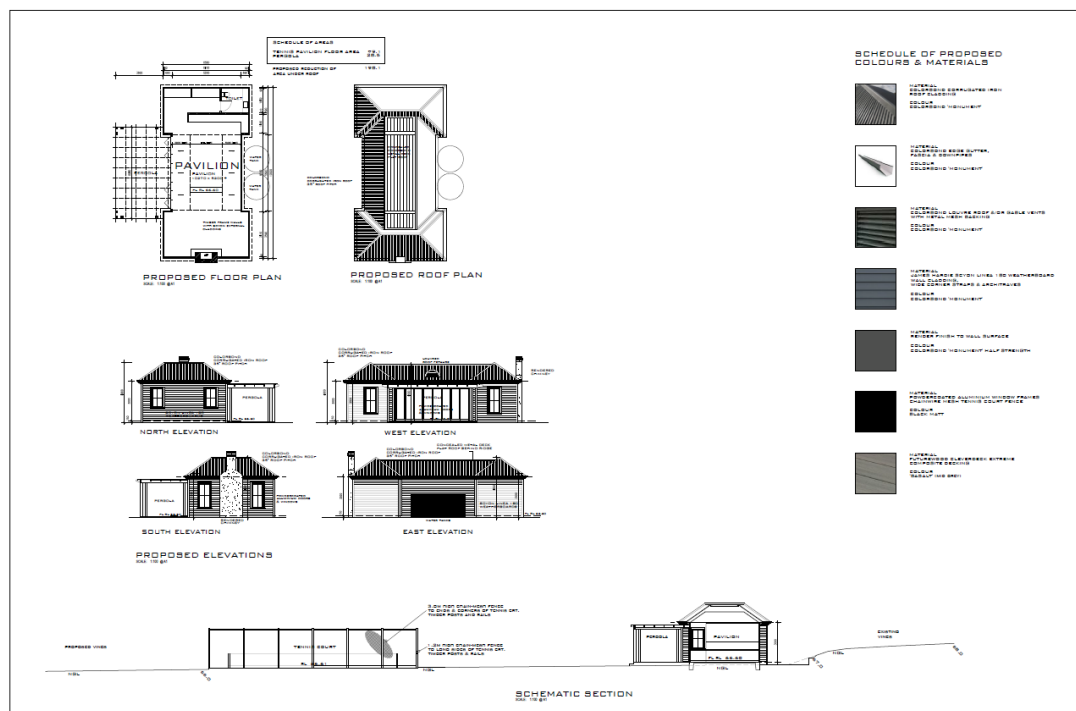


Figure 13: Layout / elevations of proposed pavilion (source: Development Plans 2024)



Figure 14: Looking southeast at existing horse menage (location of proposed tennis court and proposed pavilion) with existing dwelling on subject site in background (source: Officer photos 2024)

Council questions the 'need' and nexus of the tennis court with regard to the use of the land for a host farm. Furthermore, the tennis court is over 120 metres from the main residence of the subject site, which is well beyond the domestic envelope or home paddock. The proposed tennis court should be located within proximity of the existing dwelling and within the 'house paddock' so as not to further fragment the land for agricultural pursuits. This is

commensurate with Council's Green Wedge Management Plan which was adopted by Council on 17 December 2018 and updated in April 2019. This document provides for a strategic direction for the development and use of the Green Wedge and sets out directions including:

Siting:

- Any dwelling and all buildings and works associated with the dwelling, including but not limited to swimming pools, domestic outbuildings, tennis courts, ornamental gardens, stables, ménages and other buildings and works ancillary to the dwelling, including domestic effluent disposal fields, to the extent that is reasonably possible, but excluding buildings required for agricultural purposes, including haysheds and pump sheds, should be contained within a defined building envelope shown on the LMP, consisting of no more than 10 % of the site area or 2,000 square metres, whichever is the lesser.

As such, a condition on any approval will require the deletion of the proposed tennis court from the plans.

The multi-purpose pavilion is proposed to be used in a number of ways including:

- As a communal space area for people being accommodated on the land
- To display and sell the primary produce grown on the land
- To educate guests about the agricultural activities that occur on the land and the associated produce.

The open-plan floor area will allow for a display area, as well as presentation areas and the purchase of primary produce. The intention is that primary produce will primarily be available for purchase for guests of the host farm and will be consistent with the definition of primary Produce Sales pursuant to clause 73.03-3 which does not require a planning permit under the zone. It will also allow for a communal area for guests away from their accommodation pods with an adjoining outdoor pergola area available for their enjoyment.

It is noted that the pavilion is modest in size, located more than 100 metres away from the nearest dwelling (57 Harrisons Road Dromana) with muted tones and clad in a weatherboard profile which will assist it to blend in with the rural location. Additionally, the pavilion is to be sited approximately 20 metres from the northern boundary, where established She-oak trees are present. In this regard the building is not deemed to be visually dominant and further landscaping is not considered necessary in this instance.

Response to Submissions

Attachment 7

The issues below are those that have not been previously addressed in this report.

