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7th September 2022

PLANNING PANELS VICTORIA

MOYNE PLANNING SCHEME AMENDMENT C69moyn PORT FAIRY STRUCTURE PLAN IMPLEMENTATION

LOTS 2 & 3 ON PS748234C AND LOT 5 ON PS342928 PRINCES HIGHWAY, PORT FAIRY

SUPPLEMENTARY SUBMISSIONS 86 & 86A– PANEL HEARING

INTRODUCTION

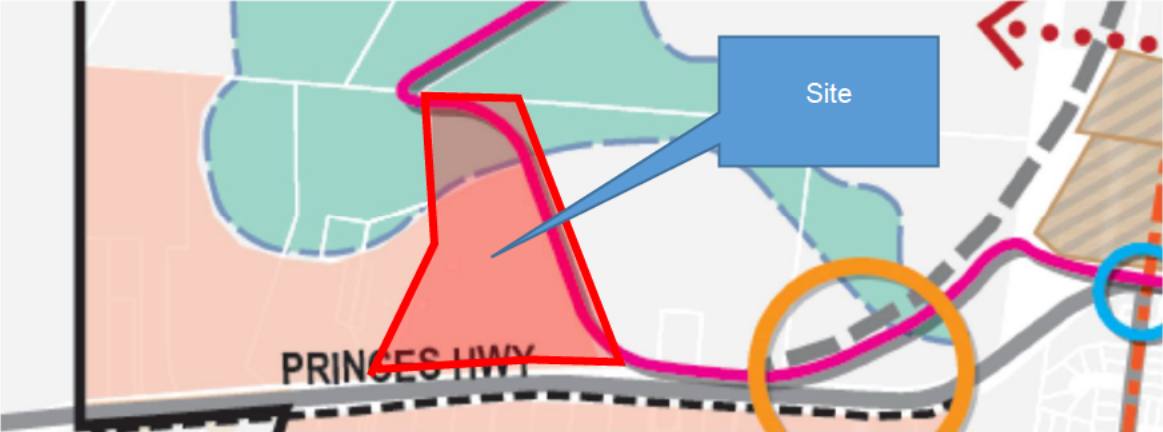
1. This submission is a supplementary submission made to the Panel Hearing for Moyne Planning Scheme Amendment C69moyn (**Amendment**) in support the verbal submission to be made on the 9th September.
2. This submission is made by [REDACTED]
[REDACTED] This submission is made on behalf of the owners [REDACTED] of Lots 2 & 3 on PS748234C and Lot 5 on PS342928. This land is located at the northern side of the Princes Highway on the western edge of Port Fairy.
3. This submission follows previous submissions made to Moyne Shire Council through the various public exhibitions of amendment C69moyn dated 27th February 2021, 27th October 2021 and 28th January 2022.
4. This submission requests that amendment C69moyn be altered as follows:
 - 4.1. This site be rezoned to the Neighbourhood Residential Zone, with the same overlay controls as Growth Area A (being the land to the east of the site).
 - 4.2. An Infrastructure Contributions Plan Overlay or a Development Contributions Plan Overlay be incorporated in the planning scheme to facilitate equitable sharing of development costs for Growth Areas A and B.
 - 4.3. The schedule to the Low Density Residential Zone be amended to support sewered development of LDRZ land with 2000m² minimum lot sizes. This request is made regardless of whether either of the first 2 requests are adopted by Council.
 - 4.4. If the LDRZ is to be retained, to re-zone the RLZ land to LDRZ to ensure consistency in zoning across the site.



5. This submission is in relation to a large property located on the north side of the Princes Highway, described as Lots 2 & 3 on PS748234C and Lot 5 on PS342928. The southern part of the site is currently within the Low Density Residential Zone, with the northern part of the site within the Rural Living Zone as shown on the following diagram.

