

PLANNING PANELS VICTORIA
AMENDMENT 69moyn TO THE MOYNE PLANNING SCHEME
PORT FAIRY COASTAL AND STRUCTURE PLAN

GENERAL SUBMISSIONS

INTRODUCTION

1. These submissions are made on behalf of:
 - a) [REDACTED] – 35 Model Lane, Port Fairy [REDACTED] **Land**);
 - b) [REDACTED] – 143 Model Lane, Port Fairy and Lots 11 & 12 LP3129, Princes Highway, Port Fairy ([REDACTED] **Land**); and
 - c) [REDACTED] – 30 and 50 Sandspit Road, Port Fairy [REDACTED] **Land**).

These submissions are structured to address the general matters common between the three submitters followed by separate sections to address the matters specific to each submitter and property.

2. The three submitters don't take issue with the strategic intention of the Amendment. It is appropriate for a Council to take steps to plan for the future of Port Fairy and to address flood risk.
3. The three submitters are all long-term residents of Port Fairy. Living in proximity to the Moyne River, they have experienced firsthand and well understand the environmental constraints of their land. They experienced the 2020 floods. They have experienced inundation on undeveloped portions of their land. They understand the dynamics of the floodplain - where the water pools, and how slowly it moves.
4. They acknowledge that sizable portions of their land adjacent to the Moyne River are not suitable for development. This is true now under the existing planning controls and would continue to be the case even if no change was made to the Planning Scheme. The question is whether the land on which their homes are situated should be sterilised from modest development.
5. This Amendment takes land that is currently developable (and will be developable under the 0.8 SLR scenario) and renders it undevelopable. It does this in two ways:
 - a) through the application of the Rural Conservation Zone (**RCZ**);

- b) The application of Floodway Overlay (**FO**) and the Draft Port Fairy Local Floodplain Development Plan (**Floodplain Development Plan**) which will operate in an unnecessarily restrictive manner.

RURAL CONSERVATION ZONE

- 6. The proposal to rezone the land in Model Lane to RCZ lacks a proper planning basis. The RCZ is a highly restrictive zone. It is a zone where use of the land for a dwelling or farming is subordinate to the environmental values of the land. Mr Glossop agreed in evidence that the RCZ is a restrictive zone where there is a low expectation of development as there is a stronger emphasis on environmental values.
- 7. *Planning Practice Note 42 – Applying the Rural Zones (June 2015) (PN42)* provides the Panel with the appropriate guidance on the application of the RCZ.
- 8. The purpose of PN42 is to provide guidance to planning authorities about:
 - a) the strategic work required to apply the Farming Zone, Rural Activity Zone, Rural Conservation Zone, Green Wedge Zone, Green Wedge A Zone and Rural Living Zone; and
 - b) the purposes and features of each zone and where they may be applied.
- 9. In describing the RCZ, PN42 considers it a *conservation* zone that caters for rural areas with *special environmental characteristics*.
- 10. Importantly, PN42 states that “*The zone should be applied in a way that is consistent with its purpose.*”
- 11. The purpose of the Rural Conservation Zone is:
 - a) *To implement the SPPF and the LPPF, including the MSS and local planning policies.*
 - b) *To conserve the values specified in a schedule to the zone.*
 - c) *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.*
 - d) *To protect and enhance natural resources and the biodiversity of the area.*
 - e) *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*

- f) *To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.*
- g) *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

12. In relation to how the Zone operates, PN42 states:

The Rural Conservation Zone is primarily concerned with protecting and conserving rural land for its environmental features or attributes. The conservation values of the land must be identified in the schedule to the zone and could be historic, archaeological, landscape, ecological, cultural or scientific values. In this zone:

- a) *all uses are subordinate to the environmental values of the land*
- b) *farming is allowed provided that it is consistent with the environmental values of the area*
- c) *the minimum lot size for subdivision is tailored to suit the environmental features and values of the land. [emphasis added]*

Land use and development is controlled in the zone to safeguard the natural environment and conserve the identified environmental qualities of the land. Most agricultural uses require a planning permit. In general, there is an expectation that a proposal will only be permitted if it conserves the values identified for the land, the site is environmentally capable of sustaining the proposal, and it is compatible with surrounding land uses.

The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a smaller lot for a utility installation.

13. PN42 states that the RCZ is designed to be applied to rural areas where:

- a) *the protection of the environmental features of the land is of primary strategic importance including, for example, native vegetation, flora and fauna, significant habitats, or they could relate to the visual qualities of the land*
- b) *the environmental features of the land are scarce and strict controls are required to prevent the further loss or decline of those features*
- c) *land use and development could directly or indirectly threaten the environmental values of the land and strict controls are required to manage this.*

14. Importantly it notes that:

If the environmental or landscape features cover a large rural area, the Rural Conservation Zone is likely to be suitable. However, if the features are widely dispersed or fragmented and the surrounding land has been substantially altered (for example, broadacre farming areas with wildlife corridors), the other rural zones may be more appropriate supplemented with overlays.

15. According to PN42, possible RCZ areas include:

- a) *relatively intact natural areas where land use and development could result in the loss of important environmental features or values*
- b) *areas of biodiversity or ecological significance*
- c) *rural areas that contain threatened species habitat, such as wetlands, water catchments and grasslands*
- d) *rural areas of high scenic or landscape value*
- e) *environmentally degraded areas where a cautious approach to land use and development is required to avoid further environmental damage*
- f) *rural areas that are unstable or prone to erosion or salinity*
- g) *open, potable water supply catchment areas.*

16. Based on PN42 it is noted that:

- a) No reference is made to flooding or protecting life and property from flooding as a purpose of, or a reason to apply, the RCZ;
- b) There is a strong emphasis on the land having identified environmental qualities which require protection;
- c) The RCZ is to be utilised when strict controls are required to protect scarce environmental features; and
- d) Is not appropriate in areas where the environmental features are dispersed or fragmented and the surrounding land has been substantially altered.

17. It is made clear from PN42 that the environmental values to be protected by the RCZ are to be identified in its schedule. The question is, what are the environmental values that Council is trying to protect with the proposed RCZ2?

18. The proposed schedule 2 to the RCZ lists the conservation values as the following:
- a) To recognise that the Belfast Lough area is subject to flooding from the Moyne River estuary.
 - b) To recognise the Belfast Lough area provides important habitat for flora and fauna.
 - c) Future use and development of this land must acknowledge the environmentally sensitive and fragile condition of the land.

To recognise that the Belfast Lough area is subject to flooding from the Moyne River estuary

19. It is acknowledged that the scope of what constitutes 'environmental values' for the purpose of the RCZ can be broad. However, in our submission, in considering whether to recommend the application of the RCZ, the Panel should consider each of the specific values identified in the schedule to the RCZ schedule, satisfy itself that they are values consistent with the purpose of the zone and PN42 and be satisfied that those values actually exist.
20. In our submission, the first identified value relating to flooding from the Moyne River estuary is not an environmental value consistent with the purpose of the RCZ and PN42. In cross examination regarding this environmental value, Mr Glossop made some oblique references to environmental features in PN42 which he considered could be connected to flood risk. Mr Glossop nonetheless agreed that if flood risk was an environmental value and it was the only environmental value in the schedule, it was not a sufficient reason alone to apply the RCZ. This means that even if the Panel disagrees with our submission that flood risk is not a protected environmental value under the RCZ, Mr Glossop's evidence is that it is not sufficient in and of itself to justify the application of the RCZ. Something more would be required.
21. In our submission, there is a very good reason why flooding is not an environmental value specified in either the purpose of the RCZ or PN42 – its because it is an environmental constraint that is managed by other tools, specifically the FO and LSIO.

To recognise the Belfast Lough area provides important habitat for flora and fauna.

22. The second identified value in the proposed RCZ2 states that the Belfast Lough area provides important habitat for flora and fauna. The Panel has no evidence before it to satisfy itself that this is the case.
23. Mr Glossop clearly had reservations on this matter as he has appropriately qualified his evidence on this issue: At paragraph 166 of Mr Glossop's evidence he states:

The Structure Plan observes that the area surrounding Belfast Lough contains vulnerable fauna populations and that the ongoing protection of the environmental values of the Lough is important. Applying the Rural Conservation Zone to protect

such areas is consistent with the guidance in the Practice Note. That said, I have not been provided with any evidence of these environmental values outside of the Structure Plan. [emphasis added]

At paragraph 170 of his evidence, Mr Glossop states:

If the environmental values set out in the Structure Plan can be established and given that the majority of the land is identified as flood prone, it is an acceptable planning outcome to heavily control land use and development outcomes to protect this environment. [Emphasis added]

24. The environmental values of Model Lane have not been established to an extent where this Panel can be satisfied that the rezoning is appropriate. Specifically, there has been no report provided to this Panel that illustrates either the biodiversity values of the land or its landscape significance.
25. It is fair to say that if such an assessment was carried out, there will be areas of the Lough which are identified as having these values – particularly the public and private land within the floodplain which directly abuts the Lough. A small area of land on the [REDACTED] land is currently managed by the [REDACTED] on behalf of the CMA for this specific reason. However, the environmental values of the land outside the floodplain or for land which is used for broadacre agricultural purposes has not been established. Such a restrictive zone should be applied on more than Council's say so in a structure plan.
26. In his oral evidence, Mr Glossop pointed to three sources of support for the environmental values identified in the proposed RCZ2:
 - a) The Great South Coast Regional Plan 2014 (**Regional Plan**);
 - b) The Port Fairy Coastal & Structure Plan (**Structure Plan**);
 - c) The statement at page 32 of Ms Ring's evidence referring to the Port Fairy Floodplain Development Plan 2019 (**DP2019**) recognising the edges of Belfast Lough remain in a relatively natural state and playing a critical role in broader environmental systems.

Regional Plan

27. Mr Glossop observed that the Regional Plan shows a sizable portion of land (which appears to include Belfast Lough) as an area containing high value terrestrial habitat. This is shown on the plan below. It should be noted that the orange diagonal lines running through that same area identifies the region as a 'primary growth corridor'. A common sense application of these high level designations would involve undertaking further analysis at local level to

determine the location of the habitat and resolve any inconsistency between the growth objectives identified in the Regional Plan and the protection of flora and fauna.



