

**INDEPENDENT PLANNING PANEL  
APPOINTED BY THE MINISTER FOR PLANNING  
PLANNING PANELS VICTORIA**

**IN THE MATTER OF AMENDMENT C69MOYN TO THE  
MOYNE PLANNING SCHEME**

BETWEEN:

MOYNE CITY COUNCIL

Planning Authority

and

SUN PHARMACEUTICAL INDUSTRIES AUSTRALIA PTY LTD

Submitter

AFFECTED LAND: 195-199 Princess Highway, Port Fairy

**SUBMISSIONS ON BEHALF OF  
SUN PHARMACEUTICAL INDUSTRIES AUSTRALIA PTY LTD**

**Introduction**

1. Amendment C69moyn (the **Amendment**) seeks to implement the recommendations of the *Port Fairy Coastal and Structure Plan 2018* (the **Structure Plan**). The Amendment provides a long-term land use and development framework for Port Fairy to 2021.
2. Sun Pharmaceutical Industries Australia Pty Ltd (**Sun Pharma**) owns and operates a pharmaceutical manufacturing facility of global significance on two parcels of land at 195 and 199 Princess Highway, Port Fairy (the **Site**). Sun Pharma seeks to ensure the Amendment appropriately provides a level of protection for the existing industrial activity occurring at the Site to ensure its future in Port Fairy is not compromised.
3. In addition to these submissions, Sun Pharma adopts its previous submission dated 13 July 2020 and 31 January 2022, supported by the expert evidence of Ms Ring (Planning), Mr Nicol (Economic Impact), Mr Ramsey

(Buffers) and the lay witness statement of Ms McKinley, the Head of Operations at Sun Pharma.

### **Sun Pharma Operations**

4. The Site has been utilised for industrial activities for over 100 years.
5. The Site employs 120 personnel, with the Sun Pharma Australian business employing 150 people in total and utilising 50 local business and contractors.
6. The Site produces globally significant amounts of starting material for opiate based pain relief medicines, known as narcotic raw materials. The Site produces 200 tonnes of narcotic raw materials annually or 25-30% of the global supply of opiate based pain relief medicines. Opiates are extracted from poppies grown in Tasmania.
7. Morphine, Codeine, Thebaine and Oripavine are currently produced at the Site, though Sun Pharma also conducts research and development activities into the production of additional products with a view to diversifying its operations and ensuring the long-term success of its business. The lay evidence statement of Ms McKinley mentions one of the products which is shortly due to commence production, medicinal cannabis.
8. The extraction of alkaloids requires storage of large quantities of chemicals at the Site: liquid nitrogen and liquid carbon dioxide (100,000 litres), various fine and toxic chemicals (50-60 tonnes), flammable liquids (600,000 litres), acids and caustics (150,000 litres)<sup>1</sup>.
9. There is only one other site worldwide producing starting material for opiate based pain relief of comparable scale to Sun Pharma, that is located in Tasmania. The two sites together produce 60% of the world's supply of opiate based pain relief.
10. The production of controlled substances including the growing and processing of medicinal poppies requires licences from both Federal and State government. Each aspect of opiate production is highly regulated,

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<sup>1</sup> Ring, page 9.

including the amount of starting material (literally the number of medicinal poppies that can be grown) due to the risk of illegal activity and the highly addictive nature of medicine produced from the raw materials. These licences require strict security requirements for selection and screening of personnel and security, including physical security, product security, transport security, electronic security and data and information security. The remote location of Port Fairy facilitates maintenance of physical security, supporting product and transport security.

11. The Site typically operates 24 hours a day five days a week and occasionally 24 hours a day, 7 days a week in response to consumer demand. This operational flexibility is essential to Sun Pharma's operations. Due to the nature of the product produced, Sun Pharma's licences dictate that it cannot be produced in bulk and stored indefinitely. It also cannot be stored for even a limited time while in transit. It must be produced in approved quantities and transported to its ultimate destination as quickly as is reasonably practicable to ensure transport security. Similarly, deliveries to the Site are not time constrained, though they typically occur during business hours.
12. The Site is accredited by the Federal government pursuant to the Known Consignor Scheme. This accreditation means the Site's air cargo passes through airport security with minimal delays. Any delay would necessitate products being returned to the Site for secure storage. Sun Pharma is also an Australian Trusted Trader, a program operated by the Australian Customs Service.
13. As may be reasonably expected, Sun Pharma takes its obligations pursuant to its various accreditations exceedingly seriously as they are essential to the functioning of the business. The obligations as they relate to operations on the Site are well summarised in the evidence of Ms Ring<sup>2</sup>, but essentially comprise:

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<sup>2</sup> Ring, page 9.

