

Date: 14 September 2022



**MOYNE PLANNING SCHEME AMENDMENT
C69moyn**

**PORT FAIRY COASTAL AND
STRUCTURE PLAN**

SUBMISSION – 



INTRODUCTION

1. This submission is made on behalf of [REDACTED] the landowners of Lot 79 LP1035 Hamilton Port Fairy Road, Port Fairy (**Lot 79**) and Lot 63 LP1035 (Proposed Lot 2 on PS832354, Blackwood Road, Port Fairy in relation to Amendment C69moyn (**Amendment**) to the Moyne Planning Scheme (**Scheme**).
2. This submission relates to Lot 79 only. Relevant to Lot 79, the Amendment, as exhibited, proposes to apply the following controls:
 - 2.1 Neighbourhood Residential Zone (**NRZ**) (currently Rural Living);
 - 2.2 Development Plan Overlay – Schedule 4 (**DPO4**);
 - 2.3 Design and Development Overlay – Schedule 4 (**DDO4**);
 - 2.4 Land Subject to Inundation Overlay; and
 - 2.5 Floodway Overlay.
3. During the Panel Hearing, it is now clear that the Council now advocates for two significant changes to the exhibited Amendment; namely:
 - 3.1 introducing a new schedule 2 to the NRZ which is specific to Growth Area A¹; and
 - 3.2 removing the DDO4 from Growth Area A.
4. Our Clients support in principle the Council's revised position and consider it to be a sensible one and one consistent with the evidence of Mr Glossop. Notwithstanding our Clients' in principle support for these changes, they have real concerns about the 'decanting' outcome undertaken by the Council and the metrics used in the controls.
5. This submission should be read in conjunction with the following documents:
 - 5.1 the survey plan prepared by Joseph Land Surveying Pty Ltd dated 29 August 2022;² and
 - 5.2 marked up amendments to NRZ³, DPO4⁴ and DDO4.⁵

¹ Tabled document 88 – Appendix 6.

² Tabled Document 118.

³ See Appendix A.

⁴ See Appendix B.

⁵ See Appendix C.



Our Clients

6. [REDACTED]
7. Our Clients' long and close connection with Port Fairy means that they have not taken a 'typical' developer's perspective to assessing the merits of the Amendment. Indeed, our Clients support many of the Council's objectives regarding future development of Growth Area A such as ensuring that the growth area does not look completely different to the existing residential areas of Port Fairy. They want Growth Area A to be a good fit within Port Fairy. However, our Clients hold the view that the proposed controls for Growth Area A require further refinement to ensure that the opportunity that this relatively small area offers is not wasted.

BACKGROUND

8. Development in Port Fairy is a challenging proposition. As the Council has explained, there are considerable constraints affecting development and expansion opportunities such as:
- 8.1 flooding (whether one adopts a 0.8 or 1.2 SLR);
 - 8.2 environmental values;
 - 8.3 character and heritage controls;
 - 8.4 high value agricultural land surrounding the township boundary;
 - 8.5 highly fragmented land within Growth Area B; and
 - 8.6 a reduction in the supply of residential land due to the proposed rezoning of substantial areas of Low Density Residential land to the Rural Conservation Zone.⁶
9. These contextual matters highlight the challenging nature of the Council's task in managing future growth within Port Fairy. It also highlights the critical importance that opportunities such as Growth Area A, and in particular our Clients' land, provide and the critical need to ensure that these opportunities are not squandered.

⁶ Noting there are numerous submissions opposing this outcome. While this submission does not offer a view about this aspect of the Amendment, it assumes this rezoning will be implemented.



10. The purpose of this submission is to ensure that the right balance is struck such that Growth Area A can fulfill its potential and add meaningful residential land supply within Port Fairy whilst at the same time ensuring that the character of Growth Area A is respectful⁷ to (as opposed to continuing or mimicking) the town's existing character.

NRZ2

11. The Amendment proposes to rezone Lot 79 and Growth Area A to the NRZ. There are two key issues relating to this zoning, namely whether the:

- 11.1 General Residential Zone (**GRZ**) or the NRZ should be used; and

- 11.2 proposed metrics in the Council's proposed NRZ2 are appropriate.

12. Before addressing these two issues, in addition to the broader contextual matters outlined above, it is necessary to identify some specific matters relevant to the context of Growth Area A⁸, namely:

- 12.1 the DPO4 area will be physically separated from the existing residential precinct to the east by the Port Fairy showgrounds, Port Fairy Cemetery and industrial land;

- 12.2 the alignment of the proposed Port Fairy bypass (which is not changed by the Amendment) runs between the DPO4 land and the existing residential area; and

- 12.3 Growth Area A will be the 'key growth front' in Port Fairy⁹.

