

Date: 2 September 2022

Moyne Planning Scheme Amendment C69

Part B Submission on behalf of Moyne Shire Council

Planning Panels Victoria

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INTRODUCTION

1. This Part B submission is made on behalf of Moyne Shire Council (**Council**) as planning authority for C69moyn (**Amendment**) to the Moyne Planning Scheme (**Scheme**).
2. This submission is to be read in conjunction with the Part A submission circulated on 25 August 2022 and the expert evidenced called from the following witnesses:
 - 2.1. Mr John Glossop of Glossop Town Planning in relation to town planning; and
 - 2.2. Mr Rob Swan of HARC in relation to hydrology/flooding.
3. This submission:
 - 3.1. outlines the changes proposed in the 'Part A' Amendment documents;
 - 3.2. address the matters set out in Direction 25 of the Panel Directions;
 - 3.3. provide Council's response to submissions and evidence.
4. The defined terms used in the Part A are adopted in this submission.
5. As this submission precedes the Panel hearing, Council will make closing submissions in response to the submissions and evidence of other parties. In circumstances where submissions raise new matters, Council will seek the opportunity to respond including, if necessary, through evidence.

PROPOSED POST EXHIBITION AND FURTHER CONSULTATION CHANGES TO THE AMENDMENT

6. Appendix 6 to Council's Part A submission contains Council's 'Part A'/'Day 1' version of the Amendment documents. These documents show in 'tracked changes', the amendments recommended by Council officers in response to submissions.
7. In summary the changes comprise:
 - 7.1. Insert new Schedule 2 to Clause 32.09 Neighbourhood Residential Zones to apply to 'Port Fairy Growth Area' identified on map in Appendix C to this submission. Schedule 1 to Clause 32.09 Neighbourhood Residential Zones to apply to residential areas other than 'Port Fairy Growth Area' identified on map in Appendix C to this submission.

7.2. Amend Schedule 4 to Clause 43.04 Development Plan Overlay (applicable Growth Area A and part of Growth Area B) by:

- revising Section 4.0 Requirements for development plan to require the development plan to show the ‘protection’ of Companions Lagoon as was as the ‘restoration’ and ‘appropriate integration’, the extent and form of development, how the development is consistent with the management of flood risks and how the development appropriate manages environmental attributes, including Latham’s Snipe and Companion Lagoon;
- replacing the requirement for the Movement Plan to provide ‘direct’ access to Bank Street and commercial core with requirement to provide ‘efficient’ access;
- replacing reference to Port Fairy Coastal and Structural Plan, 2018 with Flood Summary Report (HARC, 2021);
- clarifying the requirement relating to an appropriate design solution to address the flow of floodwater at the intersection of Reedy Creek and Hamilton-Port Fairy Road;
- inserting new requirement that a Servicing Plan ensures the protection of retained wetland and habitat values of Companion Lagoon;
- inserting new requirement that the Interface Plan includes design response for fire protection from adjacent grassland areas;
- requiring the development plan to include an ‘*An ecological assessment of the impacts of stormwater runoff on the Companion’s Lagoon wetland, undertaken by or with the participation of a suitably qualified and experienced aquatic ecologist*’.

7.3. Amend Schedules 1, 2, 3, 4, 5, 6 and 7 to the Clause 44.44 Design and Development Overlay as set out in the table in Appendix B to this submission and delete DDO4 from Growth Area A.

7.4. Apply Schedule 2 of the Rural Conservation Zone to the entire lot comprising 2 Regent Street.

7.5. Delete the Environmental Management Overlay from Crown land.

7.6. Amend Schedule 3 to Clause 44.03 Flood Overlay (**FO3**) by:

- clarifying that FO3 applies to areas in Port Fairy that area subject to 'Coastal influenced inundation';
- clarifying Floodway objectives to be achieved at section 1.0, in particular that the schedule is to address the effects of riverine and coastal storm tide floods and manage development on land subject to inundation of a specified water depth and/or combined water velocity and depth;
- updating Statement of risk in section 2.0 to specify that the schedule is to address the effects of riverine and coastal storm tide floods, reference the Flood Summary Report (HARC, 2021) and delete references to Hazard Risk Classes;
- updating permit exemptions in section 3.0 for consistency with Schedule 2 to the Floodway Overlay;
- updating the date of the Port Fairy Local Floodplain Development Plan in sections 4.0 and 5.0;
- inserting new decision guideline in section 5.0 to require the consideration of the *Marine and Coastal Policy 2020*.

7.7. Amend Schedule 4 to Clause 44.02 Land Subject to Inundation Overlay (**LSIO4**) by:

- clarifying that LSIO4 applies to areas in Port Fairy that area subject to 'Coastal influenced inundation';
- clarifying Land subject to inundation objectives to be achieved at section 1.0, in particular that the schedule is to address the effects of riverine and coastal storm tide floods and manage development on land subject to inundation of a specified water depth and/or combined water velocity and depth;
- updating Statement of risk in section 2.0 to specify that the schedule is to address the effects of riverine and coastal storm tide floods and acknowledge the flooding impact on wetland areas;
- updating permit exemptions in section 3.0 for consistency with other schedules to the Land Subject to Inundation Overlay;

- updating the date of the Port Fairy Local Floodplain Development Plan in sections 4.0 and 5.0;
 - inserting new decision guideline in section 5.0 to require the consideration of the *Marine and Coastal Policy 2020*.
- 7.8. Amend Schedule 2 to Clause 44.03 Flood Overlay and Schedule 2 to Clause 44.02 Land Subject to Inundation Overlay by updating the date of the Port Fairy Local Floodplain Development Plan in section 5.0.
- 7.9. Amend draft Local Floodplain Development Plan Incorporated Document by:
- inserting a factor that influences flood risk at 2.0 Purpose of the Overlays that reads '*the potential for dominance of riverine floods in the Moyne River estuary/Belfast Lough portion of the floodplain, versus the potential for floods in this area that are dominated by ocean storm tides*';
 - updating the Flood History at 4.1, Effect of Climate Change on Flood Risk at 4.2 and Flood Information at 4.3;
 - updating the Nominal Flood Protection Level at 4.5;
 - updating and clarifying some performance criteria at 6.0; and
 - clarifying decision guidelines 1 and 3 at 7.0;
 - making minor typographical and formatting changes.
- 7.10. Amend Clause 21.06 Environment by:
- referring to the *Marine and Coastal Policy 2020*;
 - updating references 0.8m sea level rise to 1.2m;
 - deleting supporting action which is no longer applicable;
 - updating reference documents;
 - updating references to other clauses in the Scheme; and
 - making minor formatting changes.
- 7.11. Amend Clause 21.09-3 Port Fairy by:
- clarifying and consolidating objectives and strategies relating to Housing and Settlement, Environmental and Landscape Values, Environmental Risks and Amenity, Built Environment and Heritage, Economic Development, Transport and Infrastructure; and

- updating Port Fairy 'Context'.

RESPONSE TO SUBMISSIONS AND PANEL DIRECTION 25

8. The matters raised in Panel Direction 25 are addressed in Appendix A to this submission and the body of this submission. In some instances, the matters are addressed through the evidence upon which Council will rely.
9. Council's Part A submission contains a detailed summary of submissions to the Amendment and Council's response to those submissions. The following sections of this Part B submission address the key issues raised by submitters.

FLOOD PROVISIONS

10. This section addresses the flood provisions proposed as part of the Amendment, including responding to Panel Directions 25(b) and (c).

What is proposed?

11. The Amendment proposes to apply Schedule 4 to the Land Subject to Inundation Overlay (**LSIO4**) and Schedule 3 to the Floodway Overlay (**FO3**) to the Port Fairy township to identify areas that are affected by riverine and coastal inundation. Specifically, the Amendment proposes to apply:
 - 11.1. FO3 to land subject an inundation depth of 0.5 metres and above, and/or combined water velocity and depth (VxD) of more than 0.4m² hazard factor of 0.4 metres squared per second under a 1% AEP flood event with a 1.2 metre sea level rise.
 - 11.2. LSIO4 to land subject an inundation depth below 0.5 metres, and/or combined water velocity and depth (VxD) of less than 0.4m² hazard factor of 0.4 metres squared per second under a 1% AEP flood event with a 1.2 metre sea level rise.
12. Consistent with [Planning Practice Note 12: Applying the Flood Provisions](#) (**PPN12**), FO3 is applied to the 'floodway'. The Glenelg Hopkins Catchment Management

Authority (**GHCMA**) *Flood delineation for planning scheme maps 2013* (**GHCMA Flood Delineation document**) provides defined the 'floodway' for the purpose of land use and development planning as:

'As a minimum, any land where best practice floodplain modelling indicates:

- the 100 YR ARI flood depth is likely to reach or exceed 0.5 metres; and/or*
- the estimated 100 YR ARI flood hazard factor (velocity x depth) can be expected to reach or exceed 0.4m² /sec'*

13. The LSIO4 is applied to areas within the flood fringe or area of land subject to inundation excluding the floodway. This is consistent with PPN12 which provides that LSIO can be applied to urban and rural areas, including:¹

- Areas where the extent of the floodway has been identified and LSIO covers the balance of land subject to inundation, excluding the floodway component*
- Lower flood depths and/or flow velocities*
- Lower potential flood risk.*

14. The Planning Scheme FO and LSIO maps are based on the modelled flood extent established in the *Flood Summary Report* (HARC, 2021) and 'smoothed' based on the principles set out in the GHCMA Flood Delineation document, which are:
- Raw flood data boundaries are smoothed to create plausible representation of the floodway and flood fringe boundaries.*
 - Irregularities in the floodway and flood fringe boundaries, such as small "tongues" of floodprone land extending out from the bulk of the identified flood extent, may be smoothed when accurate reflection of this data is of no value in terms of a planning permit trigger. The underlying Planning Scheme Zone is a consideration in doing this.*
 - Flood-prone areas shown on raw flood mapping that are less than 1000 m² (0.1 Ha); and not directly connected to riverine flow path (ie outside the riverine floodplain) have been excluded from the planning maps. This needs careful consideration in relation to the scale and purpose of planning maps and the underlying planning scheme zone. A permit trigger for such areas within the*

¹ PPN12, p 11.

Farming Zone is probably not warranted, but the converse may be true for land zoned for residential purposes.

- *Islands (high ground) within the floodway (ie marooned by high hazard flooding) are in general covered by the floodway overly due to safe access being cut off by flooding. A planning permit application is therefore triggered on such land which provides for proper consideration of flooded access hazards in the permit application assessment process.*
- *Islands (high ground) of 1000m² (0.1 Ha) or less within the flood fringe area to be represented by the LSIO are filled in due to safe access being cut off by flooding. A planning permit application is therefore triggered on such land which provides for proper consideration of flooded access hazards in the permit application assessment process.*
- *Small “holes” in the floodway mapping have been filled in to create the floodway overlay map. The land is still flood-prone and such “holes” represent land where the depth and hazard factor (vxD) of floodwater is lower than the adopted floodway criteria. In general there is no value from a planning perspective in identifying such small patches of land within the Floodway Overlay as subject to the Land Subject to Inundation Overlay when these patches will be marooned by high hazard flooding in any case.*

Why the FO and LSIO?

15. It is important to emphasise why the FO and LSIO are utilised in Schemes and in turn why the flooding component of this amendment is critical in the context of Port Fairy. The starting proposition is that flood controls are risk-based tools. This is evident from the categorisation under the GHCMa provisions which apply the FO in preference to the LSIO depending on the depth and velocity of flood waters. This is logical and appropriate.
16. It follows that where the predicted flood extents are suitable for inclusion within an LSIO then the prospect of development may be greater and where they are included in the FO the prospects of development are commensurately less. The identification and placement of these controls on land to manage the subdivision of land and construction

of dwellings and the like is important on an orderly planning basis but what this really means is that it has societal benefits.