Infrastructure capacity

Existing conditions on permit already require that all wastewater from the proposed development is discharged into an on-site secondary wastewater treatment and irrigation system which is approved by the Environment Protection Authority and retains all waste

within the boundaries of the land and is installed in accordance with Council's Wastewater Management Policy.

Dust

Dust suppression is already a requirement to be addressed in the LMP.

Proposed helicopter pad

There is no proposed helicopter pad on the plans submitted with this application. Separate planning submission would be required for this activity.

Potential for illegal dwelling uses and duration of guest stays

Existing conditions on permit already address the illegal use of the accommodation units and the stay of guests.

Car parking requirements are unsatisfactory

Under clause 52.06 – Car Parking of the Mornington Peninsula Planning Scheme the required number of car parking spaces is required to be provided prior to a new land use commencing.

As host farm does not have a prescribed parking rate in Table 1 of Clause 52.06 – the permit applicant has provided parking equivalent to a bed and breakfast operation, which one space for every two occupants. A space has been provided for each pod building and six spaces have been provided in association with the Lakehouse building, which is deemed to be satisfactory.

The rural industry operations are now in shed adjacent to the dwelling, which has an estimated floor area in the order of 144 square metres. Table 1 of Clause 52.06 requires 2.9 spaces for spaces for every 100 square metres of floor space and thereby four spaces would be required for the rural industry. There is ample room in the surrounds of the dwelling to accommodate this parking and given the operation is largely run by the landowners it is not deemed necessary for car parking to be formalised in this regard.

Whilst the primary produce sales land use does not require planning permission – the car parking must be still be provided in accordance with the clause. The permit applicant has stated that the display area of the primary produce sales would not exceed 50 square metres, so no more than 2 spaces is required for this land use. There is ample space in proximity of the pavilion building where this could be provided for and it is not deemed necessary that a carparking area is formalised in this regard.

Location of driveway adjacent to northern boundary and associated vehicle noise

The location of the driveway adjacent to the northern boundary provides for access to the existing dwelling and proposed Lakehouse without further fragmenting the land for agriculture. The behaviour of motorists on an otherwise private driveway is not a concern that can be addressed via this planning assessment.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

Should the application be appealed to Victorian Civil and Administrative Tribunal by the applicant, Council would be required to defend its decision, and this would have financial and resource implications.

CONCLUSION

The proposed amendment to an approved host farm and rural industry use at 101 Harrisons Road Dromana is considered acceptable subject to the recommended conditions having regard to the relevant provisions of the Planning Scheme and *Planning and Environment Act 1987*. It is therefore recommended that Council support the application and issue a Notice of Decision to Amend a Permit.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.6 Planning Permit Application P23/1995 - 1953 Frankston-Flinders Road, Hastings - Development of a floodlit major promotion sign

Prepared By	Alex Colquhoun, Senior Planner
Authorised By	Director - Planning & Environment
Document ID	A13154001
Briefing Note Number	BN1941 – 31 July 2024
Attachment(s)	1. Officer Assessment ➡ 2. Plans ➡ 3. Application Report ➡ 4. Submissions (confidential) ➡ 5. Planning Provisions ➡

EXECUTIVE SUMMARY

The purpose of this report is to seek a position from Council regarding Planning Application P23/1995 for the proposed development of a floodlit major promotion sign at 1953 Frankston-Flinders Road, Hastings. The application has been called in by Councillor Dixon for a decision by Council.

The application received two objections generally relating to the impact on nearby Green Wedge properties, environmental impacts and the response to the objectives under Clause 52.05 – Signs of the Planning Scheme.

The Department of Transport and Planning (DTP) was notified under Section 52 of the *Planning and Environment Act 1987 (the Act)* as they are not a determining referral authority under Section 55 of the *Act*. DTP has considered the proposal and does not object to the granting of a planning permit.

The proposal is considered acceptable having regard to the objectives and purposes of the applicable planning controls, being clause 52.05 – Signs of the Planning Scheme. It is recommended that Council supports the application and resolves to issue a Notice of Decision to grant a permit, subject to the conditions contained within this report.

RECOMMENDATION

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves to support Permit Application P23/1995 for the development of a floodlit major promotion sign at 1953 Frankston-Flinders Road, Hastings and that a Notice of Decision to grant a Permit be issued, subject to the following conditions:

Council Conditions**Approved Development not Altered**

- 1. The approved development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (Unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).**

4.6 (Cont.)**Maintenance**

2. All signs hereby approved must be designed to a professional standard, constructed and maintained in good condition to the satisfaction of the Responsible Authority.

Illumination

3. Sign illumination must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
4. The intensity of the external lighting and lighting in the signage must be limited so as not to cause glare or distraction to motorists or other persons or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.
5. Any wiring, cabling or anything similar must be concealed from view to the satisfaction of the Responsible Authority.
6. The signage must be wholly located within the subject property. No part of the sign may encroach into the road reserve.
7. External illumination of the sign must cease between the hours of 10pm and 6am to the satisfaction of the Responsible Authority.

Major Promotion Signs

8. The sign must not:
 - A. Dazzle or distract drivers due to its colouring.
 - B. Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles.
 - C. Be able to be mistaken as an instruction to drivers.