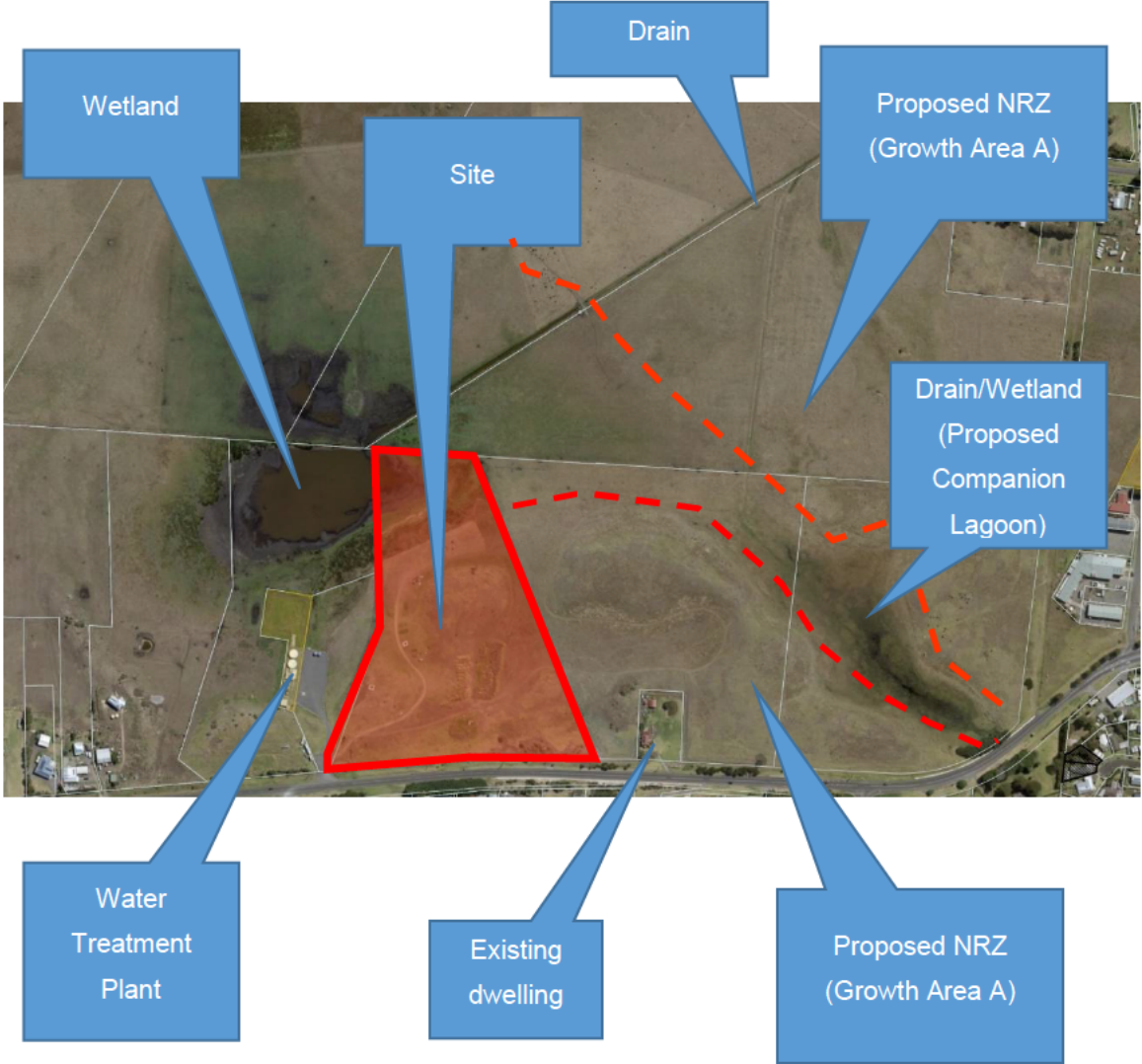


This site is adjacent to the Port Fairy Water Treatment Plant (to the west) and land identified in the Port Fairy Structure Plan as being proposed be rezoned to Neighbourhood Residential Zone as part of Growth Area A (to the east and north) and is included within an area identified as Low Density Residential (0.4ha) in the structure plan. The following extract of the structure plan shows the locality of the site:

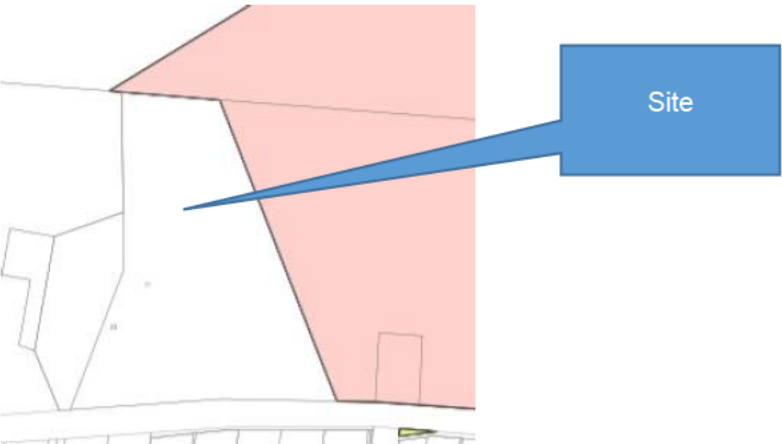




The context of this site is further illustrated by the following aerial photograph:

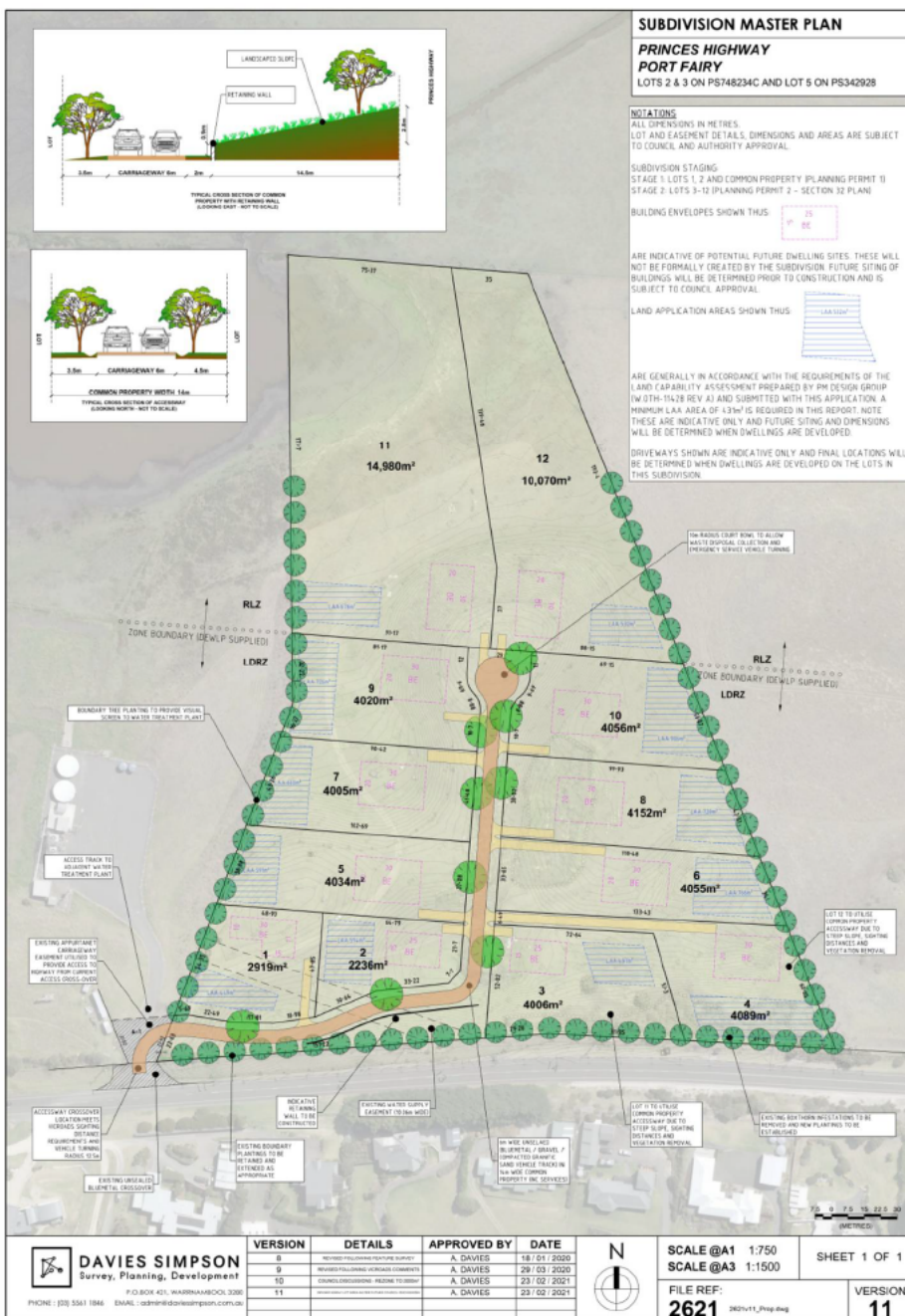


6. Review of the exhibited maps show that C69moyn has not proposed to alter the existing dual zoning of this site. See the following extract from Map 35.



