



Town Planning Evidence Statement

Planning Panels Victoria
Amendment C69moyn to the Moyne Planning Scheme
Port Fairy Structure Plan

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Date: 19 August 2022



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1.INTRODUCTION

- 1 I received instructions from Harwood Andrews Lawyers, acting on behalf of Moyne Shire Council (the ‘planning authority’) to prepare a statement of evidence in relation to Amendment C69moyn (the ‘amendment’) to the Moyne Planning Scheme.
- 2 The amendment proposes to implement the recommendations and findings of the *Port Fairy Coastal and Structure Plan 2018* (the ‘Structure Plan’).
- 3 Specifically, the amendment seeks to change the Moyne Planning Scheme by:
 - Rezoning all land within Port Fairy currently in the General Residential Zone (GRZ) and the Mixed Use Zone (MUZ) to the Neighbourhood Residential Zone – Schedule 1 (NRZ1);
 - Rezoning land identified in the Structure Plan as being within Growth Area A from the Rural Living Zone (RLZ) to the NRZ1 and applying a Development Plan Overlay – Schedule 4 (DPO4) to the land and some of the land identified as Growth Area B;
 - Rezoning land around Belfast Lough in the Farming Zone (FZ), Low Density Residential Zone (LDRZ) and Industrial 1 Zone (IN1Z) to the Rural Conservation Zone – Schedule 2 (RCZ2);
 - Applying the Commercial 1 Zone to properties identified for expansion of the town centre commercial area;
 - Replacing the existing 19 Design and Development Overlay (DDO) schedules applying to land in the Structure Plan area with 7 DDO schedules;
 - Introducing a Land Subject to Inundation Overlay – Schedule 4 (LSIO4) and Floodway Overlay – Schedule 3 (FO3) to areas subject to coastal inundation and a 1.2 metre sea level rise;
 - Applying the Erosion Management Overlay (EMO) to areas along primary coastal dunes and subject to erosion;



- Applying an Environmental Significance Overlay – Schedule 7 (ESO7) to land within the buffer area of the Port Fairy Water Reclamation Plant;
 - Applying a Parking Overlay – Schedule 1 (PO1) to the commercial town centre area of Port Fairy; and
 - Making changes to local level policy in the Planning Policy Framework (PPF).
- 4 Following the consideration of submissions received during the exhibition period, the planning authority abandoned the parts of the amendment that sought to apply the Parking Overlay and Environmental Significance Overlay.
- 5 I was not involved in the preparation of the amendment. I was engaged following the referral of submissions to the amendment to the Panel.

My Evidence

- 6 My instructions are attached to my evidence at **Appendix A**.
- 7 I have been instructed to review the amendment and prepare an expert witness statement, which provides my expert opinion on:
- *Whether Amendment C69 is acceptable with or without any changes to the exhibited documents proposed by Council and/or any additional changes you recommend; and*
 - *The submissions to Amendment C69 and the Memorandum from Water Technology to Myers Planning Group dated 19 May 2022 regarding 169A Princes Highway Port Fairy (to the extent relevant to your expertise);*
 - *Whether the use of the FO is an appropriate use of planning controls in the context of coastal and riverine flooding;*
 - *The planning merit of the following:*
 - *The application of flooding controls, specifically the LSIO and FO, in the context of planning for Port Fairy;*



- *The proposed DDOs;*
- *The application of the RCZ to properties in the Model Lane precinct;*
- *The rezoning of land in Growth Area A for residential purposes; and*
- *The application of the NRZ1 to the area surrounding Companion Lagoon.*

8 In preparing this statement, I have:

- Inspected the land affected by the amendment, including the land the land that is also proposed to be rezoned by Amendment C75moyn;
- Read the exhibited amendment documentation, including the explanatory report, ordinance and mapping changes;
- Read the Port Fairy Coastal and Structure Plan 2018;
- Considered relevant aspects of the Moyne Planning Scheme, including the Planning Policy Framework;
- Considered the Great South Coast Regional Growth Plan;
- Considered the Practitioner's Guide to Victorian Planning Schemes;
- Considered relevant Practice Notes, including Planning Practice Note No. 12: Applying the Flood Provisions in Planning Schemes, Planning Practice Note No. 23: Applying the Incorporated Plan and Development Plan Overlays, Planning Practice Note No. 36: Implementing a Coastal Settlement Boundary, Planning Practice Note No. 37: Rural Residential Development, Planning Practice Note No. 42: Applying the Rural Zones, Planning Practice Note No. 46: Strategic Assessment Guidelines, Planning Practice Note No. 59: The Role of Mandatory Provisions in Planning Schemes and Planning Practice Note No. 91: Using the Residential Zones;
- Considered relevant Ministerial Directions, including the Ministerial Direction on the Form and Content of Planning Schemes, Ministerial Direction No. 11:



Strategic Assessment of Amendments and Ministerial Direction No. 13:
Managing coastal hazards and the coastal impacts of climate change;

- Considered the Residential Land Supply & Demand Assessment: Shire of Moynes (May 2021) prepared by Spatial Economics;
 - Read the submissions received by the planning authority to the amendment; and
 - Read the agenda to the relevant Council meetings that have considered the amendment.
- 9 My evidence is based on the exhibited amendment, save for the parts of the amendment that have been abandoned.
- 10 I have not been asked to consider the extent of flood mapping, modelling or the hydrological aspects of the amendment, as these are outside my area of expertise.



2.PLANNING EVIDENCE

- 11 Having regard to the strategic planning context for Port Fairy, I have framed my assessment and evidence around the following questions:
- What is the strategic context for Port Fairy?
 - Is the amendment strategically justified?
 - Is the approach to managing flooding, coastal inundation and sea level rise appropriate?
 - Is the rezoning of the land within the township appropriate?
 - Is the approach to the proposed Design and Development Overlays within the township appropriate?
 - Is the application of the Rural Conservation Zone to land in and around Belfast Lough appropriate?
 - Is the approach to Growth Areas A and B appropriate?
- 12 These matters are addressed within this section of my statement.
- 13 In framing my assessment, I note that many submitters have raised matters along similar lines. My evidence has considered all submissions in forming my opinion.

What is the strategic context for Port Fairy?

- 14 Port Fairy is a coastal township located within the Great South Coast region, approximately 26 kilometres to the west of Warrnambool. It is strategically located on the Princes Highway, which provides connection to Melbourne, Colac and Warrnambool to the east and Portland to the west.

- 15 The Great South Coast Regional Growth Plan (the 'Regional Growth Plan') identifies Port Fairy as a district town, which is expected to accommodate 'medium growth'.¹ It acknowledges that district towns perform an important role by providing goods and services to sub-regional catchments and that district towns like Port Fairy and Koroit face pressures for growth.² It is recognised that 'natural and policy barriers and infrastructure constraint' mean that high growth is not possible within the town.³



Future Regional Settlement Framework (source: Great South Coast Regional Growth Plan)

- 16 Port Fairy is identified as a key tourism area within the broader Great South Coast region, supporting its own culture and history whilst contributing important economic development to the region.⁴

¹ Great South Coast Regional Growth Plan, p. 41.

² Great South Coast Regional Growth Plan, p. 57.

³ Great South Coast Regional Growth Plan, p. 42.

⁴ Great South Coast Regional Growth Plan, p. 29.

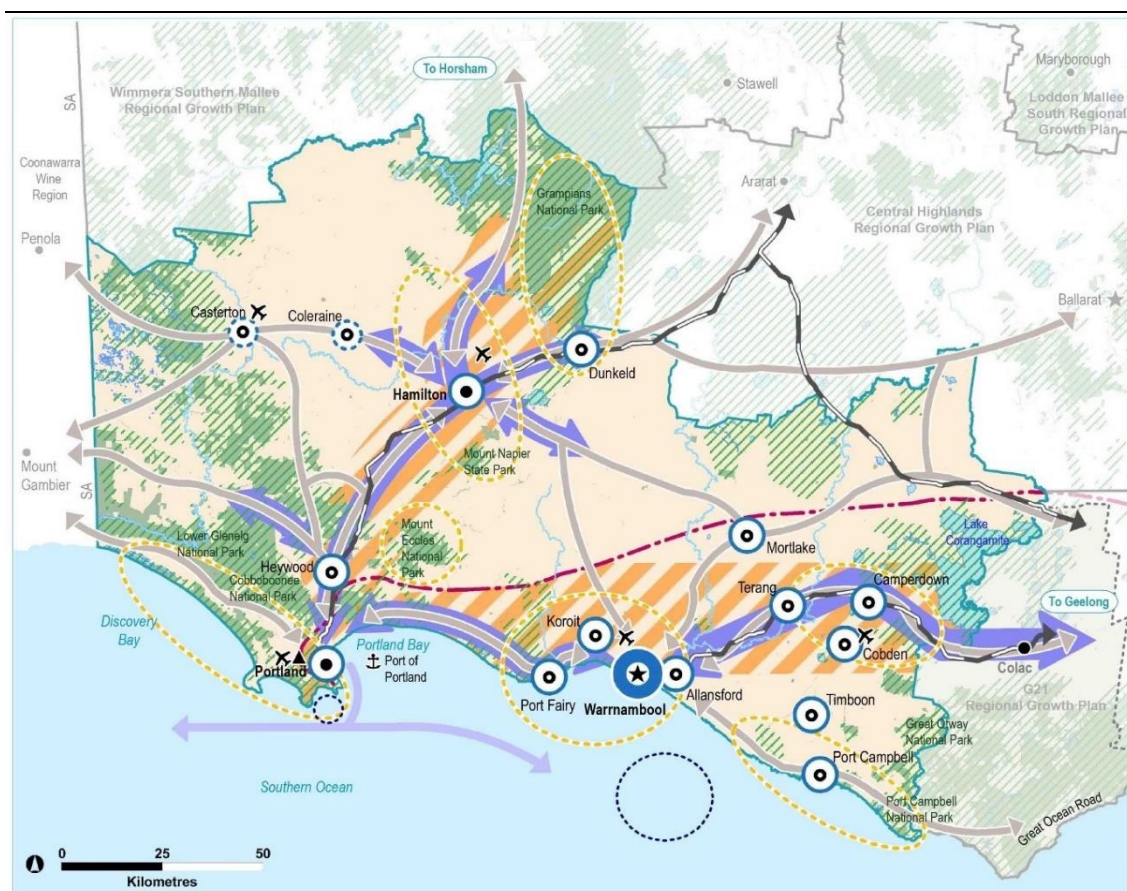


- 17 The Regional Growth Plan recognises that coastal communities like Port Fairy are subject to the impacts of climate change and coastal hazards, including coastal inundation and coastal erosion.⁵
- 18 Specific land use policies, strategies and actions identified for Port Fairy are:
- *Maintain features and elements of the town that are integral to the social and community functioning of Port Fairy as a place to live.*
 - *Avoid development in Port Fairy on flood prone areas or areas at risk from coastal hazards.*
 - *Control Port Fairy's development to protect the quality and presentation of Port Fairy's setting, including the Moyne River and Belfast Lough.*
 - *Retain the existing Port Fairy bypass route designated in the planning scheme.*⁶
- 19 Within the Moyne Planning Scheme, Clause 11.01-1R 'Settlement - Great South Coast' has an objective to attract more people to the region. A relevant strategy seeks to facilitate district towns like Port Fairy to support local communities, industry and services. The same clause seeks to support growth and economic opportunities throughout the region, especially along the Henty Highway and Princes Highway corridors.⁷
- 20 The following image is the Great South Coast Regional Growth Plan. It shows Port Fairy as a District town situated within a Primary Growth Corridor. The circle around Port Fairy, Koroit and Warrnambool says 'Enhance tourism assets'. In terms of Environment, the green stipple around Port Fairy identifies 'Areas containing high value terrestrial habitat'.

