

Planning and Environment Act 1987

Panel Report

Moyne Planning Scheme Amendment C60

Port Fairy West Structure Plan

3 May 2016

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Panel Report pursuant to Section 25 of the Act

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A handwritten signature in blue ink, appearing to read 'Brett Davis', with a stylized flourish at the end.

Brett Davis, Chair

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List of Abbreviations

AEP	Annual Exceedance Probability
ARI	Annual Recurrence Interval
CAP	Coastal Adaptation Plan
DDO	Design and Development Overlay
EMO	Erosion Management Overlay
ESO	Environmental Significance Overlay
GHCMA	Glenelg Hopkins Catchment Management Authority
LDRZ	Low Density Residential Zone
LSIO	Land Subject to Inundation Overlay
PFCHA	Port Fairy Coastal Hazard Assessment 2013
PFCSP	Port Fairy Coastal and Structure Planning Project
RLZ	Rural Living Zone
SPPF	State Planning Policy Framework
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victorian Planning Provisions

Overview

Amendment Summary

The Amendment	Moyne Planning Scheme Amendment C60
Common Name	Port Fairy West Structure Plan
Planning Authority	Moyne Shire Council
Authorisation	A03132 31 July 2015
Exhibition	21 September– 23 October 2015
Submissions	Number of Submissions: 5 Opposed:1 <ul style="list-style-type: none"> - Graham Wilson - Pendragon Pty Ltd - Wannon Water - Glenelg Hopkins Catchment Management Authority - VicRoads

Panel Process

The Panel	Brett Davis
Directions Hearing	Port Fairy Community Services Centre, 22 January 2016
Panel Hearing	Moyne Shire Offices, Port Fairy, 15 April 2016
Site Inspections	Unaccompanied, 23 January and 15 April 2016
Date of this Report	3 May 2016

Executive Summary

(i) Summary

Moyne Planning Scheme Amendment C60 (the Amendment) was prepared by the Moyne Shire Council (the Council) as Planning Authority. As exhibited, the Amendment proposes to implement the findings of the Port Fairy West Structure Plan (September 2014) (the Structure Plan) by rezoning land, inserting a new local planning policy, applying new overlays and amending existing overlays.

Key issues raised in submissions included:

- Sea level rise in South Beach area affecting land in Port Fairy west
- Is the Land Subject to Inundation Overlay justified?
- Lot sizes in the Rural Living Zone
- Settlement Boundary location.

While the Panel empathises with the arguments put forward by Mr Wilson on mitigating the source rather than accommodating future flooding events, no evidence was presented that indicated how this could take place. Council provided commentary that the Port Fairy Coastal and Structure Planning Project aims to translate the coastal hazard mapping and provide more in-depth modelling and implementation actions. This study is due in June 2017.

The Panel sees no reason why the Amendment as exhibited cannot proceed given the agreement between Council and Glenelg Hopkins Catchment Management Authority. The Panel concludes that Council has applied this approach consistent with those requirements.

The Panel is generally satisfied that the Amendment is strategically justified and supports most of Council's responses to submissions.

(ii) Recommendation

Based on the reasons set out in this Report, the Panel recommends:

Moyne Planning Scheme Amendment C60 be adopted as exhibited subject to the following:

1. **Change the land description in the Schedule to the Rural Living Zone to the Panel's preferred wording found at Appendix B to read:**
 - *the westernmost boundary of the Rural Living Zone land in Port Fairy, south of the Princes Highway and Thistle Place to the Southern Ocean*
2. **Update 6.0 References to delete 'Draft' from reference document c) contained in the Schedule to the Erosion Management Overlay.**
3. **Review the 'Application Requirements' at 3.0 of the Schedule to the Erosion Management Overlay to avoid duplication with 5.0 'Decision Guidelines.'**
4. **Change the wording in Schedules 14 and 20 to the Design and Development Overlay from 'a maximum of height of 7 metres' to 'a preferred height of 7 metres'.**

1 Introduction

1.1 Panel process

Moyne Planning Scheme Amendment C60 (the Amendment) was prepared by the Moyne Shire Council (the Council) as Planning Authority. As exhibited, the Amendment proposes to implement the findings of the Port Fairy West Structure Plan (September 2014) (the Structure Plan) by rezoning land, inserting a new local planning policy, applying new overlays and amending existing overlays.

At its meeting of 15 December 2015, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 22 December 2015 and comprised Brett Davis as Chair.

A Directions Hearing was held in relation to the Amendment on 22 January 2016. It was agreed with all parties to the Hearing that this matter be heard 'on the papers'. Following the Directions Hearing, the Panel undertook an inspection of the subject site and its surrounds.

On receipt of these submissions on 22 February 2016, 26 February 2016 and Council's right of reply on 29 February 2016, the Panel directed it necessary to convene a hearing to better inform itself prior to finalising any decision.

The Panel then met in the offices of Moyne Shire on 15 April 2016 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Moyne Shire	Sally Slater, Strategic Planner Michelle Grainger, Manager Planning
Glenelg Hopkins Catchment Management Authority	Steven Homer and Graeme Jeffery
Graham Wilson	

(i) The subject area

The amendment applies to land located to the west of the Port Fairy Township. The area is bound by the Princes Highway to the north, Southern Ocean to the south, rural properties to the west and residential zoned areas of Port Fairy to the east.

The subject land comprises 43 allotments and covers approximately 70 hectares.