- a) bunding of plant and equipment to contain spillage that might arise from equipment failure from time to time;
  - b) security including but not limited to fencing, secure access to each building on the Site (and often within buildings);
  - c) lighting throughout the Site including around the perimeter at night;
  - d) occupational and wider community health and safety plans; and
  - e) water storage and pumping at the site, in the event of fire.
- 14. Sun Pharma has sought to minimise off-site impacts as far as reasonably practicable to neighbours, noting it presently has no immediately abutting neighbours. This is reflective of the zoning framework which sensibly maintains the underlying land use separation principles of town planning. This diligence coupled with the distance to existing residents has resulted in relatively low level of complaint, but nevertheless, complaints are made.
- 15. Off-site impacts, typically influenced by weather conditions and equipment failure, include:
  - a) noise impacts as a result of light and heavy vehicular movements; forklift and elevated platform equipment movements; and noise generated by production machinery, the cooling tower and testing of the fire safety system; and
  - b) odour generated throughout the production process and use of the calamity tank in upset conditions.
- 16. The economic contribution Sun Pharma makes to Port Fairy and the broader region is well detailed within the expert evidence of Mr Nicol, the only economic expert to be called before the Panel.
- 17. Mr Nicol's economic impact analysis provides:
  - a) Sun Pharma's Port Fairy facility supports direct jobs and economic activity, but also indirect supply chain and consumption related benefits to the municipality and Victorian economies.

- b) The direct and indirect economic impacts for the municipality are \$41.2 million in revenue for local businesses and organisations, 137 jobs and \$21.9 million in value added.
  - c) For every 10 direct jobs at Sun Pharma at least one other further job is supported in the Moyne Shire once flow-on supply chain and consumption effects are taken into account.
  - d) In the context of the Victorian economy a total of 196 jobs are supported (direct and indirect).
18. Mr Nicol's evidence was not the subject of question or challenge.
19. This value is identified within the Structure Plan. Section 2.2 provides:

*Education and Public Administration are likely to be strongly influenced by the presence of major employers in the town including Sun Pharmaceuticals, BAM Stone, schools and Council respectively<sup>3</sup>.*

20. With regard to the Coastal Settlement Boundary, identified as key to the sustainable management of population growth:

*The boundary does not contemplate any expansion of existing urban development to the north of the township due to a combination of environmental considerations and clear policy direction which seeks to avoid 'sprawl' along highways and coastal edges. The immediate abuttal to the Belfast Lough is the source of many of these sensitivities, although the presence of **SunPharma, the town's major employer**, also influences any future expansion of residential uses within this area. Existing Low Density Residential land to the north has been excluded due to a number of constraints which will reduce the development capacity and subsequent disconnection from the town centre. No rezoning of land in this area or inclusion of land currently zoned for rural uses is contemplated for similar reasons<sup>4</sup>.*

[Emphasis added]

21. Section 3.3 *Economic Development* provides:

*Port Fairy has a wide variety of employment opportunities. Employment is provided by the industrial businesses including SunPharma and Bamstone, the fishing industry, retail and hospitality / tourism industry and health related jobs. The town's proximity to Warrnambool also provides additional job opportunities. The Structure Plan recognises the importance of providing for and encouraging additional employment opportunities, as well as driving broader economic growth.*

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<sup>3</sup> Structure Plan, page 14.

<sup>4</sup> Structure Plan, pages 23-34.

...