⁵ Great South Coast Regional Growth Plan, p. 39.

⁶ Great South Coast Regional Growth Plan, p. 58.

⁷ Relevant policy documents include the Great South Coast Regional Growth Plan (2014).



SETTLEMENT ROLE AND GROWTH

- ★ Warrnambool - Regional city
- Regional centre
- District town
- ★ Regional city external to the region
- Settlement external to the region
- Major growth
- Medium growth
- Sustainable change

CONNECTIVITY

- ➡ Improved regional connections
- Road
- Rail
- Sea
- ✈ Airport
- ⚓ Port

ECONOMIC DEVELOPMENT

- ▨ Primary growth corridor
- Agricultural production
- ▨ Enhance tourism assets
- Marine resources
- ▲ Portland freight and industry gateway
- Electricity transmission line (500 kV line)

ENVIRONMENT

- ▨ Areas containing high value terrestrial habitat
- Public land
- Lakes and wetlands
- Rivers

Great South Coast Regional Growth Plan: source Clause 11.01-1R, Moyne Planning Scheme



- 21 Clause 11.03-4S Coastal settlements has an objective to plan for sustainable coastal development⁸. Relevant strategies include:

Identify a clear settlement boundary around coastal settlements to ensure that growth in coastal areas is planned and coastal values are protected. Where no settlement boundary is identified, the extent of a settlement is defined by the extent of existing urban zoned land and any land identified on a plan in the planning scheme for future urban settlement.

Limit development in identified coastal hazard areas, on ridgeline, primary coastal dune systems, shorelines of estuaries, wetland and low lying coastal areas, or where coastal process may be detrimentally impacted.

- 22 At the local level, Clause 21.02 'Municipal Overview' identifies Port Fairy as a major town.

- 23 Clause 21.03 'Factors Influencing Future Planning and Development' outlines that:

- Port Fairy is identified (with Peterborough) as the main coastal settlement in Moyne Shire.
- It has significant regional heritage significance in terms of its role in European settlement of the area.
- It requires the management of a range of environmental threats, including erosion, altered coastal processes and marine pollution.

- 24 Clause 21.05 'Settlement and Housing' identifies that Port Fairy, Koroit and Mortlake are the predominant service centres of the Shire and that Port Fairy is an historic coastal town that is a popular tourist destination. Key objectives at this clause (as they relate to the development of Port Fairy) include:

⁸ Relevant policy documents include the Marine and coastal Policy DELWP 2020) and the Victorian Coastal Strategy (Victorian Coastal Council, 2014).



- *To define a sustainable urban/non urban edge to the main townships and settlements within Moyne Shire.*
 - *To maintain compact urban forms that will allow for the ease of service delivery and minimal infrastructure costs.*
 - *To identify protect and promote the conservation and enhancement of Moyne's heritage places and precincts.*
 - *To recognise the different requirements of the population by allowing the accommodation of the population of the municipality within a range of dwelling types suitable for the needs of the community.*
 - *To protect the neighbourhood character of Port Fairy.*
 - *To ensure that new development in Port Fairy respects built form and/or the coastal and riverine location of the area, including existing character, the integrity of the dune formations, maintenance of floodplains, native vegetation and significant view lines to and from the coast.*
 - *To identify flood prone land and ensure that new development is compatible with flood hazard.*
- 25 Other clauses such as Clause 21.06 'Environment' recognise the coastal and flooding environmental factors for coastal settlements like Port Fairy.
- 26 Specific direction for Port Fairy is contained at Clause 21.09-3, which has the following vision:
- *To maintain and build Port Fairy as a strong economically sustainable settlement that provides services for the local community.*
 - *To retain the distinctive character of Port Fairy based on the heritage features, the coastal location and high quality urban design.*



- *To recognise the constraints of the Moyne River floodplain on the development of land.*

27 I have considered the amendment within this context.

Is the amendment strategically justified?

28 The amendment seeks to implement the actions and recommendations from the *Port Fairy Coastal and Structure Plan 2018* (the Structure Plan).

29 The Structure Plan identifies the need to provide updated strategic direction for Port Fairy that is cognizant of:

- The housing needs of its current and expected population;
- The role that the township plays in providing tourism and employment opportunities;
- The environmental attributes and constraints of the township and its surrounds;
- The need to protect the character and heritage of the township; and
- The need to adapt to expected sea level rise and plan for the protection of the township.

30 Port Fairy is acknowledged within the Structure Plan as being the largest township within the Moyne Shire and is experiencing the most significant population growth in the Shire and some of the fastest small town growth in Victoria.⁹ As I identified above, the town is identified for medium growth within the Regional Growth Plan.

31 The Structure Plan observes that demand for dwellings is reasonably high. Analysis undertaken by Urban Enterprise during the development of the Structure Plan anticipates that up to 897 dwellings (under a high growth scenario) will be required to meet expected demand to 2041.¹⁰

⁹ Port Fairy Coastal & Structure Plan, p. 23.

¹⁰ Port Fairy Coastal & Structure Plan, pp. 23-26.



- 32 The supply of land to meet the town's housing needs is constrained and the Structure Plan anticipates that current supply is unlikely to meet the future demand.
- 33 More recently, a Land Supply and Demand Analysis for the Shire has been undertaken by Spatial Economics. It identifies that Port Fairy is currently estimated to likely be in the order of 8 years of supply capable of meeting demand.¹¹ It also says that there are supplies of unzoned land to provide a further 25 years of supply. That analysis recommends that the stock of zoned broad hectare land within Port Fairy be increased in the short term. It specifically recommends that the land identified in C69moyn be rezoned to support increased land supply.¹²
- 34 In addition to the town's housing needs, the Structure Plan identifies the need to plan for and manage sea level rise and its impact in terms of coastal inundation and erosion on the township, alongside managing environmental features and the town's tourism and economic development.
- 35 In my view, the Structure Plan demonstrates that the current planning framework for Port Fairy is unable to meet the township's challenges and opportunities. It recommends that the planning scheme be amended to provide direction to meet the direction outlined in the Structure Plan.
- 36 Amendment C69moyn advances many of the relevant land use planning components of the Structure Plan. At a high level, my finding is that the amendment is strategically justified.
- 37 There are a number of relevant detailed considerations that I outline below as a holistic assessment of the amendment.

¹¹ Residential Land Supply and Demand Assessment, Spatial Economics (May 2021) Final, page 57.

¹² Residential Land Supply and Demand Assessment, Spatial Economics (May 2021) Final, page 11.



Is the approach to flooding, coastal inundation and sea level rise appropriate?

- 38 The Regional Growth Plan and local policy within the Moyne Planning Scheme identify that Port Fairy is exposed to riverine and coastal inundation. It is recognised that these environmental risks are a constraint to the future development of the township.
- 39 The flood and inundation risk in Port Fairy has long been recognised within the Moyne Planning Scheme. At the commencement of the new format scheme in 2000, parts of Port Fairy were identified as being within a Land Subject to Inundation Overlay, based on the 1946 flood extent.¹³ Most recently, Amendment C54¹⁴ implemented updated flood mapping for Port Fairy. That amendment introduced the Floodway Overlay and included consideration of an increase of 0.2 metres of sea level rise over current 1 in 100 year flood levels by 2040 in the flood modelling, as was consistent with the position that was expressed in state policy at the time.¹⁵
- 40 This amendment seeks to build on that framework by addressing the risk of coastal and riverine inundation as identified in the *Port Fairy Local Coastal Hazard Assessment 2015* and the *Translation of the Port Fairy Local Coastal Hazard Assessment 2017* and set out in the Structure Plan. The Structure Plan has an action to:
- Implement a Planning Scheme Amendment to introduce Floodway Overlay and Land Subject to Inundation Overlays and extension of the area affected by the existing Erosion Management Overlay (Schedule 1).*¹⁶
- 41 The amendment proposes to apply the Floodway Overlay to land identified as a Hazard Class 3 or more under a 1.2 metre sea level rise scenario. Hazard Class 3 and above areas are identified as flood depths of greater than or equal to 0.5 metres.

¹³ Amendment C54 to the Moyne Planning Scheme Panel Report, p. 4.

¹⁴ Gazetted in 2014.

¹⁵ See the Panel Report for Amendment C54 to the Moyne Planning Scheme for further information.

¹⁶ Port Fairy Coastal and Structure Plan, p. 63.



The Land Subject to Inundation Overlay is proposed to apply to other land as being affected by flooding at depths of less than 0.5 metres.

42 In considering whether the approach to managing these risks is appropriate, I framed my assessment around the following considerations:

- Does the approach to coastal inundation implement State policy?
- Is planning for sea level rise of 1.2 metres inconsistent with State policy?
- Is the use of the Land Subject to Inundation Overlay and Floodway Overlay appropriate?

43 In addressing these questions, I note that many submissions have been made along similar questions.

Does the approach to coastal inundation implement State policy and is planning for sea level rise of 1.2 metres inconsistent with State policy?

44 Victoria has experienced increased intensity and frequency of high intensity rainfall and flood events in recent years, as a direct result of climate change.¹⁷

45 While climate change is resulting in an observed drying trend across southern Australia¹⁸ and Victoria¹⁹, it is anticipated that places like Victoria will also experience increased rainfall variability, resulting in less rainfall in some seasons, but increases in others.²⁰ Climate-driven natural hazards such as short-duration heavy rainfall (or extreme rainfall events) are also likely to become more intense and frequent^{21,22}, resulting in increased flood risk.²³ However, where and when these extreme rainfall events will occur within the state is expected to remain highly variable.²⁴

¹⁷ Royal Commission into National Natural Disaster Arrangements, p. 22.

¹⁸ Royal Commission into National Natural Disaster Arrangements, p. 58.

¹⁹ Victoria's Climate Science Report, 2019, p. 20.

²⁰ Victoria's Climate Science Report, 2019, p. 20.

²¹ Royal Commission into National Natural Disaster Arrangements, p. 59.

²² Victoria's Climate Science Report, 2019, p. 31.

²³ Royal Commission into National Natural Disaster Arrangements, p. 62.

²⁴ Victoria's Climate Science Report, 2019, p. 31.



46 In addition, sea level rise and increased frequency of coastal storm surge inundation are expected to continue.²⁵ By the 2070s, the sea level along the Victorian coastline is projected to increase by approximately 40-42 centimetres, relative to the 1986-2005 baseline, under a high emissions scenario.²⁶ The consequences of sea level rise include the more frequent flooding of low lying coastal and tidal areas, higher storm surges and coastal erosion.²⁷

47 The policy context for coastal inundation is principally set out at Clause 13.01-2S 'Coastal inundation and erosion'.²⁸

48 Relevantly, State policy was substantially updated by Amendment VC171 in September 2021, to implement the *Marine and Coastal Policy 2020* and places a clearer emphasis in its objective on managing coastal hazard risk, alongside other climate change impacts.