17. The Panel will be aware of flooding in other parts of Australia and in particular the impact of those floods have had on land which is constructed in at-risk of flooding areas. Land subdivision and development patterns, once established, are permanent. That is, persons will invest in the development of land, patterns will be established, infrastructure investment will occur and those development patterns will be there long after the present generation. The import of that is that whether the risks are in the near term or the long term, the appropriate time to consider and plan for those risks is now.
18. The cost to society of personal investment, of insurance or the inability to obtain insurance where risks are materialised, is beyond substantial and these only relate to property and pecuniary risks. Identification of FO also relates to safety.
19. Accordingly, it is appropriate that the flood controls represent these different areas of risk accurately. There are already flood controls within the Planning Scheme that perform this role, though they are prepared on the basis of different assumptions, not known or at least not countenanced within the current modelling.
20. It is said that the FO is not appropriate for application in areas where there is a risk of coastal inundation and, it may well be said, in areas where there is coastally-influenced inundation, the FO and its predecessors were prepared in the context of riverine and floodplain risks. It is important in this discussion to have regard to the purposes of the relevant provisions as they exist under the Scheme. The purposes of the FO are:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989 if a declaration has been made.

To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

It is not clear to the planning authority where it has been that if climate-associated inundation impacts are at a level where risk exists commensurate with the application of the Floodway Overlay, then this is not the preferred approach.

21. The decision guidelines are:

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

The Municipal Planning Strategy and the Planning Policy Framework.

The local floodplain development plan or flood risk report.

Any comments of the relevant floodplain management authority.

The Victorian River Health Strategy (2002) and any relevant regional river health strategy and associated wetland plan.

Any other matters specified in a schedule to this overlay.

22. There is nothing in this purpose or decision guidelines that make the FO an inherently inappropriate tool.

Sea Level Rise: the science

23. The evidence of climate change and sea level rise is unequivocal.
24. At a global level, the Intergovernmental Panel on Climate Change (IPCC) *Sixth Assessment Report (AR6) on the physical science basis of climate change* (IPPC **Climate Change 2021: Physical Science Basis report**), in summary, finds:
- 24.1. Human influence has warmed the atmosphere, ocean and land.²
 - 24.2. Global mean sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years (high confidence).³
 - 24.3. Human-induced climate change is affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, has strengthened since IPCC Fifth Assessment Report.⁴
 - 24.4. Global surface temperature will continue to increase until at least mid-century under all emissions scenarios considered. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in carbon dioxide (CO₂) and other greenhouse gas emissions occur in the coming decades.⁵
 - 24.5. Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level.⁶
25. Specifically in relation to future sea level rise, the IPCC Climate Change 2021: Physical Science Basis report states:

'It is virtually certain that global mean sea level will continue to rise over the 21st century. Relative to 1995–2014, the likely global mean sea level rise by 2100 is 0.28–0.55 m under the very low GHG emissions scenario (SSP1-1.9); 0.32–0.62 m under the low GHG emissions scenario (SSP1-2.6); 0.44–0.76 m under the intermediate GHG emissions scenario (SSP2-4.5); and 0.63–1.01 m under the very high GHG

² IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [A.1], p 4.

³ IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [A.2.4], p 8.

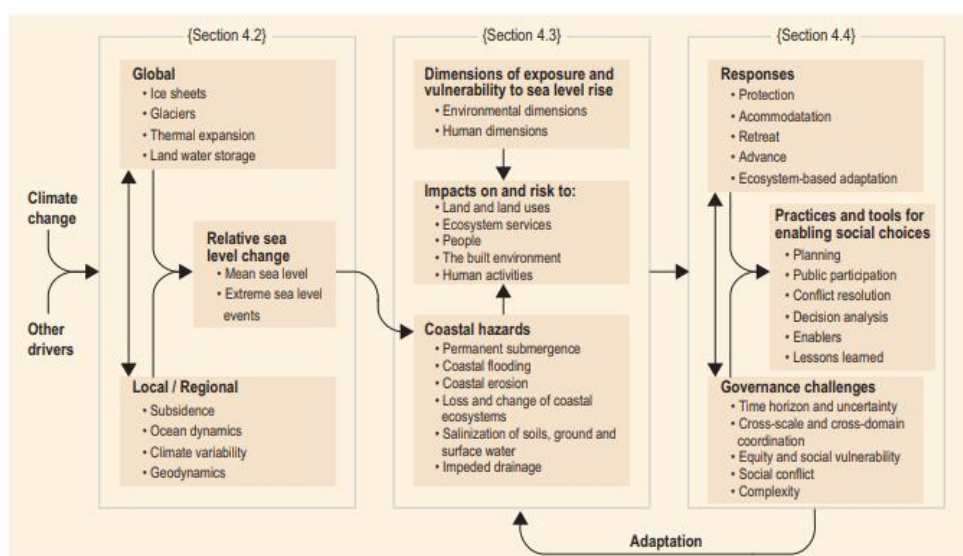
⁴ IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [A.3], p 8.

⁵ IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [B.1], p 14.

⁶ IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [B.1], p 15.

emissions scenario (SSP5-8.5); and by 2150 is 0.37–0.86 m under the very low scenario (SSP1-1.9); 0.46–0.99 m under the low scenario (SSP1-2.6); 0.66–1.33 m under the intermediate scenario (SSP2-4.5); and 0.98–1.88 m under the very high scenario (SSP5-8.5) (medium confidence). Global mean sea level rise above the likely range – approaching 2 m by 2100 and 5 m by 2150 under a very high GHG emissions scenario (SSP5-8.5) (low confidence) – cannot be ruled out due to deep uncertainty in ice-sheet processes.⁷

26. Sea level rise is a key feature of climate change. It is caused by ice melt and the thermal expansion of ocean water (caused by the ocean absorbing excess heat), as well as being influenced by a range of other factors.⁸ Sea level rise does not occur uniformly.⁹ It varies locally based on coastal topography, weather patterns and nearshore processes.
27. The relationship between climate change, sea level rise and impacts is illustrated in Figure 4.1 of the [IPCC Special Report on the Ocean and Cryosphere in a Changing Climate 2019](#), extracted below:¹⁰



⁷ IPCC Climate Change 2021: Physical Science Basis, Summary for Policymakers, [B.5.3], p 21.

⁸ See, for example, IPCC Special Report on the Ocean and Cryosphere in a Changing Climate 2019, p 330.

⁹ See for example, IPCC Special Report on the Ocean and Cryosphere in a Changing Climate 2019, p 340.

¹⁰ IPP SROCCC, p 326.

28. The [Victoria's Climate Science Report 2019](#) and the Marine and Coastal Policy 2020 recognise the IPPC AR5 (2013) findings, including that human influence has been detected in the global mean sea level rise. Citing the IPPC report, *The ocean and cryosphere in a changing climate*, 2019, the Marine and Coastal Policy 2020 states:¹¹

The latest projections from the Intergovernmental Panel on Climate Change on global sea level rise are for an increase of between 0.61 and 1.10 metres by 2100 above 1986-2005 levels under a high-emissions scenario, with a global average 0.84 metres. The range of possibilities requires us to prepare to be adaptable and flexible, and to respond to new information and observed changes in the physical environment.

Climate change impacts are expected to vary across Victoria, and may occur incrementally or rapidly. A one-size-fits-all-approach could therefore lead to maladaptation. Adaptation will need to be responsive to local conditions, values, risk appetite, risk exposure, capability and capacity. Different adaptation actions will have varying levels of effectiveness and costs, and positive and negative impacts depending on the local circumstances. Different adaptation measures need not be mutually exclusive, with the possibility of multiple options being used over time.

Planning for 1.2m Sea Level Rise

29. There should be no debate that sea level rise is occurring. Rather, the question is by how much and by when, and how we plan to protect human life and safety and property in the face of this environmental challenge.
30. Current State planning policy in the Scheme provides that we must plan for sea-level rise of not less than 0.8m by 2100. This benchmark was derived from work prepared for the Victorian Coastal Council by J R Hunter in 2013 and 2014.¹² That work was based on the IPCC Fifth Assessment Report (AR5) with allowances using regionally derived data.
31. The recent Marine and Coastal Policy 2020 provides that the sea level rise planning benchmark will be revised, and that the revision will consider the most recent sea level

¹¹ Marine and Coastal Policy 2020, pp 34 and 35.

¹² See reports in Appendix F to this submission.

rise projections as they relate to the Victorian Coast.¹³ The Marine and Coastal Strategy 2022, under Action 3, identifies as an activity:¹⁴

‘Undertaking timely, data-driven planning scheme amendment processes to protect coastal habitat linkages, and reflect sea level rise, coastal hazard, and other relevant projections related to climate change’

32. In Council’s submission, the work undertaken in support of the application of FO3 and LSIO4 to Port Fairy is based on the most recent information, specific to Port Fairy. It should therefore be adopted as the new benchmark for Port Fairy, particularly in the context where State policy documents foreshadow revision to the State standard benchmark.
33. Furthermore, adopting a 1.2m sea level rise scenario is a sound and proper planning. It adopts a precautionary and reasonable approach in circumstances where failing to identify and plan has the potential to impact human life and safety, property and infrastructure.
34. Council refers to and relies on the reason outlined in the Flood Summary Report 2021 in support of adopting a 1.2m sea level rise scenario:¹⁵
 - *The approach provides a reasonable upper limit for inundation as a result of sea level rise, in combination with a riverine flood event.*
 - *For areas that are not currently developed, the approach will provide an indication of areas that will be subject to inundation under future climatic conditions.*
 - *The resultant mapping provides an appropriate extent for triggering the consideration of present day and future flood risk in floodplain development decisions. It does not necessarily restrict the setting of floor levels to account for the estimated maximum 1%AEP flood level for the adopted future sea level scenario across the entire extent of the floodplain.*

¹³ Marine and Coastal Policy 2020, p 35.

¹⁴ Activity 3.10, p 18.

¹⁵ Page 26.

- *Moyne Shire and GHCMA should consider a Local Floodplain Development Plan to define an adaptive approach to planning requirements for existing and new land parcels in the LSIO and FO areas. Such a progressive approach will be consistent with the new Marine and Coastal Strategy.*
- *The level of the maximum 0.8m SLR cases plus a 300mm freeboard level is unlikely to provide protection against flood levels likely to occur in the area when sea level rise exceeds the 0.8m threshold, noting that the latest IPCC report (Sept. 2019) for the Oceans and Cryosphere has revised upward the projected global average increase in sea level to 1.1 metres by 2100.*

Distinguishing between riverine and coastal influenced flooding

35. The [Glenelg Hopkins Regional Floodplain Management Strategy 2017](#) describes riverine and coastal flooding as follows:

‘Riverine Flooding

- *generally occurs when water flowing out of an inland catchment overflows the natural or artificial banks of a stream, estuary, lake or dam.*

Coastal Flooding

- *generally occurs when water from the ocean inundates an inland area as a consequence of strong on-shore wind, storm tide (or combination of both) or tsunami.’¹⁶*

36. In one sense it is the case that the difference between riverine and coastal flooding is an irrelevancy. A person whose dwelling or land is inundated by water is not materially impacted one way or another way if that water is derived from the sea, from riverine processes or in part by both.
37. The Amendment area affects land which falls broadly into three groups – land which the modelling predicts to be impacted by riverine processes exclusively, land which is impacted by coastal processes exclusively and land which will experience riverine flooding but where the riverine flooding is exacerbated by sea level rise or coastal conditions. The approach of the exhibited Amendment was to not differentiate between

¹⁶ Page 27.

these sources of flooding. The approach advocated for in the Part A ordinance is to draw a distinction between those areas.

38. The distinction drawn retains the application of the GHCMA guidelines about when land should be included in or not be included in the LSIO or FO. Within the western areas of Port Fairy that some flooding is not influenced by coastal processes (though it may be influenced by altered rain events etc).
39. These areas are principally for growth areas and the predicted flood extent under the Amendment is not materially different from that which is presently mapped under the existing Scheme. To the contrary, the position in relation to those areas that are influenced by coastal processes, the flooding extents are materially different.
40. The exhibited Amendment sought to apply a common approach to the riverine areas and the coastally-influenced areas whereby no freeboard would be required above the predicted flood extent. The Panel and parties will be familiar with the approach of a predicted flood extent augmented by a freeboard above that to provide safety.
41. The Council, in conjunction with the GHCMA, considers that this approach if applied to the riverine areas where the flood mapping is not different or not materially from the present would in fact result in the Amendment securing a lower level of flood protection for those areas in the west of Port Fairy. This would be an outcome contrary to the policy intent in the circumstances and the result is that land in these areas which are under solely a riverine influence are proposed to be within the revised LSIO2 and subject to freeboard requirements.
42. It remains the case that land which is coastally influenced is not proposed to be subject to freeboard requirement. The impact of this is that building levels are close to the combination of a 0.8 sea level rise plus freeboard outcome.