*Ensuring the protection of existing industries is also important. This should occur through both the recognition of buffers contained within the Moyne Planning Scheme (which are designed to avoid conflict with sensitive uses and are shown on Figure 9) and the identification of longer term expansion opportunities. Of particular importance to Port Fairy's economic development is protection of the SunPharma site to the north of the town, which employs approximately 140 people and produces internationally significant quantities of pharmaceuticals. An indicative buffer of 500m should be identified within the Moyne Planning Scheme until such time as SunPharma and the EPA have agreed any alternate buffer in order to protect this significant industry from residential encroachment, particularly given the identified potential for increased operations on this site. Existing industrially zoned land to the south of the site is proposed for rezoning to the Rural Conservation Zone (reflecting the sites constraints), but clear policy direction should be put in place to support any use of this land for appropriate ancillary infrastructure (i.e. renewable energy generation)<sup>5</sup>.*

[Emphasis added]

22. Objectives contained within the Structure Plan include:

- *To protect significant existing industries and infrastructure.*

23. Strategies provided include:

- *Recognise buffers associated with the Sewerage Treatment Plant, Water Treatment Plant, Bamstone and SunPharma within local policy.*
- *Support further intensification of SunPharma in its current location but do not support any further expansion in recognition of adjacent residential development.*

24. Actions include:

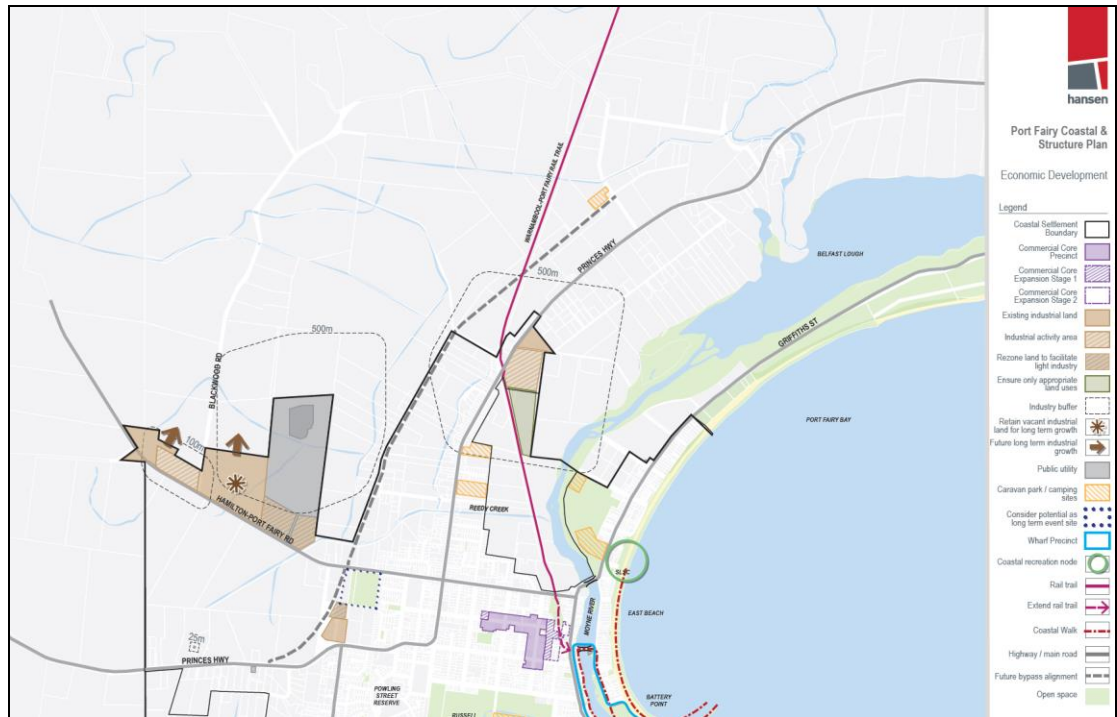
- *Apply an Environmental Significance Overlay to the buffer around the Water Reclamation Plant and work with the EPA and SunPharma to define an appropriate buffer for that site to inform a future planning overlay.*

25. Figure 12 of the Structure Plan nominates an industry buffer around the Site of 500 metres.

### **Figure 1: Structure Plan, Figure 12 (extract)**

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<sup>5</sup> Structure Plan, pages 36-37.