49 Clause 13.01-2S has an objective:

To plan for and manage coastal hazard risk and climate change impacts.

50 Accompanying strategies at this clause include to:

- *Plan for sea level rise of not less than 0.8 metres by 2100 and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.*
- *Ensure that land subject to hazards is identified and appropriately managed to ensure that future use and development is not at risk.*
- *Avoid use and development in areas vulnerable to coastal inundation and erosion.*

²⁵ Royal Commission into National Natural Disaster Arrangements, p. 58.

²⁶ Victoria's Climate Science Report, 2019, p. 35.

²⁷ Royal Commission into National Natural Disaster Arrangements, p. 62.

²⁸ As well as Clause 11.03-4S Coastal settlement.



51 In the context of this policy, the amendment seeks to identify land that will be subject to coastal inundation and make decisions about land use and development within Port Fairy (both those parts affected by coastal hazards and more broadly) acknowledging that constraint.

52 In this respect, there is a reasonably high degree of alignment between the approach undertaken in this amendment and the strategies at Clause 13.01-2S which seek to ensure that land subject to hazards is identified and appropriately managed, and that development is avoided in areas subject to the risk of coastal inundation. There is also an alignment with Clause 11.03-4S which seeks to limit development in identified coastal hazard areas, primary coastal dune systems, shorelines of estuaries, wetlands and low lying coastal areas or where coastal processes may be detrimentally affected.

53 I observe that the amendment has adopted mapping that incorporates an assumed 1.2 metre rise in sea levels by 2100. The Structure Plan justifies the adoption of a 1.2 metre benchmark by stating:

More recent estimates have identified that sea level rise is tracking towards the upper end of projections and as such, it is considered prudent to utilise data which most closely correlates with outcomes consistent with global scientific consensus. Utilising a 0.8m SLR would mean any overlay may be outdated soon after their application.

As such, planning recommendations within the Structure Plan are based on the identified Scenario 6 of the Translation of the Port Fairy Coastal Hazard Assessment.²⁹

54 Various submissions received by the planning authority have questioned the use of the 1.2 metre benchmark, with some submitters considering that such an approach is inconsistent with State policy at Clause 13.01-2S.

²⁹ The Port Fairy Local Floodplain Development Plan 2019 also adopts a 1.2m sea level rise.



55 The strategy at Clause 13.01-2S seeks to ‘*plan for sea level rise of not less than 0.8 metres by 2100 [...]*’.³⁰

56 The *Marine and Coastal Policy 2020*, which is a policy document at this clause, identifies that:

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 of 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.*³¹

57 The *Marine and Coastal Policy* adopts as Policy 6.1 to plan for sea level rise of not less than 0.8 metres by 2100 and includes the following footnote:

The impacts of climate change, including sea level rise, will be affected by global emissions trajectories and mitigation efforts. Sea level rise is not globally uniform and regional differences within +/- 30% of the global average can result from several factors. The ‘not less than 0.8m’ figure is used as the statewide planning benchmark to provide a consistent policy setting across the State. It will be updated as necessary and supported by modelling that places global

³⁰ My emphasis.

³¹ *Marine and Coastal Policy 2020*, pp. 34-35.



projections in the Victorian context to provide greater accuracy for regional and local-level adaptation.

- 58 The *Marine and Coastal Strategy 2022* acknowledges the importance of strategic planning to provide climate change adaptation at Action 3. Strategic planning is identified as a key focus, and says:

Strategic planning

Action 3 embeds adaptation as a core component of planning and management in the marine and coastal environment using a range of state-wide and local approaches. Updated projections and benchmarks for sea level rise and other climate change drivers and impacts will be incorporated into state-wide land use planning tools and policies so they remain responsive to changing circumstances. The Victoria's Resilient Coast – Adapting to 2100+ project (VRC) develops a state-wide adaptation framework for long-term coastal hazard adaptation and Marine Spatial Planning Framework (MSP Framework) will embed adaptation as a core component of planning in the marine environment. A range of tools, including Regional and Strategic Partnerships (RASPs), CMMPs, Environmental Management Plans (EMPs), marine plans (where developed) and statutory planning mechanisms will embed adaptation at a local and regional level.³²

- 59 The activities to support this action include to understand and plan for coastal hazard risks and impacts from climate change by collating and sharing the latest climate change information relevant for Victoria and using this information to inform coastal hazard mapping and projections and adaptation planning.³³
- 60 Specifically in relation to the planning framework, *Ministerial Direction No. 13: Managing Coastal Hazards* requires planning authorities to address how a proposed amendment:

³² Marine and Coastal Strategy 2022, pp. 15-16.

³³ Marine and Coastal Strategy 2022, p. 16.



- *Is consistent with the planning policies, objectives and strategies for coastal Victoria as outlined in state planning policies (including regional planning policies) in the Planning Policy Framework.*
- *Addresses the current and future risks and impacts associated with projected sea level rise and the individual and/or combined effects of storm surges, tides, river flooding and coastal erosion.*
- *Is based on an evaluation of the potential risks and presents an outcome that seeks to avoid or minimise exposing future development to projected coastal hazards.*
- *Considers that new development will be located, designed and protected from potential coastal hazards to the extent practicable and how future management arrangements will ensure ongoing risk minimisation.*
- *Considers the views of the relevant floodplain manager and relevant Victorian Government department.*

61 *Planning Practice Note No. 53: Managing Coastal Hazards* identifies that climate change is likely to increase the frequency, intensity and extent of existing coastal hazards. In terms of strategic planning for coastal areas, the Practice Note observes:

Our understanding of the coastal impacts of possible sea level rise is evolving. Further investigation into coastal hazard vulnerability and in turn adaptation options for particular catchments and coastal areas will help inform strategic planning for settlements and decisions on future growth and assist in avoiding increased risk exposure for future coastal development.³⁴

62 I interpret the policy at Clause 13.01-2S within this context to be a Statewide 'floor' in relation to how planning authorities and other agencies should approach the task of planning for sea level rise. The *Marine and Coastal Policy* acknowledges that

³⁴ Planning Practice Note No. 53, p. 3.



there is a need to appropriately consider local conditions in planning to manage risks such as coastal inundation. It is conceivable to me that evidence could be led that supports a different, higher figure than 0.8 metres and if that evidence is supported that this outcome would not be inconsistent with State policy.

63 While I am not a climate scientist or hydrologist, I can see nothing inherently inconsistent from a town planning perspective in the approach of the Structure Plan with the policy at Clause 13.01-2S to plan for sea level rise of 'not less than 0.8 metres'.

64 Given the risk to life and property that can arise from flooding and inundation events, it is prudent when undertaking a long-term planning exercise such as this Structure Plan, to make decisions based on the best available data and a conservative estimate of the likely effect. In my view, such an approach, provided it is justified by the hydrological and climate assessments, recognises that the effects of climate change are likely to result in these impacts intensifying over time. The Marine and Coastal Policy and the Planning Practice Note contemplate these outcomes. For its part, the Structure Plan justifies this approach on the basis that the precautionary principle should be applied in planning for climate change and its impact on coastal inundation.³⁵

65 Policy at both Clauses 13.01-2S and 13.03-1S specifically seeks to protect life and property from flooding and inundation and to avoid development in at-risk locations.

66 I conclude that, from a town planning perspective, the approach to identifying coastal hazards is consistent with the broad approach to policy at Clause 13.01-2S.

Is the use of the Land Subject to Inundation Overlay and Floodway Overlay appropriate?

67 The Moyne Planning Scheme currently adopts both the Floodway Overlay and Land Subject to Inundation Overlay for managing flood risk in Port Fairy.

³⁵ Port Fairy Coastal and Structure Plan 2018 (see pages 21, 56 and 63).



- 68 The delineation between these controls in the Port Fairy context is described in the Panel Report for Amendment C54:

The application of the FO represents the higher risk from the mainstream flooding modelled on a 100 year ARI (Average Recurrence Interval) flood. The FO is proposed to be applied to areas that are likely to convey active flood flows and/or store floodwaters to hazardous depths, while the LSIO is proposed to be applied to areas that are subject to overland flooding but have lower flood risk than areas in the FO.³⁶

- 69 This amendment proposes to apply the Floodway Overlay and Land Subject to Inundation Overlay in a similar manner, insofar as the area of greater hazard (by virtue of the expected flood depth) will be affected by the Floodway Overlay, while areas of lower hazard (less flood depth) will have the Land Subject to Inundation Overlay applied.

- 70 Thinking about the application of these controls in the context of the broader planning framework, Section 12(1)(a) and (b) of the *Planning and Environment Act 1987* respectively say that ‘a planning authority must implement the objectives of planning in Victoria’ and provide sound, strategic and co-ordinated planning of the use and development of land in its area.

- 71 The implementation of planning controls that seek to restrict use and development are clearly contemplated by the Act. Section 6 of the Act says that a planning scheme can:

- *regulate or prohibit the use or development of land (section 6(2)(b)).*
- *regulate or prohibit any use or development in hazardous areas or in areas which are likely to become hazardous areas (section 6(2)(e)).*

- 72 The concept of identifying and then regulating (or even prohibiting) certain uses and developments in areas affected by flood and coastal hazard is fundamentally

³⁶ Amendment C54 to the Moyne Planning Scheme Panel Report, p. 4.



consistent with notions of orderly and proper planning. In addition to this being orderly planning, it is also 'good' planning.

- 73 The operational provisions of the Victoria Planning Provisions set out a broad framework for planning and decision-making. Clause 71.02-1 'Purpose of the Planning Policy Framework' relevantly says:

The Planning Policy Framework provides a context for spatial planning and decision making by planning and responsible authorities. The Planning Policy Framework is dynamic and will be built upon as planning policy is developed and refined, and changed as the needs of the community change.

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

- 74 What this means is that frequently, a proposal will draw support from one part of the planning policy matrix, and opposition from another part. A new housing development might provide housing diversity and contribute towards a consolidated form on the one hand but cause traffic congestion or have adverse amenity impacts on the other. Ultimately, what is needed is for the planner to make an integrated decision. Clause 71.02-3 provides operational guidance about how to resolve these policy conflicts:

Victorians have various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible



authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

75 In planning for human settlements, some issues are more important than others and should be given greater (or different) weight in decision-making. Policy (and strategy) is instructive in that respect, but so too is an intelligent and forward-looking approach to decision-making. For instance, the planning scheme says that responsible and planning authorities must prioritise the protection of human life over all other policy considerations in bushfire prone areas. It also makes sense for the planning system to give great weight to other considerations where there is a risk to either human life or property. Managing flood risk through the application of planning controls is clearly one such issue and where that risk can be demonstrated, the sensible course of action is to apply the correct planning tool to assist in managing that risk.

76 I have referred to the policy at Clause 13.01-2S 'Coastal inundation and erosion' earlier and noted that it seeks to avoid use and development in areas vulnerable to coastal inundation and erosion.