13. These factors reduce the sensitivities of Growth Area A from a character perspective. As Mr Glossop agreed – the interfaces to the Hamilton-Port Fairy Road, Lagoon Road and the Princes Highway¹⁰ are really the more sensitive interfaces.¹¹ Therefore, the proposed controls should recognise and respond appropriately to these contextual matters.

GRZ vs NRZ

14. The concept of using the NRZ for a growth area is novel.
15. The principle of utilising a specific schedule for Growth Area A is a sensible one.
16. While height is relevant to the task of choosing the appropriate zone, height alone cannot, and should not, be the determining factor. The strategic housing opportunities identified in the Structure Plan and reflected in DPO4 need to be given weight. A blinkered focus on

⁷ Noting this is the Council's revised purpose to NRZ2.

⁸ References in this section of the submission to Growth Area A are limited to that part of Growth Area A proposed to be included in DPO4.

⁹ See page 28 of the Structure Plan.

¹⁰ It is understood that Mr Glossop was referring to the Princes Highway when he referred to the southern entrance.

¹¹ Our Clients note that Lot 79 does not adjoining the Princes Highway.



height alone risks undermining the achievement of the identified strategic housing objectives. This appears to have been the approach of Mr Glossop and the Council.

17. DPO4 recognises that the growth areas need to provide 'a diverse range of new and affordable housing' and the Structure Plan seeks 'a compact urban form'¹² and to 'encourage the delivery of housing which is responsive to demographic changes'¹³. Given these strategic housing objectives that underpin the Amendment, the purposes of the GRZ represent a superior fit.
18. The Council has raised a concern that a limit of two storeys is necessary to prevent the construction of three storey dwellings in an attempt to catch a glimpse of the sea. While that concern might be legitimate in other parts of the town, the topographical context of Growth Area A means that this concern does not arise. The ridge line running along the Princes Highway would prevent any sea views from Lot 79, even from a three storey building.
19. The Panel is requested to recommend that Growth Area A is zoned GRZ.

Decanting the DDO metrics

20. Putting aside the proposed zone, the next question to consider are the proposed metrics for the varied ResCode standards. These submissions apply whether the GRZ or NRZ is preferred.
21. Our Clients support Mr Glossop's view that applying both DDO4 and DPO4 would be 'overregulation' and his recommendation to 'decant' the DDO4 requirements into the zone schedule, noting our Clients take issue with some of the proposed metrics. However, this decanting process should be a policy neutral exercise. In other words, it is not an opportunity for Council to propose new or different benchmarks to those exhibited.
22. Unfortunately, the Council has not faithfully translated the DDO4 provisions into the NRZ2.
23. As exhibited, the building setback requirement was expressed as:

Any part of a new building should:

- Be set back at least 6 metres from the street boundary.
- Within 10 metres of the building frontage, on at least one side boundary, have a setback of at least 6 metres when combined with the side setback of any building on the adjacent property.

24. The Council's Part A version of NRZ with respect to side setbacks states:¹⁴

3 metres within 10 metres of the building frontage.

¹² Page 28.

¹³ Ibid.

¹⁴ See Tabled Document 88 – Appendix 6.



25. After considering the Council's Part A version, Mr Glossop has recommended:¹⁵

For a distance of at least 10 metres behind the front façade of the building fronting the street, setback new buildings a minimum of 3 metres from each side boundary.

Where no setback is specified, standard A10 or B17 applies.

26. Two matters arise from the expression of the proposed side setback.

27. First, Mr Glossop did not review the provisions in NRZ2 to assess whether a policy neutral translation was adopted. Rather, as our Clients understood Mr Glossop's evidence, he merely reviewed the Part A version of NRZ2 to determine whether varied standards worked in the schedule. Therefore, his evidence needs to be understood in this context.

28. Second, the Council is now proposing a substantially more onerous side setback. As exhibited, the Amendment only required a side setback to one side boundary. This would have allowed a dwelling to be constructed on one side boundary while providing a side setback to the other side boundary. However, the Part A side setback now requires a 3 metre setback from both side boundaries. This has not been a policy neutral 'decanting'. Further, for the reasons explained below, this is excessive and unnecessary.

29. Such an outcome should not be supported. Our Clients' proposed drafting to the side setback variation is included in Appendix A.