The majority of the land is accessed by Thistle Place; a cul-de-sac that intersects with the Princes Highway. The land titles with beach frontage generally contain a mix of single dwellings and tourist accommodation on large allotments which extend to the high water mark. These titles extending to the Southern Ocean have dual zoning of Low Density Residential at the Thistle Place end and Rural Living to the south.

The Amendment applies to land shown in Figure 1.



Figure 1 Port Fairy West Subject Area
Source: Port Fairy West Structure Plan (2014) pg.5

(ii) The exhibited Amendment

The Amendment proposes to:

- Rezone land south of Thistle Place (with the exclusion of Lot 3 on PS525407 and Lot 2 on PS531003) from Low Density Residential Zone (LDRZ) to Rural Living Zone (RLZ) (Schedule 1) and east of the westernmost boundary of the former Borough of Port Fairy from the Farming Zone (FZ) to the Rural Living Zone (RLZ) (Schedule 1)
- Apply a LSIO to the areas subject to inundation
- Introduce a new Schedule to Clause 44.04 – Land Subject to Inundation Overlay (LSIO) which provides permit exemptions for minor development
- Apply an Erosion Management Overlay (EMO) to areas subject to coastal erosion
- Insert a new EMO Schedule 1 to Clause 44.01 which provides permit exemptions, application requirements and decision guidelines
- Make consequential updates to Planning Scheme Maps 34 and 35
- Amend Clause 21.09 by including Port Fairy West as a Local Area
- Amend Clause 21.11 to reference the following documents:
 - *Port Fairy West Structure Plan September 2014*
 - *Future Coasts Port Fairy Local Coastal Hazard Assessment 2013*
- Amend the Schedule to Clause 35.03 of the RLZ to specify a 1 hectare minimum and identify the area to which this applies

- Amend Clause 43.02 of the Design and Development Overlay (DDO) Schedules 14 and 20 to increase the maximum height of a dwelling to 7 metres where additional height is required for finished floor levels to be above predicted flood levels

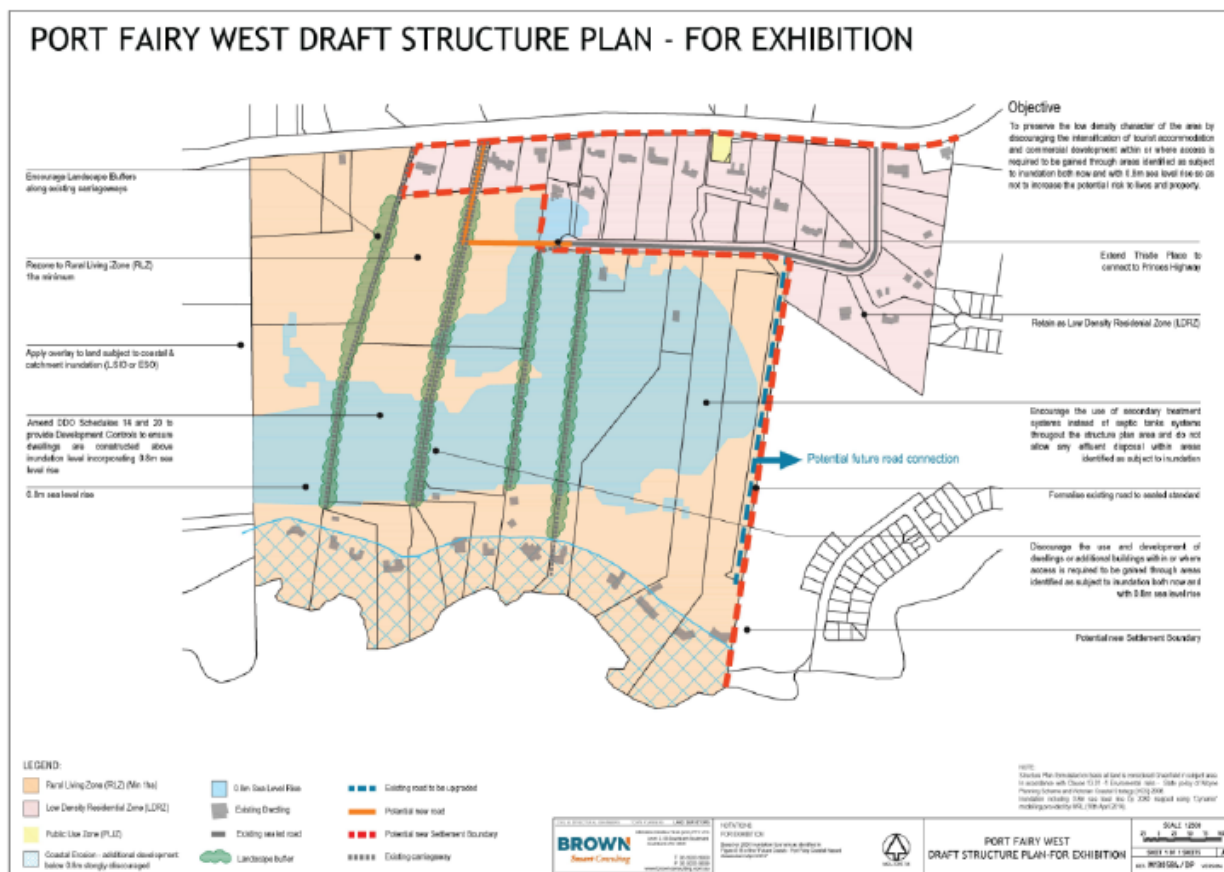


Figure 2 Port Fairy West Structure Plan

1.2 Background to the Amendment

Council provided a chronological background as shown in Table 2 below:

Action	Date
27 September 2013	Council accepts project outline submitted by Brown Consulting Pty Ltd
18 November 2013	Council conducts consultation with internal stakeholders, Referral Authorities, Government agencies and Councillors
22 January 2014	Council's Executive Management Team considers 5 draft Structure Plan options
January 2014	Structure Plans circulated to Government Agencies for formal comment
4 February 2014	Presentation of 5 draft Structure Plans to Council workshop Landowner/resident consultation session to discuss 5 different Structure Plan options

February-April 2014	Written questionnaires and advice reviewed and final draft Structure Plan developed
22 July 2014	Council resolves to place draft Structure Plan on public display and invite written submissions
28 July – 25 August 2014	Draft Structure Plan placed on public display for 2 weeks involving: <ul style="list-style-type: none"> • advertisement in the Moyne Gazette on Thursday 31 July 2014 • advertisement in the Warrnambool Standard on 26 July 2014 • mail out to landowners on 28 July 2014 • item featured in Mayors column in Moyne Gazette on 26 July 2014
September 2014	7 Submissions received and evaluated, some changes made to draft Structure Plan
11 September 2014	Council submits application to Department of Transport, Planning and Local Infrastructure (DTPLI) (Rural Flying Squad) for funding to prepare planning scheme amendment documents
28 October 2014	Council resolves to adopt final draft Structure Plan and prepare planning scheme amendment document. The Structure Plan aims to protect the low density, rural living character and protect the coastal landscape of Port Fairy West by: <ul style="list-style-type: none"> • avoiding further intensification of tourist and commercial development • providing greater road and footpath connections • avoiding additional development in areas of coastal risk • requiring future development respond to land capability.
8 December 2014	Council receives funding for preparation of planning scheme amendment from DTPLI
26 May 2015	Council resolves to seek Ministerial Authorisation to prepare and exhibit planning scheme amendment
30 June 2015	Calibre Consulting Pty Ltd (formerly Brown Consulting) completes planning scheme amendment documents
31 July 2015	Ministerial Authorisation to prepare amendment
21 September – 23 October 2015	Exhibition of planning scheme amendment with 5 submissions received
15 December 2015	Council resolves to refer 2 submissions to a Panel

Table 2 Chronology

1.3 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning context
- Sea level rise
- Land Subject to Inundation Overlay
- Other issues
 - Rural Living Zone
 - Settlement boundary
 - Erosion Management Overlay
 - Design and Development Overlay
 - Pendragon Pty Ltd submission

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

- Clause 11 Settlement
 - Clause 11.05-4, Regional planning strategies and principles
 - Clause 11.05-5, Coastal Settlement
 - Clause 11.09, Great South Coast Regional Growth Plan
 - Clause 11.09-4, Networked settlements
- Clause 13 Environmental Risks
 - Clause 13.01-1, Coastal Inundation and Erosion
 - Clause 13.02-1, Floodplain Management
 - Clause 13.03-2, Erosion and landslip
- Clause 14 Natural Resource Management
 - Clause 14.02-1, Catchment Planning
 - Clause 14.02-2, Water quality

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.05 Settlement and Housing:
 - *To define a sustainable urban/non-urban edge to the main townships and settlements within Moyne Shire*
 - *To ensure that new development in Port Fairy respects built form and/or the coastal and riverine location of the area, including existing character, the integrity of the dune formations, maintenance of floodplains*
 - *To identify flood prone land and ensure that new development is compatible with flood hazard*
 - *To manage development on the fringes of townships so that it enhances the character of the town's landscape setting*
 - *To avoid ribbon development along the coastal edge and along main roads such as the Great Ocean Road and Princes Highway.*
- Clause 21.06 Environment:

The relevant objectives of Clause 21.06 (Environment) are:

- *To maintain the integrity of existing urban floodways and to identify new floodway areas outside the urban areas*

- *To integrate the effects on flood hazard from both a 100 year ARI flood event and storm tide with a 0.8 metre rise in sea levels projected to the year 2100 in assessing development of greenfield sites in Port Fairy*
- *For urban infill development in Port Fairy, a projected sea level rise of 0.2 metres over current 1 in 100 year flood levels by 2040 will be used to assess development*
- *To ensure that waste disposal systems for residential, industrial and commercial purposes are not detrimental to the environment*
- *To ensure that appropriate risk assessment is undertaken to consider the impact and hazards of sea level rise and climate change impacts.*

The most relevant strategic directions at Clause 21.06 are:

- *Minimise development (including construction of roads) within prominent areas such as hillsides, promontories, ridgelines, headlands, and in fragile, and unstable flood prone areas to lessen their impacts*
- *Identify land subject to inundation and control new development accordingly. Incorporate into the planning scheme areas newly identified as floodways or land subject to inundation.*

Clause 22.02-1 (Coastal Areas):

- *To protect the natural and cultural values of the coast*
- *To use and develop the coast in a sustainable manner*

The Amendment reinforces Clause 22.02-1 by implementing the technical data of the Port Fairy Coastal Hazard Assessment 2013 (PFCHA) resulting in greater recognition of impacts of climate change in the form of the more stringent statutory provisions of the LSIO and EMO.

2.2 The Port Fairy West Structure Plan, 2014

The Structure Plan seeks to:

- *protect the low density and rural living character and coastal landscape of the area*
- *avoid further intensification of tourism and commercial development*
- *facilitate greater road and footpath connections from east to west*
- *avoid additional development in areas of identified risk from coastal inundation and erosion*
- *remove ongoing issues caused by land within two zones.*

The Amendment proposes inclusion of the Structure Plan as a Reference Document.