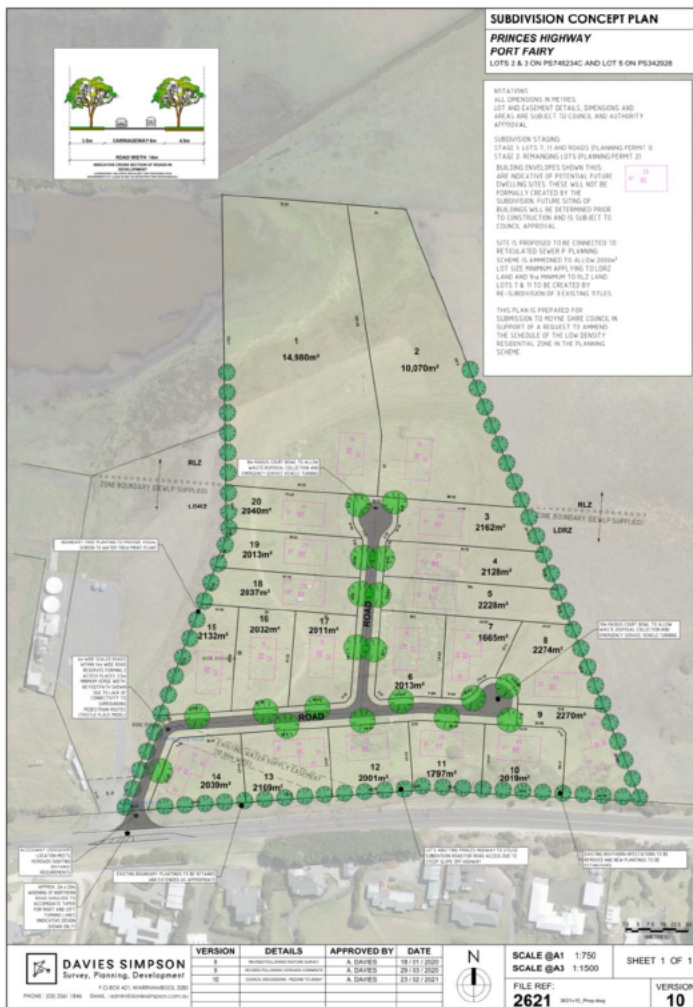
REQUEST TO ALTER THE LDRZ SCHEDULE

7. Multiple planning permit applications are currently underway to facilitate the subdivision of this property, which, under the current planning scheme controls (Rural Living Zone and Low Density Residential Zone), propose to eventually create 12 lots and a common property accessway providing vehicle access to the Princes Highway. This development outcome is shown on the plan attached as Appendix A (Our reference 2621 – Version 11) and shown as follows for ease of reference:



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
8. This proposed subdivision design has been guided by the lot area minimum in the LDRZ schedule of 4000m², under which it has been assumed that no reticulated sewerage connection would be required. Note that 2 smaller lots are created by utilising the re-subdivision provisions of the LDRZ. A LCA has been prepared which supports the appropriate on-site waste water treatment on both the 2 smaller lots and all larger lots within this site.
9. Following referral of this subdivision to the Wannon Region Water Corporation (Wannon Water), a requirement to connect the lots in this subdivision to the reticulated sewerage network has been made by the referral authority (Appendix B). The closest location of the existing sewerage network is approximately 450m to the south-east of the site (east of the Thistle Place intersection with the Princes Highway).
10. The construction of such a sewerage connection is estimated to be extremely high due to the bluestone geology of this area, the added complexity of construction within the Princes Highway reserve and also likelihood of a requirement for a sewerage pump station to be constructed due to the undulating topography of the site. The costs involved in such a scheme are considered to make this 12-lot subdivision unviable.
11. As discussed in the previous submissions, the Schedule to the Low Density Residential Zone (LDRZ) lists the following minimum subdivision areas:
- All land other than that specified below. 0.4ha.*
- The Low Density Residential Zone around Mailors Flat township south of Ibbes Lane. 1ha*
12. The minimum lot size applicable to this site of 0.4ha listed in the LDRZ schedule overrides the default LDRZ permit requirement that would allow for lots with a minimum area of 0.2ha when connected to reticulated sewerage. As per the following extract from Clause 32.03-3:
- Each lot must be at least the area specified for the land in a schedule to this zone. Any area specified must be at least:*
- 0.4 hectare for each lot where reticulated sewerage is not connected. If no area is specified each lot must be at least 0.4 hectare.*
- 0.2 hectare for each lot with connected reticulated sewerage. If no area is specified each lot must be at least 0.2 hectare.*