26. The *Draft Plan Consultation – Feedback Summary Report* provided as Appendix 1 to the Structure Plan notes:

*The Environmental Protection Authority (EPA) supported the identification of industrial buffers, and that future development should be subject to odour and noise assessment to ensure appropriate interface conditions between industry and residential development.*

*The EPA raised significant concern relating to the proximity of the vacant Industrial 1 Zoned land adjacent to SunPharma (east of the railway line) to residential areas, both existing and future. Without its rezoning to a non-industrial zone the EPA will not support any future new residential development within the industry buffer to SunPharma.*

27. Figure 1 – *Port Fairy Framework Plan* within Clause 21.09-3 nominates the Site as an area of *Industrial Uses with Potential Amenity Impacts*. Industrial Strategies within Clause 21.09 include “Recognise buffers associated with the *Sewerage Treatment Plant, Water Reclamation Plant, Bamstone and SunPharma*”.
28. Despite, and in direct contrast to, the identified buffer for Sun Pharma, Figure 8 of the Structure Plan also nominates the southwestern portion of the land at 196A and 183 Princes Highway, Port Fairy owned by Rivers Run

Estate Pty Ltd (**Rivers Run**) – located entirely within the proposed industry buffer – with an asterisk as:

Potential residential expansion area (*if development can demonstrate accordance with relevant flood controls under a 1.2m SLR scenario, and that the land is outside any buffer agreed by SunPharma & the EPA*)

29. The Amendment proposes to rezone the Rivers Run land, currently located in the Farming Zone (**FZ**), to Rural Conservation Zone – Schedule 2 (**RCZ2**).
30. Despite concerted effort Sun Pharma have not been able to locate the genesis of the asterisk on the Rivers Run land. No discussion is provided within the Structure Plan that details the reason for its inclusion, or the strategic work that was undertaken to support the Rivers Run land as a potential residential expansion area. Figure 8 the Structure Plan containing the asterisk purports to be dated 4 October 2017 Revision C. But reference to the Consultation Draft dated 17 October 2017 contain a plan with the same date and same Revision but does not contain the asterisk (see below).

**Figure 2: Consultation Draft, Figure 8 (17 October 2017)**



31. Notably Hanson, the authors of the Structure Plan have not been called to provide evidence to this Panel.



32. Mr Glossop in cross-examination was unable to direct the Panel to the strategic foundation and analysis supporting the inclusion of the asterisk, or indeed any discussion of the asterisk at all. Mr McGurn's evidence on behalf of Rivers Run was not able to explain the genesis of the asterisk. To use the word used of 13 September 2022 – the absence of any explanation of the how or when the asterix was lobbed into the structure plan is peculiar.
33. Rivers Run's submission to the Council notes that for approximately the past 20 years multiple approaches have been made to Council by owners of the Rivers Run Land, seeking that the land be rezoned for residential purposes. Rivers Run submission further notes they have been encouraged by Council to 'hold off' until further strategic planning work was completed for the Structure Plan. Rivers Run have lodged a Section 96A, combined planning scheme amendment and planning permit process, Amendment C75.
34. Ms Forsyth's questions to Mr Glossop in cross-examination and the Rivers Run submission indicate that Rivers Run is urging this Panel to recommend that the Rivers Run Figure 1 – *Port Fairy Framework Plan* within Clause 21.09-3 be nominated as a '*Potential residential expansion area*' on the basis that the Rivers Run land forms some kind of 'logical inclusion' to the northern residential edge to Port Fairy.
35. Just like the 'asterix', the strategic basis of the Rivers Run case is a mystery.

### **Sun Pharma's submission**

36. Sun Pharma's concern with the Rivers Run submission, is essentially that Mr Glossop is entirely correct in his evidence before the Panel. The Panel will recall Ms Forsyth's cross-examination of Mr Glossop where Ms Forsyth asked whether this Amendment 'recognising the potential' of the Rivers Run land would '*leave the door open for that site to be assessed on its merits and provide certainty and transparency that further investigation is an anticipated outcome*'. Mr Glossop responded "*Any elevation of the appropriateness of that land for residential development would help to facilitate that identified land use change when C75 is heard. It would give that amendment a leg up*".