2.3 Planning scheme provisions

(i) Zones

The land in the Structure Plan area is currently a mixture of LDRZ, Farming Zone (FZ) and RLZ.

(ii) Overlays

The Amendment proposes to include the LSIO and the EMO to parts of the Structure Plan area. The application of a LSIO and EMO is proposed to provide a permit trigger for new

developments that may affect or be affected by predicted coastal inundation based on technical data derived from the *Port Fairy Coastal Hazard Assessment, April 2013* (PFCHA):

- Schedule 3 to the LSIO will introduce new planning permit requirements for buildings and works in areas identified at risk of inundation as well as new application requirements and a mandatory referral to the relevant Catchment Management Authority
- Schedule 1 to the EMO will introduce new permit application requirements to ensure any new development is designed and carried out in accordance with a coastal erosion risk assessment.

2.4 Ministerial Directions and Practice Notes

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments).

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

Planning Practice Note 36 *Implementing a Coastal Settlement Boundary* was used to determine the settlement boundary for the Structure Plan area.

2.5 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

The Panel concludes that the Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Sea level rise

3.1 The issue

The issue relates to mitigation of sea level rise in the South Beach area.

Submitter Mr Wilson argued if sea level rise in the South Beach area was mitigated then land in Port Fairy West would not be subject to future inundation. At the hearing Mr Wilson submitted:

We need a barrier built across the breach point to prevent the occurrence of recent flooding then all the talk about sea water will not happen. My point around sea level rise is indicative of the fact we have a long time to deal with this. Build a wall progressively to match the sea level rise.

Council submitted that mitigation of sea level rise at South Beach would prevent coastal inundation of land in Port Fairy west is “*an overly simplistic and unfounded argument which can be discounted through a lack of substantive evidence.*”

Council submitted:

The mitigation of climate change impacts on coastal processes (sea level rise, storm surge, coastal inundation, wave run-up) is a highly complex area and an emerging field. Council is working to mitigate the impacts of climate change on the coastline in and around Port Fairy through developing the Port Fairy Coastal and Structure Planning Project (PFCSP) and a Coastal Climate Adaptation Plan (CAP).

Council submitted that Practice Note 12 *Applying the Flood Provisions in Planning Schemes* (June 2015) only relates to planning controls for riverine flooding and gives insufficient policy direction on planning controls for coastal inundation as a result of sea level rise. Council submitted it has not been able to rely on this document for policy direction for this Amendment.

Council outlined that the PFCSP aims to translate the coastal hazard mapping contained in the PFCHA (which includes the South Beach area) for use in the Planning Scheme to provide an appropriate level of detail for future overlays and planning provisions. This project will comprehensively analyse coastal inundation data to provide depths, velocities, flow paths and estimated length of time for inundation of identified areas. This project is due to be completed by 30 June 2017.

Council advised that depending on the outcomes of this analysis, there was a possibility that changes to the coastal inundation and erosion mapping may be required in the Port Fairy West area.

In addition, the CAP aims to develop a common understanding with the community of the causes of and possible solutions to coastal hazards and the complexities and challenges associated with mitigating them. The CAP also includes a technical analysis and risk assessment of specific areas and assets under threat.

Glenelg Hopkins Catchment Management Authority (GHCMA) submitted that the PFCSP will provide the opportunity to obtain improved flood data for Port Fairy West.

3.2 Sea level rise of 0.8m

Mr Wilson questioned the projected sea level rise of 0.8m from the PFCHA as being overly pessimistic compared to rates of recorded sea level rise of 0.21m over the past 26 years.

Council submitted that the PFCHA modelled different sea level rise scenarios of 0.4m by 2050, 0.8m by 2080 and 1.2m by 2100. In order to achieve consistency with the SPPF, Council chose the 0.8m by 2080 benchmark to apply the LSIO for coastal inundation in the Port Fairy West area.

Council submitted that it is unable to make changes to the SPPF as stipulated by Section 22 (3) of *the Planning and Environment Act 1987* (P&E Act):

A planning authority must not consider a submission which requests a change to the terms of any State standard provision to be included in the planning scheme by the amendment.

With regard to sea level rise, Council outlined its responsibilities under Clause 13 of the SPPF.

GHCMA's presentation to the Panel had concluded that a consistent approach to setting the Nominal Flood Protection Level (NFPL) across Port Fairy was required. GHCMA submitted that the estimate of the present day mean sea level is 1% AEP (Annual Exceedance Probability) storm tide flood level, derived by hydrodynamic modelling.¹ Steven Homer, on behalf of the GHCMA submitted:

This will enable the CMA to set the NFPL for land in the LDRZ using the same approach currently applied to urban land in the Moyne River.

Council submitted that its position is that the absence of the present day 1% AEP mapping and the 0.2m sea level rise scenario for the Port Fairy West area should not prevent the application of the LSIO to the land subject to coastal inundation.

GHCMA agreed with Council that the issue was easily resolvable and should not be seen as an impediment to adopting the Amendment. They noted that the wider issue of consistency should be addressed as soon as possible.

Council submitted that the Amendment achieved the objectives of planning for sea level rise:

by implementing the technical data contained in the PFCHA that identifies land subject to coastal inundation based on 0.8m sea level rise by 2080. Council has formulated the Structure Plan on the basis that the land located outside the proposed coastal settlement boundary is 'Greenfield' and has planned for 0.8m sea level rise by 2080 by applying the LSIO.