77 Policy at Clause 13.03-1S 'Floodplain management' has an objective:

To assist the protection of:

- *Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.*
- *The natural carrying capacity of rivers, streams and floodways.*
- *The flood storage function of floodplains and waterways.*



- *Floodplain areas of environmental significance or of importance to river, wetland or coastal health.*

78 Regulating the built environment, through land use planning and building controls, is an important part of prevention, mitigation and management of existing and future flood risk and is part of a multi-barrier approach to risk management, that also includes the use of structural works and infrastructure such as levees and emergency management planning and response in the event of a significant flood event. In this regard, I observe that in addition to this planning scheme amendment, the Structure Plan has an action to investigate and identify required physical works to protect the existing urban area from sea level rise through Council's Coastal Adaptation Plan.

79 As identified by the Agriculture and Resource Management Council of Australia's Standing Committee on Agriculture and Resource Management (SCARM):

*Land use planning controls are the most cost-effective floodplain management measure, particularly with respect to limiting the growth in future flood damage.*³⁷

80 This is a view reinforced by the *Review of the 2010-11 Flood Warnings & Response*, which observed:

Reducing flood risk in established areas is costly. It is significantly easier to impose proactive mitigation measures such as land use planning and building standards to minimise further risk before development occurs.

*Indeed, compared to mitigation measures that modify the flow of water (such as levees) or response modifications (which seek to modify human behaviour through activities such as public education, warning systems and emergency service response), property modification measures are the most cost effective for addressing future risk. They are also "less expensive, less inequitable and less environmentally intrusive than structural mitigation".*³⁸

³⁷ Floodplain Management in Australia: Best practice principles and guidelines, 2000, p. 12.

³⁸ Review of the 2010-11 Flood Warnings & Response, p. 191.



- 81 In this respect, built environment regulation can materially affect the level of natural disaster risk by directly influencing the exposure and vulnerability of communities to the hazard.³⁹
- 82 Planning regulation also plays an important role in the ‘visibility’ of flood hazard and risk to residents and the broader community, through the mapping of planning controls, which are included in contracts of sale for properties.
- 83 The application of the flood provisions within planning schemes is guided by Planning Practice Note No. 12: Applying the Flood Provisions in Planning Schemes.
- 84 The Practice Note identifies that there are four tools that can be applied to manage flood risk – the Urban Floodway Zone, the Floodway Overlay, the Land Subject to Inundation Overlay and the Special Building Overlay. The Practice Note defines two types of flooding events – ‘mainstream flooding’⁴⁰ and ‘stormwater flooding’. The Special Building Overlay is designed to be applied to manage stormwater flooding, while mainstream flooding is managed by the three other provisions.
- 85 The Practice Note observes that each of the four provisions ‘have been derived based on the type of flooding and potential level of risk to life and property.’ It further notes:
- The level of planning control in each provision is commensurate with the potential flood risk.*⁴¹
- 86 The way I understand the applicability of the flood provisions in the general terms that the Practice Note contemplates and in the way that they have generally been applied by planning authorities and catchment management authorities is that:

³⁹ Productivity Commission, Natural Disaster Funding Arrangements, Inquiry Report No. 74, p. 30.

⁴⁰ Mainstream flooding is defined within PPN12 as follows: *Heavy rainfall produces surface run-off which flows into streams and rivers. When there is a large amount of run-off, water overflows the river banks on to adjacent low-lying land causing flooding. This is called mainstream flooding and can occur in both rural and urban areas. The UFZ, FO and LSIO identify areas affected by mainstream flooding in planning schemes.*

⁴¹ Planning Practice Note No. 12, p. 2.



- The Urban Floodway Zone is applied to areas that convey active flood flows and where the potential flood risk is high. It is particularly applicable where control of land use is required because of the high flood risk.
 - The Floodway Overlay, similar to the Urban Floodway Zone is applied to areas that convey active flows or store floodwater. It is often applied in areas that are particularly hazardous due to the depth or velocity of flood flows.
 - The Land Subject to Inundation Overlay is applied to identified land subject to the 1% Annual Exceedance Probability (AEP) flood extent, with a lower flood risk than the Urban Floodway Zone or Floodway Overlay.
- 87 The Practice Note also provides an explanation about the role of Local Floodplain Development Plans, which are prepared in collaboration between the council and the relevant floodplain management authority.
- 88 The Local Floodplain Development Plan provides localised flood data that assists in decision-making. The incorporation of a Local Floodplain Development Plan can streamline planning permit assessment and avoid the need to prepare a Flood Risk Report (as required under the Floodway Overlay) on a site-by-site basis. This is significant, because the Local Floodplain Development Plan can reduce the regulatory burden on applicants for a detailed risk assessment to accompany each application.
- 89 Under the Land Subject to Inundation Overlay and Floodway Overlay, an application must be consistent with a Local Floodplain Development Plan that is incorporated into the planning scheme. Within the Floodway Overlay, a floodplain management plan can specify varied requirements for the re-subdivision of existing lots.
- 90 The Local Floodplain Development Plan, once incorporated into the planning scheme, works in concert with the flood provisions in the planning scheme to guide decision-making.
- 91 Relevantly, Planning Practice Note No. 12 was last updated in June 2015 and has not kept pace with changes to the flooding provisions within the planning scheme.



92 I particularly observe that there is no reference within Planning Practice Note No. 12 to the use of flood provisions to address coastal hazards, notwithstanding that recently and significantly, Amendment VC171 updated the flood management framework and modified the Land Subject to Inundation Overlay to (among other things) ‘include references to coastal and riverine inundation’.⁴²

93 The Explanatory Report for that amendment observes:

The Amendment updates the Land Subject to Inundation (LSIO) and the Erosion Management Overlay (EMO) to include coastal hazards. The LSIO and EMO are already used in coastal contexts however the LSIO does not refer to sea level rise and the EMO does not refer to coastal erosion. The Minister for Planning has approved planning scheme amendments where the LSIO has been applied to coastal land at risk of flooding including the Bass Coast (C82), Moyne (C54), Greater Geelong (C394ggee) and Mornington Peninsula (C216) Planning Schemes.

94 The Land Subject to Inundation Overlay contains specific reference in its purpose to coastal flooding:

To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.

95 This Purpose was amended to include reference to riverine and coastal flooding by Amendment VC171. Prior to this amendment, the Purpose was:

To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.

96 In my view, the changes to the Land Subject to Inundation Overlay by Amendment VC171 make it clear that that the overlay can be applied to manage coastal hazards. I am also aware of a significant number of amendments which have applied this

⁴² Explanatory Report, Amendment VC171.



control to manage coastal inundation and factor in sea level rise – such as Amendment C394ggee to the Greater Geelong Planning Scheme.

97 While there is no specific reference in the Purpose of the Floodway Overlay to coastal flooding, there is no reference within its purpose to other types of flooding (like riverine) either. Instead, the Purpose of the Floodway Overlay is more focused on the flood and hazard characteristics (e.g. identifying waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding).

98 I note that there is one other difference between the purposes of the Floodway Overlay and the Land Subject to Inundation Overlay that is worth commenting on. The Floodway Overlay's final purpose is:

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

99 By comparison, the Land Subject to Inundation Overlay's final purpose is:

To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health⁴³.

100 In my view, this distinction is not necessarily determinative in saying that the Floodway Overlay cannot be applied to manage coastal inundation in the way that this amendment seeks to.

101 What is more relevant (in my opinion) is that this amendment seeks to apply the Floodway Overlay to manage high hazard areas, due to the depth of flood expected. That hazard (as I understand it) is associated with riverine flooding that is likely to be exacerbated and increase over time as a result of coastal processes, subject to sea level rise due to climate change and coastal inundation.

102 The use of the Floodway Overlay to manage areas subject to high hazard associated with coastal inundation and riverine flooding is consistent with the Purpose of the

⁴³ My emphasis.



control. This is because the Purpose of the Floodway Overlay seeks to identify 'high hazard' areas which have the greatest risk and frequency of being flooded.

- 103 It is also consistent with a best practice approach to managing flood risk more broadly – whereby the Floodway Overlay is applied to high hazard areas and active flow paths, while the Land Subject to Inundation Overlay is applied to areas of lower hazard. This, in my view, is consistent with a broad and proper interpretation of the practice guidance and the way the suite of flood provisions are used to manage flood hazard and risk generally.
- 104 I conclude that the use of the Floodway Overlay and Land Subject to Inundation Overlay to manage coastal inundation is appropriate.
- 105 I also conclude that the incorporation of the Local Floodplain Development Plan is appropriate and will provide guidance on appropriate outcomes within flood prone land. The document will be an Incorporated Document under the Moyne Planning Scheme and be afforded the same weight in decision-making as the planning scheme.

Is the rezoning of land within the township from GRZ to NRZ appropriate?

- 106 The Structure Plan recommends that the existing General Residential Zone land within the township be rezoned to the Neighbourhood Residential Zone.
- 107 In making this recommendation, the directions and objectives in the Structure Plan for housing and built form include a need to:
- Support its role as the primary district town within Moyne Shire, identified in the Regional Growth Plan for medium growth.
 - Promote a compact urban form.
 - Ensure infill development is sensitive to its environmental, heritage and character context.



- Retain the overall low scale of residential development.

108 There are clearly competing directions here, which seek to both accommodate growth, while also protecting heritage and existing character. These competing directions are common in coastal township locations, such as Port Fairy, nor across planning for residential development in Victoria more broadly.

109 In considering the appropriateness of the zone for the township, I have had regard to Planning Practice Note No. 91: Using the Residential Zones.

110 Planning Practice Note No. 91 describes the following role and application for the General Residential Zone:

Applied to areas where housing development of three storeys exists or is planned for in locations offering good access to services and transport.⁴⁴

111 The General Residential Zone – Schedule 1, which applies in Port Fairy does not provide any ResCode variations or alter the maximum building height.

112 While a mandatory 3 storey, 11 metre height limit is set out within the zone, residential areas in Port Fairy are also affected by various Design and Development Overlays that include mandatory⁴⁵ or discretionary building heights of between 5 metres to 8 metres.

113 Within this context, the building heights envisaged by the General Residential Zone are incongruent with building heights set out in the Design and Development Overlay schedules (whether mandatory or preferred). Even where the heights in the Design and Development Overlay are preferred rather than mandatory, the tallest of these restrictions is 8 metres, which is significantly lower than the 11 metre maximum height limit under the General Residential Zone.

⁴⁴ Planning Practice Note No. 91, p. 2.

⁴⁵ DDOs 1 and 4-9 include a statement to say that a permit must not be granted to construct a building or construct or carry out works which exceed these height requirements.



114 The proposed consolidation of Design and Development Overlays under this amendment also proposes discretionary and mandatory height limits of between 5 metres to 9 metres across the residential areas.

115 I note that the Practice Note says that it is *inappropriate* to apply the General Residential Zone to areas where a planning authority seeks to respect the existing single and double storey character of an area.⁴⁶

116 It further observes that:

*As a general principle, applying a residential zone should align with either existing building heights if they are sought to be maintained, or align with future building heights identified in strategic work.*⁴⁷

117 It says that:

*If an area has an existing single and double storey character that is sought to be maintained, applying the GRZ is likely to be inconsistent with this preferred neighbourhood character outcome.*⁴⁸

118 In contrast to the General Residential Zone, the role and application for the Neighbourhood Residential Zone is described in the Practice Note as follows:

*Applied to areas where there is no anticipated change to the predominantly single and double storey character. Also to 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 the surrounding area.*⁴⁹

⁴⁶ See Principle 4 in Planning Practice Note No. 91.

⁴⁷ Planning Practice Note No. 91, p. 6.