Structure Plan

28. The Structure Plan reflects a confused approach to identifying the values of the Belfast Lough. It struggles to identify those values, variously moving between biodiversity, landscape and view lines. It certainly fails to distinguish between the developed areas around Model Lane and the floodplain land adjacent to the Moyne River.
29. The Structure Plan includes the following references:
 - a) At page 19, it notes the presence of endangered flora and fauna within the settlement, particularly Shearwaters, Latham's Snipe and Hooded Plovers. It does not specifically identify the location of this habitat. We note that there has been no technical report provided to the Panel which confirms the extent of and location of this habitat.
 - b) At page 29, it includes a strategy to reduce the extent of existing Low Density land to the north of the township within the Belfast Lough Environs to reflect the constraints of the land (flooding and industrial buffers) and visual sensitivity as a result of its location adjoining the Lough and, as a result, there is a strategy to discourage new dwellings within the Belfast Lough Environs. This seems to illustrate that it is the flood risk which is driving the zoning considerations, not flora and fauna.
 - c) At page 43, in the context of 'built environment', it refers to development occurring within Belfast Lough impacting on open views across the Lough. We note that view lines are typically managed by DDOs and the DDO is being removed from the Model Lane land which would make this objective difficult to achieve.
 - d) At page 64, in section 3.7 'Landscape & Environment', it refers recent confirmation of Latham's Snipe populations in the Port Fairy West / South Beach area having informed the identification of wetland areas for protection, while rezoning of land in

the Belfast Lough area will further protect known populations of vulnerable fauna in that location. No reference is made to what vulnerable flora exists and where it is located.

- e) At page 65, it notes that estuaries such as Belfast Lough represent unique ecosystems comprising coastal saltmarshes, rushes, sedges and seagrasses which link catchments to the coastal marine environment. Adjoining land management practices and development (such as for housing) has the potential to significantly impact the Belfast Lough. Again, these areas are not identified but are likely to be the land in immediately proximity to the Moyne River.
- f) At page 67, it includes a strategy to provide for the ongoing protection of the 'environmental values' of the Belfast Lough through the implementation of planning controls including the rezoning of land where required. Those environmental values are not specified.
- g) At page 67, it includes the action to rezone land within the Belfast Lough to reflect its environmental significance. Reference is not made to what its environmental significance is.
- h) In the implementation section of the Structure Plan it includes the following extract which seemingly represents an 'all in' approach to justify the rezoning:

LAND	EXISTING ZONE/S	PROPOSED ZONE	COMMENTS
Land in the Belfast Lough Area	Farming Zone, Low Density Residential Zone & Industrial 1 Zone	Rural Conservation Zone (private land) and Public Conservation & Resource Zone (public land)	Rezoning of land within the Lough area to reflect the impacts of this area from flooding, its role in accommodating the ecological function of the Lough, as well as associated flora and fauna. It also reflects the importance of this landscape when viewed from key entry points to the township such as Griffiths Street and the rail trail.

- 30. The approach to identifying the Belfast Lough and what its values are is somewhat nebulous in the Structure Plan. Where the values are intended relate to flora and fauna – as is the case with the proposed RCZ2, it is appropriate that there be a flora and fauna assessment to support both the identification of the flora and fauna and, if it is present, the extent of it.
- 31. If the Structure Plan is intending to protect the landscape character of the Belfast Lough including viewlines to the coast, then it is also appropriate that there be an assessment undertaken to determine what those viewlines are and the appropriate instrument to protect them. The usual instrument would be the application of a DDO but that is being removed from the Model Lane land.

32. We note that the *Planning for Biodiversity Guidance (DELWP, dated December 2017)* (**Guidance Note**) also provides guidance on the application of the RCZ as a zone to manage biodiversity. The purpose of the Guidance Note is to guide Council's to meet their obligations to protect and conserve biodiversity. Section 3 provides the 'tool kit' for biodiversity planning and notes that zoning can be an effective tool for the protection and conservation of biodiversity.

33. At section 3.3.3 it discusses the appropriate application of the RCZ stating:

The Rural Conservation Zone (RCZ) is a rural based zone that can be used to facilitate the protection and conservation of biodiversity. RCZ can be applied to private land in areas with high biodiversity value. Agriculture is allowed in the RCZ provided it is consistent with the environmental and landscape values of the area. Unlike the other rural zones, farming is subordinate to the environmental values of the land.

Key features of the RCZ include:

- *a purpose 'to protect and enhance natural resources and the biodiversity of the area'*
- *a permit is required for most agricultural activities*
- *prohibits uses such as intensive animal husbandry, industry (other than Rural industry) and warehouses (other than Freezing and cool storage and Rural store)*
- *decision guidelines require consideration of whether a use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.*

34. Table 1 of the Guidance Note describes the type of land appropriate for the RCZ:

Biodiversity issue	Planning tool
Large relatively intact natural areas where land use under the existing zone may result in the loss of important biodiversity. For example, an area that has been zoned for rural living that has not yet been subdivided/developed, and contains important biodiversity values.	Rural Conservation Zone

35. It is insufficient for Council to say that because it has identified flora and fauna values for the Belfast Lough in a Structure Plan that it means that those values are present. When relying on the presence of flora and fauna as the basis to apply a restrictive zone, the bare minimum would be to present to this Panel an assessment which supports that position. This has not been done. Mr Glossop acknowledged this and has qualified his evidence accordingly.

36. The final matter Mr Glossop pointed to as supporting the RCZ was a comment in Ms Ring's evidence referring to the Floodplain Development Plan (2019) recognising the edges of Belfast Lough remaining in a relatively natural state and playing a critical role in broader environmental systems. We note that the 2021 version of the Development Plan omits this statement and contains no reference to the biodiversity values of Belfast Lough.

Future use and development of this land must acknowledge the environmentally sensitive and fragile condition of the land

37. The final conservation value in the draft RCZ1 is 'Future use and development of this land must acknowledge the environmentally sensitive and fragile condition of the land'. In our submission it is entirely unclear what is intended to be meant by this value and how it is achieved through the application of the RCZ. We submit that it is not an environmental value recognised in the purpose of the RCZ or in PN42. It would also appear to be a somewhat redundant conservation value in that it refers to future use and development of the land.
38. In planning, the tail should not wag the dog. Placing a RCZ over land and then asserting it has environmental values is not the proper approach. Similarly, it is not proper planning to seek a particular outcome (i.e. a desire to reduce the likelihood of development) and use that desired outcome as a basis to select the most restrictive zone. You don't select the most restrictive zone without a proper justification, including a proper application of the PN42.
39. The Structure Plan is a useful document for stating Council's objectives and, in many aspects of the plan, Council's objectives have been accompanied by technical information which provides transparency for Council's approach. But too often in this hearing we have had witnesses relying on statements in the Structure Plan as a sufficient strategic justification for the next step. It was understandable that Ms Ring thought that there were technical assessments to underpin the biodiversity values referred to in the Structure Plan. However, such information is not before the Panel.
40. In discussions during Council's presentation, reference was made to the Beveridge North West PSP process. We consider this a very good example of the appropriate way to apply a RCZ. It was applied to a portion of land described as the Spring Hill Cone – it was an area which didn't have biodiversity value but had identified value in its topography and landscape features. The intention was that the land would be rezoned RCZ until it could transition into public ownership in the form of parklands. The Panel in that case had the benefit of:
- a) The landscape and visual assessment prepared by Planisphere on behalf the planning authority which was a comprehensive landscape assessment which evaluated the character, waterways, landform and landscape. The outcome of the assessment is that some of the land in the precinct was identified for zoning into RCZ;

- b) Landscape and Visual Assessment prepared by Allan Wyatt;
- c) Landscape Architectural Evidence prepared by Barry Murphy. Mr Murphy made recommendations regarding the extent of land which should be zoned RCZ be virtue of its landscape value; and
- d) Landscape assessment by Craig Czarny

The C69 Panel does not have the benefit of receiving similar supporting information in relation to the environmental values of the Lough.

- 41. Council has acknowledged that our clients are not “going to get wet feet”. We assume this means that Council is not concerned that the Model Lane residents are at risk of inundation. If this is the case, it is difficult to understand the basis for supporting a blanket ban on development in the existing low density development area which generally sits outside the 1% AEP flood plain.
- 42. We understand and accept the desire not to have two zones across single lots (despite the fact that this is an existing condition with the [REDACTED] land). The better solution is the one proposed by Mr Glossop which is to leave the zoning as is and apply the existing ESO over the land. Mr Glossop observed that the issue with using an overlay is that it doesn't control land use. In our submission that is entirely appropriate here. It is the development which needs to be regulated and that can be achieved by the LSIO.

Recommendations sought:

- a) That the land within Model Lane (including the three submitters' land) remain in as currently zoned.
- b) Council undertake the necessary technical assessments to determine the environmental value of the Belfast Lough and its extent and that consideration be given by Council to apply an Environmental Significance Overlay over land within the area which has identified environmental value or is otherwise considered unsuitable for development based on the identified environmental values.

APPROACH TO FLOOD RISK

- 43. The three submitters have not had the benefit of receiving technical advice and calling expert evidence on the Amendment's approach to flood risk. They have had the benefit of receiving and reviewing the evidence. It is their position that the appropriate standard to be applied is 0.8m SLR for 2100.

44. The submitters understand that portions of their land are subject to flood risk, including portions which are used for flood storage and that it is not appropriate for those portions of their land to contain dwellings.
45. The question is whether there should be an opportunity for those parts of the submitter's properties closer to Model Lane to develop their land in a manner consistent with the existing low densities of dwellings in that location. Council says that those properties 'aren't going to get their feet wet', if that is the case why should there be an opportunity for small levels of development to occur in line with the expectations of the existing LDRZ.
46. There are two elements are play on the approach to flood risk:
- a) the strategic basis for the application of a 1.2 SLR to 2100; and
 - b) the translation of that requirement into the proposed overlay controls.
47. In relation to the strategic basis for 1.2m SLR, there it is common ground between the parties that clause 13.01-2S provides for a minimum of 0.8 SLR. In our submission, climate change and its effects have the potential to impact everyone in Victoria and, indeed, globally. As a result, it is appropriate that significant departures from the State standard should be led by the State. If there is a risk to life and property, it is not appropriate that it be addressed in an ad hoc fashion and left to the whims of local politics. There is no reason that Port Fairy should have different standards than Point Lonsdale. If the Panel has any reservations about the 1.2m standard, it would be appropriate for it to make a recommendation that the standard be reconsidered at a State level.
48. In relation to translation of the requirements into the proposed overlay controls, these are matters which have already been the subject of detailed submissions before the Tribunal. Without repeating those submissions at length, we note our position as follows:
- a) We agree with the submissions of Rivers Run and Pendragon that the LSIO is the appropriate tool to plan for and manage the risks of sea level rise. Leaving the FO to apply to the areas which convey flood flows or store floodwater is an appropriate approach which is consistent with the *Planning Practice Note 12: Applying the flood provisions in planning schemes* (and this includes the portions of the three submitters' lands which are close to the Moyne River). It would also substantially simplify what has become an overly complicated Amendment. It would also take out of the equation the legal issue which has been the subject of debate between the parties. This is an issue which is seemingly unable to be resolved via this Panel process but, if left unresolved, could result in consequences which are clearly unintended by Council (being a prohibition of subdivision) which would not be desirable in the circumstances;

- b) 0.8m SLR for 2100 adopts a high level of conservatism which is supported by current policy and the evidence of Mr Bishop and Ms Barich. Nowhere in planning do we plan for the 95th percentile scenario and it is not appropriate to start here where there are appropriate tools available to manage the known flood risk.
- c) The practical distinction between the 1.2m SLR with no freeboard or 0.8m SLR with 600mm freeboard is an important one in terms of a development's ability to realistically achieve mitigation measures. Consequently, our clients support the application of a 0.8m SLR together with the provision of a 600mm freeboard which allows for development to take realistic steps to mitigate flood risks.