Expiry

9. This permit expires 15 years from the date of issue, at which time the sign and all supporting structures must be removed, and the site made good to the satisfaction of the Responsible Authority.

Part B

That the Council resolves that Attachment 4 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* contains personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

COUNCIL & WELLBEING PLAN

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

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

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

4.6 (Cont.)

GOVERNANCE PRINCIPLES

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

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

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

DISCUSSION**Purpose**

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

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

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

The key planning considerations are summarised in the below table:

Proposal	Development of a floodlit major promotion sign
Zoning and Overlays	Zone: Industrial 3 Zone (IN3Z) – Clause 33.03-5 - Sign requirements are at Clause 52.05. This zone is in Category 2. No overlays apply to the subject site.
Permit Triggers	52.05-2 - A permit is required to construct or put up for display a sign in Section 2 of the relevant category.

4.6 (Cont.)

	52.05-12 – Category 2 – Office and Industrial – A permit is required for a ‘floodlit sign’ and a ‘major promotion sign’ as they fall within Section 2.
Notification/Advertising of proposal	The application was advertised by sending direct notice to all adjoining properties and erecting a sign on site for 14 days.
Submissions	Two objections have been received to date.
Consultation	No Planning Application Conference (PAC) was held.
Key Issues	• Will the proposal have an impact on residential amenity? • Will the proposed sign have an appropriate built form and visual presence in this context and is the sign appropriate for this site? • Is the proposal acceptable from a Road Safety perspective? • Consideration of the matters raised in the objections
Recommendation	A Notice of Decision to grant a permit be granted, subject to conditions.

Background**Subject site and surrounds**

The site is formally described as Lot 2 on the Title Plans PS537478Y, it has an irregular quadrilateral shape with a site frontage of 322.51 metres to Frankston-Flinders Road and a maximum depth of 187.5 metres. The overall land size is approximately 48,119 square metres.

The site is on the east side of Frankston-Flinders Road in Hastings. The site is the largest land holding in this industrial estate and contains numerous businesses with existing buildings and works including industrial warehouses, ancillary offices and storage. These include The Wood Project, Norton Livestock Handling Solutions and industry associated with soil storage and blending. Each part of the site that contains different businesses includes its own business identification signage on the fences or facades of buildings.

The site is relatively flat but slopes from the northern boundary at approximately 10m Australian Height Datum (AHD) to the southern boundary at approximately 7m AHD. The proposed siting of the sign is on land that is approximately 7m AHD, in the south-western corner. The proposed top of the sign will be 5.65 metres above that.

The site is located in within the southern portion of an approximately 1.25 kilometre long industrial strip containing various industrial activities and businesses from vehicle repair and maintenance, marine boat repairs, construction supply stores, food and drink premises, equipment hires, warehouses and industry. There are numerous business identification signs located within the front setbacks of adjoining industrial sites further to the north.

Directly opposite the site to the west, is 1950 Frankston-Flinders Road which is within the Green Wedge Zone. This is the closest residential receptor at approximately 160 metres north west of the proposed sign. The next closest is located approximately 215 metres to the

4.6 (Cont.)

north east, across the Stony Point Train Line, and on John Coleman Close. The sign is not likely to be visible at all from the north east due to intervening topography and vegetation. The sign will also be screened almost entirely from the closest dwelling at 1950 Frankston-Flinders road by intervening roadside vegetation and plantings within that site.

The land to the south is in the Public Park and Recreation Zone and used for community purposes. The proposed sign is over 100 metres the nearest waterway to the south that flows into Kings Creek, further to the south east.

The Hastings Activity Centre is approximately 1.3 kilometres to the south. With another long strip of commercial and industrial uses along that section of Frankston-Flinders Road.

Refer to Attachment 1 – Officer Assessment for detailed description of site and surrounding environs.



Figure 1: Aerial Photo showing subject site and surrounding properties (Nearmap February 2024)

Sign location ★

Proposal

This application seeks approval for the development of a floodlit major promotion sign. The proposed sign includes two floodlit display faces, each measuring 8.3 metres wide by 2.2 metres high. Each display face is 18.26 square metres, without the skirting board and logo box. The overall structure is 5.65 metres high.