13. Given the costs involved in connecting this development to the reticulated sewerage network, it is considered only practically and economically viable (refer Rivacourt Pty Ltd v Banyule CC [2009] VCAT 174) for this development to connect to reticulated sewerage if the site was able to be subdivided into 20 lots utilising the minimum area of 2000m² under the existing LDRZ. This would require an amended schedule to allow this lot size, with the first line in the current schedule to be removed. A concept plan showing the development potential of allowing 2000m² lots follows and is also attached in Appendix C:



14. The removal of the first line of the schedule (being: *All land other than that specified below 0.4ha*) would allow the standard zone provisions of 0.4ha minimum lot sizes for unsewered developments and 0.2ha minimum lot sizes for seweraged developments. The other existing requirement in the schedule which deals with land in Mailors Flat would be unchanged and would remain in place.

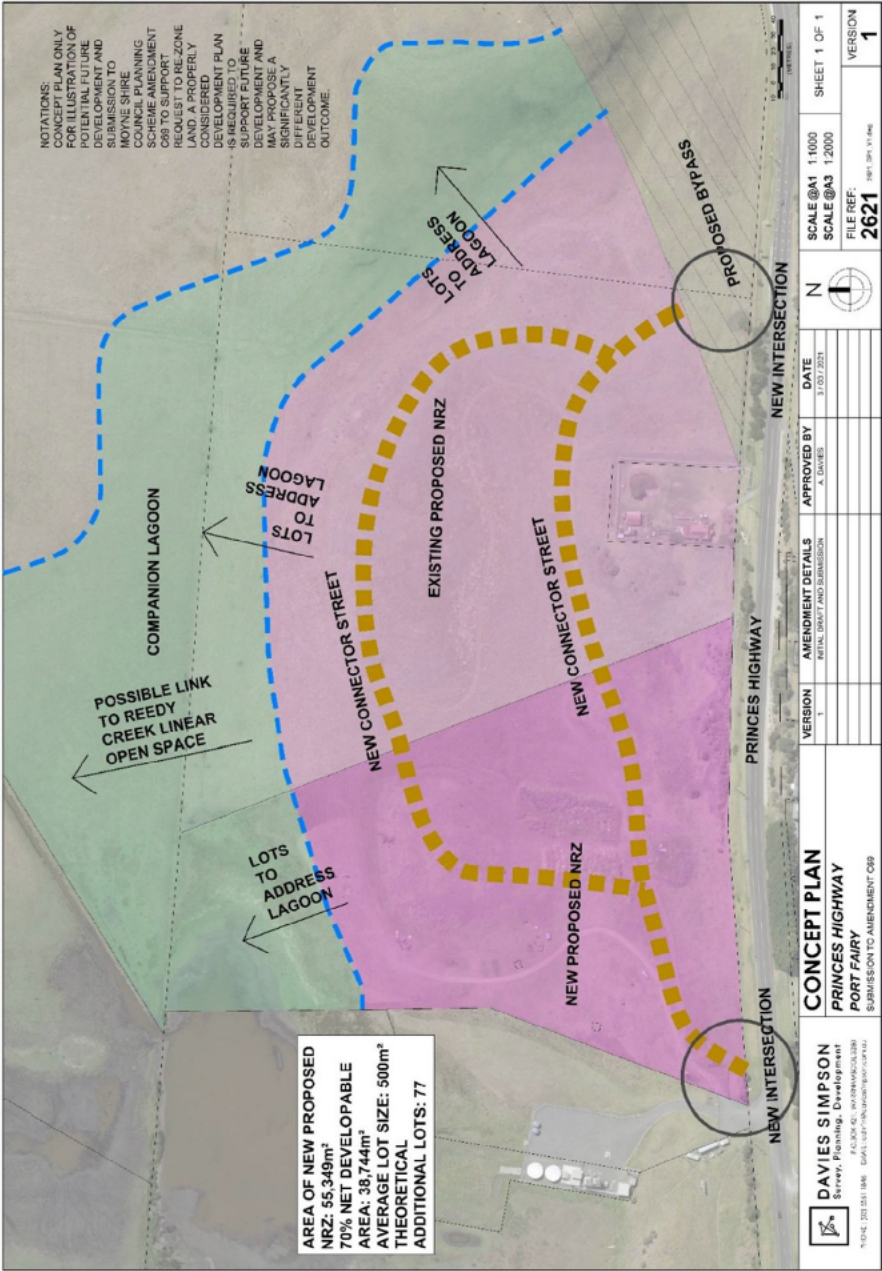
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
15. It is argued that this requested change will allow more appropriate development of the Low Density Residential Zone throughout the shire, providing for greater density of development where appropriate services are provided or able to be provided. However, review of the planning scheme reveals that it is only the LDRZ land surrounding Port Fairy (and inter-alia subject to this amendment) which would benefit from such a change.
16. As noted in the introduction, the amendment does not propose to alter the 2 zones which apply to the site. Given the proposed rezoning of land to the north of this site to NRZ, it appears incongruous for a small section of RLZ land to remain sandwiched between the NRZ and LDRZ. If this whole site is not rezoned to NRZ, it is requested that the existing RLZ part be amended to LDRZ. It is further submitted that a similar approach should be applied to Lot 1 on PS748234 and Lot 3 on PS342928 (both lots located to the west of the site) to ensure the zone boundaries reflect the cadastral boundaries of the land in this area.
17. The part of this submission to change the RLZ to the LDRZ has only been identified in the process of preparing this submission and I apologise for the delay in bringing it to the attention of the panel and council.