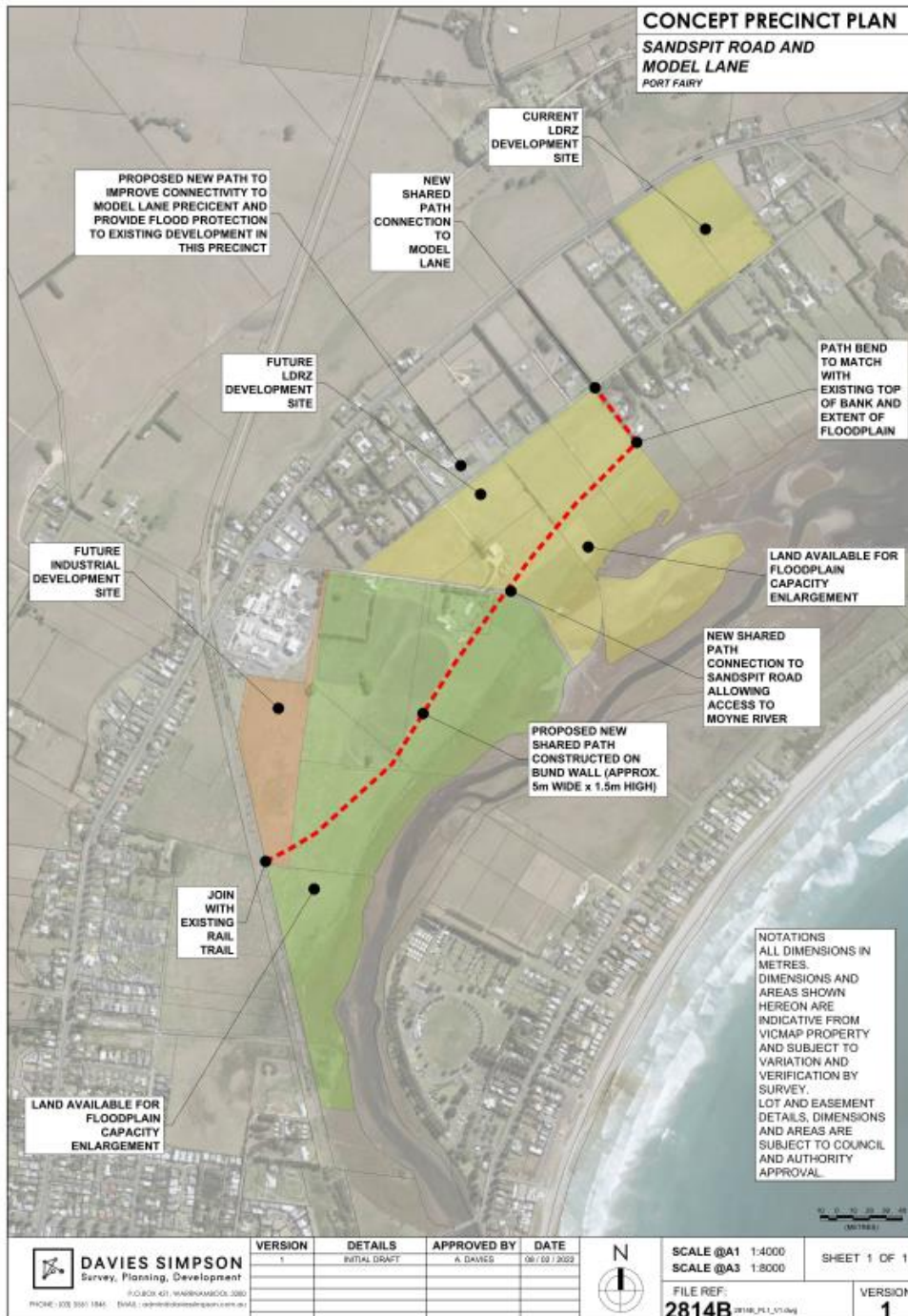
Recommendations sought:

- a) The 0.8m SLR to 2100 be adopted and references to 1.2m SLR be deleted from clause 21.06, and the overlay controls;
- b) The LSIO be applied to land as shown in the 0.8m mapping produced by Council;
- c) Delete references to 1.2 SLR in the Floodplain Development Plan;
- d) Delete the following strategies from clause 21.09-3:
 - *Discourage new dwellings within the Belfast Lough Environs as identified on the Port Fairy Framework Plan.*
- e) Re-draft the following strategy from clause 21.09-3 'Environmental Risks and Amenity' to remove references to Flood Hazard Classes:
 - *Use Flood Hazard Classes, which consider a combination of depth and velocity, to guide decision-making on the appropriateness of development approvals.*
- f) Delete the following strategy from clause 21.09-3 'Environmental Risks and Amenity':
 - *Do not support any mitigation measures undertaken by individual landowners or undertaken site-by-site as a basis for any development approval.*

APPROACH TO MITIGATION

49. The three submitters do not understand the lack of support for mitigation measures undertaken by individual landowners or on a site by site basis. FFLs are a form of mitigation, as is the filling of the land. Any measures proposed would have to be acceptable to the CMA and appropriate engineering solutions should be encouraged where it serves to manage flood risk.

50. In this vein, we attach the following plan which has been prepared in conjunction with the three submitters to illustrate ways in which development closer to Model Lane could occur while allowing for increased floodplain capacity and opportunities for a shared path connection through the Lough to the Rail Trail. Such a proposal would also provide an opportunity to land closer to the Moyne River to be preserved.



HOUSING AFFORDABILITY

51. The Council has downplayed issues associated with housing affordability. The land supply analysis for the whole of the municipality is not a realistic reflection on what is actually happening on the ground in Port Fairy. It *is* difficult for decision makers to make reasonable guesses of what regional housing demand will look like if the sea and tree change movement starts to dissipate. However, here and now, there is a genuine housing crisis in Port Fairy.
52. For instance, Council recently endorsed a plan for the Mayor, ██████████ to write to resident ratepayers asking them to consider making their property available for long term lease in a bid to ease housing pressures in the shire. The Mayor noted that the rental vacancy rate is below 1% in the region and there is a critical need for housing with people facing homelessness and businesses being unable to attract workers.¹ This is incompatible with the assertions of Council that it has sufficient land supply based on current data.
53. The submitters' land has the ability to make a small but important contribution to the critical land supply shortage in Port Fairy.

THE SUN PHARMA POLICY BUFFER

54. The proposed policy buffer would affect land owned by the ██████████ and a small portion of land owned by the ██████████. These submitters do not take issue with the application of the policy buffer.
55. We understand that SunPharma is content to maintain the status quo in relation to the existing zoning of the Industrial 1 Land, Farming Land and Low Density Residential Zone land closest to its property.
56. It is noted that none of the complaints shown in Mr Ramsay's evidence arose from the three submitters' properties. Mr Ramsay considered that the retention of the Industrial 1 Zoning to the south of the SunPharma facility and its potential development for factoriettes represented a compatible land use for the SunPharma facility which would be appropriate within the policy buffer. Similarly, it should be noted that SunPharma's acoustic standards will increase with the rezoning of the Farming Zone land to RCZ as the receiving zone levels are more restrictive under the RCZ than the current zoning.

RIVERS RUN LAND

57. The future rezoning of the Rivers Run land will be addressed via a separate amendment process.

¹ <https://www.moyne.vic.gov.au/News-Media/%E2%80%9CLease-to-a-Local%E2%80%9D-to-improve-housing-availability>

58. However, they observe that Council has been inconsistent in its choice of supporting development in some areas and not others. There may be planning reasons why the Rivers Run Estate is proposed to be developed and we take no view on them. But, based on flood risk and the location of the Rivers Run land within the Belfast Lough, there is no discernible difference between one property undertaking a rezoning process to facilitate an urban scale of development verses the minor scale of development which is currently permitted and might reasonably be contemplated in the future in Model Lane -yet the approach to both has been very different.

SUBMISSIONS ON BEHALF OF [REDACTED] – 143 MODEL LANE, PORT FAIRY AND LOTS 11 & 12 LP3129, PRINCES HIGHWAY, PORT FAIRY

1. Property 6 (143 Model Lane, Port Fairy) is owned by [REDACTED]. The land is currently zoned Low Density Residential Zone and is improved with a dwelling and shed. It is currently affected by a FO, LSIO, DDO16 and the lower portion of the land which extends into the Moyne River is covered by an ESO1.
2. The ESO1 relates to Coastal Areas and Estuaries. The overlay acknowledges the importance of estuaries on the basis that:

Estuaries such as Lake Yambuk, Moyne River and The Cutting (former Merri River entrance) represent unique ecosystems comprising coastal saltmarshes, rushes, sedges and seagrasses which link catchments to the coastal marine environment. They are also under pressure associated with adjoining land management and river mouth openings. These areas are also sites which exhibit hazards related to sea level rise and potential acid sulphate soils and the need to consider these matters when considering development activity on the coast. [emphasis added]

The overlay encourages the development of land away from the overlay in order to protect the identified values of the land within the control. This was the control which Mr Glossop considered could be extended further into the Belfast Lough environs in order to manage environmental values, where such values not established for the RCZ.