¹ AEP is the likelihood of occurrence of a flood of given size or larger occurring in any one year. AEP is expressed as a percentage (%), and may be expressed as the reciprocal of ARI.

3.3 Discussion and conclusion

The Panel agrees with Council that it is obliged to plan for and manage the coastal impacts of climate change in accordance with the Victorian Government benchmark of a 0.8m sea level rise by 2100. This is set out at Clause 13.01-1 (Coastal inundation and erosion) of the SPPF.

Some concerns in GHCMA's initial submission had subsided by the time the Hearing was convened. Council outlined to the Panel that GHCMA, as the relevant Floodplain Management Authority, are an important stakeholder to the PFCSPP and were a part of the Project Control Group.

The Panel commends Council and GHCMA on working to an agreed position prior to the commencement of the Hearing, and in forward planning for the PFCSPP.

The *Guidelines for Coastal Catchment Management Authorities: Assessing development in relation to sea level rise (June 2012)*, states that greenfield development, (conversion of rural land to an urban use), will be assessed against a 1% AEP benchmark that includes an allowance of 0.8m rise in mean sea level.

While the Panel empathises with the arguments put forward by Mr Wilson on mitigating the source rather than accommodating future flooding events, no evidence was presented that indicated how this could take place. At the Hearing, Council advised it is looking at a coastal adaptation plan to 'defend Port Fairy' with mitigation including 'hard' and 'soft' engineering options. It provided commentary that the PFCSPP aims to translate the coastal hazard mapping and provide more in-depth modelling and implementation actions, and this study was due in June 2017.

The Panel concludes that:

- Mitigation works to existing properties or adjoining land are beyond the matters for this Panel, however the Panel notes Council's acknowledgement of the issues and its coastal adaptation plan will seek to address this.
- Council has planned for sea level rise consistent with SPPF requirements.

The Amendment is a prudent precautionary response to manage flood risk given the available flood information.

4 Land Subject to Inundation Overlay

4.1 The issue

Is the application of the Land Subject to Inundation Overlay is justified?

4.2 Evidence and submissions

(i) Mapping methodology

GHCMA and Mr Wilson expressed concerns with the LSIO and the extent of inundation mapping. GHCMA raised issues of consistency being introduced between the approach to managing the Moyne River floodplain versus Port Fairy West.

Council submitted:

the LSIO is being applied using the best data that is available at the moment. The issue of how the mapping for Port Fairy West inundation is further refined, updated and/or altered as a part of the PFCSP is unequivocally outside the scope of this Amendment.

Council outlined that GHCMA, in its submission received on 26 February 2016 (Conclusion 2 on page 14) agreed with the methodology used by Council to determine the LSIO boundary that was *“derived using hydrodynamic modelling which is the most appropriate methodology for delineating flood controls in urban settings.”*

Council concluded:

the salient issue raised by the GHCMA relates to how it uses the available technical data derived from the PFCHA to set the appropriate building floor level when providing expert advice on planning permit applications in its capacity as Floodplain Manager.

As the Panel had queried GHCMA’s written response and asked Council and the GHCMA to respond, Council tabled independent advice from Water Technology, confirming that the current mapping in the PFCHA is adequate for the Amendment and that *“Council is obliged to use the best available data for its planning controls”* (Document 7).

Council submitted that it and the GHCMA subsequently agreed that applying the LSIO through this Amendment to introduce a trigger mechanism for the referral of future planning permit applications *“is a superior outcome to not applying the LSIO at all.”*

(ii) Use of Floodway Overlay

GHCMA submitted that upon completion of the future modelling, consideration should be given to the application of the Floodway Overlay (FO) in combination with the LSIO. Council submitted that it was only made aware of GHCMA’s view when it was provided on 26 February 2016.

Council explained that at this late stage in finalising the Amendment they were not in a position to review new information that has come to light at the final stages of the project or make substantial changes that would warrant further consultation or re-exhibition.

4.3 Discussion and conclusions

Council is using the best available data to apply the LSIO. GHCMA and Council's independent advice from Water Technology have agreed to this methodology. The Panel notes that GHCMA's submission received on 26 February 2016 did not request any changes to the extent of the LSIO mapping, Schedule 3 or to the local policy at Clause 21.09-4. GHCMA concluded:

The application of the LSIO will provide an appropriate flood related planning trigger to ensure proposed developments are referred to the CMA for assessment.

The Panel agrees with this approach. The schedule to the LSIO and the exemptions included are supported.

The FO is beyond the scope of this Amendment. Council made it clear that a necessary prerequisite for examining the FO as an appropriate planning tool is for further modelling to be completed. This modelling is outside the scope of the Amendment before the Panel.

The Panel concludes:

- The application of the LSIO is strategically justified and based on accepted methodology.
- The application of a FO at this late stage would transform the Amendment and is not supported.
- The schedule to the LSIO is supported.

5 Other issues

The Amendment applies the requirements of the LSIO, EMO and DDO to proposed buildings, works and subdivisions to assist in protecting life, property and the natural environment from the hazards of coastal inundation and erosion. Having reviewed the exhibited documents, this chapter discusses changes to the wording of the schedules and other issues raised by Mr Wilson.

5.1 Rural Living Zone

Mr Wilson argued that the minimum lot size for the RLZ (1 hectare) was too small for conventional agricultural equipment and too large for domestic use.

(i) Submissions

Council submitted that the use of the RLZ is aimed to ensure lots sizes are compatible with land capability, to protect the rural residential character of the area in line with local residents' aspirations and resolve the issue of land in two zones.