⁴⁸ Planning Practice Note No. 91, p. 6.

⁴⁹ Planning Practice Note No. 91, p. 2.



119 I also note that the Practice Note contemplates that the use of the NRZ is appropriate in a range of scenarios including special or constrained areas, minimum and incremental change areas⁵⁰.

120 Within this context and acknowledging the Structure Plan's direction for development to respond to the existing scale and character of development, I consider that the Neighbourhood Residential Zone is an appropriate zone for residential areas in Port Fairy.

Is the approach to the proposed Design and Development Overlays within the township appropriate?

121 The amendment proposes to rationalise the 19 Design and Development Overlay schedules that currently apply within Port Fairy into 7 new schedules.

122 The current Design and Development Overlays that apply within Port Fairy implement the *Port Fairy Design Guidelines 2001*.

123 The Structure Plan observes that there is significant overlap between the existing schedules and that there is an opportunity to consolidate them into simpler built form controls that reinforce the existing approach.

124 In general, I support the approach to rationalise controls where there is an opportunity to do so.

125 The key questions that arise are:

- Whether the use of the Design and Development Overlay to implement the built form outcomes expected by the Structure Plan is appropriate? And
- Whether the drafting of the Design and Development Overlay schedules is appropriate?

⁵⁰ Planning Practice Note No. 91, p.5.



126 I consider both of these questions in the analysis that follows. When planning for development in settlements like Port Fairy, there are, in my view, two tools that can be used as the ‘primary’ tools for guiding built form outcomes:

- The schedules to the residential zones; and
- The Design and Development Overlay.

127 The proposed Design and Development Overlays apply to both the residential and commercial areas within Port Fairy.

128 Planning Practice Note No. 91: Applying the Residential Zones provides detailed guidance on the selection of zones, as well as the use of their schedules.

129 My reading of the guidance in the Practice Note is that it prefers that built form guidance is directed in schedules to residential zones, where practicable, rather than by using other tools such as Design and Development Overlays.

130 For instance, the Practice Note says that:

A Design and Development Overlay (DDO), Development Plan Overlay (DPO) or Incorporated Plan Overlay (IPO) may be used to implement specific built form outcomes that cannot be achieved through a schedule to a residential zone.⁵¹

131 Unlike other tools, such as the Activity Centre Zone, the residential zones, the flood provisions and the Development Plan Overlay, there is no practice note that directly guides the application of Design and Development Overlays within planning schemes.

132 The only Departmental guidance that I am aware of is within *Using Victoria's Planning System*, which the Department's website says is a “technical guide about planning schemes”. On Design and Development Overlays, it says:

⁵¹ Planning Practice Note No. 91, p. 11, my emphasis.



This overlay is principally intended to implement requirements based on a demonstrated need to control built form and the built environment. The intended built form outcome must be clearly stated, as must the way in which the imposed requirements will bring this about. Where possible, performance-based requirements should be used rather than prescriptive requirements.⁵²

133 The Schedule to the Design and Development Overlay can set customised permit triggers and requirements for buildings and works, subdivision and advertising signs. In the case of buildings and works and subdivision, these requirements can be discretionary or mandatory.

134 It is my experience that this overlay is also a tool that has been used widely by planning authorities to implement structure plans across a wide spectrum of planning situations – such as major activity centres and rural and coastal townships.

135 Indeed, it is a tool that has guided built form outcomes in Port Fairy for a considerable time.

136 To this extent, I note that the Design and Development Overlay has a specific purpose:

To identify areas which are affected by specific requirements relating to the design and built form of new development.

137 The use of the Design and Development Overlay to guide built form direction within the township aligns with this purpose.

138 On the one hand, there is a practicality in retaining the use of the Design and Development Overlays to guide built form outcomes within Port Fairy. Using the Design and Development Overlay builds on and consolidates the existing approach to built form control within the township.

139 On the other hand, the guidance in Planning Practice Note No. 91 appears to discourage the use of the Design and Development Overlay where requirements

⁵² Using Victoria's Planning System, p. 19.



can be decanted into residential zone schedules (such as through variations to Clauses 54 and 55 standards, neighbourhood character objectives and decision guidelines)⁵³.

140 In this regard, Planning Practice Note No. 91 says:

*While the DDO has similar features to the NCO, it is more appropriately applied to promote specific urban design outcomes for an area that cannot be achieved by varying the standards to clause 54 and clause 55. This occurs when a built form different from the existing neighbourhood character is sought.*⁵⁴

141 Firstly, there is merit in using DDOs instead of local policies, especially in the current climate of PPF translation, where DELWP is seeking to streamline the policy sections of planning schemes. From an implementation perspective, a DDO is a control and has more statutory 'teeth'. However, having read the exhibited DDOs, there are several structural challenges which require further thought.

142 Some of the requirements in the proposed Design and Development Overlay schedules could be translated as Clause 54 and Clause 55 variations. For instance, DDO4 contains a front setback requirement that could quite easily be drafted as a variation to Standard A3 and B6. The same observation can be made about DDO requirements concerning matters such as site coverage and building height.

143 This is not possible for all requirements, as some setbacks required are greater than that which would be permissible in ResCode. Equally, some of the proposed height requirements are below 9 metres and could not be supported in the zone. In those circumstances, Practice Note No. 91 encourages the use of an overlay. I also note that in the case of DDO1, the land is zoned Commercial 1. In that case, the overlay is the only statutory control (i.e. non-policy) available to deliver the sort of built form control that the Structure Plan is seeking.

⁵³ I also note that Appendix Two of the Port Fairy Coastal and Structure Plan 2018 contemplates inserting localised values into the zone schedules (see Pages 97-102).

⁵⁴ Planning Practice Note No. 91, p. 11.



144 Having regard to all of this, I conclude that the Design and Development Overlay may be an appropriate tool for managing built form within the township. I have used the word 'township' deliberately here, as a case can be made to delete the DDOs from the two growth areas and to rely on the Development Plan Overlay (DPO) to guide future built form. In those areas, key built form requirements can be 'decanted' from the DDO to the Zone schedule.

145 The Panel should consider whether the treatment of signage in DDO1 is appropriate. This overlay includes signage as Section 3, which is the category typically applied to residential areas. I am concerned that this might be too restrictive but also acknowledge that the application of the Heritage Overlay to this area is a relevant factor.

146 In terms of drafting, there are a number of general requirements in the overlay schedules that are poorly drafted. The permit exemptions also refer to the *Heritage Act 1995*, which has been repealed and replaced with the *Heritage Act 2017*. Understandably, references to the repealed Act are problematic. I am also uncertain about the impact of the exemption in the second point which says:

The development is exempt under Section 66 of the Heritage Act 1995⁵⁵.

147 Notwithstanding my views about whether the Design and Development Overlay is the most appropriate control, the drafting of the provisions can be improved for clarity and usability.

148 I conclude that while the use of the DDO is an acceptable tool, the structure and content of the controls requires refinement.

149 My suggestions for improvements to the DDOs are:

- Clarify / tighten the language of subjective requirements in all DDOs⁵⁶.

⁵⁵ I assume that this refers to Section 92 in the Heritage Act 2017.

⁵⁶ For instance, DDO3 contains a landscaping requirement as follows: *Front fencing and landscaping should reflect the 'buildings in landscape' character of the area.*



- 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).

Is the application of the Rural Conservation Zone to land in and around Belfast Lough appropriate?

- 150 The amendment proposes to rezone land outside the township boundary in the vicinity of Belfast Lough to the Rural Conservation Zone.
- 151 I observe that there are currently two distinctly different approaches to managing the Belfast Lough environs in terms of statutory controls. This can generally be categorised by land within the Structure Plan area (the south-west section of the Lough) and land outside the Structure Plan area (the north-east section of the Lough).
- 152 The land within the Structure Plan area (which is proposed to be rezoned to the Rural Conservation Zone – Schedule 2) is currently zoned a combination of Low Density Residential Zone, Industrial 1 Zone, Farming Zone, Rural Conservation Zone and Public Park and Recreation Zone. Land in this area is also affected by a Design and Development Overlay and partially affected by a Floodway Overlay and Land Subject to Inundation Overlay.
- 153 The Lough environs land outside of the Structure Plan area is generally zoned Farming Zone and is affected by Environmental Significance Overlay – Schedule 1 ‘Coastal Areas and Estuaries’, as is the Lough itself. Some of this land is also affected by a Floodway Overlay and Land Subject to Inundation Overlay.



- 154 Relevantly, the Environmental Significance Overlay – Schedule 1 does not apply to private land within the Structure Plan area in the Belfast Lough environs.
- 155 The Structure Plan identifies that land within the Belfast Lough environs is home to ‘known populations of vulnerable fauna’⁵⁷ and that the environmental values of the Lough need to be protected through the implementation of planning controls, including rezoning of land where required.⁵⁸
- 156 The environment and landscape objectives of the Structure Plan include:
- *To prioritise the protection of Port Fairy’s important coastal areas to support their ongoing ecological health.*
 - *To recognise the important contribution the Belfast Lough environs make to the landscape character and ecological functions of the settlement.*⁵⁹
- 157 The Actions include to:
- Rezone land within the Belfast Lough to reflect its environmental significance. Private land should be rezoned to the Rural Conservation Zone and public land to the Public Conservation and Resource Zone.*⁶⁰
- 158 Broader settlement and housing policy within the Structure Plan includes a strategy to:
- Discourage new dwellings within the Belfast Lough environs.*⁶¹
- 159 Submitters object to the rezoning of the land, particularly along the Model Lane precinct, on the basis that it will restrict land use and development.
- 160 The Purpose of the Rural Conservation Zone is:

⁵⁷ Port Fairy Coastal & Structure Plan, p. 64.

⁵⁸ Port Fairy Coastal & Structure Plan, p. 67.

⁵⁹ Port Fairy Coastal & Structure Plan, p. 67.

⁶⁰ Port Fairy Coastal & Structure Plan, p. 69.

⁶¹ Port Fairy Coastal & Structure Plan, p. 29.



- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To conserve the values specified in a schedule to this zone.*
- *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape faunal habitat and cultural values.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*
- *To provide for agricultural use consistent with the conservation of environment and landscape values of the area.*
- *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

161 The Conservation values identified in the Rural Conservation Zone seek:

- *To recognise that the Belfast Lough is subject to flooding from the Moyne River estuary.*
- *To recognise the Belfast Lough area provides important habitat for flora and fauna.*
- *Future use and development of this land must acknowledge the environmentally sensitive and fragile condition of the land.*

162 In addition to the potential biodiversity and fauna that the Structure Plan identifies, I also note that much of the land to be rezoned is identified as flood prone under both current flooding provisions and those proposed to be implemented by this amendment.



163 Planning Practice Note No. 42: Applying the Rural Zones provides guidance on the application of the Rural Conservation Zone. It identifies that the zone is *‘primarily concerned with protecting and conserving rural land for its environmental features or attributes’*.⁶²

164 The Practice Note says that it 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.*
- *The environmental features of the land are scarce and strict controls are required to prevent the further loss or decline of those features.*
- *Land use and development could directly or indirectly threaten the environmental values of the land and strict controls are required to manage this.*⁶³

165 It further identifies that possible Rural Conservation Zone areas can include:

- *Relatively intact natural areas where land use and development could result in the loss of important environmental features or values.*
- *Areas of biodiversity or ecological significance.*
- *Rural areas that contain threatened species habitat, such as wetlands, water catchments and grasslands.*
- *Rural areas of high scenic or landscape value.*
- *Environmentally degraded areas where a cautious approach to land use and development is required to avoid further environmental damage.*
- *Rural areas that are unstable or prone to erosion or salinity.*

⁶² Planning Practice Note No. 12, p. 8.