REZONING TO NRZ (INCLUSION INTO GROWTH AREA A)

18. As noted in the introduction, this submission requests that this land be included in Growth Area A through re-zoning to the Neighbourhood Residential Zone and application of the DDO4 and DPO4 as per Growth Area A.
19. From review of the context and topography of this site, there is a clear nexus between this land and the land to the east that is included within the Growth Area A and is proposed to be rezoned to NRZ1 with additional application of the DDO4 and DPO4.
20. The site is disconnected from the existing LDRZ land to the west of the site by the location of the Water Treatment Plant and to the north by the companion lagoon. These features provide an obvious break in land-use pattern and appears to be a much more appropriate boundary of the amendment than the land in this site.
21. It is noted that the amenity impacts of this plant appear to be relatively minor as the plant is primarily cooling towers and filtration units to treat groundwater to a potable standard. Any future development could provide appropriate buffers / screening (e.g. vegetation plantations) to further mitigate any amenity impacts.



22. The topography of this site links to the land to the east and, if both sites were subject to the same strategic controls, significant improvements to the development of this area south of the wetland (proposed Companion Lagoon in structure plan and DPO4) would result. Such development would be able to provide significant improvement in development design by providing additional land to be developed in a site responsive design. A concept plan (high level outline development plan) showing potential roads arcing across the site in response to the topography, the location of the lagoon and the interface with the proposed bypass follows and is also included in Appendix D.










23. If this land was not included within the NRZ, such a design would be more difficult to achieve and would likely result in a poorer outcome with limited connectivity. The inclusion of this land into the NRZ will facilitate improved development of both this land and the land in within Growth Area A land to the east of this site. It would give greater efficiency of development, improving connectivity outcomes, especially the interface with the bypass and potentially reduce impact on lower elevation land which is more likely to be subject to flooding. This improved development efficiency is critical in this area due to the large number of subsurface rock deposits which make construction of infrastructure, extremely difficult and expensive. It will facilitate a significant improvement in development of Growth Area A south of the companion lagoon.

24. From review of the exhibited planning scheme documents and the Port Fairy Structure Plan, it is unclear as to why this land was not identified for inclusion into the NRZ in the development of the structure plan. Indeed, it was identified in the early Issues and Opportunities paper as a site for redevelopment. Importantly, there is no discussion regarding retaining this land as a buffer from the adjacent Water Treatment Plant in either the exhibited amendment or the structure plan.

CREATION OF INFRASTRUCTURE CONTRIBUTIONS PLAN OVERLAY (ICO) OR DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY (DCPO).