37. This ‘leg up’ for Amendment C75 is, in Sun Pharma’s submission, entirely lacking in proper strategic foundation and is deeply problematic in a number of respects.
38. Put simply:
- a) The new owners of the Rivers Run land are land speculators who purchased the land in the full knowledge that the land has never held an urban zone. The new owners were volunteers. The planning system owes such persons nothing.
  - b) The strategic work undertaken to support the Amendment plainly demonstrates the Rivers Run land is not required for residential growth. Council’s Part B submission notes Port Fairy has capacity for over 15 years of zoned and unzoned residential land supply within broad hectare and major infill land comprising 110 zoned lots (approximately 7 years) and 460 unzoned lots (over 25 years). Further there is a minor infill supply in Port Fairy of approximately 104 lots<sup>6</sup>.
  - c) The Rivers Run land has never held an urban zone and sits outside the coastal settlement boundary in the Amendment. Mr McGurn conceded that the Council has followed the process in *Planning Practice Note 36 – Implementing a Coastal Settlement Boundary*. Accordingly, the proposed residential development of that land does not respond to the strategically justified Coastal Settlement Boundary nor the housing strategy contained within the Structure Plan to favour residential growth to the north and west of the Princes Highway in Growth Area A and Growth Area B and limit opportunities for growth in areas which are low-lying and susceptible to flooding.
  - d) The Rivers Land is entirely contained within the Belfast Lough Environs (identified in the Structure Plan and Figure 1: Port Fairy Framework Plan to clause 21.09-3. Mr McGurn conceded this. He

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<sup>6</sup> Part B submission, [84]-[85].

also conceded that the Structure Plan strategy for the Belfast Lough Environs relevantly is:

*Discourage new dwellings within the Belfast Lough Environs.*

The relevant Actions in the Structure Plan is<sup>7</sup>:

*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.*

- e) Additional housing in this location does not respond to detail of the Structure Plan as far as it confirms the value of Sun Pharma and seeks to provide it with a degree of protection in the form of policy buffers from possible encroachment of sensitive land uses.
- f) A high speculative purchase by the Rivers Run group is no substitute for proper strategic foundation. Perhaps the main benefit of the participation of Rivers Run in C69 is that it has exposed the folly of C75. Sensibly, the Council has not progressed with that amendment. It is yet to progress past the submission stage and is not a seriously entertained planning proposal. Where an amendment to a planning scheme is yet to be seriously entertained, it is appropriate that it is afforded little weight due to uncertainties regarding whether the amendment will be ultimately pursued, or modified during the amendment process<sup>8</sup>.

In *Australian Catholic University v Yarra CC* [2021] VCAT 1218 (20 October 2021), the Tribunal discussed the proper weight to be afforded Amendment C269 to the Yarra Planning Scheme in circumstances where the amendment had recently completed exhibition. At [18]:

*Amendment C269 to the Yarra Planning Scheme has recently finished exhibition as an amendment to update and translate the existing LPPF*

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<sup>7</sup> Page 69 of Structure Plan.

<sup>8</sup> *495507 Barkly St Pty Ltd v Maribyrnong CC* [2020] VCAT 486 (17 April 2020), [26]; *Veheski v Mornington Peninsula SC* [2021] VCAT 1550 (21 December 2021), [26].

*into the broader policy framework of clauses 10 to 19. We agree with Mr Crowder's planning evidence, however, that this is not yet a seriously entertained planning scheme amendment so we do not address it in any detail. Nor did any party seek to rely on provisions in this amendment.*

- g) Respectfully, it would be improper for the current Amendment to seek to pre-empt what might happen with C75 - it remains to be seen whether the Council will let that amendment lapse, abandon it or otherwise. The planning system would be getting well ahead of itself to think that C75 will progress any further into the planning process.

#### Appropriate buffers for Sun Pharma

39. Sun Pharma considers that maintaining an appropriate zoning framework and policy buffer zones around the Site is the best way to facilitate and secure the benefits of Sun Pharma for the community. The zoning framework has been successful to date in ensuring that risks associated with security, environment, emergency planning and public safety are minimised and impacts on amenity of neighbours are minimised.
40. Existing policy within the Moyne Planning Scheme (the Scheme) supports industry and appropriate separation of land uses and to ensure that housing is appropriately located:
- a) Facilitate the district town of Port Fairy to support local communities, industry and services<sup>9</sup>;
  - b) ensure development is not prejudiced and community amenity and human health not adversely affected by noise emissions<sup>10</sup>;
  - c) ensure suitable separation between land uses that pose a human health risk or reduce amenity due to air pollutants and sensitive land uses<sup>11</sup>;
  - d) ensure that use or development of land is compatible with adjoining and nearby land uses<sup>12</sup>;

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<sup>9</sup> Clause 11.01-1R.