Revisions to the proposed metrics in NRZ2

30. In broad terms, the proposed metrics are too onerous for a growth area and will fail to provide the right settings to deliver the more diverse range of housing envisaged by the Amendment. In simple terms, the proposed metrics will create development that mimics the existing development in the township which is recognised in the Structure Plan as not delivering the diversity of housing required for Port Fairy's changing demographics. An outcome that seeks to replicate the development patterns within Port Fairy will risk squandering this important and finite opportunity.

31. Indeed, upon a closer examination and comparison with the controls proposed elsewhere within Port Fairy, some of the proposed controls for Growth Area A are more restrictive compared with Port Fairy's more sensitive and established residential areas.

32. In essence, our Clients consider that it is appropriate for the key elements of the established residential character of Port Fairy to guide the preferred character of Growth Area A but they should be delivered in a manner that allows for greater development. For example, the control should maintain a side setback but they should not adopt the same side setback (or a more onerous side setback) that is adopted for the established areas within the town.

¹⁵ See Tabled Document 99 – Appendix D.



33. The following changes should be made to NRZ2:


33.1 The minimum front setback should be 4.5 metres. This reflects the minimum front setback in the design guidelines under current DDO21 which is 4.5 metres. DDO21 applies to the peripheral residential areas and includes various more recent residential subdivisions. DDO21 demonstrates that 4.5 metre setbacks are already acceptable within Port Fairy. Therefore, adopting a 4.5 metre setback within this particular growth area context, which is largely free from the constraints of existing residential character, is both reasonable and appropriate.

The metrics for site coverage and permeability should not be varied and the default ResCode standards should apply. There is no good reason to impose a more stringent site coverage and permeability standards within Growth Area A than those that are proposed within proposed DDO2. Proposed DDO2 covers an established residential area which is clearly more sensitive to change and is also mostly subject to the HO. The DDO2 land will also be covered by NRZ1, which has no proposed variations to the ResCode standards in its schedule. Council's Part A version of DDO2¹⁶ shows that the site coverage and permeability requirements will be deleted. This means the default ResCode standards for site coverage and permeability would apply in this area. Our Clients see no sound planning reason to adopt a more stringent site coverage and permeability standards in Growth Area A when compared with the established parts of the town. Given the absence of any existing residential character, the default site coverage and permeability standards ought to be appropriate for Growth Area A.

The proposed variations will simply increase the number of report and consents required to be processed by Council. Assuming a 500 square metre lot, any dwelling with a footprint of more than 200 square metres would fail to comply with the varied requirement and need a report and consent.

33.2 The side setbacks as exhibited, and in Council's Part A version, are too onerous for this growth area context. Further, the proposed side setbacks will effectively restrict the width of a dwelling on a 15 metre wide lot to 9 metres or just 6 metres on a 12 metre wide lot. Further, if narrower lots are proposed, which is reasonable to expect given the objectives of DPO4, the resultant building envelope becomes even more constrained for no meaningful character benefit. If there is to be a side setback, it ought to be limited to one side boundary only. This will still ensure that space is retained between buildings.

¹⁶ Tabled Document 88 – Appendix 6.



Further, the 10 metre distance for the 3 metre side setback should be measured from the front title boundary. Such an outcome would still deliver meaningful space and setbacks before a building can be constructed on a side boundary and strikes the right balance between reflecting the township character and allowing a more compact urban form.

34. Our Clients' preferred position on the NRZ2 schedule is shown in Appendix A.

DDO provisions

35. Our Clients support the Council's revised position that DDO4 should not be applied to Growth Area A. If the Panel does not agree with the Council's revised position, the changes in Appendix C should be made to DDO4.
36. The submissions regarding the metrics in NRZ2 also apply to the metrics in proposed DDO4.
37. The other significant matter relating to DDO4 is the use of 'must' and 'should'. As exhibited, every requirement in DDO4 was capable of being granted with a permit. In these circumstances, 'should' is the preferable word to be used.