25. The submission to include a ICO or DCPO into the scheme reflects earlier submissions to C69moyn and the earlier structure plan exhibition. This submission was made in light of the large areas of diverse landownership and small lots (especially in Growth Area B) and would support to development of the growth areas through an equitable distribution of development costs.



JUSTIFICATION OF SUBMISSION

26. This site is located within the land affected by amendment C69moyn and it is submitted that the scope of this amendment is broad enough to accommodate these requested amendments. This is contrary to councils submission summary, however given the substantial alterations proposed by Council to the exhibited documents in their Part A and Part B submissions, it is contended that there is broad authorisation to deal with the matters raised in this submission and that there is substantial nexus between this site and the C69moyn amendment.
27. Correspondence and discussions over the preceding years with Council strategic planning staff had not identified the scope of the amendment as limiting consideration of this submission. Indeed, the continued engagement with the C69moyn amendment process was encouraged and supported. If limitation to the scope of this amendment had been flagged by council, a proponent supported amendment would have been recommended at that point in time and could have been considered concurrently with this amendment.
28. Given the significant alterations made by council between the exhibition and the part A and part B submissions to the panel, it is requested that the panel recommend that a further public exhibition process is undertaken prior to council deciding whether to adopt, abandon or adopt with alterations this amendment.
29. This submission to include land within the Growth Area A or to rezone the entirety of the site to LDRZ and to alter the LDRZ schedule is proposed as a 'logical inclusion' to the amendment. Review of previous panel hearings has been made and the report of the Logical Inclusions Advisory Committee 2011 (**Logical Inclusions**) is tabled to support this submission (refer Logical Inclusions (AC) [2011] PPV 115).
30. The committee in section 5.1 identified the following issues in defining a 'logical inclusion':
- Suitability of land for urban development.
 - Defining a sensible and sustainable boundary to include land suitable for development.
 - Identifying land that can be brought into the UGB as a logical extension to the current boundary.
31. The committee in the Logical Inclusions report supported the definition of a 'logical inclusion' in section 5.1 as:
- A logical inclusion will make good sense and lead to sound outcomes having regard to relevant policy and physical context. It would be a good fit and be reasonably expected having regard to relevant background and decision criteria.*

[REDACTED]

32. The committee in section 5.7 of the Logical Inclusions report adopted the following decision guidelines for inclusion of land as a 'logical inclusion'.

- (a) The constraints of the land are known and it contains a reasonable percentage of unconstrained land suitable for residential or employment purposes; and*
- (b) It has similar characteristics to adjoining land within the UGB; and*
- (c) It will not compromise an existing high amenity rural landscape; and*
- (d) The land can be planned as part of a corridor, PSP or master plan process, and the issues raised in developing the land can be dealt with by that process; and*
- (e) It would allow for the development of well connected, neighbourhoods capable of providing a range of local services; and*
- (f) If brought into the UGB, there is reasonable certainty that the land can be developed generally consistent with State and local planning policy; and*
- (g) It is capable of being serviced at costs typical of servicing in the locality; and*
- (h) The boundary is not arbitrary but relates to a strong natural or constructed feature. Cadastral boundaries have been supported where the land to be included is along the 'front' of a growth area where it is expected that further land might be included in the future.*

33. This submission translates the references to the UGB (urban growth boundary) in the above decision guidelines to refer to amendment C69moyn. It is contended that these criteria are appropriate to utilise in this submission and consideration of the amendment.

34. This submission contends that this site meets the 'logical inclusions' criteria for inclusion into Growth Area A as:

- 34.1. Significant works has been undertaken to propose residential development of this land. This work identifies a significant area of land available for residential development.
- 34.2. This land has a significant nexus with and shares characteristics with the land in Growth Area A to the east of this site.
- 34.3. Inclusion of this land into Growth Area A will not compromise an high amenity rural landscape.
- 34.4. The land can be included within amendment C69moyn.
- 34.5. Inclusion of this land into Growth Area A and rezoning to NRZ and/or alteration to the LDRZ will facilitate the development of a well-connected and services neighbourhood.
- 34.6. The land is readily able to be developed in line with State and local planning policy. Note that existing permit applications are underway on this site.
- 34.7. The requirement of servicing this land with reticulated sewerage is a significant driver of this submission. If this submission was supported, development in line with typical costs of construction in this locality would be undertaken.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34.8. The boundaries in the currently exhibited amendment appear to be arbitrary and have not considered the topography of the area, the nexus of this site to Growth Area A and the impact of the bypass on Growth Area A. The inclusion of this land into Growth Area A reflects the strong features of the area including the existing Water Treatment Plant, Companion Lagoon and cadastral boundaries.