Figure 1 - 143 Model Lane - Current zoning

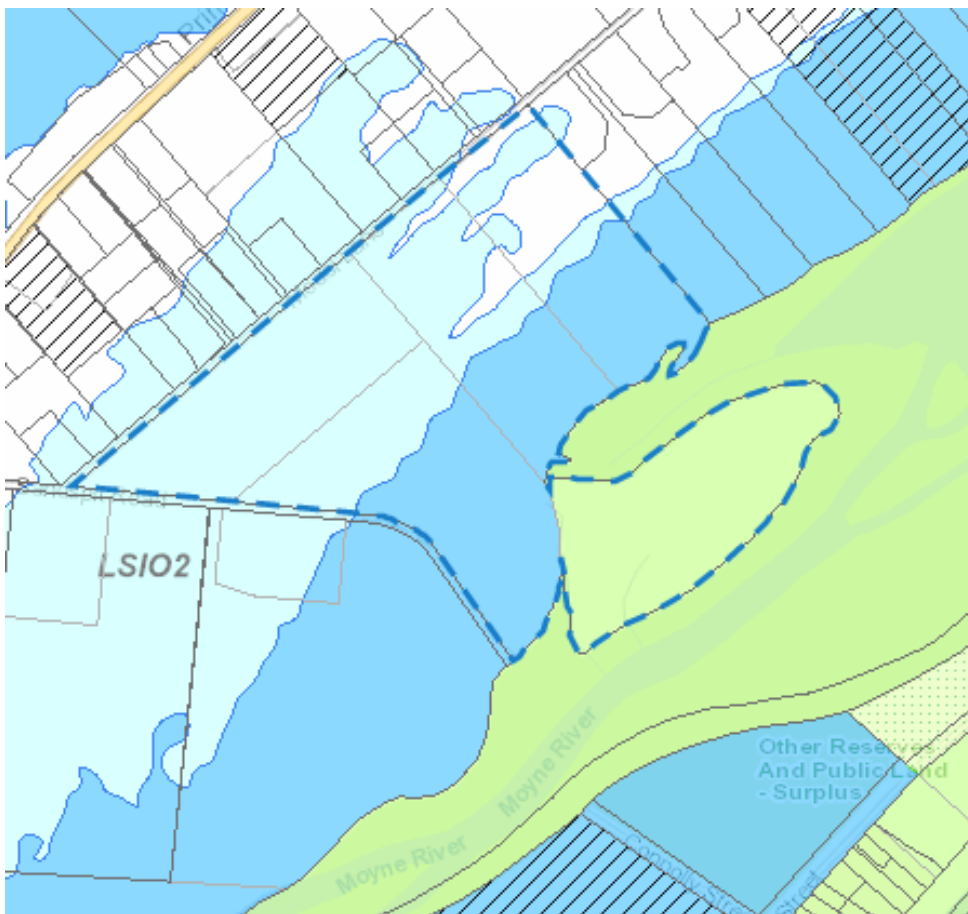


Figure 2 - 143 Model Lane – Current overlays

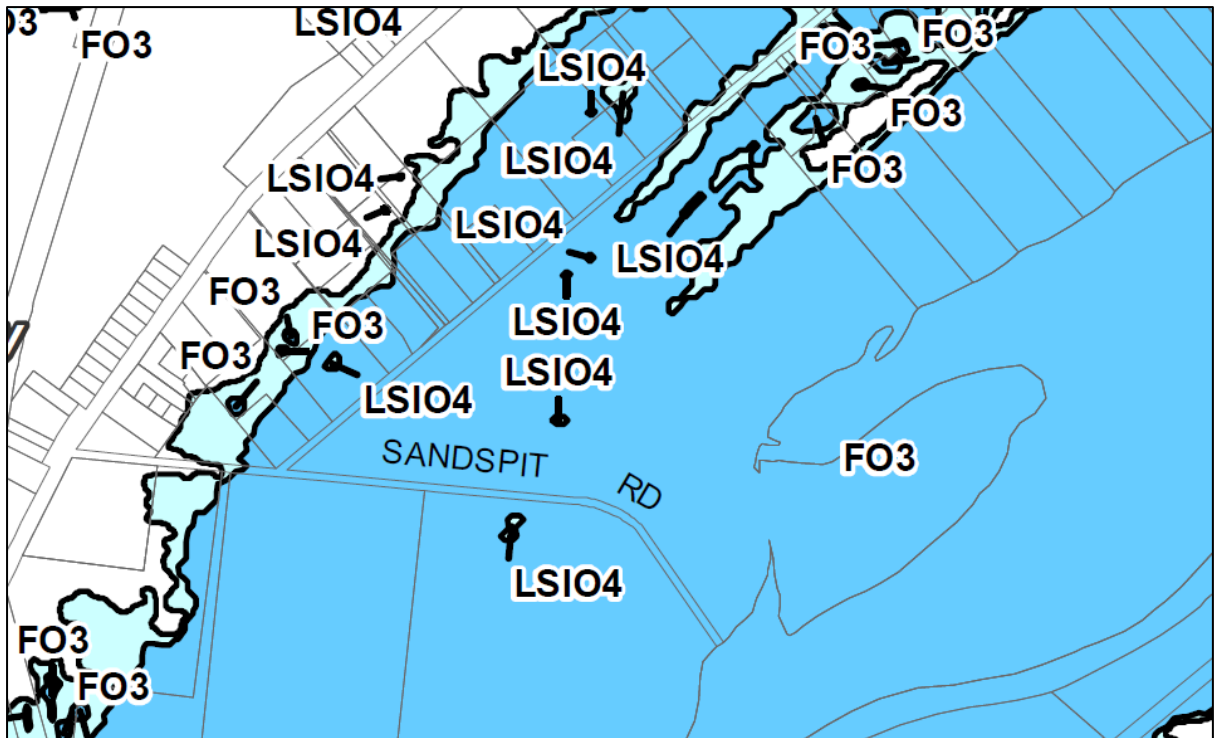


Figure 3 - 143 Model Lane - proposed FO and LSIO

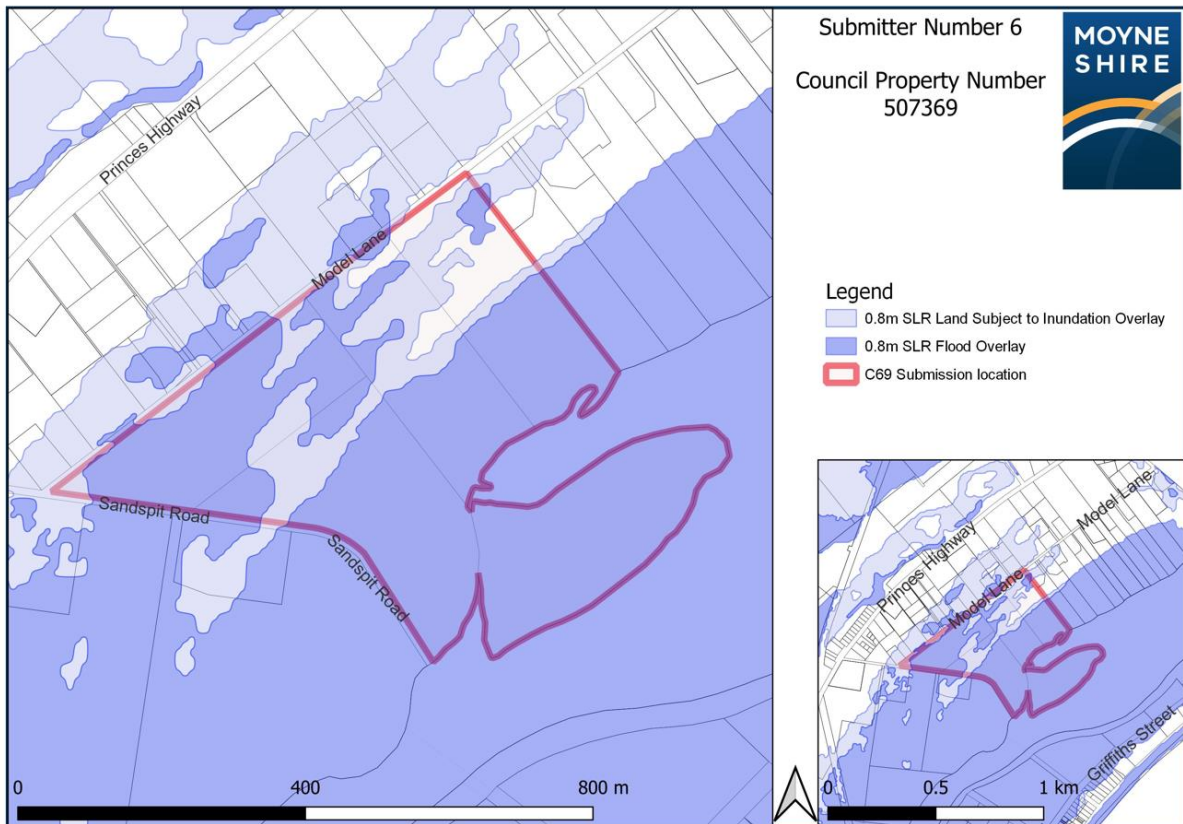


Figure 4 - 143 Model Lane - 0.8 extent

3. It is acknowledged that the mapping for the 0.8 SLR presents constraints to the development of the land other than in the areas immediately adjacent to Model Lane. In our submission this is likely to be the area where modest development could occur, and that opportunity should be retained.
4. Property 6A (Princes Highway, Port Fairy) is also owned by [REDACTED]. The land is currently zoned Low Density Residential Zone which is currently used for agricultural cropping. It is not currently affected by a FO and LSIO but is affected by the DDO16.