The LFDP

43. Council observes the manner in which the drainage experts for Rivers Run have been instructed about the application of the FO and its interaction with the LFDP. Both Mr Bishop and Ms Barich have been instructed to proceed with the preparation of their

evidence on the premise that the controls proposed within the local floodplain development plain do not permit subdivision of lots within the FO (other than as provided for in Clause 44.03-3).

44. While it is appropriate to instruct the witness on a presumed factual basis, in Council's submission the presumed basis is incorrect. This misdirection has affected the opinions of these experts and the result of the conclave. It is not understood that either expert claim to holding either legal. Council's reasons for this conclusion follow.
45. The witnesses have been directed on the basis of a decision of the Victorian Civil and Administrative Tribunal (Tribunal) in [Greater Shepperton CC v Golden Broken Catchment Management Authority \[2016\] VCAT 2181](#). That decision of Deputy President Gibson concerns whether the provisions of the FO prohibits a LFDP from facilitating more liberal subdivision controls than provided for under the overlay.
46. It is convenient to consider how those controls are framed in the overlay.
47. Firstly, Clause 44.03-3 Subdivision provides that:

A permit is required to subdivide land. A permit may only be granted to subdivide land if the following apply:

- *The subdivision does not create any new lots, which are entirely within this overlay. This does not apply if the subdivision creates a lot, which by agreement between the owner and the relevant floodplain management authority, is to be transferred to an authority for a public purpose.*
 - *The subdivision is the resubdivision of existing lots and the number of lots is not increased, unless a local floodplain development plan incorporated into this scheme specifically provides otherwise.*
48. The Amendment proposes that a local floodplain development plan be prepared and the salient aspects of the LFDP include:

- Clause 6.2 which establishes the requirements for applications to subdivide land either wholly or partly within the FO or LSIO.
- Clause 1.0 under the purpose of the plan where it is said that the application must comply with the LFDP.

49. In this instance the controls within the LFDP at Clause 6.2 contemplates that land may be subdivided into additional lots subject to a range of conditions and in circumstances where the lots are partly or wholly within the LSIO or FO. The Council submits that this approach is consistent with the head provision being the FO at clause 44.03 of the Scheme. The Rivers Run position is that this is not.

50. A few things must be established at the outset. Firstly, a decision of the Tribunal is not a binding decision at law. Secondly, the decision of the Tribunal in this instance was a decision where the arguments of a single planning lawyer were preferred over the arguments of what appears to be a non-legal background advocate. It is open to any person to submit an application on a position at odds with the non-binding findings of the Tribunal. The Council submits that the findings of the Deputy President in this instance are not the correct or preferable analysis of the law. Thirdly a LFDP is part of the Planning Scheme ordinance as an incorporated document.

51. The matter turns upon the operation of the phrase

“The subdivision is the re-subdivision of the existing lots and the number of lots is not increased, unless a local flood plain development plan incorporated into this Scheme specifically provides otherwise.”

52. Broken into its constituent parts, there must be:

- A subdivision;
- Which is a re-subdivision of existing lots;
- Which does not increase the number of lots;
- Unless the flood plan development plan incorporated into the Scheme specifically provides otherwise

53. The Deputy President's decision turns materially on the interpretation of the word "resubdivision". The Tribunal deals with the issue of what re-subdivision means at paragraph 11. The Tribunal finds that *'the common meaning of the term "the re-subdivision of existing lots" is a subdivision of two or more existing lots where the internal boundaries and configuration of the existing lots are changed but no other additional number of lots are created'*.
54. The common meaning approach is applied by the Tribunal because there is no definition of "re-subdivision" under the Act.
55. On its face this applied meaning creates a difficulty with the provisions of the FO insofar as the relevant provisions includes the words *"and the number of lots is not increased"*. In effect, the phrase is, on the Tribunal's reasoning, saying the relevant subdivision must be a subdivision that does not create any additional lots, and does not create any additional lots... The effect of the importation of this "common meaning" is to make the sentence repetitive. When one has regard to the Tribunal's reasoning, it states again at Paragraph 11 *"It was possibly not necessary in the drafting of this provision to specify that the number of lots is not increased. The words are repetitive. Nevertheless they reinforce the meaning of the term "the re-subdivision of existing lots" to make it absolutely clear what the sub-clause deals with"*.
56. In all the Tribunal's construction appears to be a consequence of its common meaning approach and it delivers an outcome that is not a plain reading of the parliamentary drafter's wording.
57. Take for example the subdivision of two lots in the FO. The two lots can on the Tribunal's interpretation, only be subdivided to create two lots, and the LFDP cannot alter that position. This Panel might fairly ask what work then does the second limb of the provision have to do? At paragraph 15 the Tribunal says, *"a local floodplain development plan may provide otherwise in terms of saying that a re-subdivision may occur providing any lot created is not greater or less than a certain size or has certain minimum dimensions"*.

58. There is nothing in the words of the Planning Scheme that limits the scope of the work that the carve-out provision can do to dimensions of lots. It is simply not grounded in the words of the statute. Accordingly, the reading down of the LFDP, in the manner that the Tribunal did in this instance, is not appropriate.
59. It is appropriate to address what then is the meaning of a resubdivision. Resubdivision is expressed in slightly different terms within the Planning Scheme itself. For example under the [Green Wedge zones](#), “resubdivision” (as one word) is referred to as “re-subdivision”. There is no materiality in this difference in words, the clauses in the Green Wedge Zone clearly operate in the same way under the Floodway Overlay.
60. The terms resubdivision and “re-subdivision” are used in a range of decisions across the Tribunal and the Supreme Court. None of these to Council’s knowledge explore a particular common law meaning of the phrase, but they clearly elicit that one adopted use of the term “re-subdivision” and resubdivision is the act of a further subdivision of existing allotments. The Council will provide an example list of the many references that reflect this position.
61. There is one instance under the Subdivision Act, [section 32A](#) where total consolidation and re-subdivision is used in respect of owners corporations where the lots in common property are dissolved and re-subdivided into some other formation. Again, this is not a definition or a definitive position describing the meaning of resubdivision, it merely demonstrates is that resubdivision in the common parlance is not constrained to limit the number of lots created and it is for this reason, in Council’s submission, that it was necessary in the Planning Scheme to add the words “*and the number of lots is not increased*”.
62. The Council submits that the common import of the term “*resubdivision*” is in fact no more than a subdivision of existing lots and that the construct advanced by the Tribunal in the *Greater Shepparton* matter is unsound.

63. Accordingly, it is the Council's position that the manner in which the LFDP is crafted is appropriate, lawful. Finally, it is noted that the Council's approach is consistent with the relevant Practice Note. Practice Note 12 *Applying the Flood Provisions in Planning Schemes – A Guide for Councils*, states that:

For subdivision in the UFZ and FO, if the subdivision provisions in the local floodplain development plan differ from the subdivision provisions in the UFZ or FO, the local floodplain development plan prevails.¹⁷

ZONE CHANGES

64. This section addresses the proposed zone changes, including responding to Panel Directions 25(f) to (g).

Application of the Neighbourhood Residential Zone to existing residential land

65. The Amendment proposes to rezone residential land in Port Fairy from General Residential Zone (**GRZ**) and Mixed Use Zone (**MUZ**) to Neighbourhood Residential Zone.
66. In March 2017, the Victorian government introduced a suite of reformed residential zones via Amendment VC110. At the time, the GRZ was the 'default' residential zone to be applied to land in the absence of a housing strategy. State government guidance indicated that the appropriateness of the GRZ would need to be reviewed. As there was no housing strategy for Port Fairy at the time, Council applied the GRZ to all residential areas in Port Fairy.
67. The Structure Plan was prepared following the residential zone reform to provide a land use and development framework for Port Fairy, including to identify areas to accommodate population growth. The Structure Plan recommends the application of the NRZ to existing residential areas to implement the settlement and housing objectives and strategies.

¹⁷ Page 7.

68. The settlement and housing objectives are:¹⁸
- *To support Port Fairy as being the primary ‘district town’ for Moyne Shire and its role in accommodating a medium level of growth, as reflected in the State Planning Policy Framework.*
 - *To ensure an appropriate supply of residential land within Port Fairy in recognition of its role.*
 - *To direct housing growth to areas not subject to identified inundation.*
 - *To promote a compact urban form which avoids sprawl and provides a clear delineation between urban and rural areas.*
 - *To deliver opportunities for residential growth across a range of growth fronts and formats to reflect the diversity of demand.*
 - *To encourage the delivery of housing which is responsive to demographic changes.*
 - *To encourage sensitive residential infill development close to the commercial core.*
 - *To ensure infill development is delivered in a way which is sensitive to the environmental, heritage and character context.*
69. In Council’s submission, the NRZ will provide for housing growth at the same time as appropriately balancing other relevant objectives. That is, the NRZ will allow development to meet demand while also ensuring that new development respects and responds to the low-scale, heritage character of Port Fairy.
70. This approach is consistent with guidance in [Planning Practice Note 90: Planning for housing \(PPN90\)](#) and [Planning Practice Note 91: Using the residential zones](#).
71. The principles underpinning the residential zones in PPN90 include that ‘*All residential zones support and allow increased housing, unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist*’.¹⁹
72. PPN90 provides that the NRZ is an appropriately applied to:

¹⁸ Page 28.

¹⁹ PPN90, p 3.

- 72.1. *'areas where there is no anticipated change to the predominantly single and double storey character'; and*
- 72.2. *'areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area.'*²⁰
73. Port Fairy is recognised in the Scheme and the Structure Plan as having specific neighbourhood, heritage and landscape values. The Structure Plan recognises that with increasing growth, there is likely to be significant pressure for new development and that new development must be managed to ensure avoid negative impacts on the highly valued character of the township.²¹
74. The existing policy for Port Fairy in Clause 21.09-3 seeks to retain and enhance its coastal and river character and protect vegetation. It also seeks new development that respects the historic built form and natural environment and building heights that reflect traditional elements of heritage buildings in the town.
75. In a context where 15 years housing supply is accommodated at the municipal level, land within Port Fairy is constrained environmentally and there is direction to maintain and respect the character of Port Fairy, Council says that the NRZ is the appropriate residential zone.

Land Supply

76. Various submitters²² have raised concerns regarding land supply and demand within Port Fairy. Submitters contend that there is a strong demand for housing and insufficient land supply in support of opposition to proposed re-zoning and requests for specific land to be rezoned.
77. Council rejects such submissions. A foundational principle of settlement planning is to ensure sufficiently supply of land is available for residential and other land uses. Clause 11.02-1S of the Scheme states:

²⁰ PPN90, p 2.

²¹ Settlement Strategy, p 23.

²² Submitter Nos. 6, 6a, 21a, 26, 26a, 39, 39a, 58, 100 and 123.

'Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis'.

78. This strategy provides that is the role of planning authorities to plan to accommodate population growth for at least 15 years growth and give direction on locations where growth should occur. It does not require 15 years of growth to be provided in each townships within each municipality. Rather, it requires at least 15 years of growth to be accommodated within the municipality as a whole.
79. This approach to settlement planning has been accepted by Panel. Most recently, the Panel for Greater Geelong Amendment C395, which implemented a settlement strategy, said:
*'The Panel considers there is no disagreement that the 15 years of supply at a municipal level can be met with the Amendment, and thus the strategy in Clause 11.02-1S is satisfied. The Panel also accepts that the '15 year' test does not need to be met at a township, or even sub-municipal level, in the planning scheme.'*²³
80. An important input into the Structure Plan was the *Economic & Tourism Land Use Analysis* (Urban Enterprise, 2017).²⁴ This report found that in 2017 there would be 12-13 years of residential land supply in Port Fairy based on a medium growth rate of 1.22% or an average of the historic building approval rate. These figures do not account for land supply made available through Growth Areas A and B.
81. The more recent *Residential Land Supply & Demand Assessment* prepared by Spatial Economics dated May 2021 (**the Supply & Demand Assessment**) contains a detailed assessment of the historic, current and future assessment of residential land supply and demand across Moyne Shire. It confirms that there is sufficient land supply within Port Fairy and the municipality as a whole to meet the 15-year benchmark in the Scheme

²³ [Greater Geelong C395ggee \(PSA\) \[2020\] PPV 36](#), [3.1.2].

²⁴ The report was updated following the release of the 2016 ABS Census data.