Council submitted that:

a substantial portion of the land in the study area is subject to coastal inundation and erosion in which additional development and effluent disposal systems are to be avoided; a principle specified in the proposed local policy for the area. The majority of the land area currently within the Low Density Residential Zone south of Thistle Place is identified as subject to coastal inundation and it would therefore not be appropriate for subdivision into lots of 4,000sqm (the minimum where reticulated sewerage is not available).

Council submitted that 1 hectare has been determined as the appropriate minimum lot size for RLZ land throughout the Moyne Shire, with the exception of the stony rise country surrounding Port Fairy where the minimum is 4 hectares due to servicing constraints and access issues.

Council also submitted that an additional consideration in rezoning land from LDRZ to RLZ were the 19 questionnaires received back from landowners in the study area. The questionnaire had an overwhelming majority of which conveyed a general consensus to protect the rural living character and pristine coastal environment of the area.

It was argued that the rezoning of land would also address the issue of land in two zones. Council submitted that one objective of the Structure Plan was to rectify the zoning anomaly due to titles being covered by the LDRZ and RLZ. There are approximately six LDRZ lots south of Thistle Place, with the coastal frontage of the lots being zoned RLZ. Council submitted that this anomaly causes problems in subdividing land in accordance with Clause 64.03 of the Moyne Planning Scheme (Subdivision of land in more than one zone). This is shown in Figure 3.

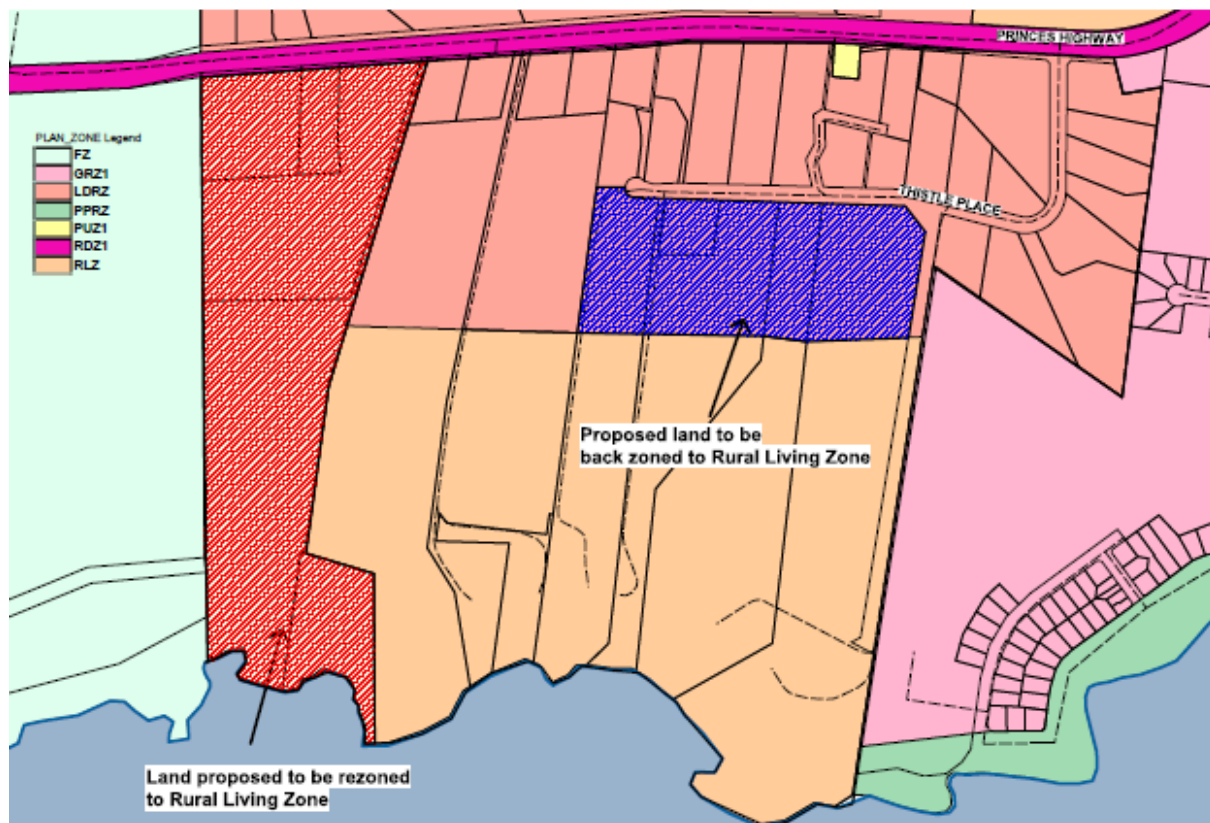


Figure 3 Area of land proposed to be 'back zoned'
Source (Document 8)

Council argued that the 'back zoning' of titles from LDRZ to RLZ on the titles with coastal frontage would remove the existing zoning anomaly whereby all these lots will be covered by the RLZ.

Mr Wilson submitted that he was affected by the land in two zones. He could not understand how changing the zones helped with regard to dealing with sea water.

(ii) Discussion and conclusions

The default lot size in the RLZ is 2 hectares while the schedule allows Council to modify this to suit local conditions. The modifications in this case are considered appropriate for consistency across the Shire.