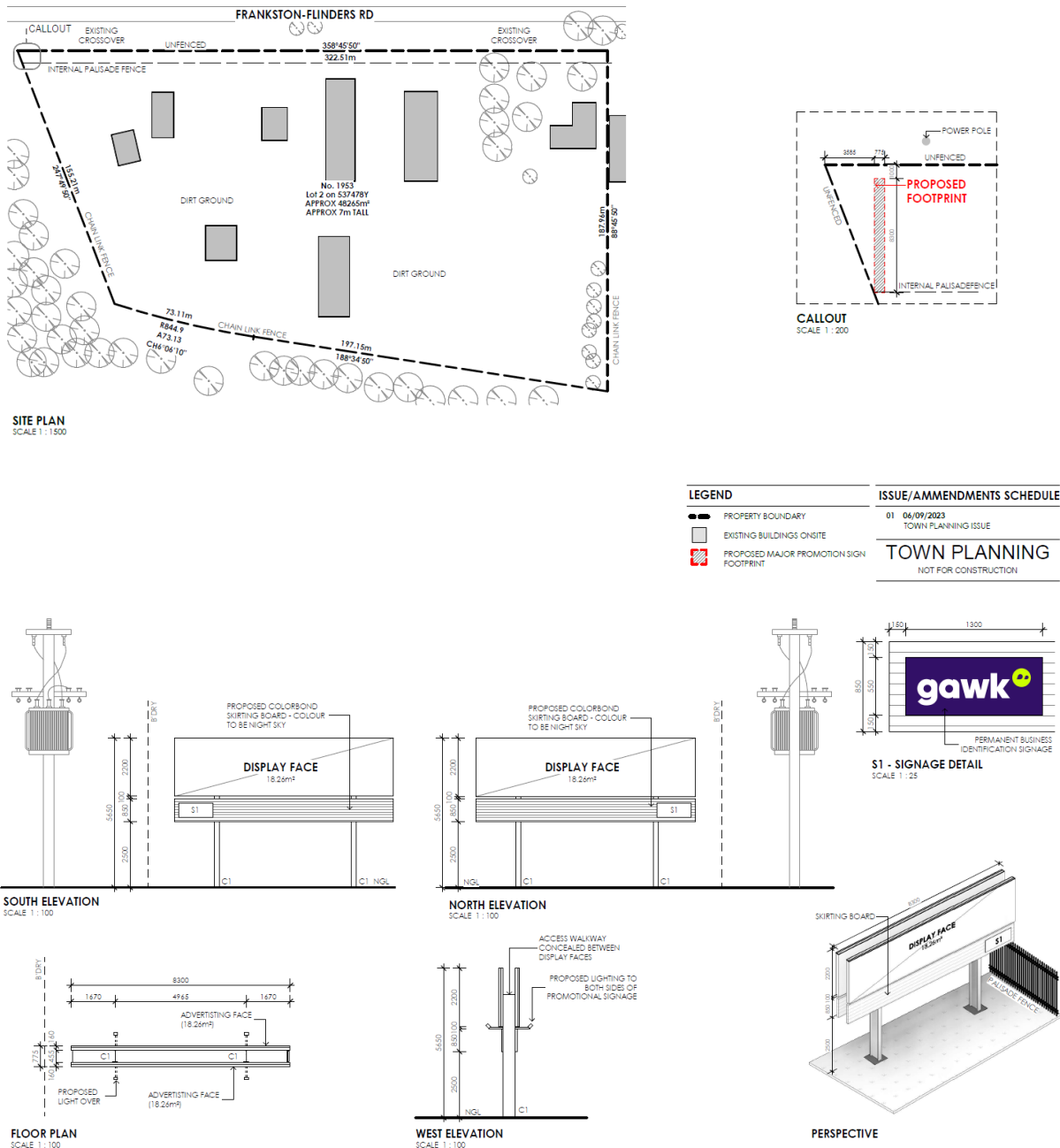


Figure 3: Development Plans

Please refer to the following for further details:

Attachment 1 – Officer Assessment

Attachment 2 – Plans

Attachment 3 – Application Report

Relevant permits and history

The proposed sign is approximately 1 kilometre to the north of two other major promotion signs as shown in Figure 4 below. Whilst they are indicative of signage in the broader locality, they are not considered directly relevant to assessment of this application within the considerations of clause 52.05 of the Planning Scheme, which requires specific consideration to be given to signs within 200 metres of existing major promotion signs.