⁶³



- *Open, potable water supply catchment areas.*

- 166 The Structure Plan observes that the area surrounding Belfast Lough contains vulnerable fauna populations and that the ongoing protection of the environmental values of the Lough is important. Applying the Rural Conservation Zone to protect such areas is consistent with the guidance in the Practice Note. That said, I have not been provided with any evidence of these environmental values outside of the Structure Plan.
- 167 In terms of land use and development outcomes, it would be fair to observe that the Rural Conservation Zone is a relatively 'restrictive' zone. There are not many uses that are *as-of-right* and most development requires a planning permit. As the zone's Purpose makes clear, this is a zone which seeks to protect the natural environment and biodiversity.
- 168 This contrasts with the existing zoning, particularly in the Model Lane precinct, where the Low Density Residential Zone allows subdivision to 0.4 hectares and, in some cases, the use and development of land for dwellings without a planning permit.
- 169 In this regard, the application of the Rural Conservation Zone sends a strong signal about the environmental and biodiversity significance of the area, as well as its flood constraint.
- 170 If the environmental values set out in the Structure Plan can be established and given that the majority of the land is identified as flood prone, it is an acceptable planning outcome to heavily control land use and development outcomes to protect this environment.
- 171 With this caveat, the application of the Rural Conservation Zone is consistent with the direction of the Practice Note.



172 If the environmental values cannot be established, I also accept that a similar outcome may be able to be achieved by relying on the flooding provisions⁶⁴ and applying an Environmental Significance Overlay, as applies to the north-eastern part of the Lough.

Is the approach to Growth Areas A and B appropriate?

173 The Structure Plan identifies two growth areas, generally to the west of the existing township as areas for future residential development.

174 The Structure Plan also notes that given the environmental constraints of land subject to inundation and the extent of land affected by heritage controls, the release of greenfield land will be required in order to meet expected population growth within the township.

175 I have considered the planning approaches for both of these growth areas.

Growth Area A

176 Growth Area A comprises land to the west of the existing township, bounded by Hamilton-Port Fairy Road to the north, Princes Highway to the south and the existing residentially zoned land to the east.

⁶⁴ Including the Port Fairy Local Floodplain Development Plan.



Growth Area A (source: Port Fairy Coastal & Structure Plan)

- 177 Part of the land is within the alignment of the Port Fairy bypass, with the Public Acquisition Overlay reserving land for future acquisition for that purpose.
- 178 While the Structure Plan identifies that “*this area is proximate the town centre and will remain relatively free from inundation*”⁶⁵, part of the land comprises Companion Lagoon and is proposed be included within the Land Subject to Inundation Overlay. Indeed, on my inspection I observed that some of the land north of Princes Highway and west of Lagoon Road was inundated.
- 179 The Structure Plan includes strategies to:
- *Recognise Growth Area A as the key growth front.*
 - *Ensure development in Growth Area A responds to identified future inundation impacts and locates housing outside areas subject to significant flooding.*

⁶⁵ Port Fairy Coastal & Structure Plan, p. 30.



- 180 The proposes to rezone the land to the Neighbourhood Residential Zone and apply both the Design and Development Overlay and the Development Plan Overlay to guide its future development.
- 181 I note that the Structure Plan originally recommended that the land be rezoned to the General Residential Zone.
- 182 I have turned my mind to considering which of these zones is more appropriate and, in this respect, have had regard to *Planning Practice Note No. 91: Using the Residential Zones* and the purpose of each zone.
- 183 Earlier in my statement, I outlined the Practice Note's guidance in terms of where each of these zones could be applied. I also observe that the Practice Note considers that both the General Residential Zone and Neighbourhood Residential Zone can be applied in 'incremental' growth contexts.
- 184 While I acknowledge that Growth Area A is intended to provide for a significant amount of new housing supply in line with Structure Plan expectations, the land is also somewhat constrained by the risk of inundation and Companion Lagoon being within much of the precinct.
- 185 In addition to the Structure Plan identifying this land as a growth location, it also places it within the 'Residential Areas' precinct for built form outcomes. In these areas, it is expected that:

The scale and coverage of buildings will contribute to the identity of Port Fairy as a 'coastal' settlement, rather than an 'urban' or 'suburban' place and it is important to protect. ⁶⁶

- 186 There are some circumstances where a Neighbourhood Residential Zone can be appropriate, even in a 'growth' context. The Structure Plan advances a view that the 'coastal' identity of Port Fairy is important in its residential areas, including the

⁶⁶ Port Fairy Coastal & Structure Plan, p. 49.



growth areas. This may be one factor that makes the application of the Neighbourhood Residential Zone appropriate.

- 187 In the context of a broader application of the Neighbourhood Residential Zone in Port Fairy, the application of that zone to this growth area is broadly consistent with housing expectations. I also consider the environmental values of Companion Lagoon are an environmental characteristic to consider that the Neighbourhood Residential Zone may be appropriate to apply in this context.
- 188 Ultimately, I find that the application of the Neighbourhood Residential Zone to Growth Area A is acceptable. However, I also accept that the General Residential Zone could be applied to this location, provided development was carefully managed in a manner that responds to its coastal environment. The challenge associated with the application of the General Residential Zone is that it allows 3 storey development of up to 11 metres. A development of this scale, close to the foreshore and at an entrance to the town would strike me as being incongruent in the content of the broader environs. On that basis, I have lent towards the use of the Neighbourhood Residential Zone.
- 189 In terms of guidance for future development, I consider that the Design and Development Overlay or the Development Plan Overlay are generally appropriate tools to apply to manage this outcome. However, it is a somewhat unusual scenario in my experience to apply *both* a Design and Development Overlay and a Development Plan Overlay to a growth area.
- 190 On the one hand, there is some logic to the approach when considered against the broader framework articulated in the Structure Plan and the identification of Growth Area A as being within a residential precinct. In this respect, the Development Plan Overlay will guide the initial development (subdivision) of the area, while the Design and Development Overlay will be more enduring and provide detailed design consideration for future dwellings and ensuring they align with built form expectations for the Port Fairy residential areas more broadly.



191 However, I think that this approach may lead to overregulation. Particularly in a context where the Development Plan Overlay will require a Development Plan to deliver an integrated outcome for the land, I think it would be far preferable to decant the *relevant* built form guidance found in the Design and Development Overlay into the Development Plan Overlay, under requirements for a development plan. Some measurable requirements could also be included in the Zone schedule.

192 In terms of the content of the Development Plan Overlay and the requirements for a Development Plan, there is a need for greater protection of Companion Lagoon and seeking to avoid development in areas of inundation.

193 In this respect, the Development Plan must show:

- *The restoration and appropriate integration of Companions Lagoon with new development (see below for further details), including appropriate interfaces.*

194 The further detail is largely set out in the Landscape and Open Space Plan, which requires (among other things):

- *Recognition of the Companion Lagoon, which should comprise the extent of land subject to flooding above 0.3 metres in 2100 as identified in the Port Fairy Coastal and Structure Plan 2018 (or suitable updates to that mapping).*
- *Appropriate design responses to support the habitat values of the lagoon, which include feeding areas for species such as the Latham's Snipe.*

195 A further notation on the Precinct Plan (which is an extract of the Structure Plan says:

Recognise existing low lying land that will be subject to increased inundation over time and develop this land into a new wetland / public open space as part of any development of the growth area. Consider buffers to protect Latham's Snipe.



196 It seems to me that the approach is broadly to 'recognise' the Lagoon and achieve 'appropriate integration' and design responses. In my view, these requirements do not achieve the intent of the strategy in the Structure Plan, which is to:

*Ensure development in Growth Area A responds to identified future inundation impacts and locates housing **outside** areas identified as subject to significant flooding.⁶⁷*

197 This language needs to be brought into the requirements for the Development Plan, to ensure that Companion Lagoon and the habitat for Latham's Snipe is protected and that future residential development is outside the floodplain.

198 I note that some submitters seek for the future wetland to be removed from the Neighbourhood Residential Zone land and placed in a Public Park and Resource Zone or Public Conservation and Resource Zone.

199 While I think that those submissions may have merit, particularly once the wetland environment is restored and established, I think the intent of what the submissions are seeking to achieve can be met under the Development Plan Overlay, provided the schedule included the stronger requirements that I have mentioned above. Also, I see no intention for the Lagoon to be in public ownership as part of this amendment, which is a necessary pre-requisite for the application of a public land zone.

200 Subject to these findings, I consider that the proposed controls for Growth Area A are appropriate.

Growth Area B

201 The amendment proposes to rezone land in Growth Area B from the Rural Living Zone and the Mixed Use Zone to the Neighbourhood Residential Zone. The Development Plan Overlay is also proposed to be applied to some land within this

⁶⁷ Port Fairy Coastal & Structure Plan, p. 28. Emphasis added.



precinct immediately north of Hamilton – Port Fairy Road, but the balance of the precinct will not have the overlay applied.

202 Land surrounding Growth Area B is within the Rural Living Zone. To the east, land is prone to inundation and is affected by the Floodway Overlay. Part of the land is within the Public Acquisition Overlay for the Port Fairy Bypass.

203 Many lots in this area have already been developed for residential purposes.

204 The existing zoning arrangement is unusual in that lots along Albert Street are within two zones – the Mixed Use Zone and the Rural Living Zone, with the latter applied to the creek environs.

205 This amendment seeks to maintain that arrangement, with flood prone parts of lots remaining in the Rural Living Zone, while the Mixed Use Zone land is rezoned to the Neighbourhood Residential Zone.

206 I note that the guidance in the *Practitioner's Guide to Victorian Planning Schemes* about zone boundaries says:

*A zone boundary should align with title boundaries or other clearly defined feature such as a road centreline or watercourse unless there is a deliberate reason not to.*⁶⁸

207 There are clearly constraints to developing the part of these lots that is within the creek environs and Floodway Overlay. While I am not sure that retaining the lots within two zones is desirable, I accept that this amendment does not propose to rezone to the flood prone land. Perhaps a future strategic work program of the Council should consider whether a different approach should be adopted?

208 I also observe that the Structure Plan recommended that a Development Plan Overlay be applied to land within Growth Area B to manage servicing requirements. The land within the precinct is already fragmented and many lots developed for dwellings. While coordination of the servicing requirements is required, I think that

⁶⁸ A Practitioner's Guide to Victorian Planning Schemes, p. 16.



the fragmented nature of land ownership would challenge a coordinated outcome for this precinct. That said, there is merit in the planning scheme seeking to achieve a co-ordinated approach to the development of the area. It is likely to be the case that, to achieve this, the Council will need to be the lead agency responsible for preparing the development plan.

Are there other matters in submissions that warrant comment or change to the amendment?

209 I have read and primarily relied on the Council's summary of submissions to the amendment, along with the Council's response to these submissions. However, due to the nature of the issues raised by some submitters, I have read some submissions in full.