The Panel concludes:

- A 1 hectare minimum lot size is an appropriate for Port Fairy West in order to balance the demand for some level of subdivision while maintaining the existing rural residential character and protecting the sensitive coastal environment.
- The back zoning of land from LDRZ to RLZ is supported on the basis that it is outside the settlement boundary, corrects an anomaly of land in two zones and protects the rural living character of the area.

5.2 Settlement boundary

(i) Submissions

Mr Wilson submitted that the Structure Plan settlement boundary should be the old Port Fairy Borough boundary (the western extent of the Structure Plan area).

Council submitted that the proposed Settlement Boundary is located at the extent of urban development as defined by the boundary of the Low Density and General Residential Zones. This has been determined with reference to the Victoria Planning Provisions (VPP) Planning Practice Note 36 (PPN36) *Implementing a Coastal Settlement Boundary* which stipulates:

A coastal settlement boundary defines the allowable extent of urban use and development for a settlement.

Council submitted that urban zones should fall within the coastal settlement boundary; and the boundary is located at the furthest extent of the urban zones. PPN36 sets out that a coastal settlement boundary should be established through a strategic planning process that involves an analysis of land opportunities and constraints with a minimum 10 year planning horizon.

Council acknowledged that a comprehensive analysis of land supply and demand in Port Fairy is outside the scope of this Amendment. It submitted that a desktop analysis of residential sales data in the last 5 years was undertaken in rural residential areas at the western edge of Port Fairy (Thistle Place) and the eastern edge of Port Fairy (Model Lane). This data demonstrated that demand for residential land is significantly lower in Thistle Place, at 9 sales in the past 5 years, compared to 25 sales at Model Lane.

Mr Wilson submitted that there are, in effect, only three vacant allotments, skewing this data. He submitted that the FZ should be included as infill as it was only an additional 8 hectares and not capable of being farmed efficiently. Council argued that based on its land market data, there was:

...insufficient justification to rezone more land within the Structure Plan area to an urban zone/s to allow for a higher lot yield at this time and to shift the location of the coastal settlement boundary to the western boundary.

With regard to the Schedule to the RLZ, the Panel questioned the geographic referencing of the extent of the RLZ area. The exhibited Schedule to the RLZ description is currently: *'westernmost boundary of the former Borough of Port Fairy'*. Council undertook to the Panel to provide alternative wording to better describe this location.

Post Hearing in an email to Planning Panels Victoria on 18 April 2016, Council submitted that an alternative description for the land subject to the 1 hectare minimum subdivision area as:

The westernmost boundary of the Rural Living Zone land in Port Fairy, south of the Princes Highway and Thistle Place to the Southern Ocean.

(ii) Discussion and conclusion

It is difficult to draw any firm conclusions about supply and demand issues given that very few rural living lots have been created in recent years. The Structure Plan sets out objectives

for future development and the rezoning should provide the mechanism to test the demand where applicable. This was duly tested throughout its preparation and exhibition, including the use of resident surveys.

The Panel concludes:

- The Structure Plan settlement boundary as exhibited is supported.
- The schedule to the RLZ needs to be reworded to provide a clearer definition of the settlement boundary.
- The Panel accepts Council's suggested wording to define the settlement boundary.

(iii) Recommendation

The Panel recommends:

- 1. Change the land description in the Schedule to the Rural Living Zone to the Panel's preferred wording found at Appendix B to read:**

- ***the westernmost boundary of the Rural Living Zone land in Port Fairy, south of the Princes Highway and Thistle Place to the Southern Ocean***

5.3 Erosion Management Overlay

Council has proposed an EMO as part of the Amendment. The Panel has reviewed the schedule and at the Hearing asked Council to clarify its drafting.

(i) Submissions

Council submitted that the application of the EMO is proposed to introduce the need for a permit for new development that may affect or be affected by predicted coastal erosion based on technical data derived from PFCHA. Schedule 1 to the EMO will introduce new permit application requirements to ensure any new development is designed and carried out in accordance with a coastal erosion risk assessment.

Council advised that the layout and proposed structure is based on an EMO introduced for the East Gippsland Planning Scheme. Water Technology prepared the Schedule, and this was peer reviewed by Dr Darren James of the DELWP Port Phillip Regional office.

The Panel queried the Reference documents validity and the GHCMA and Council both confirmed the three documents listed at Section 6.0 of the Schedule were current. The third document, the *Western Regional Coastal Plan 2015-2020* was no longer a draft.

In reviewing the schedule, the Panel makes the observation that it appears more rigid and detailed than the East Gippsland model it is based on. As the EMO was not the subject of any submissions by parties to the Hearing, the Panel suggests that the Council look closely at its drafting of 'Application Requirements at Section 3.0' and avoid duplication with the 'Decision Guidelines' at Section 5.0.

(ii) Conclusion

The Panel concludes that the inclusion of the EMO is appropriate.

(iii) Recommendations

The Panel recommends:

2. Update 6.0 References to delete 'Draft' from reference document c) contained in the Schedule to the Erosion Management Overlay.
3. Review the 'Application Requirements' at 3.0 of the Schedule to the Erosion Management Overlay to avoid duplication with 5.0 'Decision Guidelines.'

5.4 Design and Development Overlay

(i) Heights

Council has amended Clause 43.02 of the DDO Schedules 14 and 20 to increase the maximum height of a dwelling to 7 metres where additional height is required for finished floor levels to be above predicted flood levels.

In the Hearing the Panel queried Council's rationale for setting the maximum height limits. It was unclear as to what the maximum height limit was being measured against, as no AHD was stipulated.