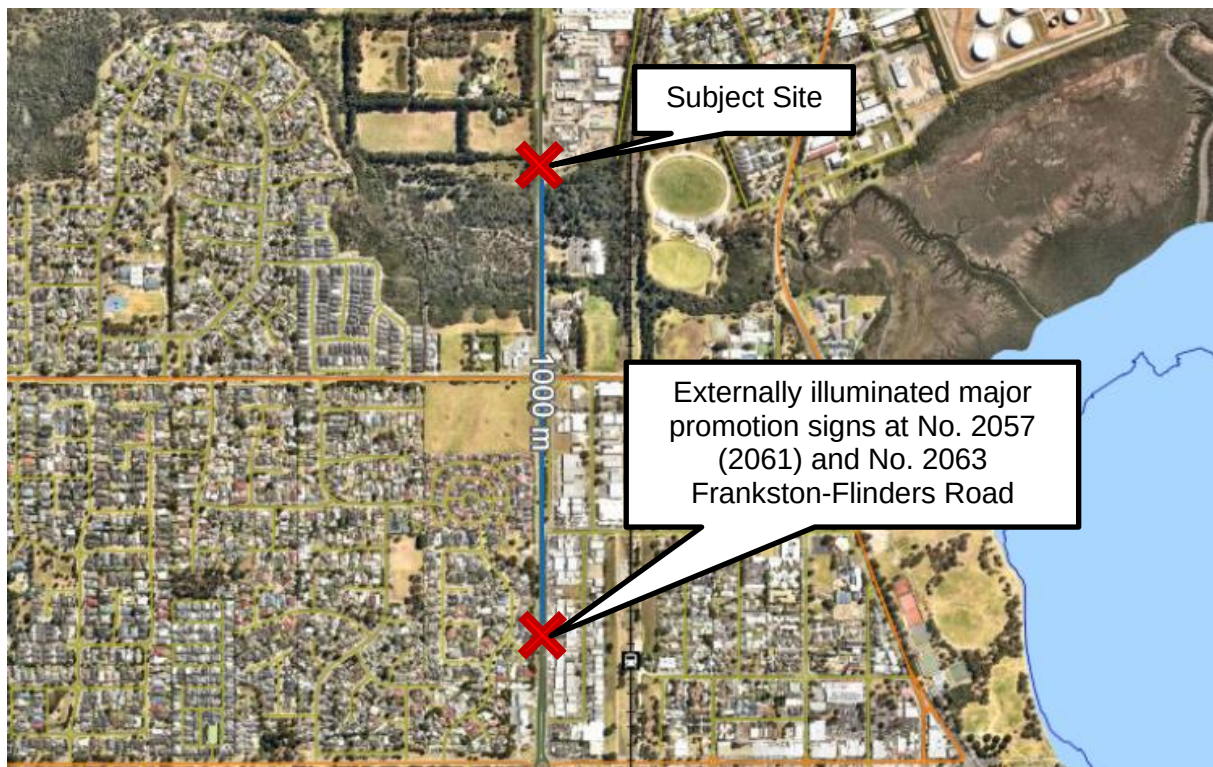


Figure 4: aerial showing existing approved sign in context of the subject site

NOTIFICATION AND CONSULTATION

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

Submissions

Please refer to the following for further details:

Refer to Attachment 1 – Officer Assessment for detailed assessment of concerns.

Refer to Confidential Attachment 4 – Submissions.

To date, two objections have been received. The concerns raised can be summarised as:

- Impact on nearby Green Wedge properties.
- Environmental impacts.
- Response to the objectives under Clause 52.05 – Signs of the Planning Scheme.

These are addressed in summary below.

Consultation

No formal mediation has been undertaken with the objectors.

REFERRALS

Notice was given to the Department of Transport and Planning and did not object to the granting of a planning permit.

CONSIDERATION

Refer to Attachment 1 – Officer Assessment for detailed assessment against all relevant criteria.

Refer to Attachment 5 – Planning Provisions for all relevant planning scheme provisions.

The proposed sign is considered to be consistent with the objectives and strategies of the relevant Planning Policy Framework (PPF) and objectives and decision guidelines of Clause 52.05. The following key issues are summarised:

Will the proposal have an effect on residential amenity?

The proposal is directly opposite a Green Wedge Zone which is separated by Frankston-Flinders Road. The closest dwelling at 1950 Frankston-Flinders Road is approximately 160 metres to the north west. There is significant existing vegetation both on the road reserve and within the front setback of the property and surrounding the dwelling. It is considered there will be little to no views to the proposed signage (as seen below).



Figure 5: Street view facing No. 1950 Franks-Flinders Road from the area of proposed works

The closest residential property in the General Residential zone is approximately 215 metres to the north east, across the Stony Point Railway Line. Given this, the topography and intervening vegetation, the sign will not be visible from the residential properties to the north east.

Given the industrial use of the land and the existing interface, in addition to the other considerations noted above, the proposal is not considered to have a negative effect on residential areas or heritage places. There are no heritage places within the vicinity of the site.

Will the proposed sign have an appropriate built form and visual presence in this context and is the sign appropriate for the site?

4.6 (Cont.)

This area of Hastings is typically defined by industrial properties which face Frankston-Flinders Road. Opposite (west) the subject site is a Green Wedge Zone in which the properties are accessed from Frankston-Flinders Road. These properties have been identified as being used for a mix of residential and agricultural uses. It is a main road in an industrial area that has a wide variety of front setbacks, frontage treatments, extent of landscaping, number of crossovers, and rhythm and spacing of buildings. It is considered that the proposed signage can be accommodated within this location without causing detrimental amenity or character outcomes.

The site is not within a significant view corridor, viewline, gateway location or landmark site identified in a framework plan or local policy. Whilst a major promotion sign must be prominent by its inherent nature, the sign is not considered to unreasonably dominate any part of the road corridor or surrounding environment. This is largely due to the existing vegetation both to the north and south of the site within Frankston-Flinders Road, where the extent of any distant views is limited and filtered by the surrounding vegetation. The height of the proposed signage is to be lower than that of what a typical major promotion sign and will therefore only be visible to those who are on Frankston-Flinders Road and generally not beyond due to the flat topography and vegetated character of the surrounds.

The proposal is not considered to add to any visual clutter or a cumulative impact in terms of congestion of signage in the surrounding area. It is the first major promotion sign in an approximately 1.25 kilometre long industrial strip. The sign is within an open area of the subject site, however, is not far from other business identification signage which is a prominent feature within this strip.

The sign will not tower over any important viewing point, nor dominate any streetscape or intersection. While the sign will appear partly above the skyline on approach from the north, this skyline is not part of a significant landscape. As such, the proposed sign is not considered to unreasonably change the nature and extent of skyline views available from these locations.

Is the proposal acceptable from a Road Safety perspective?