STRATEGIC POLICY BASIS

35. This submission is supported by planning policies in the Moyne Planning Scheme. With particular reference being made to the following:

36. Clause 71.02-1: The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

37. Clause 71.02-3: The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

38. Clause 11: Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services.

39. Clause 11.01-1S: Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities. Create and reinforce settlement boundaries. Limit urban sprawl and direct growth into existing settlements. Promote and capitalise on opportunities for urban renewal and infill redevelopment. Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services.

40. Clause 11.01-1R: Facilitate the district towns of Allansford, Camperdown, Casterton, Cobden, Coleraine, Dunkeld, Heywood, Koroit, Mortlake, Port Campbell, Port Fairy, Terang and Timboon to support local communities, industry and services. Support growth and economic

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

opportunities throughout the region, especially along the north-south (Henty Highway) and east-west (Princes Highway) corridors. Support higher economic and population growth along the east-west primary growth corridor by capitalising and building on existing connections, strengths and infrastructure.

41. Clause 11.02-1S: Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development. Planning for urban growth should consider:
 - Opportunities for the consolidation, redevelopment and intensification of existing urban areas.
 - Neighbourhood character and landscape considerations.
 - The limits of land capability and natural hazards and environmental quality.
 - Service limitations and the costs of providing infrastructure.
42. Clause 11.02-3S: Define preferred development sequences in areas of growth to better coordinate infrastructure planning and funding. Ensure that new land is released in areas of growth in a timely fashion to facilitate coordinated and cost-efficient provision of local and regional infrastructure. Ensure that planning for water supply, sewerage and drainage works receives high priority in early planning for areas of growth.
43. Clause 11.03-6S: Integrate relevant planning considerations to provide specific direction for the planning of sites, places, neighbourhoods and towns. Consider the distinctive characteristics and needs of regional and local places in planning for future land use and development.
44. Clause 19.03-2S - Integrate developments with infrastructure and services, whether they are in existing suburbs, growth areas or regional towns.
45. Clause 19.03-3S - Provide for sewerage at the time of subdivision or ensure lots created by the subdivision are capable of adequately treating and retaining all domestic wastewater within the boundaries of each lot.
46. Clause 19.03-3S - Ensure that the use and development of land identifies and appropriately responds to potential environmental risks, and contributes to maintaining or improving the environmental quality of water and groundwater.



SUMMARY

47. As discussed earlier in this submission, there is a clear nexus between this land and the land to the east and if both sites were subject to the same strategic controls a much-improved development of the area would result.

48. The concept plan shown in this submission illustrates the how this site interfaces with the neighbouring land and provides a potential lot yield of approximately 50 lots. This additional lot yield would be a substantial asset to Port Fairy by providing for a significant increase in population and developable land in the currently constrained Port Fairy market.

49. The amendment of the LDRZ schedule will correct poor wording of the schedule and maintain the flexibility intended under the VPP zone provisions and support the development of land with appropriate service connections.

50. In summary this submission requests that:

1. This land be included into the Neighbourhood Residential Zone, with the same overlay controls as on the land to the east.
2. An Infrastructure Contributions Plan Overlay or a Development Contributions Plan Overlay be incorporated in the planning scheme to facilitate equitable sharing of development costs for Growth Areas A and B.
3. The schedule to the Low Density Residential Zone be amended to support sewered development of LDRZ land with 2000m² minimum lot sizes. This request is made regardless of whether either of the first 2 requests are adopted by Council.
4. If the LDRZ is to be retained, to re-zone the existing RLZ land to LDRZ to ensure consistency across the site.



Appendix A
12 Lot Plan

Appendix B
Wannon Water Sewer Requirement

Appendix C
22 Lot Plan (sewer connected)

Appendix D
Concept Plan (Outline Development Plan) – Growth Area Extension

Appendix E
Rivacourt Pty Ltd v Banyule CC [2009] VCAT 174

Appendix F
Logical Inclusions (AC) [2011] PPV 115 (11 November 2011)