The Panel is concerned that the "maximum" height limit specified of 7 metres is too restrictive if sites are affected by the LSIO and GHCMA requirements. It queries not specifying the AHD levels and suggests that the term 'maximum' is replaced with 'preferred' in the case that more than 7 metres is required. If these circumstances arise, Council will still have discretion if it is still not satisfied with the proposed heights.

(ii) Discussion and conclusion

The Panel found the 'Design Guidelines Height' confusing however it notes that these already exist within the schedules. If the 'Design Guidelines Height' in the reference document specifies a datum, then this should be included. The Panel was not provided with a copy of the *Port Fairy Design Guidelines 2001* to confirm this, and it may be a broader issue for Council to review.

The Panel concludes:

- Locking in a maximum height control in land affected by the LSIO could jeopardise future ability to build
- Replace the word 'maximum' with 'preferred' to allow for flexibility on permit applications.

(iii) Recommendation

The Panel recommends:

4. Change the wording in Schedules 14 and 20 to the Design and Development Overlay from 'a maximum of height of 7 metres' to 'a preferred height of 7 metres'.

5.5 Pendragon Pty Ltd submission

The Panel and Mr Wilson had queried the details of the Pendragon Pty Ltd submission, as it had not been provided a copy at time of the Hearing. Pendragon Pty Ltd are owners of land immediately to the east of the Structure Plan area.

Council submitted that at its meeting on 15 December 2015, Council resolved to accept 3 submissions received from Pendragon Pty Ltd, Wannon Water and VicRoads. It did so on the basis that the three submissions did not request changes to the Amendment. Council provided a copy of the Pendragon Pty Ltd submission to the Panel post-hearing.

The Panel accepts Councils submission and makes no further comment on the matter.

Appendix A Document list

No.	Date	Description	Presented by
1	16/2/16	Written submission	Sally Slater, Moyne Shire
2	16/2/16	Written submission	Graham Wilson
3	26/2/16	Written submission	Steven Homer, Glenelg Hopkins Catchment Management Authority
4	26/2/16	Port Fairy Coastal Hazard Assessment	" "
5	4/3/16	Right of Reply	Sally Slater, Moyne Shire
6	15/4/16	Panel submission	" "
7	15/4/16	Water Technology Letter dated 7/4/16	" "
8	15/4/16	Back zoning Plan	" "
9	15/4/16	Port Fairy West Structure Plan	" "
10	15/4/16	LSIO Map	" "
11	15/4/16	Panel submission	Steven Homer, Glenelg Hopkins Catchment Management Authority
12	18/4/16	Pendragon Pty Ltd submission and Council summary	Sally Slater, Moyne Shire
13	18/4/16	Example EMO Schedule	Sally Slater, Moyne Shire

Appendix B Panel Preferred Version – Schedule to the Rural Living Zone

22/03/2012
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SCHEDULE TO THE RURAL LIVING ZONE

Shown on the planning scheme map as **RLZ**.

	Land	Area/Dimensions/Distance
Minimum subdivision area (hectares).	All land other than that specified below.	1 hectare
	The Rural Living Zone Land around Port Fairy which is generally bounded by the Princes Highway (north), Toolong Road, Blackwood Road, Hamilton-Port Fairy Road., the Southern Ocean and the Westernmost boundary of the former Borough of Port Fairy.	4 hectares
	The Rural Living Zone South of Thistle place to the Southern ocean to the westernmost boundary of the former Borough of Port Fairy south of the Princes Highway	
	The westernmost boundary of the Rural Living Zone land in Port Fairy, south of the Princes Highway and Thistle Place to the Southern Ocean.	1 hectare
	The Rural Living Zone on the eastern and western sides of Mailors Flat located between Ibbs Lane (north) and Hurleys Lane (south).	4 hectares
Minimum area for which no permit is required to use land for a dwelling (hectares).	All land other than that specified below.	1 hectare
	The Rural Living Zone Land around Port Fairy which is generally bounded by the Princes Highway (north), Toolong Road, Blackwood Road, Hamilton-Port Fairy Road, the Southern Ocean and the Westernmost boundary of the former Borough of Port Fairy. The Rural Living Zone South of Thistle place to	4 hectares

	Land	Area/Dimensions/Distance
	<p>the Southern ocean to the westernmost boundary of the former Borough of Port Fairy south of the Princes Highway</p> <p><u>The westernmost boundary of the Rural Living Zone land in Port Fairy, south of the Princes Highway and Thistle Place to the Southern Ocean.</u></p> <p>The Rural Living Zone on the eastern and western sides of Mailors Flat located between Ibbs Lane (north) and Hurleys Lane (south).</p>	<p>1 hectare</p> <p>4 hectares</p>
<p>Maximum floor area for which no permit is required to alter or extend an existing dwelling (square metres).</p>	<p>None specified</p>	
<p>Maximum floor area for which no permit is required to construct an out-building associated with an existing dwelling (square metres)</p>	<p>None specified</p>	
<p>Maximum floor area for which no permit is required to alter or extend an existing building used for agriculture (square metres)</p>	<p>None specified</p>	
<p>Minimum setback from a road (metres).</p>	<p>None specified</p>	
<p>Minimum setback from a boundary (metres).</p>	<p>None specified</p>	
<p>Minimum setback from a dwelling not in the same ownership (metres).</p>	<p>None specified</p>	
<p>Permit requirement for earthworks</p>	<p>Land</p>	
<p>Earthworks which change the rate of flow or the discharge point of water across a property boundary.</p>	<p>All land</p>	
<p>Earthworks which increase the discharge of saline groundwater.</p>	<p>All land</p>	