83. Based on VIF 2019 data, the Supply & Demand Assessment provides that at a municipal level there is sufficient:
- 83.1. zoned land supply to accommodate between 16 and 34 years of demand; and
 - 83.2. unzoned broad hectare land to accommodate over 25 years of demand.²⁵
84. While not the applicable policy 'benchmark', Port Fairy has capacity for over 15 years of zoned and unzoned residential land supply within broad hectare and major infill land, comprising:
- 84.1. approximately 110 zoned lots (approximately 7 years); and
 - 84.2. approximately 460 (118ha) unzoned lots (over 25 years).²⁶
85. The Supply & Demand Assessment also provides that indicates that there is also minor infill supply in Port Fairy of approximately 104 lots.²⁷
86. The implementation of the Structure Plan and settlement boundary, as well as the proposed rezoning is appropriate in the context of the available land supply at a municipal and township level.

Growth Areas

87. The Structure Plan identifies two growth areas for future housing. Due to the flood constraints affecting much of the township, the key area for delivery of housing is to the west of the township, between the Princes Highway and the Hamilton-Port Fairy Road (**Growth Area A**). The other area identified for more long-term growth is located along the Albert Road ridgeline (**Growth Area B**).
88. Part of Growth Area A is subject to flooding based on the *Flood Summary Report 2021* findings. The area subject to a flood depth of 0.5m or greater²⁸ is an existing wetland. The Structure Plan proposes to retain the wetland and an area around it as wetland. The part nominated for housing is predicted to experience a flood depth of less than 0.5m and therefore falls within the LSIO. The Structure Plan strategy seeks to ensure

²⁵ Page 57.

²⁶ Page 57.

²⁷ Page 42.

²⁸ Based on a 100 year coastal & 20 year riverine inundation with a projected sea level rise of 1.2m.

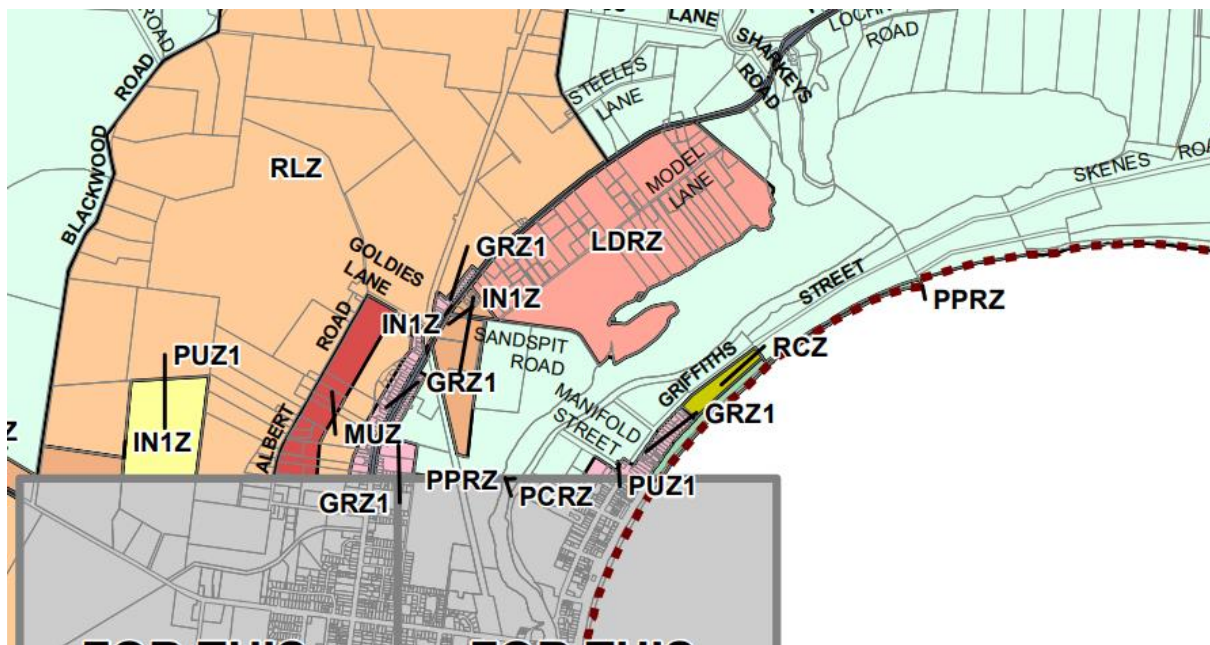
development in Growth Area A responds to identified future inundation impacts and locates housing outside of areas identified for significant flooding.²⁹

89. The exhibited Amendment proposed to rezone the Rural Living Zone land in Growth Area A to Neighbourhood Residential Zone (**NRZ1**). NRZ1 was proposed to apply to all residential areas.
90. Council submits that the NRZ is an appropriate zone for Growth Area A for the same reasons as set out above in relation to the reasoning of all residential areas in Port Fairy. While Growth Area A is intended to accommodate future growth, the scale of growth is commensurate with Port Fairy's role as a district town. The NRZ will allow for housing growth in a manner that meets the 15 year supply benchmark in the Scheme while ensuring the built form is responsive to Port Fairy's existing low-scale character and the physical constraints of the land.
91. The exhibited Amendment also proposed to apply DDO4 and DPO4 to Growth Area A to manage its future development for residential purposes. In response to submissions and Mr Glossop's evidence, Council recommends in the 'Part A' Amendment documents the following changes for Growth Area A:
 - 91.1. no longer apply DDO4 (the intent of which is translated to NRZ2 and DPO4);
 - 91.2. apply new Schedule 2 to the NRZ, which addresses matters that were covered by DDO4; and
 - 91.3. amend Schedule 4 to the Development Plan Overlay to addresses matters that were covered by DDO4.
92. Council submits that the 'Part A' changes simplify the controls applicable to Growth Area A at the same time as retaining the intent of DDO4.

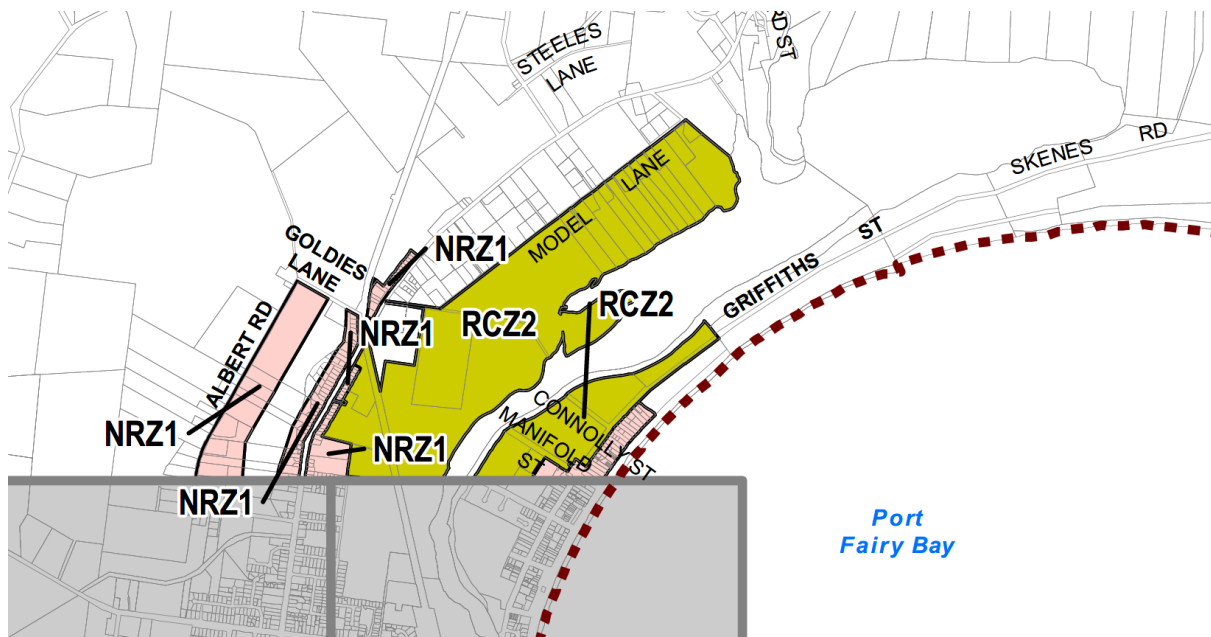
²⁹ Page 28.

Application of the Rural Conversation Zone

93. The Amendment proposes to rezone land in the Farming Zone (**FZ**), Low Density Residential Zone (**LDRZ**) and Industrial 1 Zone (**IN1Z**) around Belfast Lough and outside the town settlement boundary (including the southern side of Model Lane) to the Rural Conservation Zone (**RCZ2**). See below for extract of Scheme Map no. 34 showing current and proposed zoning.



Current zoning. Extract from Scheme zone Map No. 34.



Proposed zoning. Extract from Exhibition zone Map No. 34.

94. Section 3.7 of the Structure Plan recognises and seeks to Port Fairy's unique coastal environmental, broader landscape setting and environmental values. This includes Belfast Lough and the Moyne River estuary which are covered by the Environmental Significance Overlay – Schedule 1 (**ESO1**). ESO1 applies to coastal areas and estuaries within Moyne Shire which are of environmental significance as well as consideration, scientific and tourism value.
95. The Structure Plan recognises the area adjacent to Belfast Lough as environmentally significant as well as being susceptible to riverine and coastal influenced inundation. It is a strategy to 'Discourage new dwellings within the Belfast Lough Environs'.³⁰
96. The RCZ2 is recommended on the following basis:

*'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.'*³¹

³⁰ Structure Plan, p 29.

³¹ Structure Plan, p 77.

97. Council submits that the RCZ2 is the appropriate zone:
- 97.1. The area is located outside the settlement boundary due to a combination of the following considerations: environmental significance, landscape values, susceptibility to riverine and coastal influenced flooding. These are all factors which are relevant to defining a coastal settlement boundary in [Planning Practice Note 36: Implementing a Coastal Settlement Boundary](#).
 - 97.2. It is consistent with [Planning Practice Note 42: Applying the Rural Zones](#) which identifies that the RCZ is designed to be applied to rural areas where *‘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.’*³²
 - 97.3. This land is not required to accommodate housing growth. As the Structure Plan identifies, there is sufficient land within Port Fairy township for over 15 years of population growth.
 - 97.4. The land is also subject to significant flood risk under a 1.2m or 0.8m sea level rise scenario. Residential rezoning of this land would be inappropriate as it would allow for an intensification of population in a high risk area.
98. Council does not support the retention of the LDRZ to part of properties on Model Lane. It would allow the intensification of development in an area that is identified as having high environmental values and high risk of flooding. Furthermore, the Structure Plan and the Supply & Demand Assessment identify that there is sufficient land supply within Port Fairy Township to cater for at least 15 years of demand. It is also well recognised as poor planning practice to apply two zones to one lot. In these circumstances, Council submits that the LDRZ should not be retained on part of the properties on the south side of Model Lane.

PARKING OVERLAY AND ENVIRONMENTAL SIGNIFICANCE OVERLAY

99. Panel Direction 25 (e) seeks an explanation why Council resolved to abandon the application of the Parking Overlay to the commercial town centre and the Environmental Significance Overlay over the Wannon Water Reclamation Plant.

³² PPN42,

Parking Overlay

100. The *Port Fairy Car Parking Strategy 2017*, adopted by Council in August 2017, recommended, among other things, the application of a Parking Overlay to the Port Fairy town centre which sets lower parking rates for specific commercial land uses, and requires payment-in-lieu for spaces not provided. The Structure Plan notes the recommendation in the *Port Fairy Car Parking Strategy 2017*.
101. Most submissions received in relation to this issue objected to both the application of the Parking Overlay and the payment-in-lieu requirement on that basis that these controls would disincentivise development.
102. The officer report to Council at its Ordinary Meeting on 1 March 2021 recommended that the Parking Overlay be abandoned as part of the Amendment. This recommendation was based on a lack of strategic justification in circumstances where:
 - 102.1. the *Port Fairy Car Parking Strategy 2017* found the existing parking supply was adequate and made recommendations for managing increased demand during peak holiday periods; and
 - 102.2. the Infrastructure and Environment Directorate's annual budget provides for improvements to parking and associated infrastructure.
103. Council's resolution of 1 March 2021 was consistent with the officer recommendation to abandon the application of the Parking Overlay.