The siting and angle of the signs ensures that while it will be directly visible to both northbound and southbound drivers, it will not form a background to any traffic signal or interfere in anyway with the reading of traffic signals. As a result, the sign will not distract drivers or pedestrians. Additionally, the proposed Major Promotion Sign will be externally illuminated only and not provide any electronic display face. Notwithstanding, the mandatory conditions for a Major Promotion Sign under Clause 52.05-9 are still required to ensure that the sign must not:

- Dazzle or distract drivers due to its colouring.
- Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles.
- Be able to be mistaken as an instruction to drivers.

These would be incorporated into the permit conditions.

Notice of the application was given to the Department of Transport and Planning (DTP) who did not object to the granting of a planning permit.

Consideration of the Objections

Please refer to confidential Attachment 4 – Submissions.

4.6 (Cont.)**Effect on Green Wedge properties**

The objector is concerned that the proximity of the site area to nearby Green Wedge Zoning will have a detrimental impact on the flora and fauna within these areas. The area in which the major promotion sign is located is zoned as an Industrial area and the infrastructure and businesses surrounding also form a strong industrial character on the eastern side of Frankston-Flinders Road. Although to the west are Green Wedge Zoned properties, it is evident from the subject site that these properties have been designed and sited as to avoid views, noise and any other interaction with Frankston-Flinders Road apart from access to this road.

Given that the eastern side of Frankston-Flinders Road within this area has 1.25 kilometre strip of industrial properties, it is not uncommon to experience advertising material and signage along this entire area. This area is heavily characterised by warehouses and factories which have existed and interacted with the nearby areas for numerous years. Whilst being at an interface with the green wedge, the proposal is not considered out of character with the immediate surrounds.

Environmental effects

All signs must be considered in relation to the character of the area which includes giving regard to the sensitivity of the area in terms of the natural environment. Although the subject site and site area is within an industrial area it is important to identify the nearby areas and the impact that the proposed signage could have on these areas. Nearby areas include Green Wedge and Public Park and Recreation Zones, all of which contain important environmental landscape and habitat value.

It is important to note that the proposed major promotion sign will be at a maximum height of 5.65 metres, well below the canopy of the surrounding mature trees. Additionally, the major promotion sign will only be externally illuminated and not electronic meaning the impact on fauna would be less than if it was proposed as an electronic sign. The environmental landscape and value within these areas is not considered to decrease as a result of the proposed major promotion sign as the low scale nature and illumination technique will not unreasonably detract from or impact the existing environmental features within the area.

Response to the objectives under Clause 52.05

Please see the assessment against Clause 52.05 – Signs of the Planning Scheme within Attachment 1 – Officers Assessment

CONCLUSION

The proposed development is considered to be an acceptable outcome with regard to the relevant provisions of the Planning Scheme and *the Act*, subject to appropriate conditions. It is therefore recommended that Council resolve to support the application and issue a Notice of Decision to Grant a Permit, subject to conditions contained in the recommendation section of this report.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.7 Coastal Hazard Vulnerability and Risk Assessment Guidelines

Prepared By	Rachel Diamond, Coordinator - Strategic Planning
Authorised By	Director - Planning & Environment
Document ID	A13197043
Briefing Note Number	BN1903 – 21 May 2024
Attachment(s)	1. Mornington Peninsula Coastal Hazard and Vulnerability Risk Assessment Guidelines ↗

STATEMENT OF CONFIDENTIALITY

Not applicable.

EXECUTIVE SUMMARY

The purpose of this report is to seek adoption of the Mornington Peninsula Coastal Hazard and Vulnerability Risk Assessment Guidelines (the Guidelines) which seek to provide further clarity and guidance about the preparation of a Coastal Hazard Vulnerability and Risk Assessment (CHVRA) required to accompany planning permit applications on land subject to sea level rise hazards.

Mornington Peninsula Planning Scheme (MPPS) Amendment C271morn proposes to introduce the requirement for a CHVRA by introducing planning controls along the Western Port Bay coastline and inland areas to ensure development protects local township character and is responsive to erosion and inundation hazards from predicted sea level rise.

A CHVRA is to have regard to a range of matters, including State planning policy about planning for and managing coastal hazard risk and climate change impacts set out in clause 13.01-1-2S (Coastal inundation and erosion) of the MPPS which is based on the State Government's Marine and Coastal Policy 2020 and Marine and Coastal Strategy 2022.

RECOMMENDATION

That Council adopts the Mornington Peninsula Coastal Hazard and Vulnerability Risk Assessment Guidelines.

COUNCIL & WELLBEING PLAN

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

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

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

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

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

GOVERNANCE PRINCIPLES

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

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

The Western Port Coastal Villages and Surrounding Settlements Strategy (the Strategy) was adopted by Council in 2019. Subsequently, at the Council Meeting held on 4 April 2023, Council resolved to adopt Amendment C271morn to implement the key strategic directives of the Strategy.

DISCUSSION

Purpose

Adoption of the Guidelines (see Attachment 1) is required to assist with decision making on planning permit applications. In accordance with S.60(1A)(fa) of the *Planning and Environment Act 1987*, a responsible authority must consider:

- (g) *any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council.*

As such, implementing the use of the Guidelines as an adopted document ensures the requirements of the Guidelines are considered by both Council and VCAT before deciding on an application.