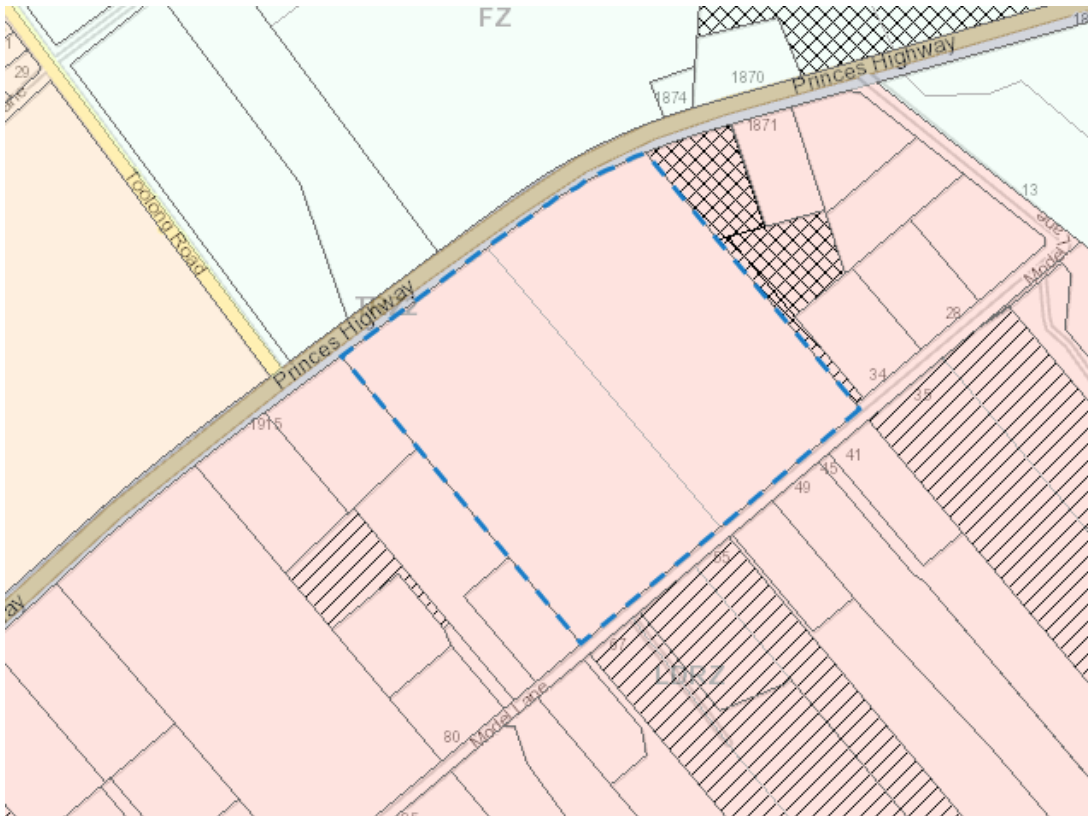


Figure 5 - Princes Highway - Current zoning



Figure 6 - Princes Highway - Current overlays

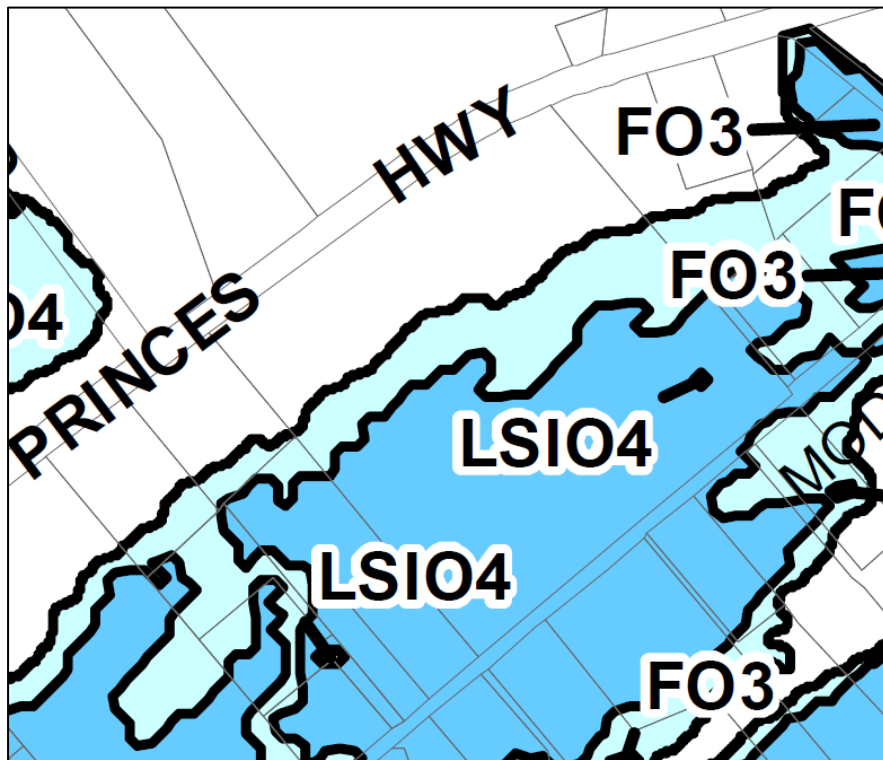


Figure 7 - Princes Highway - proposed FO and LSIO

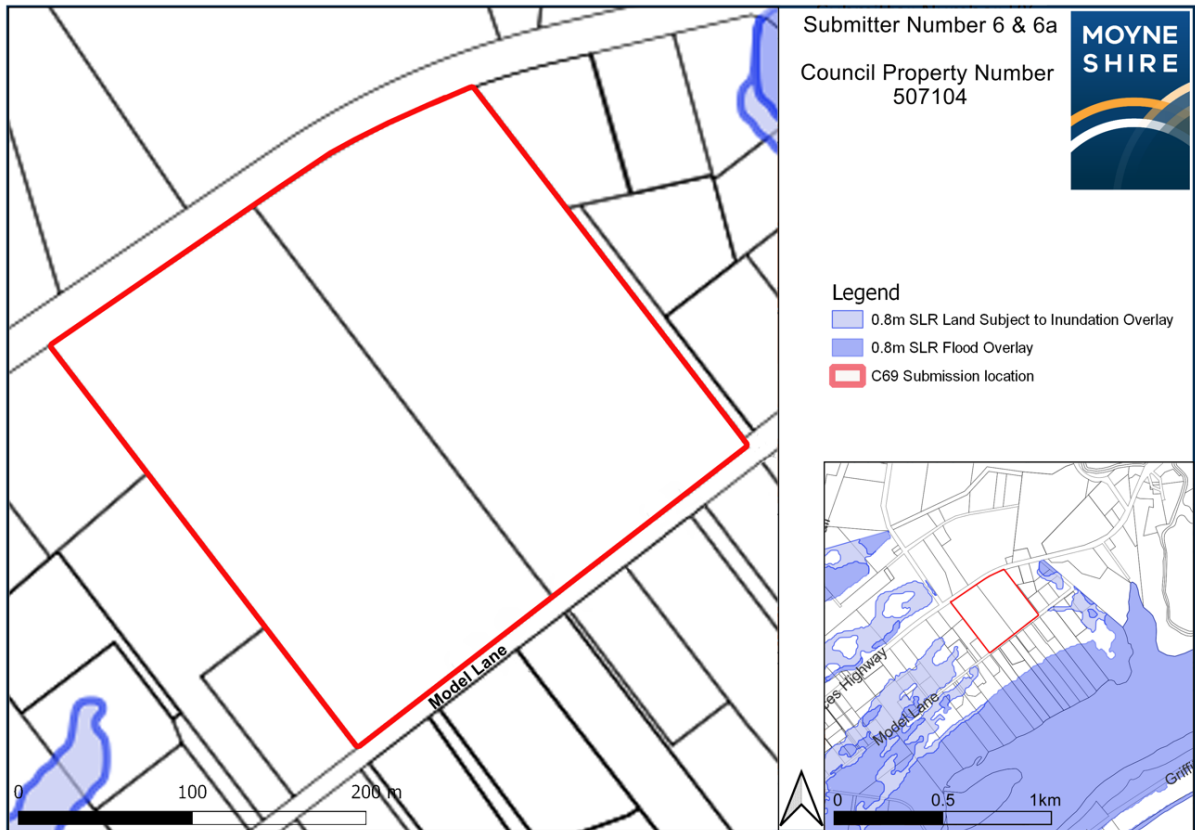
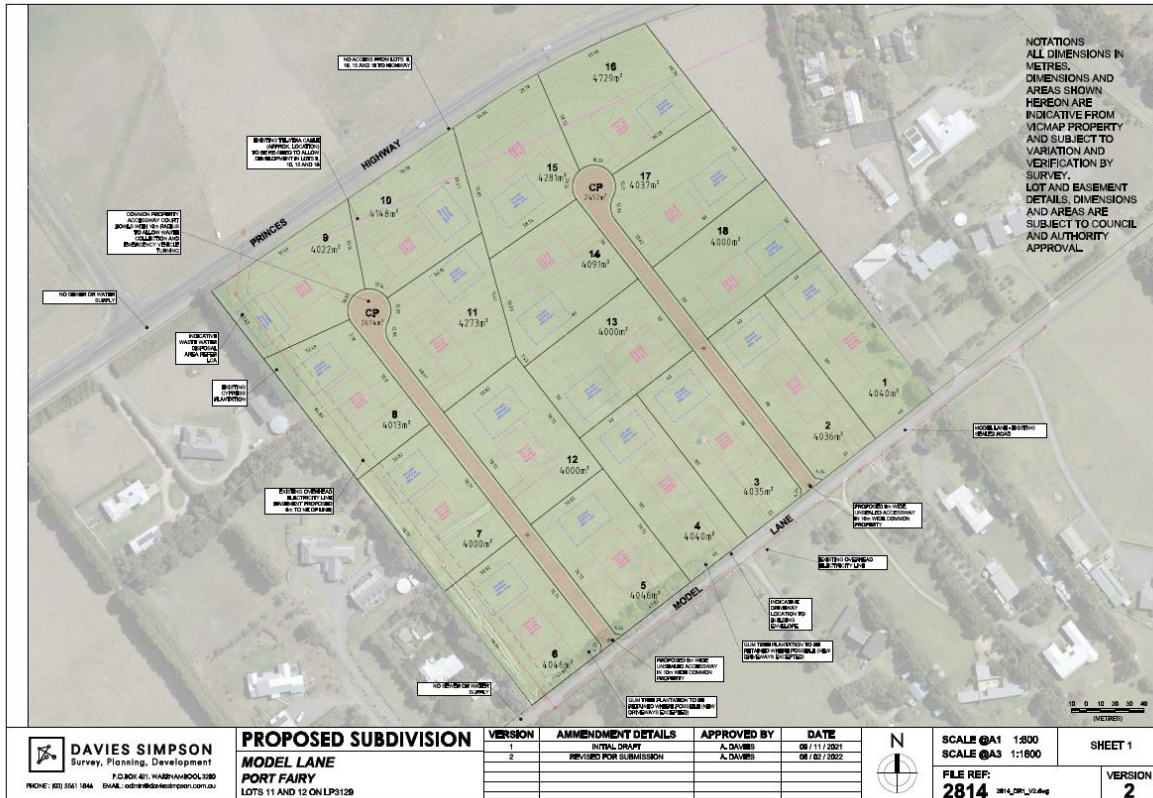


Figure 8 - Princes Highway - 0.8 extent

5. For Property 6A, the difference between the 1.2m SLR and the 0.8m is significant. It can be seen from the images above that the property is unencumbered in the 0.8m scenario and is significantly encumbered in the 1.2m. Importantly, in the 1.2m scenario, access from the property would not be possible via Model Lane unless works were undertaken to bring Model Lane up to the required standards for access in the Floodplain Development Plan.
6. We note that conclave statement 38 states: *In consideration of access to existing township allotments, there should be some flexibility in the application of the DELWP access provisions to allow consideration of overall risk assessment for the appropriateness of development.*
7. The [REDACTED] had hoped that this flexibility would apply to the creation of lots which would otherwise meet the requirements of the LSIO with the exception of the access road (which is beyond a landowners ability to control). The submitters consider that addressing the access

issue is an important matter for this Amendment. Failing to do so puts the onus on landowners to bear consequences for matters which are beyond their ability to control.

8. Shown below is a potential subdivision design for Property 6A. It can be seen that 18 lots are proposed with access drawn from court bowls onto Model Lane. This development outcome will not be achievable under the 1.2m scenario.



Recommendation sought

In the event that our submission to remove the FO is not accepted, we seek a recommendation that:

- a) The access criteria in the Floodplain Development Plan not apply to access to land via Council roads.

SUBMISSIONS ON BEHALF OF [REDACTED] OF 35 MODEL LANE, PORT FAIRY

1. Property 21 (35 Model Lane, Port Fairy) is owned by [REDACTED]. It is currently located within the Low Density Residential Zone and is improved with a single dwelling. It is currently affected by a FO and LSIO.