Environmental Significance Overlay

104. Implementing a recommendation of the Structure Plan, the exhibited Amendment proposed to apply Schedule 7 of the Environmental Significance Overlay (**ESO7**) to a 500m buffer around the Port Fairy Water Reclamation Plant. ESO7 sought to protect the ongoing operation of the plant from encroachment of incompatible development.
105. Council received submissions both objecting to the application of ESO7, and requesting the extension of ESO7 to cover adjacent industrial properties. The EPA's submission to the Amendment noted that since the Structure Plan and exhibition of the

Amendment, the Buffer Area Overlay (**BAO**) had been introduced and therefore may be a more appropriate tool to manage sensitive interfaces.

106. The officer recommendation to Council at its Ordinary Meeting of 1 March 2021 was to abandon the application of ESO7 as part of the Amendment. Based on the introduction of the BAO, the officer recommended that Council undertake a broader investigation in relation to the merits of the application of the BAO/ESO to key industrial sites more broadly. The officer considered that such an approach would achieve a consistent approach to interface treatments. At the same meeting, the Council resolved to abandon this part of the Amendment.

CONCLUSION

107. This concludes Council's Part B submission.

Greg Tobin
HARWOOD ANDREWS
on behalf of
Moyne Shire Council

LIST OF APPENDICES

Appendix A	Response to Panel Direction 25
Appendix B	Summary of changes in 'Part A' DDOs
Appendix C	Zone and overlay maps based on 'Part A' Ordinance
Appendix D	Memorandum from John Glossop in relation to 'Part A' Ordinance
Appendix E	News articles in relation to historic and recent flooding in Port Fairy
Appendix F	Articles in relation to impact on insurance, derivation of Victorian sea-level and 1 in 100 year floods

Appendix A – Response to Panel Direction 25

Panel Direction	Issue	Response
25 (a)	A response to the issues raised by the Department of Environment, Land, Water and Planning in its letter of authorisation, (undated and un-numbered, but included in Council's package of information, noting a search of records has the date as 3 March 2020.	<p>The letter of authorisation (included in Appendix 5 to Council's Part A submission) listed 7 conditions of authorisation.</p> <p>In response to condition 1, Council updated the exhibited Explanatory Report to confirm consistency of the proposed rezoning with Planning Practices Notes 90 and 91.</p> <p>In response to condition 2, Council reviewed its approach to the Port Fairy Water Reclamation Plant buffer in light of the then proposed amendments to the Victorian Planning Provisions for buffers. Following exhibition and further consultation resolved to abandon the proposed ESO7 over the Port Fairy Water Reclamation Plant buffer on the basis that further work will be done to investigate application of the Buffer Area Overlay more generally.</p> <p>In response to condition 3, Council revised the date of the LFDP in LSIO2 and FO2 to ensure consistency with the Amendment.</p> <p>Prior to exhibition of the Amendment, Council made the changes to the DDO maps, the Schedule to Clause 72.03, corrected mapping and ordinance inconsistencies and updated the Explanatory Report and Instruction Sheet to reflect these changes.</p>
25 (b)	Information on the proposed flood provisions, including use and rationale of a 1.2m mean sea level rise in flood modelling, and the application of flood provisions to specific properties, particularly in the Model Lane precinct. With regard to the mean sea level	Refer to Part B submission.

	rise, the Panel seeks information on the rationale of adopting 1.2m sea level rise in the context of State Policy (Clause 13.01-2s) that mentions 'not less than 0.8m'.	
25 (c)	A response on whether there is merit to distinguish between potential riverine and coastal flooding.	Refer to Part B submission.
25 (d)	Confirmation of the author of the proforma submission regarding the Wannon Water Reclamation Plant buffer issue.	Refer to letter to PPV dated 17 August regarding Panel Direction 25 (d).
25 (e)	An explanation why Council resolved to abandon the application of the Parking Overlay to the commercial town centre and the Environmental Significance Overlay over the Wannon Water Reclamation Plant.	Refer to Part B submission.
25 (f)	Rationale for rezoning residential land in Port Fairy from General Residential Zone and the Mixed Use Zone to Neighbourhood Residential Zone.	Refer to Part B submission.
25 (g)	Rationale for rezoning land for residential development as Growth Area A and the use and suitability of the Neighbourhood Residential Zone for areas identified for growth.	Refer to Part B submission.
25 (h)	For items F and G, information on how the Amendment complies with relevant aspects of	Refer to Part B submission.

	State Planning Policy that promote housing diversity (e.g. Clause 16.01-1) and compliance with Planning Practice Note 90: Planning for Housing and Planning Practice Note 91: Using the Residential Zones.	
25 (i)	Rationale for rezoning properties in the Model Lane precinct to Rural Conservation Zone, and its response to requests for rezoning of specific properties to be added to or exempted from the Amendment.	Refer to Part B submission.
25 (j)	Summary of changes recommended to the Design and Development Overlays.	Refer to Appendix B.
25 (k)	Response to requests for grammatical/readability/other changes to mapping or ordinance.	Refer to 'Part A' Amendment document.
25 (l)	The status of the Incorporated Documents and Background Documents.	<p>The Structure Plan is a Council adopted document. The Structure Plan and <i>Flood Summary Report 2021</i> are proposed to be listed as a background document to Clause 21.11.</p> <p>The final <i>Port Fairy Local Floodplain Development Plan</i> and the <i>Glenelg Hopkins Catchment Management Authority Guidelines for Fencing in Flood Prone Areas 2015</i> are proposed to be incorporated documents listed in the Schedule to Clause 72.04.</p> <p>For other documents, refer to Appendix 2 to the Part A submission.</p>

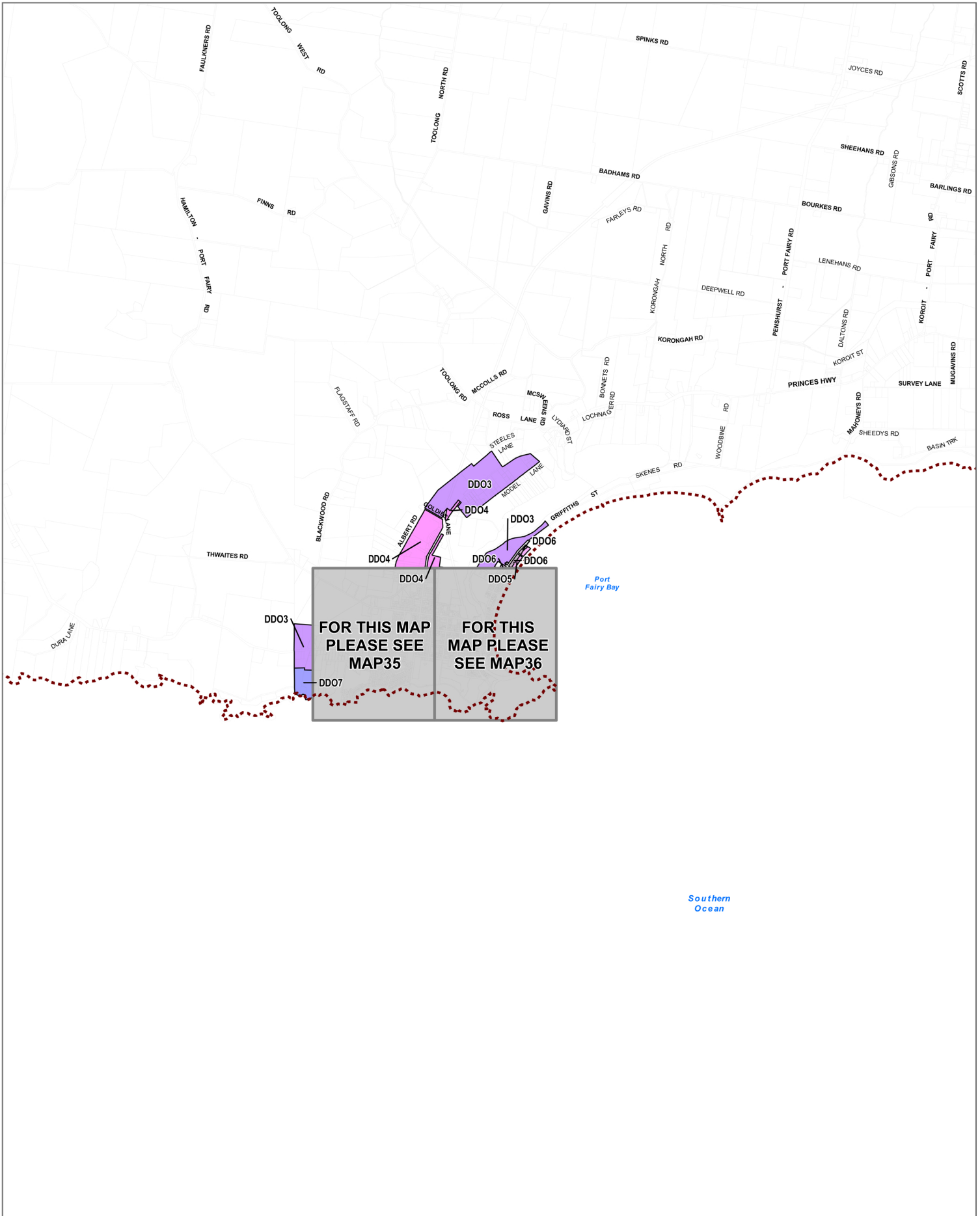
APPENDIX B: SUMMARY OF CHANGES TO 'PART A' DDOs

DDO Schedule	'Part A' changes to ordinance text	'Part A' changes to mapping
<p>Schedule 1 to Clause 43.02 Design and Development Overlay</p> <p>(Port Fairy Commercial Core Precinct)</p>	<ul style="list-style-type: none"> Clarify and consolidate design objectives in section 1.0. Amend buildings and works requirements in section 2.0 to: <ul style="list-style-type: none"> clarify and consolidate requirements, including to clarify mandatory building heights; insert 'Design Detailing requirement' to capture deleted design objective. Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. Delete sign requirements in section 4.0. Insert decision guidelines at section 6.0 relating to buildings and works. 	None.
<p>Schedule 2 to Clause 43.02 Design and Development Overlay</p> <p>(Port Fairy Town Centre Precinct)</p>	<ul style="list-style-type: none"> Clarify and consolidate design objectives in section 1.0. Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify and consolidate requirements, including to clarify mandatory building heights. Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. Delete sign requirements in section 4.0. Insert decision guidelines at section 6.0 relating to buildings and works. 	None.
<p>Schedule 3 to Clause 43.02 Design and Development Overlay</p> <p>(Port Fairy Settlement Approaches)</p>	<ul style="list-style-type: none"> Clarify and consolidate design objectives 1 and 3 in section 1.0 relating to integration of landscaping with built form. Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify requirements. Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. Delete sign requirements in section 4.0. Insert decision guidelines at section 6.0 which requires consideration of 'The Design Objectives of this Schedule'. 	None.

DDO Schedule	'Part A' changes to ordinance text	'Part A' changes to mapping
Schedule 1 to Clause 43.02 Design and Development Overlay (Port Fairy Residential Areas)	<ul style="list-style-type: none"> • Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify requirements. • Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. • Delete sign requirements in section 4.0. • Insert decision guideline at section 6.0 relating to driveways. 	No longer applies to Growth Areas A and B.
Schedule 5 to Clause 43.02 Design and Development Overlay (Port Fairy East Beach)	<ul style="list-style-type: none"> • Clarify design objective in section 1.0. • Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify requirements. • Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. • Delete sign requirements in section 4.0. • Amend language in section 5.0 Application requirement relating to view sharing. • Insert decision guideline at section 6.0 relating to driveways and clarify second decision guideline relating to landscape response. 	None.
Schedule 6 to Clause 43.02 Design and Development Overlay (Port Fairy Griffiths Street and Wharf Precinct)	<ul style="list-style-type: none"> • Clarify design objectives in section 1.0. • Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify requirements. • Delete permit exemption relating to circumstances where a permit has been granted or development is exempt under the <i>Heritage Act 1995</i>. • Delete sign requirements in section 4.0. • Amend language in section 5.0 Application requirement relating to view sharing. • Insert decision guideline at section 6.0 relating to driveways and clarify language in guidelines 3 and 4. 	None.
Schedule 7 to Clause 43.02 Design and Development Overlay (Port Fairy South Coast Precinct)	<ul style="list-style-type: none"> • Clarify and consolidate design objectives in section 1.0. • Amend buildings and works and subdivision requirements in sections 2.0 and 3.0 to clarify requirements. • Delete permit exemption relating to circumstances where a permit has been 	None.