<sup>10</sup> Clause 13.05-1S.

<sup>11</sup> Clause 13.06-1S.

- e) Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses<sup>13</sup>;
- f) Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures<sup>14</sup>;
- g) Protect existing industrial uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively<sup>15</sup>;
- h) facilitate well-located, integrated and diverse housing that meets community needs<sup>16</sup>;
- i) to strengthen and diversity the economy<sup>17</sup>;
- j) Facilitate regional, cross-border and inter-regional relationships to harness emerging economic opportunities<sup>18</sup>;
- k) Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region<sup>19</sup>;
- l) Innovation and research - To create opportunities for innovation and the knowledge economy within existing and emerging industries, research and education<sup>20</sup>;
- m) Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development<sup>21</sup>.

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<sup>12</sup> Clause 13.07-1S.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Clause 16.

<sup>17</sup> Clause 17.01-1S.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Clause 17.01-2S.

<sup>21</sup> Clause 17.03-1S.

- n) contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts<sup>22</sup>;
- o) to facilitate the sustainable operation of industry<sup>23</sup>;
- p) Protect industrial activity in industrial zones from the encroachment of commercial, residential and other sensitive uses that would adversely affect industry viability<sup>24</sup>;
- q) Provide adequate separation and buffer areas between sensitive uses and offensive or dangerous industries and quarries to ensure that residents are not affected by adverse environmental effects, nuisance or exposure to hazards<sup>25</sup>;
- r) Where the economy uses the strengths of the agricultural foundation to further diversify and improve production and increase opportunities for value added activities, industrial expansion<sup>26</sup>;
- s) By specifically identifying Sun Phama (Glaxo) as a well established business that makes an important contribution to the economy<sup>27</sup>;
- t) separation of other existing manufacturing businesses from other land uses, particularly residential, is considered important in order that they may carry out their activities without conflict<sup>28</sup>; and
- u) maintain and built Port Fairy as a strong economically sustainable settlement that provides services for the local community<sup>29</sup>.

41. Ms Ring's evidence is supportive of changes to local policy at Clause 21.09-3 which include<sup>30</sup>:

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<sup>22</sup> Clause 17.

<sup>23</sup> Clause 17.03-2S.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Clause 21.04.

<sup>27</sup> Clause 21.07.

<sup>28</sup> Clause 21.07.

<sup>29</sup> Clause 21.09-3.

<sup>30</sup> Ring, page 34.

- *Confirmation of Sun Pharma's importance to the community as one of the town's main employers and need to protect it from the encroachment from incompatible development.*
  - *Application of the coastal settlement boundary as shown on the (new) Port Fairy Framework Plan.*
  - *Discouraging the development of further housing along the Princes Highway to the north, other than where already zoned for residential purposes.*
  - *Directing housing growth to the nominated Growth Area A.*
  - *Discouraging new dwellings within the Belfast Lough area.*
  - *Protecting significant industries and infrastructure.*
  - *Recognising buffers associated with the Wastewater Treatment Plant, Bamstone and Sun Pharma.*
42. The fact that the EPA does not require a specific separation distance is not a matter of controversy. EPA publication 1518 for example only relates to air emissions. Planning considerations include not only air emissions, but a much broader and informed consideration of matters to inform land use separation and policy buffers. The case urged upon the Panel by Rivers Run misunderstands these basic town planning principles.
43. Mr Tobin's early question to Dr Cowan and Dr Cowan's answer exposed that Dr Cowan does not resist what the Council proposes in clause 21.09-3 for a 500 metre Industry buffer. Dr Cowan was specifically asked about it and supports it. Mr McGurn deferred to Dr Cowan on the topic specifically in his oral evidence and his written evidence<sup>31</sup>. The Panel can safely proceed on the basis that the Rivers Run expert evidence supports a 500 metre Industry buffer in clause 21.09-3.
44. This is consistent with the role of policy to first and primarily prevent environmental, human health and amenity issues caused by siting incompatible land uses together. It ought be beyond question that prevention of land use conflict is preferable to seeking to manage increased conflict once it has been created. It should also be beyond question that the value Sun Pharma presents to Port Fairy and the broader municipality

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<sup>31</sup> Paragraph 68 of Mr McGurn's evidence.

should not be compromised or unreasonably constrained by residential encroachment.