Figure 9 - 35 Model Lane - current zoning

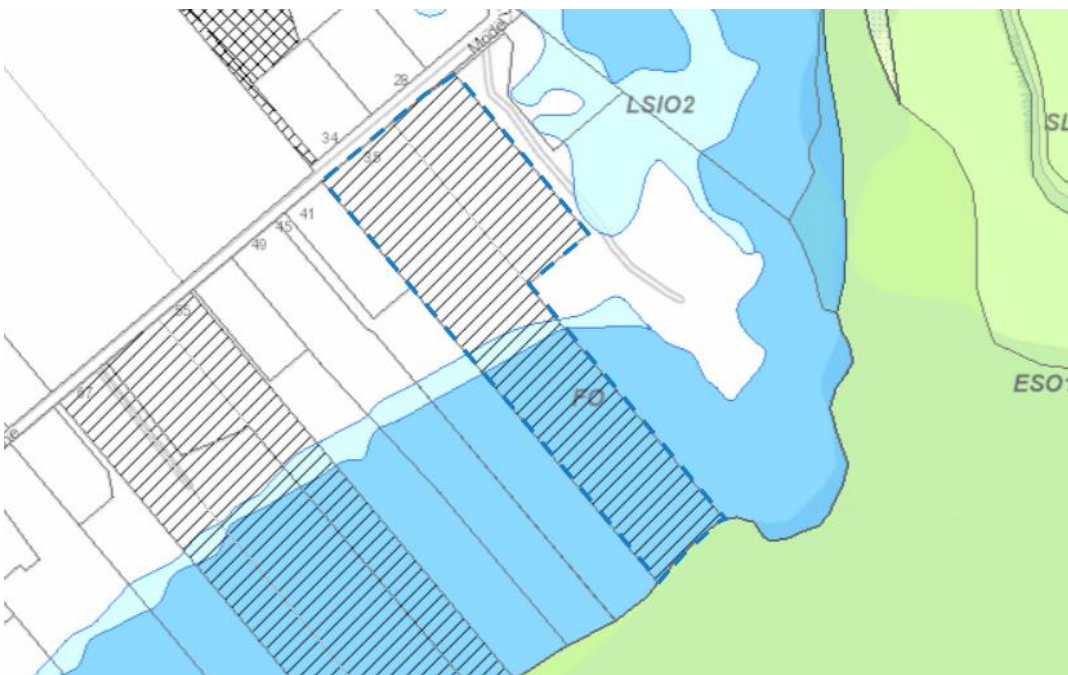


Figure 10 - 35 Model Lane - current overlays

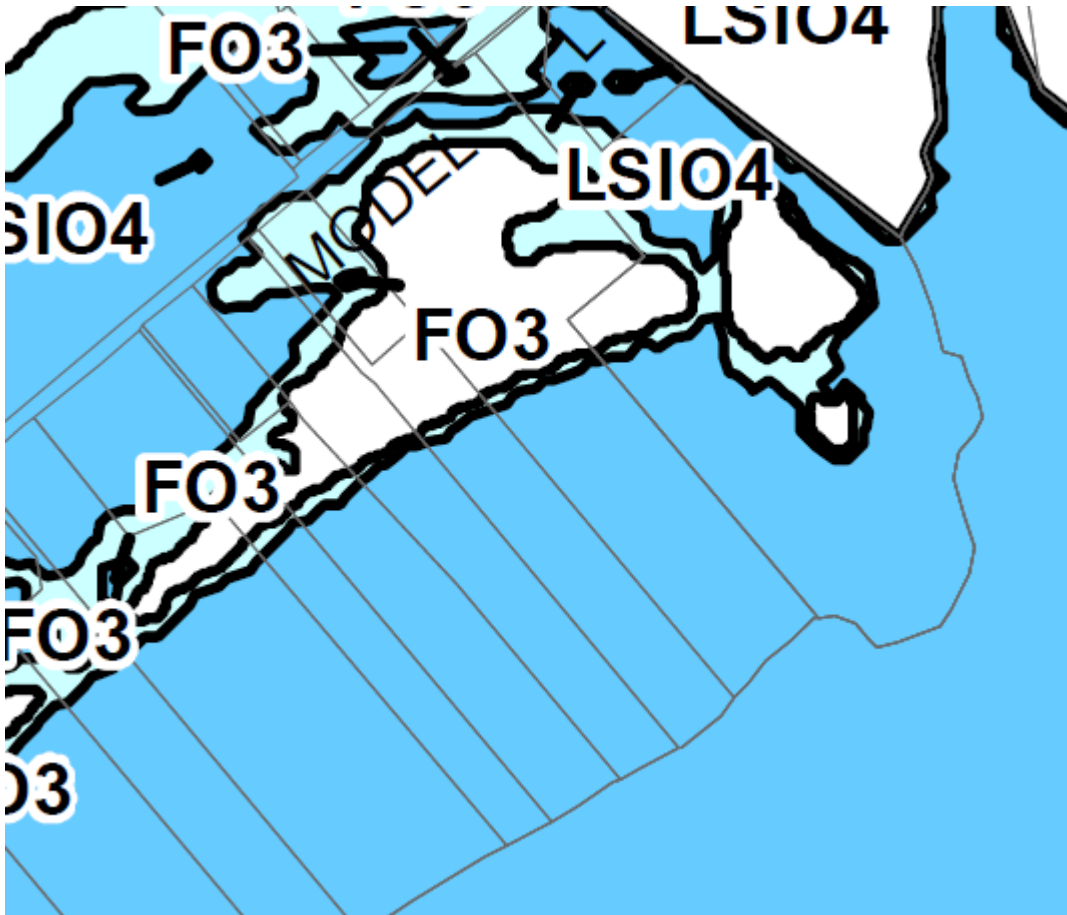


Figure 11 - 35 Model Lane - proposed FO and LSIO

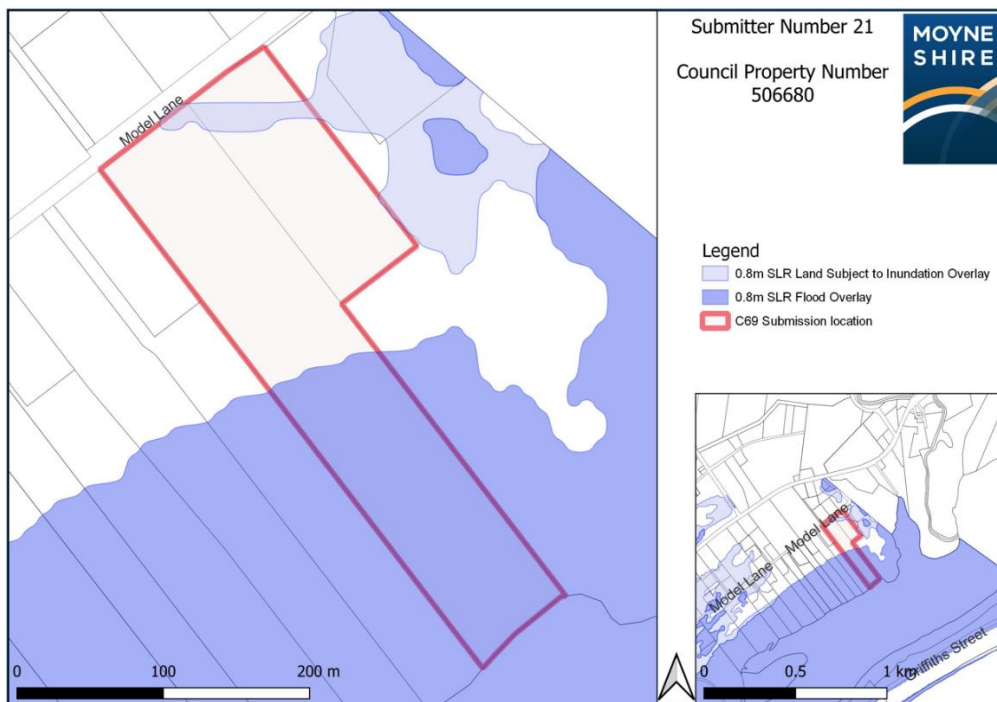
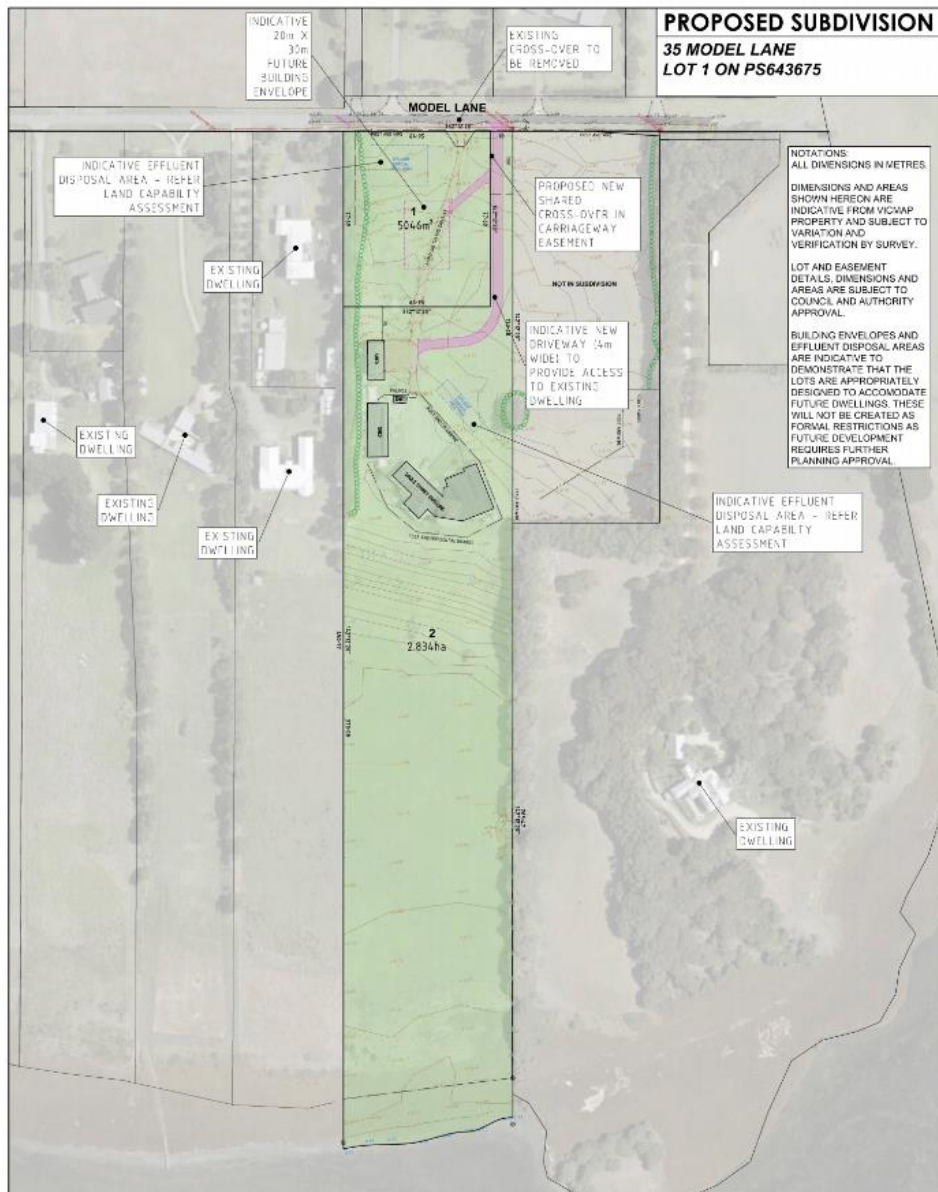
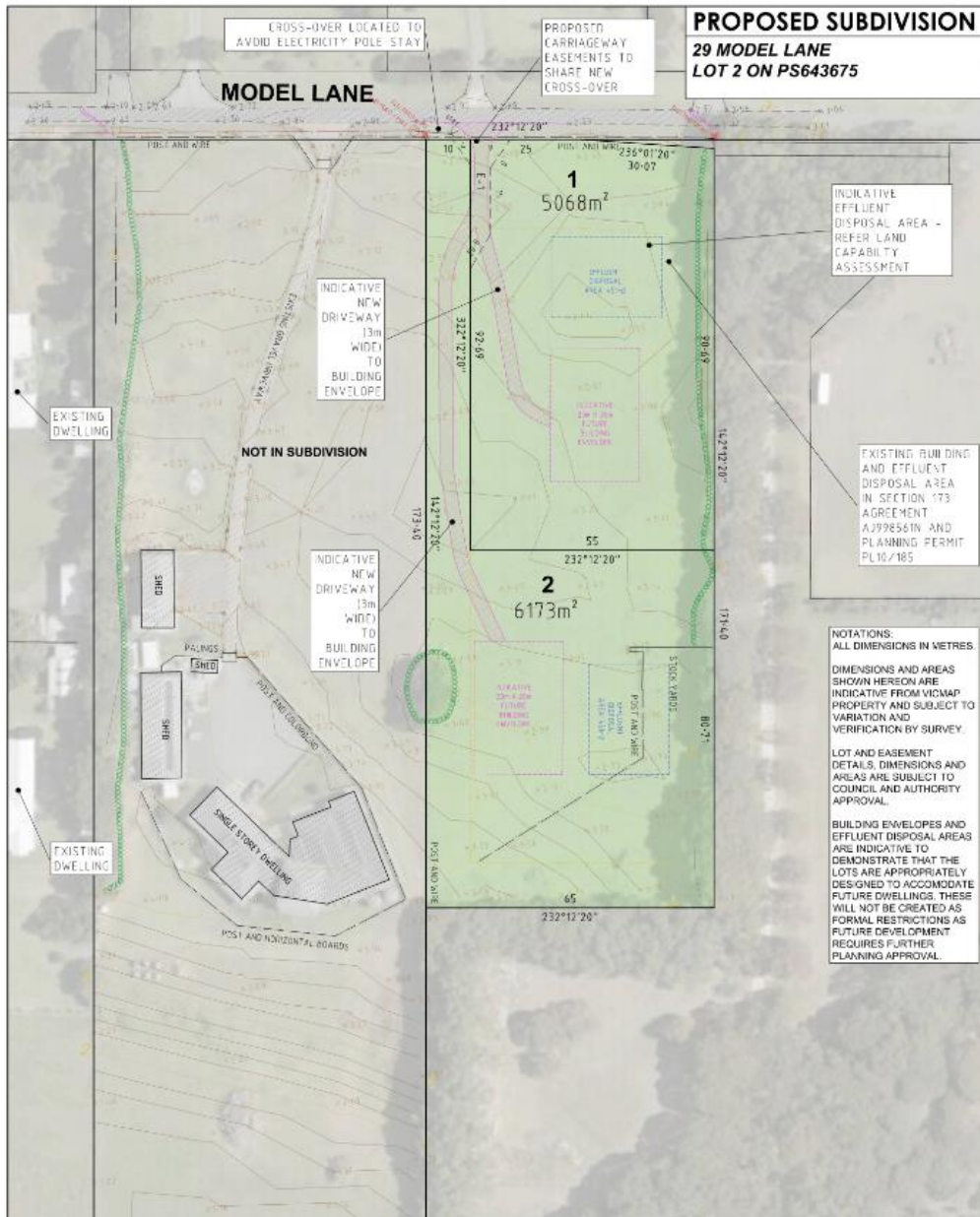