DDO Schedule	'Part A' changes to ordinance text	'Part A' changes to mapping
	<p>granted or development is exempt under the <i>Heritage Act 1995</i>.</p> <ul style="list-style-type: none"> • Delete sign requirements in section 4.0. • Amend language in section 5.0 Application requirement relating to view sharing. • Insert decision guideline at section 6.0 relating to driveways and delete guideline 3. 	

APPENDIX C: ZONE AND OVERLAY MAPS BASED ON ‘PART A’ ORDINANCE



LEGEND

- DDO3 - Design and Development Overlay - Schedule 3
- DDO4 - Design and Development Overlay - Schedule 4
- DDO5 - Design and Development Overlay - Schedule 5
- DDO6 - Design and Development Overlay - Schedule 6
- DDO7 - Design and Development Overlay - Schedule 7



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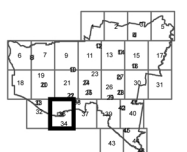


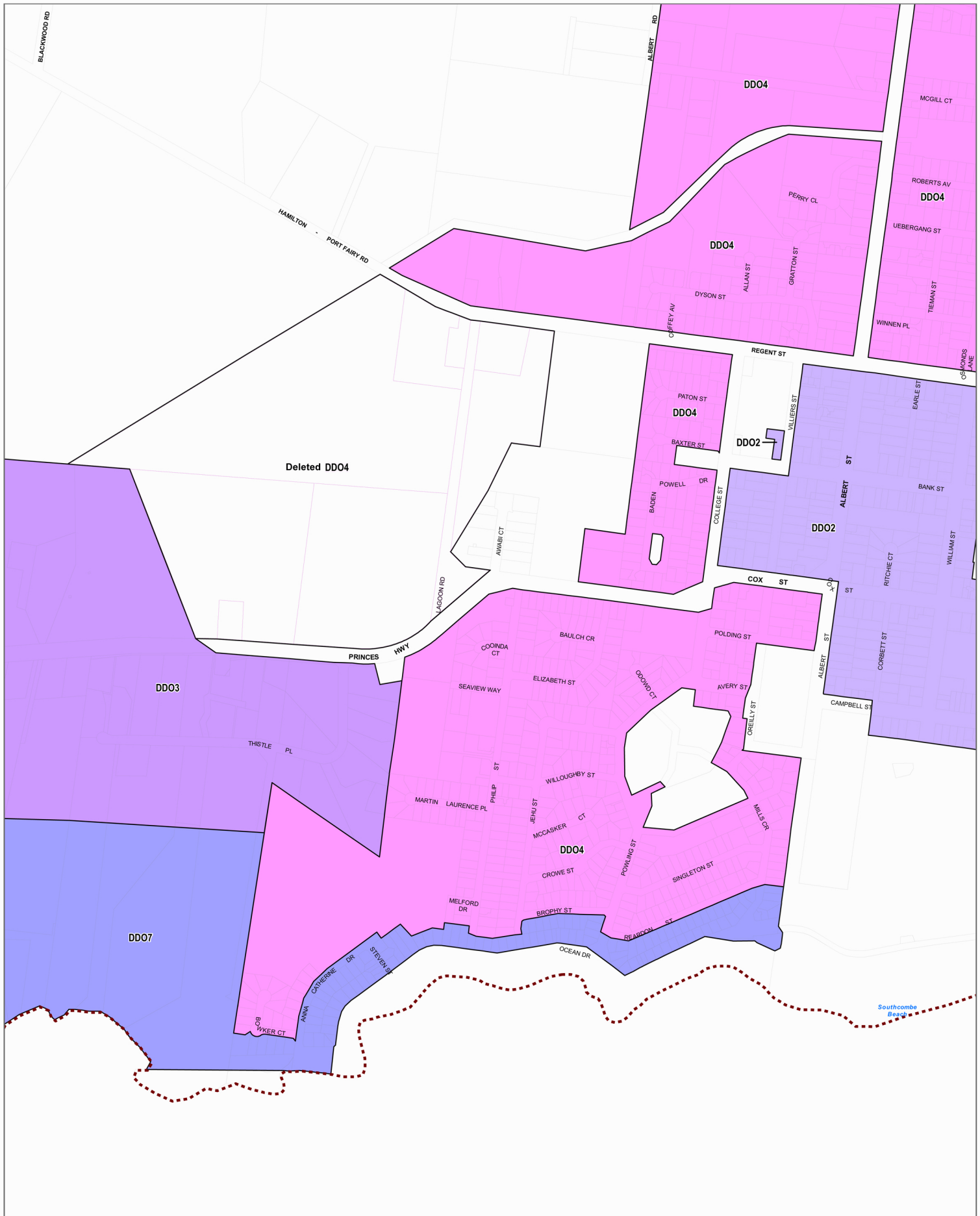
Planning Group
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Amendment Version: 1



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INDEX TO ADJOINING SCHEME MAPS





- LEGEND**
- DD02 - Design and Development Overlay - Schedule 2
 - DD03 - Design and Development Overlay - Schedule 3
 - DD04 - Design and Development Overlay - Schedule 4
 - DD07 - Design and Development Overlay - Schedule 7



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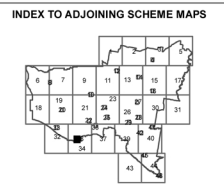
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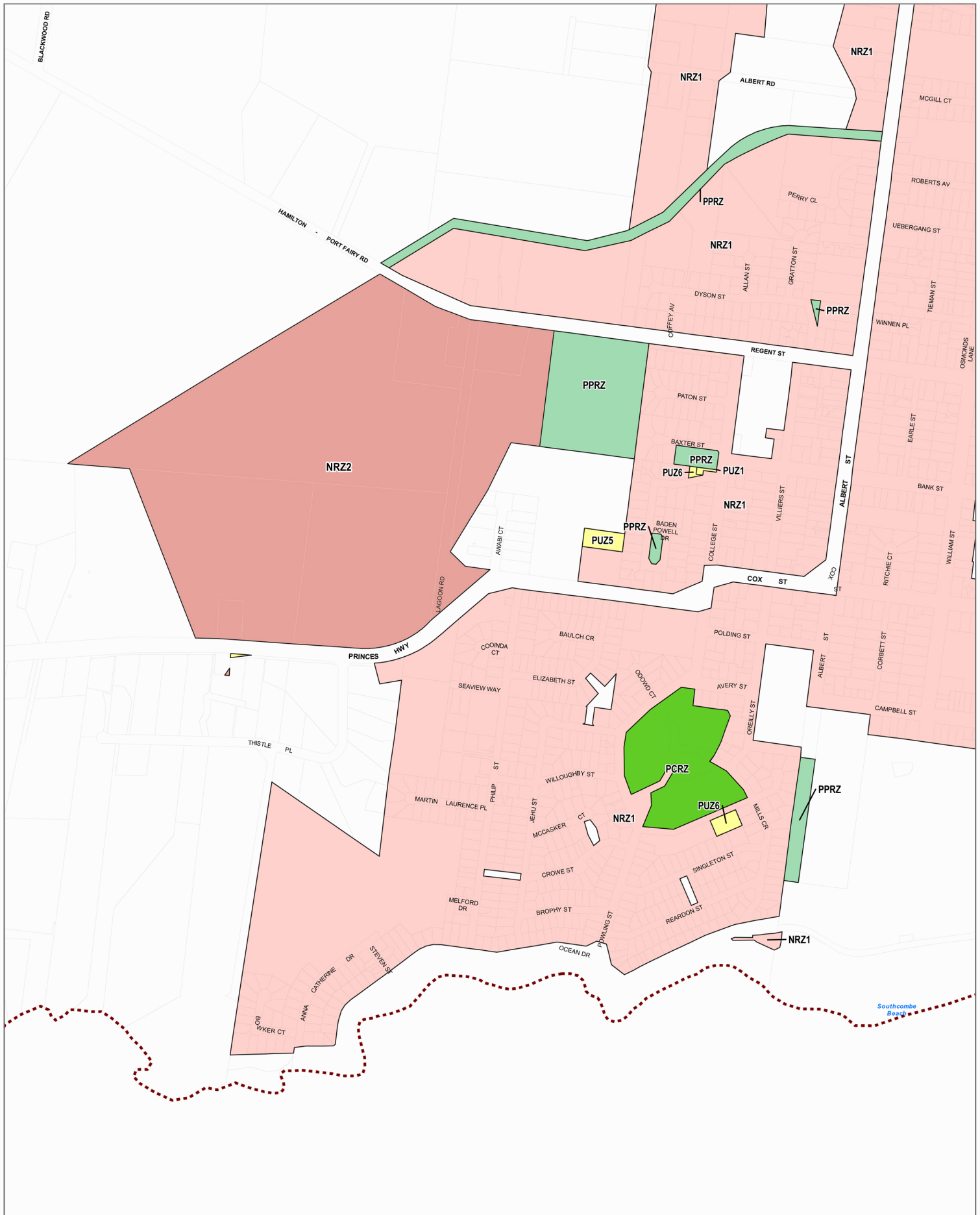
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MOYNE PLANNING SCHEME - LOCAL PROVISION AMENDMENT C69



LEGEND

- LDRZ - Low Density Residential Zone
- NRZ - Neighbourhood Residential Zone
- PCRZ - Public Conservation and Resource Zone
- PPRZ - Public Park and Recreation Zone
- PUZ1 - Public Use Zone - Service and Utility
- PUZ5 - Public Use Zone - Cemetery/Crematorium
- PUZ6 - Public Use Zone - Local Government



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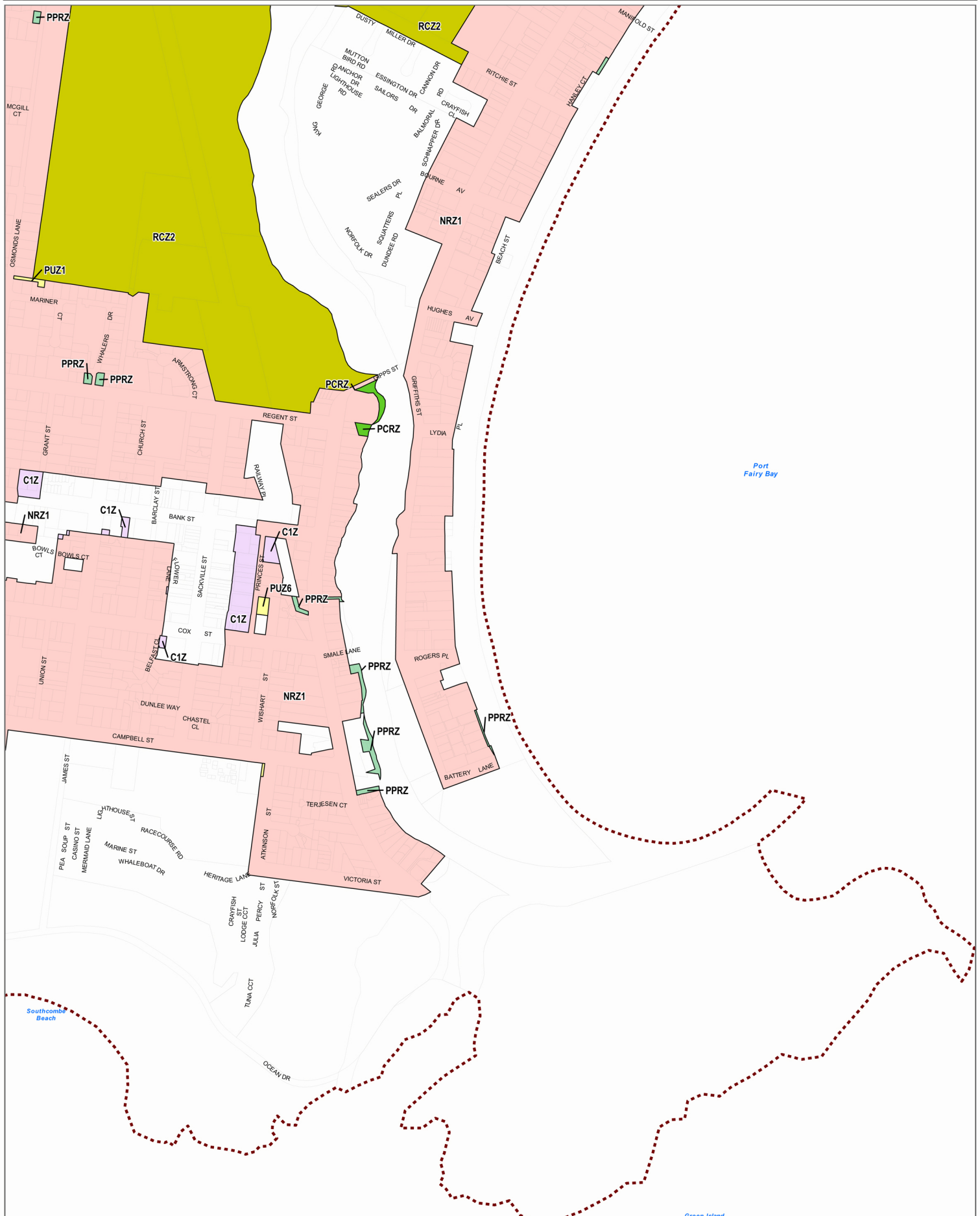
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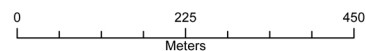
LEGEND