Background

MPPS Amendment C271morn proposes to introduce planning controls along the Western Port Bay coastline and inland areas to ensure development protects local township character and is responsive to erosion and inundation hazards from predicted sea level rise. The amendment is based on Council's adopted Coastal Villages and Surrounding Settlements Strategy (Ethos Urban, 2019).

In doing so, Amendment C271morn proposes to introduce the requirement for a CHVRA in schedules 2, 3 and 4 of the Land Subject to Inundation Overlay (LSIO) and schedule 6 to the Erosion Management Overlay (EMO).

The purpose of a CHVRA is to assess whether it is safe for the proposed development to be constructed where sea level rise hazards are identified, and whether any proposed adaptation measures should be considered or implemented to reduce risks. A CHVRA is to have regard to a range of matters, including State planning policy about planning for and managing coastal hazard risk and climate change impacts set out in clause 13.01-1-2S (Coastal inundation and erosion) of the MPPS which is based on the State Government's Marine and Coastal Policy 2020 and Marine and Coastal Strategy 2022.

This policy framework requires Council and permit applicants to:

- Plan for sea level rise of not less than 0.8 metres by 2100 and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.
- Ensure that land subject to hazards is identified and appropriately managed to ensure that future use and development is not at risk.
- Avoid use and development in areas vulnerable to coastal inundation and erosion.
- Respond to marine and coastal processes in the context of the coastal compartment type.
- Assess the effectiveness, costs, benefits, impacts (direct, cumulative and synergistic) and path dependency of available adaptation options in the following order:
 1. non-intervention
 2. avoid
 3. nature-based methods
 4. accommodate
 5. retreat
 6. protect.
- Ensure that development or protective works that seek to respond to coastal hazard risks avoid detrimental impacts on coastal processes.

Importantly, Council's local planning policy at clause 13.01-L seeks to ensure new development proposals assess the vulnerability of the proposed development to climate change effects. Council has therefore already been requesting CVHRAs for some time, in a manner generally consistent with the proposed Guidelines.

Amendment C271morn was adopted by Council on 4 April 2023 and is currently awaiting approval from the Minister for Planning. Importantly, it was considered by an independent Planning Panel which recommended that:

"Council should develop as a matter of priority, supporting guidance material for applicants, to ensure that requirements for a CHVRA are well understood and proportionate to the likely risk and consequence."

In response to this recommendation, Council engaged Streamology Pty Ltd to prepare the Guidelines. Significantly, the Guidelines are believed to be the first of their kind in Victoria.

The purpose of the Guidelines is to provide clarity about the intended purpose and outcomes of a CVHRA, including the required criteria and methodology for their preparation by qualified coastal engineers or coastal process specialists.

Because of their intended nature and use, the Guidelines are not a statutory tool and they do not form part of the MPPS. They also may need to be updated over time as sea level rise data and State planning policy (including planning benchmarks) evolve.

What is a CHVRA?

A CHVRA is the approach for assessing the exposure of a location or property to coastal hazards, the associated likelihood and consequences of exposure and the risks to life and property. In accordance with current State Government policy, coastal hazards (both erosion and inundation) are currently assessed against sea level rise scenarios of not less than 0.8 metres by 2100.

Under the proposed planning requirements of Amendment C271morn, there are two levels of CHVRA reports: a basic CHVRA and a detailed CHVRA. The level of detail within a CHVRA will depend on the scale of the assessment, shoreline class, specific place-based needs, and complexity of the potential risks.

Where the outcome of a basic CHVRA is that the proposed development is classed as medium risk or higher to life or property then a detailed CHVRA is required, which must:

- Include a peer review prepared by a suitably qualified coastal engineer or coastal processes specialist, as selected in agreement with the Mornington Peninsula Shire Council, and at the applicant's expense.
- Address the outcomes of the peer review.

Risk management approach

The risk management approach to coastal hazard assessment outlined in the Guidelines is based on AS/NZS 5334-2013 Climate change adaptation for settlements and infrastructure - A risk-based approach and involves answering the following questions:

- What might happen? (Assess exposure to coastal hazards).
- How likely is it? (Assess the probability of occurrence).
- What impact, damage or injury may result? (Assess the consequence of the hazard).
- How important is it? (Assess the significance of the impact in relation to the regulatory criteria and public opinion).
- What can be done about it? (Assess treatment options including management and mitigation options).

For the risk assessment process, the likelihood and consequence are combined to generate a risk classification (as shown in Attachment One, Table 9 and 10, pages 22-23). Likelihood examines the probability of an inundation or erosion event occurring, as well as its frequency.

The consequence ranking constitutes the physical impact of the event to the asset together with its vulnerability and adaptive capacity. Once the risks are quantified, the acceptability level of the risk must be assessed.

Risk must be assessed for each hazard and for both risk to life and property separately (i.e. individual risk to life and risk to property assessments required).