Figure 12 - 35 Model Lane - 0.8 extent

2. Two planning permits have been issued for subdivision in respect of the [REDACTED] Land to effectively create three additional lots (noting the existing dwelling). It is anticipated that the subdivisions will be complete before the Amendment proceeds to gazettel (should it do so). The site analysis plans as considered by Council in determine dto grant the permits for the two subdivisions are shown below.





3. The primary concern for the [REDACTED] is that if the exhibited FO and LSIO's are introduced, a FO will apply to Model Lane and to the frontage of the property. The [REDACTED] are concerned that owners of the new lots will be unable to obtain planning permits to construct dwellings on the lots where the Flood Overlay and Floodplain Development Plan imposes requirements that access to a building envelope have an accessway to the building envelope that:
- a) does not traverse land where the flood depth is estimated to exceed 300mm during a 1% AEP flood event under the 1.2m sea level rise scenario; and
 - b) is not subject to flooding where the product of depth and velocity ($V \times D$) exceeds 0.4 metres squared per second during the 1% AEP flood event.

4. Much of the [REDACTED] land is proposed to be located in the FO (indicating a depth of greater than 0.5m in the 95% modelled scenario) and consequently, there a concern that a new subdivision which has the benefit of a planning permit issued by Council in full knowledge of this Amendment, may not be able to be developed.
5. In our submission, it is not an appropriate outcome for lawfully subdivided land to be rendered undevelopable. Especially when compared to the 0.8m SLR scenario of the application of the LSIO shown above which shows the land unencumbered by access restrictions.

Recommendation sought

In the event that our submission to remove the FO is not accepted, we seek a recommendation that:

1. The access criteria in the Floodplain Development Plan not apply to access to land via Council roads.

SUBMISSIONS ON BEHALF OF [REDACTED] – 30 AND 50 SANDSPIT ROAD, PORT FAIRY

THE LAND

1. Property 58 (30 Sandspit Road, Port Fairy) is owned by [REDACTED]. It is currently located within the Farming Zone. It is improved with a single dwelling located near the Sandspit Road frontage. The dwelling is approximately 100 years old and experienced the 1946 floods and has been in the [REDACTED] family for 3 generations. It is subject to the FO, LSIO and DDO21.



Figure 13 - 30 Sandspit Road - current zoning

2. Property 58A (50 Sandspit Road, Port Fairy) is owned by [REDACTED]. It is currently located partially within an Industrial 1 Zone and partially within the Farming Zone. It is subject to the FO, LSIO and DDO21.

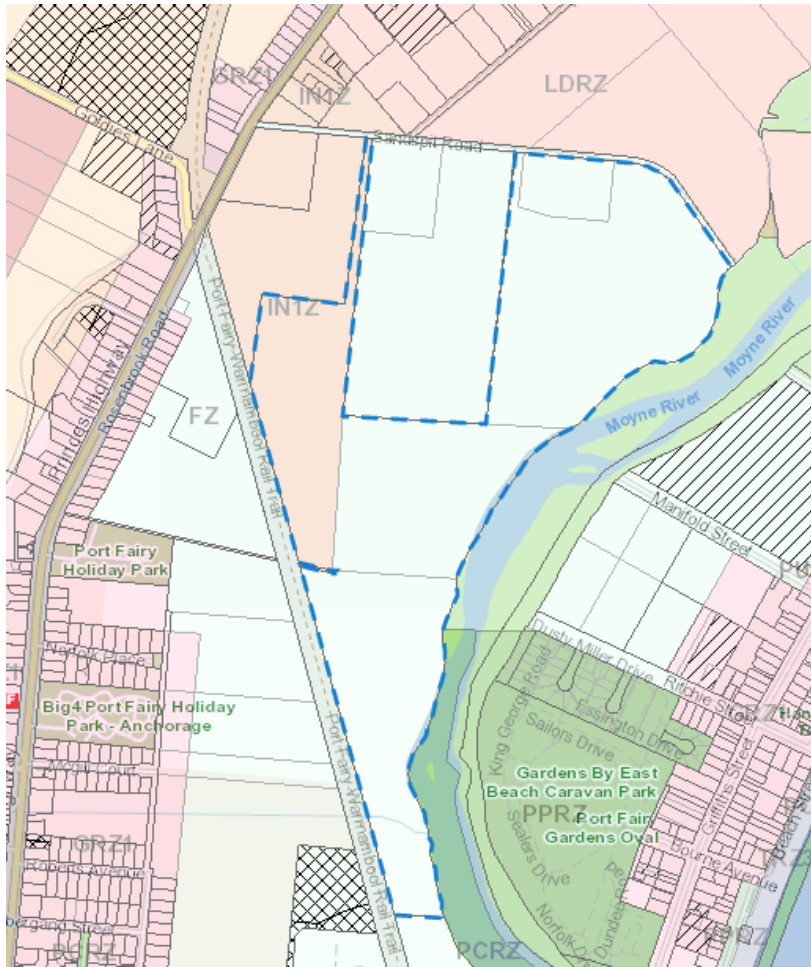


Figure 14 - 50 Sandspit Road - current zoning

3. The land within the Farming Zone is used for stock grazing (sheep rearing, breeding and grazing). The land is usually stocked with between 350-700 head of sheep, with an average of 500 head of stock. The average annual net income from the farming operation is between \$60-\$70,000 per annum. The [REDACTED] family have owned and farmed the land since the early 20th century and their operations included agricultural crop raising due to the high quality decomposed volcanic soils and the good drainage capacity on the land.