-  C1Z - Commercial 1 Zone
-  NRZ - Neighbourhood Residential Zone
-  PCRZ - Public Conservation and Resource Zone
-  PPRZ - Public Park and Recreation Zone
-  PUZ1 - Public Use Zone - Service and Utility
-  PUZ3 - Public Use Zone - Health and Community
-  PUZ6 - Public Use Zone - Local Government
-  RZ - Rural Conservation Zone



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Australian Map Grid Zone 54

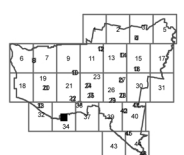


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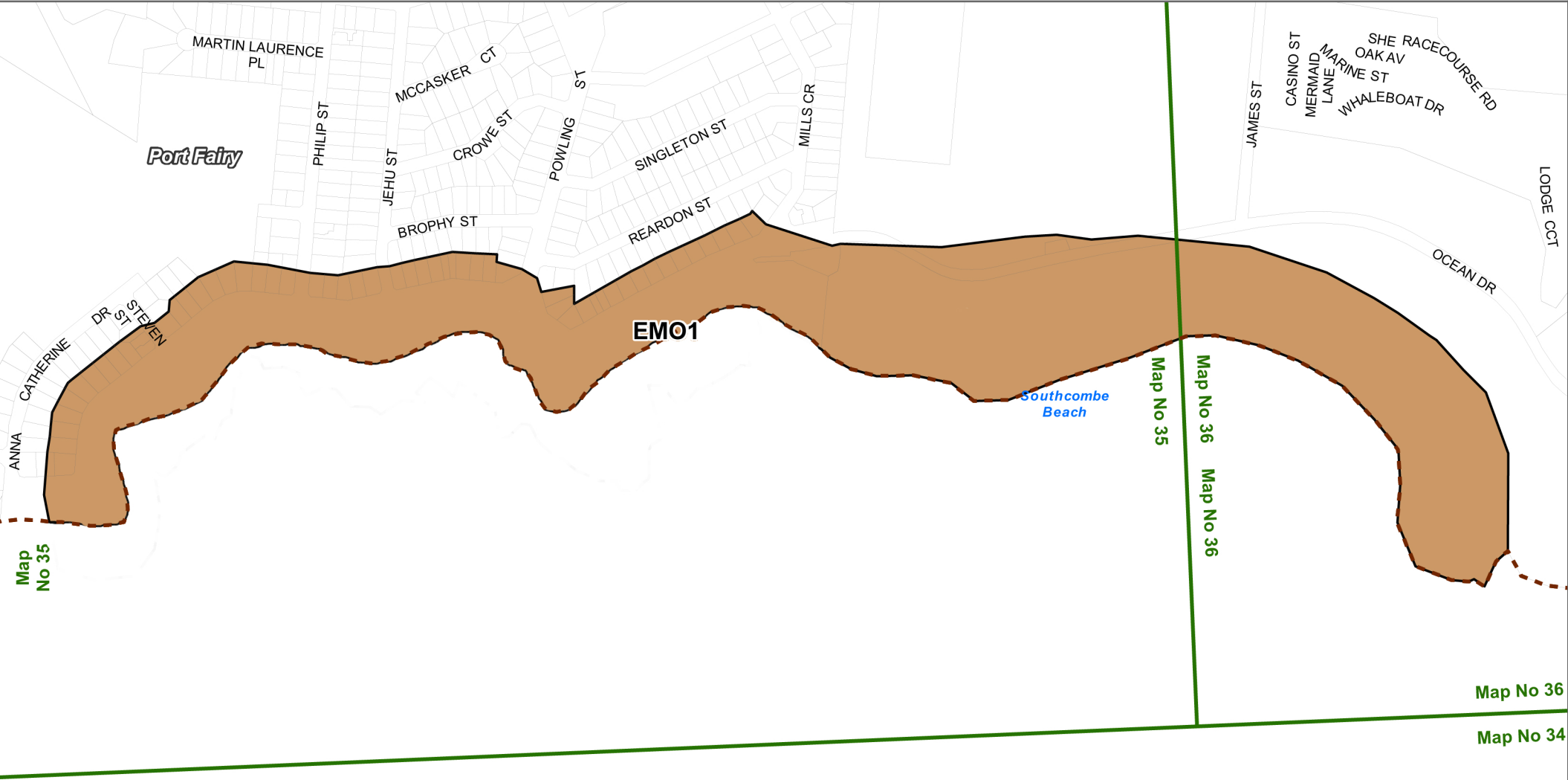


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MOYNE PLANNING SCHEME - LOCAL PROVISION
AMENDMENT C69

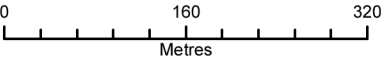


- LEGEND**
- EMO1 - Erosion Management Overlay - Schedule 1
 - Local Government Area

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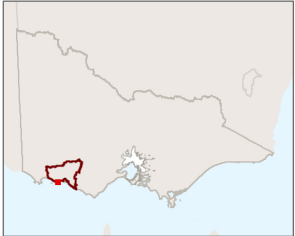
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Planning Group
Print Date: 13/01/2020
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Part of Planning Scheme Maps 35EMO & 36EMO



**APPENDIX D: MEMORANDUM FROM JOHN GLOSSOP IN RELATION TO 'PART A'
ORDINANCE**



Memorandum of Opinion

Project	Amendment C69moyn to the Moyne Planning Scheme
Date	31 August 2022
Subject	Review of 'Part A' Ordinance Changes

Introduction

1. I received a request from Harwood Andrews Lawyers on 29 August 2022 to review the 'Part A' version of the ordinance for Amendment C69moyn (the amendment) to the Moyne Planning Scheme (the Planning Scheme).
2. The version of the ordinance that I have commented on is the ordinance at Appendix 6 to the planning authority's Part A submission (dated 25 August 2022).
3. This memorandum sets out my review and opinion of the changes made in the Part A version of the ordinance. It should be read as an addendum to my evidence statement to this amendment.


Review

4. My review of the ordinance has been undertaken at a high level. The comments set out within this document should not be considered to be an exhaustive list of my opinion and review. Rather, I provide comments in terms of key themes that emerge in the drafting.
5. For ease of reference, I have grouped my analysis under the relevant suite of controls.

Design and Development Overlays

6. The Part A version of the ordinance make a number of substantive changes to the various Design and Development Overlay (DDO) schedules that are proposed to be applied within Port Fairy.
7. In my evidence, I noted that the use of the DDO was a generally acceptable tool to apply within the township, but that the structure and content of the controls required refinement. I particularly observed that the permit exemptions were confusing and that a number of the





general requirements in the overlay were poorly drafted and unclear. I made general suggestions¹ that the drafting of the schedules should be refined to:

- Clarify / tighten the language of subjective requirements in all DDOs.
 - Clarify and update (as necessary) the permit exemptions at Clause 2.0.
 - Delete the DDOs from Growth Areas A and B and decant relevant, measurable requirements into the Zone schedules. Where necessary, decant subjective requirements to the DPO schedule.
 - Clarify whether the height limits are mandatory or not.
 - Reconsider the designation of signage in DDO1 to Category 3.
 - Consider decanting certain measurable requirements from residential DDOs into Zone schedules (where possible).
8. I also understand that changes have been made to respond to matters raised by submitters in relation to the DDOs.
9. My observation is that the drafting of the controls has been improved compared to the version of the controls that were exhibited.
10. Particularly, I support:
- The clarification of the permit requirements and exemptions, by virtue of the deletion of the exemption relating to matters covered by the *Heritage Act 1995*.
 - The deletion of the DDOs from the growth areas and the decanting of relevant requirements into a zone schedule.
 - The deletion of signage requirements within each schedule.
11. However, there remains a number of unresolved issues, particularly in relation to the drafting and expression of the requirements within the schedules.
12. I explore some of these issues below.


Identification of Mandatory and Discretionary Requirements

13. The DDO schedules have been redrafted to change a number (but not all) of the requirements expressed with a 'should' to a 'must'.
14. Additionally, some DDOs² have included a designation that the building height requirements cannot be varied with a permit.

¹ See paragraphs 144-149 of my evidence statement.

² See DDO1 and DDO2 for instance.



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15. While I think that the intent in these changes has been to attempt to clarify which requirements are mandatory and which are discretionary, I think from an operability and interpretation perspective, it is still unclear which requirements are discretionary and which are mandatory.
16. This is particularly well highlighted when reading the height limits across and schedules and also when (to use one example) having regard to the site coverage and permeability requirements in DDO3, which read:

Site Coverage and Permeability

The combined site coverage of buildings and impermeable surfaces must preserve the natural and open character of Belfast Lough and the hillsides.

The site area covered by buildings should not exceed 40 per cent.

The site area covered by permeable surfaces should be at least 60 per cent.

17. The way I read the control is that none of these requirements are mandatory³, however the use of 'should' for some requirements (which are measurable) and 'must' for the first requirement (which is qualitative) is challenging.
18. The debate around the use of 'must' vs 'should' for outlining mandatory and discretionary requirements within planning control is well ventilated. The *Practitioner's Guide to Victorian Planning Schemes* also outlines some relevant guidance that says:
- Use 'must' or 'must not' if the requirement is mandatory.*⁴
19. It separates this out from the use of the word 'should', by saying:
- Do not use 'should' for a mandatory requirement. 'Should' can be used in criteria and in expressing non-mandatory requirements in schedules to some overlays, for example the Design and Development Overlay.*⁵
20. It then observes that drafting should make discretion obvious, by making '*mandatory requirements explicit. Do not assume that a reader will understand what you mean.*'⁶
21. I think historically there has been a 'special case' in this must vs should debate applied for drafting DDO schedules. I am aware that there are some DDOs that express discretionary requirements as 'must', while others express these requirements as 'should'. I observe that Panels, planning authorities and the Department have adopted different approaches on different occasions.


³ Because they are not accompanied by the expression that "a permit cannot be granted to vary this requirement" which is both commonly used in DDO drafting and in the drafting of the height requirements in DDO1 and DDO2 in this amendment.

⁴ A Practitioner's Guide to Victorian Planning Schemes, p. 53.

⁵ A Practitioner's Guide to Victorian Planning Schemes, p. 53.

⁶ A Practitioner's Guide to Victorian Planning Schemes. P. 54.



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22. In circumstances where ‘must’ has been applied in discretionary requirements under DDOs, that has applied a view that Clause 43.02-2 says that:

Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay.

[...]