DPO provisions

38. Our Clients support the use of the DPO within Growth Area A. They note that DPO4 is not proposed to apply to all of the land in the Structure Plan identified as forming part of Growth Area A. Therefore, it is important that the requirements and objectives of DPO4 clearly relate to the land that will be subject to DPO4.
39. At the broad level, it appears that DPO4 has been prepared on two misunderstandings, namely:
- 39.1 the land is subject to the effects of sea level rise;¹⁷ and
- 39.2 Reedy Creek forms part of the land to be covered by the DPO¹⁸.
40. To assist the Panel, our Clients have proposed specific changes to DPO4. These are included in Appendix B. The Panel will be taken to these changes.
41. There are four specific matters that deserve specific mention.
42. The first relates to Reedy Creek. As Tabled Document 118 establishes, Reedy Creek is not within land proposed to be covered by the DPO nor part of Lot 79. Indeed, south of the Hamilton-Port Fairy Road, Reedy Creek is located within the adjoining private land which is in separate ownership to our Clients. While north of the Hamilton-Port Fairy Road, our

¹⁷ Mr Swan's evidence was that he believed that the DPO land only subject to riverine flooding.

¹⁸ See Tabled Document 118.



Clients understand that Reedy Creek is within public land, which is also outside of the proposed DPO.

43. Our Clients consider any references to undertaking works within or along Reedy Creek must be deleted. It is an unsatisfactory position for a planning control to require a landowner to undertake works on another person's land. Arguably the situation is different to the north of the Hamilton-Port Fairy Road given the public status of Reedy Creek. In any event, and at a minimum, DPO4 must be amended to ensure any reference to works on or along Reedy Creek be limited to the north of the Hamilton-Port Fairy Road.
44. The second issue relates to the creation of a pedestrian connection to Bank Street. While our Clients can understand the Council's desire to create pedestrian access from Growth Area A through to Bank Street, the delivery of this access will require acquiring land within the Showgrounds and privately owned land in Baxter Street. Putting aside that none of this land is within the DPO, none of the private land owners have the means or power to deliver this outcome. Only Council has the power to deliver this pedestrian link.
45. Our Clients accept that it is important that land within the DPO does not prejudice the delivery of such a link. However, what this means in a practical sense, which was acknowledged by Mr Glossop, is that the subdivision of our Clients' land will need to provide access to Lagoon Road.
46. The third issue relates to Lagoon Road. Lagoon Road provides important public access within the DPO area. Given the characteristics of Lot 79, with a limited frontage to the Hamilton-Port Fairy Road, Lagoon Road presents as a logical location to provide vehicle access to the Hamilton-Port Fairy Road. Further, utilising Lagoon Road will likely preclude the need to create a new intersection on the Hamilton-Port Fairy Road. Given the status of the Hamilton-Port Fairy Road, within the Transport Zone 2, reliance on Lagoon Road for access presents as a logical and reasonable outcome. Given this, DPO4 should be amended to acknowledge the use of Lagoon Road.
47. The existing mapping for Lagoon Road needs to be tidied up and this should be addressed by the Amendment. Currently, part of Lagoon Road is mapped within the Road Closure Overlay. Our Clients have been unable to determine why this overlay was applied in the maps. Their enquiries with Council have not revealed any planning basis for this overlay. Further, and somewhat peculiarly, the Scheme contains no ordinances to give effect to the mapping. Without an ordinance, the mapping has no effect.¹⁹ Correcting this mapping error as part of this Amendment (to remove the RXO from Lagoon Road) would:

¹⁹ In order to introduce an ordinance to give effect to the mapping, a planning scheme amendment would be required. The introduction of such an ordinance would directly affect our Clients (and the other adjoining property owners and occupiers).



- 47.1 give greater certainty to the owners within DPO4 that Lagoon Road can be used;
 - 47.2 would not change the legal position of Lagoon Road; and
 - 47.3 will save Council the burden of needing to devote further resources to address this issue in the future.
48. The fourth issue relates to Companion Lagoon. Companion Lagoon is a large depression that is located primarily on the land to the west of Lot 79, which is beyond the DPO4 boundary. Companion Lagoon is only partly located on Lot 79. Currently Companion Lagoon is split across four properties, in different ownership, and it will likely be affected by the proposed bypass.
49. Our Clients acknowledge that Companion Lagoon is likely to have some ecological values. However, they have not seen any ecological assessment considering Companion Lagoon. As currently drafted, DPO4 reads as though the whole of Companion Lagoon is located within DPO4. An example of this is where DPO4 seeks to achieve Companion Lagoon being an integral part of the growth area.
50. Our Clients accept that Companion Lagoon, in so far as it is within the DPO, is a feature that any residential subdivision needs to be responded to. The drafting of DPO4 should reflect this.

CONCLUSION

- 51. Our Clients thank the Panel for the opportunity to explain their concerns.
- 52. For the above reasons, our Clients invite the Panel to recommend that the Amendments be supported but changed in accordance with this submission and the attached appendices.

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14 September 2022