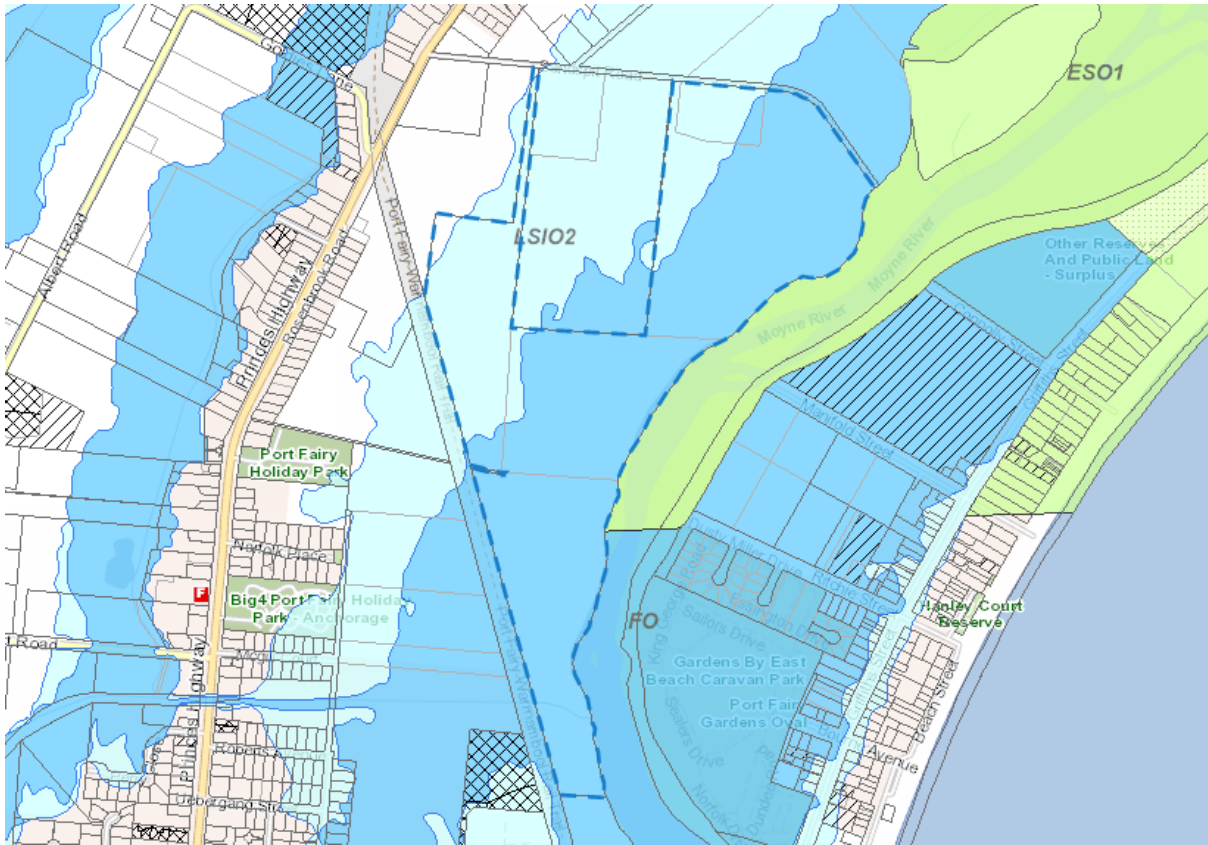


Figure 15 - 30 and 50 Sandspit Road – current FO and LSIO overlays

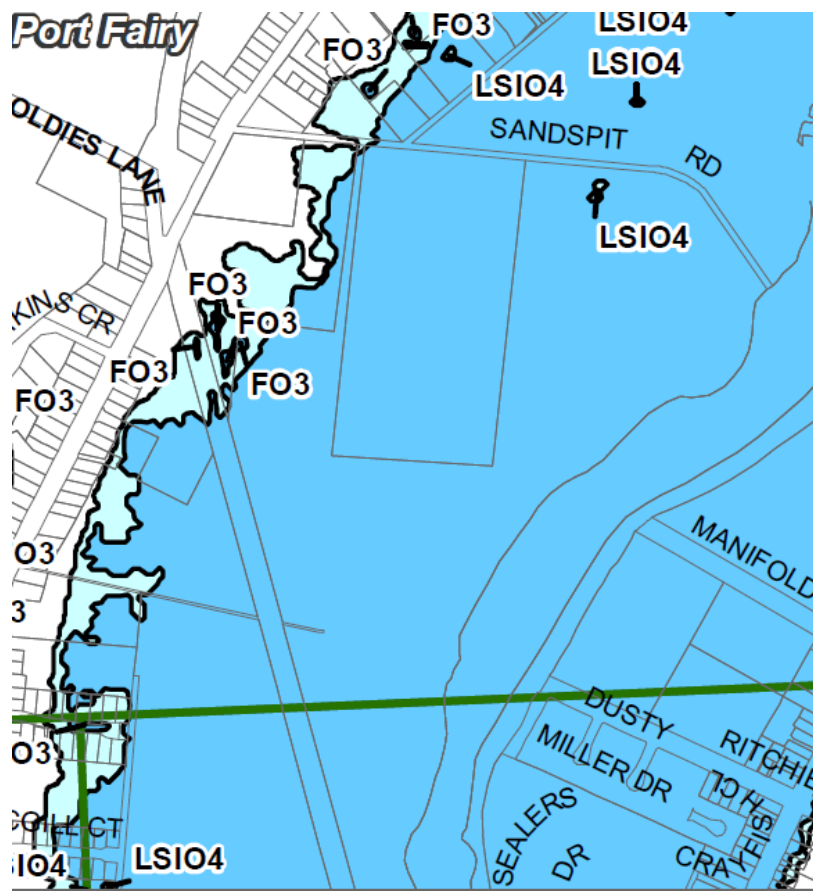


Figure 16 - 30 and 50 Sandspit Road - proposed FO and LSIO

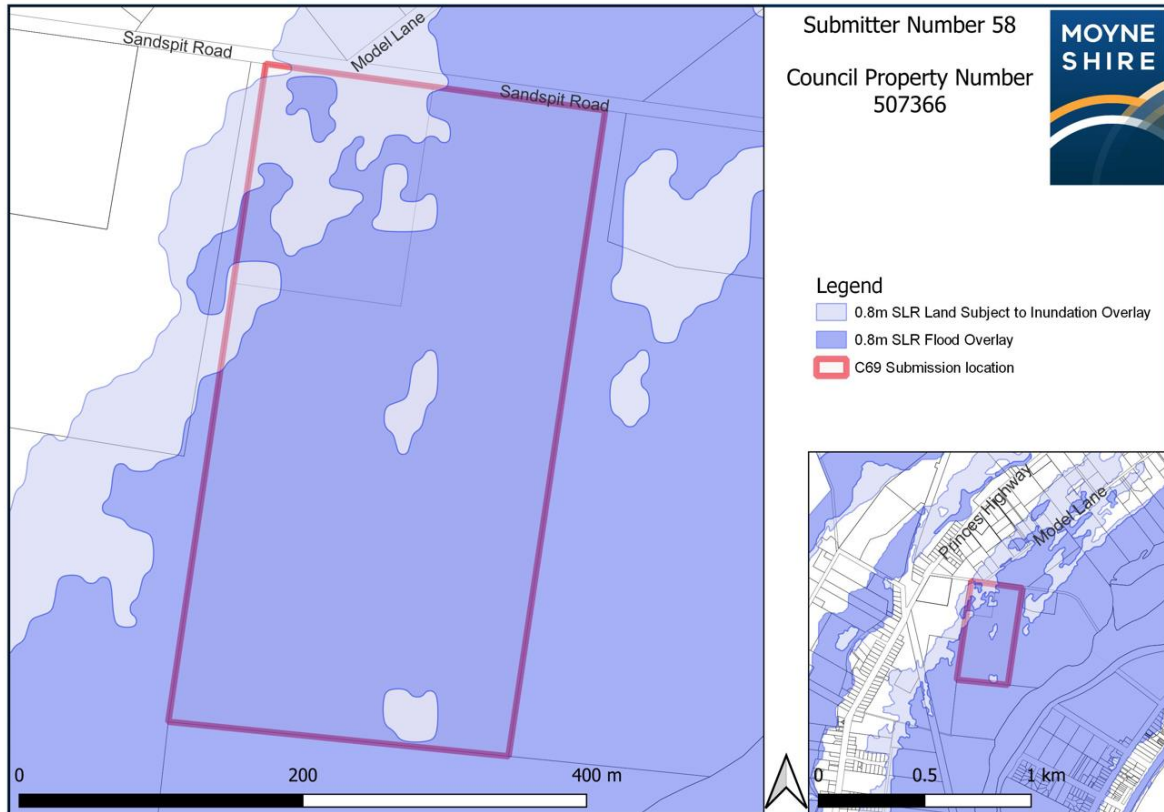


Figure 17 - 30 and 50 Sandspit Road - 0.8m extent

4. In the event that the land is not rezoned as proposed by this Amendment, the [REDACTED] have the following intentions for their land:
 - a) To develop the land in the Industrial 1 Zone for factoriettes;
 - b) To continue to farm the land within the Farming Zone.

INDUSTRIAL 1 ZONE LAND

5. The rationale for rezoning Industrial 1 Zone land as part of this Amendment remains unclear. It has not been supported by any meaningful Industrial Land Use Strategy or assessment and there has been no justification for the selection of the RCZ as the substitute zone.
6. In our submission, the Industrial 1 Zone is the preferred zone for land within the policy buffer. Mr Glossop's explanation was that it would be hard to get a permit for a dwelling in that location under the RCZ. He may be correct. However, it is impossible to get a permit for a dwelling in that location if it is zoned Industrial 1.
7. The choice of an RCZ makes little sense in this location. The Structure Plan appears to also want its cake and eat it too as at page 39 in the 'Economic Development' section there is a strategy to rezone industrial land within the Belfast Lough environs but to also 'ensure policy

support for appropriate ancillary uses. It is unclear how such policy support is to be provided for.

8. Set out below is the preliminary design proposal for factoriettes within the Industrial 1 Land. As noted by Mr Ramsay, such a proposal would be an appropriate interface land use within the SunPharma policy buffer.



FARMING ZONED LAND

9. The [REDACTED] wish to continue to farm their land.

10. It should be noted that the [REDACTED] have taken positive steps to identify and protect known habitat values within the Farming Zone land. They are a participant in the Coastal Connections Program run by the Glenelg Hopkins CMA. It's a program where the CMA partners with private landowners to protect and restore coastal, esuarine and wetland habitat. They enter into conservation management agreements to help ensure that endangered coastal habitat is protected through weed management and pest control and stock exclusion. Attached with this submission is a copy of the current stewardship agreement. Extracted below is a copy of the plan which shows the portion of the Tieman land with identified biodiversity values shown in red.



11. The agreement identifies the land colored red as containing Coastal Saltmarsh and Estuarine Wetland EVCs and requires the landowner to manage the land through the control of weeds and keep stock excluded from the area. The agreement acknowledges that the land colored red provides habitat for rare and threatened species.
12. In our submission, the existence of the agreement is illustrative of the following:
 - a) At least at CMA level, there is a level of understanding about the extent of the biodiversity values of the [REDACTED] land which have been identified in the area colored red on the agreement plan. This appears logical given that the balance of the land has clearly been highly disturbed for farming.
 - b) Given the narrow extent of those values, it may be appropriate for consideration to be given to applying an appropriate overlay over this section of the land to continue to ensure those values are preserved;
 - c) There remains no basis for the balance of the land to be encumbered with a RCZ in the absence of any technical evidence supporting its biodiversity values beyond the extent shown in the current agreement.

[REDACTED]
S&K Planning Lawyers
16 September 2022

Attachments:

1. Coastal Connections Stewardship Agreement [REDACTED] Land)
2. Planning for Biodiversity Guidance (DELWP, dated December 2017)
3. Planning Practice Note 42 – Applying the Rural Zones (June 2015)
4. Amendment C21 to the Moyne Planning Scheme Panel Report
5. Amendment C21 to the Moyne Explanatory Report