A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

23. It presumes that you ‘must’ be in accordance with those requirements, but you can get a permit to vary the requirement. The *Ministerial Direction on the Form and Content of Planning Schemes* also provides direction that a mandatory requirement should include the sentence: ‘*A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay*’ (or a variation of that sentence).
24. I accept that the term ‘must’ may be able to be applied for discretionary requirements. However, in my view, it is problematic for the schedules under this amendment to use ‘must’ and ‘should’ interchangeably for discretionary requirements and apply the term ‘must’ for both mandatory and discretionary requirements.
25. From a practical perspective, it is likely to lead to confusion among permit applicants and potentially decision-makers about which requirements are mandatory and which are discretionary.
26. I also read the direction in the Practitioner’s Guide as preferring that ‘should’ be used to express discretionary requirements in the Design and Development Overlay.
27. I have also considered contemporary approaches to drafting. In this respect I observe that Amendment C407melb (which implemented the Arden Structure Plan) was gazetted on 28 July 2022. I note that it is probably one of the most recent expressions of drafting for DDOs. It is also an amendment that I understand had extensive involvement from DELWP and was subject to a rigorous advisory committee process.
28. In my view, the DDO schedules in Amendment C407melb provide an elegant solution to clarifying which requirements are mandatory and discretionary, in a manner that is consistent with the Practitioner’s Guide.
29. For example, DDO82 ‘Arden Precinct – Arden North’ says at Clause 2.2 ‘Requirements’:

The following Built Form Outcomes and Built Form Requirements apply to an application to construct a building or construct or carry out works.

A permit may be granted to vary a built form requirement expressed with the term ‘should’.



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30. This drafting makes it clear that requirements expressed with the term ‘should’ can be varied, while other requirements cannot.
31. In my view, such language should be adopted in the DDO schedules under this amendment, but with a companion sentence that says:
- A permit cannot be granted to construct a building or to construct or carry out works which are not in accordance with any built form requirement expressed with the term ‘must’.*
32. This approach makes mandatory and discretionary requirements clear for applicants, decision makers and the community and, in my view, represents a best practice approach that is consistent with contemporary drafting.

The Expression of Building Height Requirements and Exemptions

33. Setting aside my comments on whether certain building height (and other) requirements are mandatory or discretionary, I also observe that some (but not all) DDOs seek to define building height as being measured:
- Between the natural ground level and the apex of the building roof.*
34. This is expressed in DDO2, DDO5 and DDO6, but is absent from other schedules.
35. Building height is defined at Clause 73.01 of the planning scheme as:
- The vertical distance from natural ground level to the roof or parapet at any point.*
36. Notably, this means that building height is expressed slightly differently across these DDOs – some rely on the definition at Clause 73.01, while some define a different (but ultimately similar) measurement.
37. The *Practitioner’s Guide to Victorian Planning Schemes* says:
- Use words that have been defined in the planning scheme in strict accordance with their definition.⁷*
- Before a new definition is used, consider why a new definition is needed. The Act and the VPP provide a number of definitions and a provision should be drafted on the basis of these definitions.⁸*
38. I cannot see any discernible reason to adopt a measurement metric different to that at Clause 73.01 and suggest that the requirement be deleted.

⁷ *A Practitioner’s Guide to Victorian Planning Schemes*, p. 54.

⁸ *A Practitioner’s Guide to Victorian Planning Schemes*, p. 55.



39. Similarly, DDO2, DDO4, DDO5, DDO6 and DDO7 all contain a requirement that:

The building height may be measured from the designated floor height rather than the natural ground level, if the dwelling site is within the Land Subject to Inundation Overlay or Floodway [Overlay].

40. This language is similar in intent, but expressed differently, to a requirement in the Neighbourhood Residential Zone (at Clause 32.09-10) that says:

Building height if land is subject to inundation

If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone or schedule to the zone is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.


41. I prefer this language and for consistency (noting that much of the land in Port Fairy is proposed to be zoned NRZ) suggest that this language be carried across to the overlays, as appropriate.
42. Finally, I observe that none of the building heights expressed in the overlays (whether mandatory or discretionary) allow for the height limit to be exceeded by up to 1 metre on sloping sites. I think that this requirement (which applies in the NRZ) should be carried across into relevant DDOs.

Further comments on specific DDO schedules

43. In terms of some specific comments relevant to individual schedules:

- The second Design objective in DDO1 is ‘*To support sensitive integration of new development with the precinct’s heritage qualities*’. While this redrafted objective is more aligned with the purpose of the DDO than the exhibited objective, I question whether the verb should be an encouraging verb or a conclusive verb (i.e. to ‘support’ vs to ‘ensure’).
- DDO3 contains a Design objective ‘*To reduce the visual prominence of built form on approach to Port Fairy*.’ In my view, this drafting is unclear (and potentially difficult to achieve). The objective should instead be drafted to focus on encouraging a low scale built form response.
- DDO3 contains a decision guideline to consider ‘*the Design Objectives of this Schedule*’. This requirement is superfluous as Clause 43.02-6 requires the responsible authority to consider the design objectives of the schedule.
- DDO5 and DDO6 have Design objectives which seek respectively ‘To protect existing native coastal vegetation and encourage the planting of indigenous vegetation’ and ‘To protect existing native coastal vegetation and identified landscape character (including the dominance of Norfolk Pines) and to encourage the planting of additional vegetation.’





The part of the objective that seeks to ‘protect’ existing vegetation appears to be beyond the power of the DDO, which does not control the removal of vegetation. Similarly, there is no overlay (like the Vegetation Protection Overlay) applying to land across DDO5 and DDO6 which would protect that vegetation.

If the intent is to prevent the removal of the vegetation, I cannot see any ability to do so, even with a well-intended (but inappropriate) objective in the Design and Development Overlay and that part of the objective should be deleted.

However, if the intention is to ensure that development is sited in a manner that allows for remnant vegetation to be viably retained, then the objective should be reworded to be more directive about the built form outcome expected.

44. As I identified earlier, this commentary should not be considered to be exhaustive, but rather highlighting general and thematic opportunities for improvement in the drafting of these controls.

Floodway Overlay & Land Subject to Inundation Overlay

45. The Part A changes to the Floodway Overlay (FO) and Land Subject to Inundation Overlay (LSIO) can generally be summarised as follows:
- Updating the reference to the year in the *Port Fairy Local Floodplain Development Plan* Incorporated Document in all overlays from 2019 to 2022.
 - Changing the Floodway/Land subject to inundation objectives to be achieved and Statement of risk in FO3 and LSIO4.
 - Amending the permit exemptions in FO3 and LSIO4.
 - Amending the decision guidelines in FO3 and LSIO4.
46. Firstly, I think that updating the reference year of the Incorporated Document is an uncontroversial (and necessary) change.
47. In terms of the proposed changes to the Floodway/Land subject to inundation objectives to be achieved and Statements of risk, my view is that:
- The objectives are generally appropriate from a land use planning perspective. The objectives clarify that the overlay is managing riverine and coastal influenced inundation.
 - The Statements of risk appropriately delineate between areas of high risk (under the FO) and lower risk (under the LSIO). This distinction is appropriate and clarifies the way in which the controls are applied, as I explored in my evidence.
 - I note that the LSIO Statement of risk refers to the area being subject to flooding of less than 0.5 metres of depth, but the companion statement in the FO has been deleted. I think it would be desirable to retain the statement in the FO, to identify the depth expected in this location, as it informs the higher risk from higher hazard.



48. In relation to the revised permit exemptions:

- The exemptions generally seem appropriate and clearly drafted.
- It is unclear to me why the exemption for buildings and works associated with an Outdoor recreation facility is different in the LSIO4 (where it must be “open sided”) to the FO3 (where there is no reference to it being “open sided”).
- The reference to “outdoor sign” could, in my view, be amended to simply refer to a sign. Clause 52.05-10 already exempts a sign from requiring a permit (under any provision) for ‘a sign inside a building that cannot generally be seen outside’.

49. In relation to decision guidelines, both the Floodway Overlay – Schedule 3 (FO3) and Land Subject to Inundation Overlay – Schedule 4 (FO4) include the following matter to be considered:

The requirements of the Marine and Coastal Policy 2020.

50. Firstly, it is not clear what the ‘requirements’ of this policy are in relation to assessing a planning permit application. I particularly note that the policy direction from this document was introduced into planning schemes by Amendment VC171 and it is unclear to me what further land use planning guidance is necessary in this instance.

51. More pertinently, however, the Practitioner’s Guide to Victorian Planning Schemes observes that reference to external documents in decision guidelines is only appropriate in certain circumstances. It particularly says that decision guidelines:

may refer to a document but only if the document is incorporated in the scheme. A decision guideline should not refer to a background document.⁹

52. The *Marine and Coastal Policy 2020* is listed as a policy document at various clauses within the Planning Policy Framework.¹⁰

53. However, it is not listed as an incorporated document at Clause 72.04, nor does this amendment propose to introduce it as an incorporated document in the Schedule to Clause 72.04. Similarly, I do not think that the *Marine and Coastal Policy 2020* would satisfy the tests within the Practitioner’s Guide¹¹ for when a document should be incorporated.

54. On this basis, I recommend that the decision guideline be deleted from both the FO3 and LSIO4.

⁹ A Practitioner’s Guide to Victorian Planning Schemes, p. 114.

¹⁰ See Clauses 11.03-4S, 11.03-5R, 12.02-1S, 12.02-2S, 13.01-2S, 14.02-1S and 17.04-2S for instance.

¹¹ See Section 6.7.2 of the Practitioner’s Guide to Victorian Planning Schemes.






Proposed Neighbourhood Residential Zone Schedule 2

55. The Part A ordinance proposes that a new schedule to the NRZ apply to the growth areas (NRZ2).
56. This responds to my comments to not apply the DDO to growth areas and instead rely on the zone and DPO to guide land use and development.
57. It follows that I support the approach to the use of a defined NRZ2 schedule for the growth areas.
58. There are, however, opportunities to improve the drafting, particularly in relation to the variations to Standard B13 and Standards A10 and B17.
59. I observe that the amendment proposes to introduce the following varied standards:
- Standard B13: Two canopy trees per dwelling.
 - Standard A10/B17: 3 metres within 10 metres of the building frontage.
60. My reading of the way the varied standards operate in zone schedules is that they replace the Clause 54 and Clause 55 standards *in their entirety*. This is consistent with the Tribunal's interpretation in *Frankcom Blossom v Whitehorse CC* [2019] VCAT 1790 and my interpretation of the guidance in Planning Practice Note No. 91: Using the residential zones.
61. PPN91 relevantly states:
- When a local value is specified in a schedule, the value replaces the relevant value in both the clause 54 and clause 55 standard and in the corresponding building regulation.*¹²
62. And:
- Any omission of text or values between the clause 54 and clause 55 standard and the variation may have unintended consequences. It is therefore important that the variation uses the format and language of the relevant standard to ensure that there is no confusion.*
- Only the numerical value of the relevant standard should be changed. The schedule cannot be used to apply a different value to only some land in the zone because the building regulations refer to the application of the variation uniformly throughout the zone. A building certifier's point of reference is what the land is zoned in the planning scheme.*¹³
63. To this extent, I note that residential zone schedules in Stonnington and Whitehorse clarify the operation of the balance of the standard beyond the 'variation'.

¹² Planning Practice Note No. 91, p. 18.

¹³ Planning Practice Note No. 91, p. 19.




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64. I do not think that it is intended that the proposed variations in NRZ2 essentially turn off the balance of the standard, particularly in the case of Standard A10/B17, which would otherwise allow walls to be constructed without setback beyond 10 metres of the building façade.
65. If I am right about this assumption, I suggest that the proposed standards be reworded as follows:
- Standard B13: *In addition to the requirements of standard B13, at least two canopy trees should be planted per dwelling.*
 - Standard A10/B17: *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.

66. I also think it is desirable to decant some of the requirements of the DDO4 into decision guidelines in the NRZ2, as follows:
- *Whether adequate space is available to avoid boundary to boundary development and to maintain a landscaped garden setting.*
 - *Whether the building materials and colours respect the character of surrounding dwellings.*
 - *Whether garages, outbuildings and parking areas have been sited to minimise visibility from the street.*
 - *Whether driveways are constructed of a permeable material.*

Development Plan Overlay – Schedule 4

67. The proposed DPO4 has been revised under the Part A ordinance to include stronger requirements for the identification of Companion Lagoon and to prevent development from flood prone land.
68. These changes arise out of recommendations from my evidence and I consider that they are generally appropriate.



John Glossop
Director



**APPENDIX E: NEWS ARTICLES IN RELATION TO HISTORIC AND RECENT FLOODING
IN PORT FAIRY**

See electronic folder.

APPENDIX F: ARTICLES IN RELATION TO IMPACT ON INSURANCE, DERIVATION OF VICTORIAN SEA-LEVEL AND 1 IN 100 YEAR FLOODS

See electronic folder.