210 When considering the themes that emerge from submissions, my evidence picks up on many of the issues raised in submissions in the discussion above.

211 However, I provide the following comment in relation to other matters that are not addressed earlier in this statement, as relevant to my expertise:

- **The amendment will devalue my property or increase the cost of insurance**

Various submissions raised concerns about property devaluation or insurance costs as a result of the flooding and erosion management controls proposed by this amendment, while others identified that other controls would also restrict redevelopment potential of land and therefore decrease property values.

Property devaluation (or appreciation) or the impact of increased insurance costs are essentially private economic matters. The *Planning and Environment Act 1987* can consider economic impacts, but these are impacts on a community and not an individual.

- **196A and 183 Princes Highway**

I have been asked in my instructions to have regard to all submissions and the memorandum prepared by Water Technology in relation to the above site.



The submitter (Submission 69) requests two changes to the amendment⁶⁹:

- The Rivers Run land be identified as a 'Potential residential expansion area' within Figure 1 to Clause 21.09-3 'Port Fairy'.
- The nomination of a 500m 'Industrial Buffer Zone' be removed from Figure 1 to Clause 21.09-3 'Port Fairy'.

In relation to the request for the land to be identified as a Potential residential expansion area, I note that the land is the subject of another planning scheme amendment (Amendment C75moyn) which seeks to rezone the land and facilitate an integrated development outcome. I have not been asked to consider the merits of that amendment in light of the structure plan, but in any case, that proposal is being resolved as part of a separate process. It seems premature to make the change required by the submitter at this time.

I make comments regarding the industrial buffer zone later.

■ **Buffer to the Water Reclamation Plant**

As exhibited, the amendment proposed to apply an Environmental Significance Overlay to identify and regulate development within the buffer to the Water Reclamation Plant.

Some submissions supported the application of the buffer, while others contested its application and/or the size of the buffer area.

Ultimately, the Planning Authority abandoned that part of the amendment and it is not before this Panel.

In my view, it is appropriate for the buffer area to the Water Reclamation Plant to be protected in order to avoid land use conflict. This approach is consistent with policy at Clauses 13.06 and 13.07 which seeks to minimise land use

⁶⁹ In a subsequent submission they also made recommendations about changes to the Floodway Overlay.



conflict, protect human health and improve air quality. The Environmental Significance Overlay has historically been used and applied to a number of wastewater treatment plants to protect the infrastructure and the community. The use of the Environmental Significance Overlay as a buffer control is no longer supported by DELWP. Instead, the Buffer Area Overlay is the most appropriate tool for managing buffer areas. The Explanatory Report that introduced the Buffer Area Overlay identifies that it can be applied to wastewater treatment plants.

I recommend that the planning authority identify the need to conduct further strategic work to support the future application of the Buffer Area Overlay (or other response) to protect this critical infrastructure and the community. In the interim, the buffer should be identified in local policy and protected through relevant objectives and strategies.

- **Buffer to Industrial Uses**

Some submitters identify or contest the need to apply buffers to industrial uses such as Sun Pharmaceuticals and Bamstone's operations within the town.

The Structure Plan identifies a 100 metre buffer around Bamstone's land on Hamilton-Port Fairy Road and a 500 metre buffer around Sun Pharmaceutical's operations along the Princes Highway. These buffers are identified in the Port Fairy Framework Plan proposed to be introduced at Clause 21.09-3 as part of this amendment, but not in the form of any planning control.

I note that some submissions contest or refute the need to apply a buffer to some of these uses, on the basis that they do not meet the thresholds identified in EPA Publication No. 1518.

As I identified in relation to the Water Reclamation Plant, there is policy support at a State level to manage and minimise land use conflicts, protect human health and improve air quality. It is also 'good' land use planning to separate land uses



and minimise impacts from land use conflict on human health, safety and amenity and I support the overall principle of minimising land use conflict.

The identification of buffer areas around industrial land uses that have impacts to surrounding land is consistent with this principle. It is appropriate that these buffers are identified in policy (and controls, if required) and that this is used appropriately in decision-making for development within those buffers, provided they are justified.

That justification should be informed by a rigorous assessment of likely impacts and defining an appropriate buffer distance.

- **Extension of the Erosion Management Overlay**

Some submitters raised concern about the application of the Erosion Management Overlay and the technical assessments that are required for permit applications.

I consider that the application of the Erosion Management Overlay is warranted, given the risk of coastal erosion. The Purpose of the control very clearly supports its application in this instance. In relation to the technical assessment that is required, it is appropriate that the responsible authority be satisfied that the risk of erosion is appropriately managed.



3.CONCLUSION

212 My conclusions in relation to Amendment C69moyn are as follows:

- The amendment is strategically justified.
- From a town planning perspective, the adoption if a 1.2 metre sea level rise consideration is consistent with policy at Clause 13.01-2S of the Moyne Planning Scheme to plan for sea level rise of not less than 0.8 metres.
- I support the use of the Floodway Overlay and Land Subject to Inundation Overlay to manage the flood risk and risk of coastal inundation within Port Fairy.
- The rezoning of the residential land within the township from the General Residential Zone to the Neighbourhood Residential Zone is appropriate.
- The use of the Design and Development Overlays to guide built form within Port Fairy provides a reasonable attempt to consolidate the existing framework. However, there are opportunities to further improve built form guidance for development within the settlement.
- The rezoning of land within Belfast Lough to the Rural Conservation Zone is appropriate.
- The approach to Growth Areas A and B is generally appropriate, but further consideration should be given to consolidating the Design and Development Overlay into the Development Plan Overlay. Separately, the controls relating to the protection of Companion Lagoon and avoiding development within the floodplain should be strengthened.



213 I have made all inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

John Glossop FPIA

Director, Glossop Town Planning Pty Ltd

19 August 2022



Requirements Under PPV's Guide to Expert Evidence

- 214 This statement is prepared by John Glossop, Glossop Town Planning Pty Ltd, Level 5, 111 Cecil Street, South Melbourne VIC 3205. I am a Director of the firm. The firm has been in business since 1997.
- 215 I have a Bachelor of Arts (Urban Studies) Hons. I have been engaged in the following positions and roles in my career as a planner including:
- Former planner with the Shire of Newham and Woodend (prior to its amalgamation with the Macedon Ranges Shire).
 - Strategic and Social Planning Manager, Shire of Melton until 1997.
 - Sessional member, Planning Panels Victoria between 1997-2012.
- 216 I have sat as a Chairman or member on several planning scheme amendments, dealing with a broad range of issues from high-rise housing in Williamstown, the redevelopment of Pentridge Prison and the application of flooding overlays in the Mornington Peninsula Shire.
- 217 Sessional lecturer and tutor in strategic, statutory planning and urban studies at Victoria University of Technology (1996-99) and lecturer in statutory planning Latrobe University Bendigo (2000- 02).
- 218 Member of the ResCode Advisory Committee 2000.
- 219 I have considerable experience in statutory and strategic planning and new format planning schemes.
- 220 My expertise to make this statement is based on a combination of my experience working in metropolitan Melbourne and regional Victoria, an understanding of the site and my experience as a planner in both the private and public sectors.



221 My office has been engaged by the state's catchment management authorities and Melbourne Water to review the flood provisions within planning schemes. I have also provided evidence before the Panel for Amendment C91 to the Moorabool Planning Scheme in support of Melbourne Water's approach to flooding in that planning scheme.

222 I have been instructed from Harwood Andrews Lawyers, acting on behalf of Moyne Shire Council, to provide an opinion on the planning merits of this amendment.

223 My office was not involved in the preparation of the amendment.

224 I have relied on the documents referred to in the introduction section of my statement.

225 There were no tests undertaken in the preparation of this statement.

226 I was assisted in this statement by Matthew Gilbertson, Senior Associate of my office.



Appendix A: My Instructions

Our ref: 1GFT 22001863
Contact: Greg Tobin
Direct Line: 03 5225 5252
Direct Email: gtobin@ha.legal

4 August 2022

John Glossop
Glossop Town Planning
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Subject to legal professional privilege

Dear John,

Moyne Planning Scheme Amendment C69

1. We act for Moyne Shire Council (**Council**) in relation to proposed Amendment C69 to the Moyne Planning Scheme (**Amendment C69**). Council is the planning authority for the Amendment.
2. Amendment C69 applies to all land within the Port Fairy township and surrounds.
3. Amendment C69 proposes to implement the recommendations of the *Port Fairy Coastal and Structure Plan 2018 (Structure Plan)* by:
 - making changes to zone and overlay controls applicable to Port Fairy;
 - revising the Local Planning Policy Framework; and
 - updating operational provisions.
4. The proposed changes to the zone and overlay controls, include:
 - introducing new schedules to the Land Subject to Inundation Overlay (**LSIO**) and Floodway Overlay (**FO**) to identified areas subject to coastal and inundation and a 1.2m seal level rise;
 - simplifying existing Design and Development Overlays (**DDO**);
 - rezoning land identified in Growth Area A on the Structure Plan to Neighbourhood Residential Zone – Schedule 1 (**NRZ1**);
 - rezoning land in the General Residential Zone (**GRZ**) and Mixed Use Zone to NRZ1;
 - rezoning land identified for commercial expansion of the town centre from GRZ to Commercial 1 Zone;
 - rezoning land outside the settlement boundary shown on the Structure Plan around Belfast Lough to Rural Conservation Zone; and
 - extending the Erosion Management Overlay (**EMO**) which applies to Port Fairy West to areas along the primary coastal dune in South Beach and East Beach.
5. Amendment C69 documentation and relevant Council reports are contained in your brief of documents.
6. Amendment C69 was exhibited in mid-2020. Following a review of the 86 submissions received, Council placed Amendment C69 on hold to enable further flood modelling to be undertaken to ensure that Amendment C69 is based on robust and thorough information. In late 2021- early 2022, Council conducted further community consultation in respect of the further flood study. See below for further detail.

7. On 1 March 2022, at the Ordinary Council Meeting, Council:
 - (a) considered all submissions received during the exhibition period and further community consultation;
 - (b) resolved to abandon the parts of Amendment C69 relating to the application of the Parking Overlay to the Port Fairy town centre¹ and the application of the Environmental Significance Overlay to the Wannon Water Port Fairy Water Reclamation Plant²; and
 - (c) resolved to refer remaining submissions to a Planning Panel.
8. A Planning Panel has been appointed and comprises Kathy Mitchell (Chair), Adam Terrill and Geoff Underwood.
9. Subject to the Panel Directions following the Directions Hearing on 5 August 2022, key dates are as follows:
 - expert evidence is likely to be due on **19 August 2022**; and
 - a hearing in the **week of 5 September 2022**.