The risk level tolerability and implications are also identified in Attachment One, Table 11, page 23. Importantly, if the risk for a planning permit application is identified as unacceptable with or without treatment, this would lead to refusal of the application.

Peer review

Where the outcome of a CHVRA is that the proposed development is classed as medium risk or higher to life or property, a detailed CHVRA is required which includes a peer review. The purpose of the peer review is to provide Council with confidence in the technical work undertaken.

The peer reviewer must be a suitably qualified coastal specialist and their role is to:

- Assess methods and assumptions used to deliver the outputs.
- Assess the quality of the outputs in relation to their intended end use.
- Check that the outputs meet the requirements of the CHVRA guidelines.

The peer reviewer will review the work detailed in the CHVRA report and provide feedback on its quality, accuracy, and appropriateness. The feedback may include suggestions for improvements, corrections, or recommendations for further work.

Again, if the peer review process determines that the level of risk associated with a planning permit application is unacceptable, the application would be refused.

Options for consideration

The options for consideration include:

- **Option 1:** Resolve to adopt the Guidelines.
- **Option 2:** Resolve not to adopt the Guidelines.

Option 1 is recommended to assist with decision making on planning permit applications. As an adopted document, the requirements of the Guidelines can be given weight by both Council and VCAT in accordance with section 60 of the *Planning and Environment Act 1987*.

Council's local planning policy at clause 13.01-L seeks to ensure new development proposals assess the vulnerability of the proposed development to climate change effects. Council has therefore already been requesting CVHRAs for some time, in a manner generally consistent with the proposed Guidelines. In addition, Council adopted MPPS Amendment C271 on the 4 April 2023 which requires a CHVRA for certain planning applications. As outlined in the report, the Planning Panel for this amendment recommended that –

‘Council should develop as a matter of priority, supporting guidance material for applicants, to ensure that requirements for a CHVA are well understood and proportionate to the likely risk and consequence.’

Adoption of the Guidelines will provide greater certainty to applicants as to what is required when a CHVRA is requested as part of the planning permit process.

Option 2 is not recommended as there will be no clear guidance available to planning permit applicants when a CHVRA is requested as part of the planning permit process.

ENGAGEMENT

The Guidelines have been informed by internal and external stakeholder consultation.

Two internal workshops were held in August and September 2023 with Council's Statutory and Strategic Planning officers and Dr Christine Arrowsmith from Streamology.

A draft of the Guidelines was also referred to Melbourne Water as requested by the Department of Transport and Planning. Overall, while Melbourne Water supports the intent of the Guidelines, it raised concerns with the risk-based approach, noting that Melbourne Water is currently developing its own guidelines.

Streamology revised the Guidelines to reflect Melbourne Water's feedback as much as possible and the position Melbourne Water has taken with regard to flood referrals and acceptability of flooding in relation to coastal inundation over the last 12 months.

The following changes were made:

- Further clarification has been included in the Guidelines to highlight Melbourne Water's role as the determining authority for the LSIO. Any application affected by the overlay will be referred to Melbourne Water to meet the assessment criteria related to floor levels and safety and may be subject to further requirements or conditions as stated by Melbourne Water.
- Further clarification has been provided in relation to finished floor level requirements as requested by Melbourne Water. This specifically relates to flood levels being sought from Melbourne Water in order to obtain correct levels at the time of application.
- A new flood Safety Risk matrix is included which is more conservative than the Erosion Risk Matrix. This reflects the current Melbourne Water and Department of Transport and Planning approach.

Importantly, Melbourne Water is the determining authority for applications referred to it under the LSIO. Therefore, if Melbourne Water does not support an application, it will be refused. This is expressly acknowledged in the Guidelines to ensure there is no conflict between the Guidelines and Melbourne Water's authority in determining applications.

It is also noted that the Guidelines are considered to be more conservative than Melbourne Water's approach for flooding, as acceptability of risk is explicitly based on flood safety and damages thresholds. Melbourne Water follows a pass or fail approach (rather than levels of risk) to these thresholds which is reflected in the Guidelines.

COMMUNICATIONS PLAN

The Guidelines contained in Attachment 1 are proposed to be published on Council's website with supporting information and a media release.

LEGAL AND REGULATORY FRAMEWORK

The Guidelines were prepared having regard to the provisions of the *Planning and Environment Act 1987* where applicable.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

The Guidelines outline that for land subject to sea level rise hazards, a CHVRA must:

- Consider factors including sea level rise and its associated natural hazards (as set out in the Marine and Coastal Policy March 2020 and clause 13.01-2S: Coastal inundation and erosion).
- Consider the implications of coastal processes on the development.
- Consider the implications of the development on existing development and coastal processes.

- Apply the precautionary principle and use best available data in its approach.
- Classify the risk of the development using a risk management framework in accordance with AS 5344-2013: Climate Change Adaptation for Settlements and Infrastructure.

FINANCIAL CONSIDERATIONS

Preparation of the Guidelines was funded by a grant from the State Government's Coastal Planning Grants Program.

The cost to applicants to undertake a CHVRA is site dependent but is generally between \$5,000 - \$7,500, with a peer review generally costing between \$2,500 and \$4,000.

OFFICER DIRECT OR INDIRECT INTEREST

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