Instructions

10. We have been instructed to brief you to provide a fee proposal to:
 1. Review this letter, the attached brief of documents and relevant policies and provisions of the Moyne Planning Scheme and relevant Planning Practice Notes;
 2. Prepare an expert witness statement to be filed on a date to be confirmed (with a draft provided in advance of that date) which provides your expert planning opinion on:
 - (a) whether Amendment C69 is acceptable with or without any changes to the exhibited documents proposed by Council and/or any additional changes you recommend; and
 - (b) the submissions to Amendment C69 and the Memorandum from Water Technology to Myers Planning Group dated 19 May 2022 regarding 169A Princes Highway Port Fairy (to the extent relevant to your expertise);
 - (c) whether the use of the FO is an appropriate use of planning controls in the context of coastal and riverine flooding;
 - (d) the planning merit of the following:
 - (i) the application of flooding controls, specifically the LSIO and FO, in the context of planning for Port Fairy;
 - (ii) the proposed DDOs;
 - (iii) the application of the RCZ to properties in the Model Lane precinct;
 - (iv) the rezoning of land in Growth Area A for residential purposes; and
 - (v) the application of the NRZ1 to the area surrounding Companion Lagoon.
 3. If instructed:
 - (a) attend a meeting/video-conference(s) to discuss the above matters;

¹ Council noted that the *Port Fairy Car Parking Strategy 2017* found that existing supply to be adequate for the populating and that other mechanisms could be used to address higher demand in peak tourist periods.

² As part of Council's ongoing strategy work program, Council officers propose to further consider the interface e requirements for Port Fairy's industrial areas, including the reclamations plant.

- (b) consider and advise on:
 - any relevant expert witness statement circulated on behalf of other parties; and
 - any changes to Amendment C69 proposed by other parties.
 - (c) present your expert evidence at the hearing.
- 11. If you are instructed to provide expert evidence, we would appreciate a draft of your expert evidence in advance of the required circulation date.
- 12. Your written statement of evidence must be prepared in accordance with [Planning Panel's Guide to expert evidence](#).

Further Background

Processing Amendment C69

- 13. On 4 March 2020, the Minister for Planning authorised the preparation of Amendment C69.
- 14. Amendment C69 was exhibited between 14 May and 28 July 2020. Eighty-six submissions were received during exhibition. In summary, submissions both supported and objected to the proposed flood provisions, residential rezonings, application of the EMO and simplification of the DDOs. Some submissions opposed the application of the PO. Some submissions requested changes to the text/maps in the Planning Scheme ordinance and maps.
- 15. Following a review of submissions, Council placed Amendment C69 on hold to commission additional flood modelling. Hydrology and Risk Consulting Pty Ltd were appointed to undertake the additional flood modelling, which was completed in August 2021. A copy of the Flood Summary Report 2021 is contained in your brief.
- 16. Public consultation in relation to the updated flood modelling was undertaken between 16 December 2021 and 31 January 2022. In response to the consultation, 65 submissions were received (in addition to the 85 submissions received in response exhibition). Of the 65 submissions, 2 were late and 23 supplemented submissions received to the exhibition of Amendment C69. A total of 128 submissions have been received in response to exhibition and the subsequent consultation. Submissions to the consultation raised similar concerns as submission to exhibition.
- 17. As set out above, Council abandoned part of Amendment C69 and referred remaining submissions to a Planning Panel at its meeting on 1 March 2022. A copy of the Council report is contained in your brief. The report contains a detailed summary of submissions and the officer response.
- 18. Further information on Amendment C69 can be found online [here](#).

Amendment C75 (Amendment C75) and application under section 96a of the PE Act (Permit Application)

- 19. Amendment C75 and the Permit Application relate to land at the land at 169a and 183 Princes Highway, Port Fairy and together seek to facilitate a residential subdivision and development.
- 20. Amendment C75 proposes to rezone the Subject Land from Farming Zone and General Residential Zone to the Neighbourhood Residential Zone and apply the Development Plan Overlay – Schedule 5. A draft development plan has also been prepared.
- 21. The Permit Application proposes to subdivide the Subject Land into 75 residential lots, undertake earthworks (cut and fill), construct 10 dwellings on Proposed Lot 20, create or alter access to a road in a road in the Transport Zone 2 (formerly Road Zone, Category 1) and create or remove easements.
- 22. Council is the Planning Authority for Amendment C75 made at the request of Myers Planning Group Pty Ltd on behalf of Rivers Run Estate Pty Ltd.
- 23. Amendment C75 and the Permit Application were exhibited between 16 December 2021 and 31 January 2022. Council has received 89 submissions, which raised various issues.

24. Following a preliminary review of submissions, Amendment C75 and the Permit Application has been put on hold while officers seek further information from Rivers Run Estate Pty Ltd.
25. Previously Council was intending for Amendment C69 and Amendment C75 to be heard together at a Panel hearing. However, the timeframes no longer coincide. 2
26. Further information regarding Amendment C75 and the Permit Application, including a copy of submission can be found online [here](#).

Brief of documents

27. We have provided you with an electronic brief of documents (index attached and brief available via link [HERE](#)).

Your fees

28. We request that you send your fee proposal to our client care of Harwood Andrews by email, marked for the attention of Allison Tansley (atansley@ha.legal).
29. We confirm that you should not commence any substantive work on this matter until you have received confirmation from Harwood Andrews that your fee proposal has been approved.
30. Our client will remain responsible for your fees. We require that any tax invoices be addressed to our client, whose contact details are as follows:

Moyne Shire Council
c/o Allison Tansley
Harwood Andrews
Email: atansley@ha.legal

Legal professional privilege

31. Your professional opinion is sought in the context of us providing legal advice to our client about this matter. Consequently, your advice by virtue of your being engaged by us, attracts legal professional privilege.
32. To ensure that legal professional privilege is maintained, please keep our engagement of you confidential until your expert witness report is filed and served, at which time legal professional privilege will be deemed to be waived.

Next steps

33. If you have any questions or require any further information, please contact Allison Tansley on 03 9611 0197.

Yours faithfully,



Greg Tobin
HARWOOD ANDREWS

Encl. Index to brief of documents

Index to Brief of Documents

A. Amendment C69 Exhibited Amendment Documents	
1.	Explanatory Report
2.	Instruction Sheet
3.	<p>Proposed ordinance:</p> <ul style="list-style-type: none"> (a) Clause 21.06 (Environment) (b) Clause 21.09 (Local areas) (c) Clause 21.11(Reference documents) (d) Clause 32.09 (NRZ) (e) Schedule 1 to Clause 32.09 (NRZ) (f) Schedule 1 to Clause 35.06 (RCZ) (g) Schedule 2 to Clause 35.06 (RCZ) (h) Schedule 7 to Clause 42.01 (ESO) (i) Schedule 1 to Clause 43.02 (DDO) (j) Schedule 2 to Clause 43.02 (DDO) (k) Schedule 3 to Clause 43.02 (DDO) (l) Schedule 4 to Clause 43.02 (DDO) (m) Schedule 5 to Clause 43.02 (DDO) (n) Schedule 6 to Clause 43.02 (DDO) (o) Schedule 7 to Clause 43.02 (DDO) (p) Schedule 4 to Clause 43.04 (DPO) (q) Schedule 2 to Clause 44.03 (LSIO) (r) Schedule 3 to Clause 44.03 (LSIO) (s) Schedule 2 to Clause 44.04 (FO) (t) Schedule 4 to Clause 44.04 (FO) (u) Clause 45.09 (Parking Overlay) (v) Schedule 1 to Clause 45.09 (Parking Overlay) (w) Schedule to Clause 66.04 (Referral of permit applications under local provisions) (x) Schedule to Clause 72.03 (What does this Planning Scheme consist of?) (y) Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme)
4.	Map sheets
5.	<p>Incorporated Documents:</p> <ul style="list-style-type: none"> (a) Port Fairy Local Floodplain Development Plan 2019 (b) Guidelines – Fencing in Flood-Prone Areas (July 2015)
6.	<p>Supporting documents/clauses and schedules in tracked changes:</p> <ul style="list-style-type: none"> (a) Clause 21.06 (Environment) (b) Clause 21.09 (Local areas) (c) Clause 21.11(Reference documents) (d) Schedule to Clause 66.04 (Referral of permit applications under local provisions) (e) Schedule to Clause 72.03 (What does this Planning Scheme consist of?) (f) Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) (g) Port Fairy Coastal and Structure Plan (August 2018) (h) Translation of Part Fair Coastal Hazard Assessment (18 August 2019) (i) Port Fairy Car Parking Strategy (17 March 2017)
B. Updated modelling and maps the subject of community consultation	
7.	Flood Summary Report (August 2021)

8.	Port Fairy Local Floodplain Development Plan (December 2021)
9.	Updated LSIO and FO maps
C. Submissions in response to exhibition and further consultation	
10.	Redacted submissions
11.	Unredacted submissions
D. Council Meeting Minutes & Agendas	
12.	Ordinary Council Meeting on 1 March 2022: (a) Agenda (extract) (b) Attachments (extract) (c) Minutes (extract)
E. Other	
13.	Memorandum from Water Technology to Myers Planning Group dated 19 May 2022 regarding 169A Princes Highway Port Fairy



Appendix B: Amendment Area Inspection Photographs

Amendment C69 Moyne

Photographs taken 8 July 2022



Model Lane from Sand Spit Road



Model lane from in front of No. 164

Amendment C69 Moyne

Photographs taken 8 July 2022



From 23 Model Lane looking south west



Osmonds Lane extension looking north

Amendment C69 Moyne

Photographs taken 8 July 2022



McGill Court



End of McGill Court looking north



From McGill Court looking south



Bowker Court

Amendment C69 Moyne

Photographs taken 8 July 2022



Bowker Court



Rear of Bowker Court

Amendment C69 Moyne

Photographs taken 8 July 2022



Rear of Bowker Court



Land to west of Bowker Court

Amendment C69 Moyne

Photographs taken 7-8 July 2022



From 18 Anna Catherine Drive looking west



Goldie’s Lane looking southwest. Land on the right is existing Mixed Use and proposed NRZ1

Amendment C69 Moyne

Photographs taken 8 July 2022



Albert Road Port Fairy, looking south opposite No. 109



Albert Road Port Fairy, looking north opposite No. 109

Amendment C69 Moyne

Photographs taken 6-7 July 2022



Standing on Lagoon Rd looking south (Growth Area A)



Standing on Lagoon Rd looking east (looking toward future Port Fairy By-Pass in foreground and Showgrounds in background)



Princes Highway looking north east



Princes Highway looking south west

Amendment C69 Moyne

Photographs taken 8 July 2022



181 Princes Highway



179 Princes Highway

Amendment C69 Moyne

Photographs taken 8 July 2022



Aitkens Crescent



Service Road looking south west

Amendment C69 Moyne

Photographs taken 8 July 2022



184 Princes Highway



186 Princes Highway

Amendment C69 Moyne

Photographs taken 8 July 2022



186 Princes Highway



Goldie's Lane



Amendment C69 Moyne

Photographs taken 8 July 2022



Rail Trail



SunPharma Chemicals



Looking south along Rivers Run boundary with rail trail



Rear of Houses fronting Princes Highway

Amendment C69 Moyne

Photographs taken 8 July 2022



Rear of houses facing Princes Highway



Rear of houses fronting Highway



Rivers Run boundary with caravan park



Rivers Run boundary with caravan park looking north

Amendment C69 Moyne

Photographs taken 8 July 2022



From caravan park boundary looking east



Pump Station



Pump Station



Possible link to Princes Highway at Rivers Run land



Rear abuttals of Rivers Run land



Rear abuttals of Rivers Run land

Amendment C69 Moyne

Photographs taken 8 July 2022



Rear abutts of Rivers Run Land



Rear of SunPharma

Amendment C69 Moyne

Photographs taken 8 July 2022



Lane on north east of rail trail



Lane on north east of rail trail