45. The evidence, including the concessions made the technical witnesses in the case, makes it is clear based on the evidence that the Council's proposal for a policy buffer around the Sun Pharma site is prudent.
46. Various submissions/urgings have put forward the Sun Pharma should or could do a range of things to change its operations and plant (for example, 'cover the calamity tank', 'put of up noise walls'). Putting aside for a moment that those making such suggestions either weren't aware of, or apparently haven't considered:
  - (a) the previously odour problems created when the calamity tank was previously covered;
  - (b) the visual and potential floodway impacts of installing noise walls;

those suggestions underscore the very problem with the urgings of the Rivers Run case and the threat of residential encroachment towards the Sun Pharma site. The planning scheme is laced with policy support for the economy, for job support, for manufacturing, for Sun Pharma and for the protection of all of these items. These fundamentals components of the planning scheme are not just empty rhetoric – they are founding planks of the whole town planning scheme - they must be given effect. To yield to the urgings of a land speculator proposing residential encroachment would be to effect ignore all of these policies.

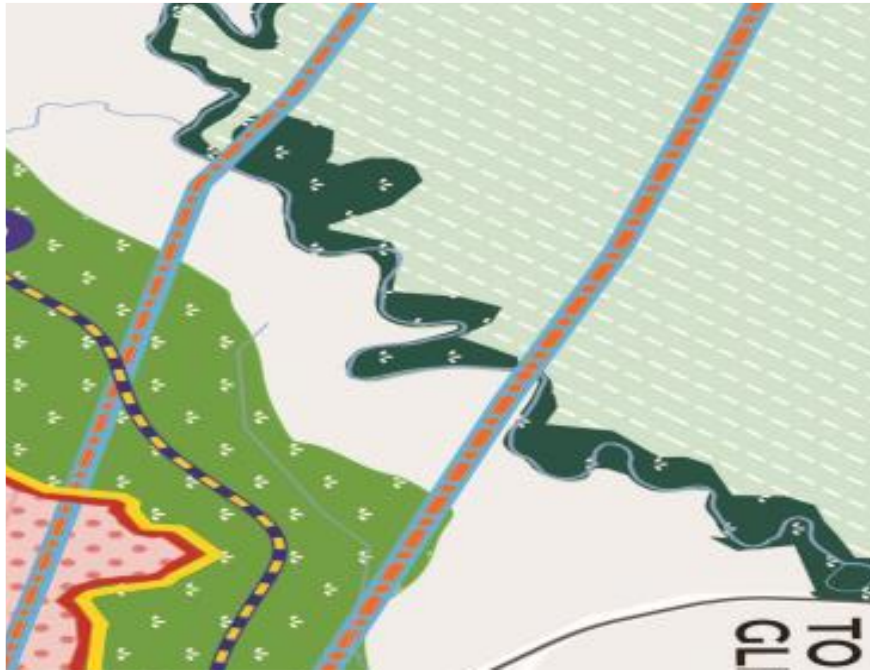
47. Policy buffers are not novel to separate residential uses from industrial uses with the potential for amenity impacts are not novel.
48. Clause 11.01-1L of the Latrobe Planning Scheme provides the following strategy to land within the Traralgon Town Structure Plan:



*Support industrial uses with limited off site amenity impacts and other compatible uses within the Janette Street Industrial precinct (TTSP Area 6) as a buffer between the lime batching facility and nearby residential and mixed uses.*

49. The Traralgon Town Structure Plan contains a Lime Batching Facility Buffer (500 metres), shown in a red dashed line.

**Figure 3: Clause 11.01-1L, Traralgon Town Structure Plan (extract)**



50. The Industrial Framework Plan contained at Clause 02.04 of the Latrobe Planning Scheme similarly identifies a 'Heavy Industry Buffer'.
51. Clause 14.03 of the Monash Planning Scheme provides the following Strategy:

*Develop and maintain buffers around mining and extractive industry activities.*

...

*Determine buffer areas between extractive activities and sensitive land uses on the following considerations:*

- *Appropriate limits on effects can be met at the sensitive locations using practical and available technology.*
- *Whether a change of land use in the vicinity of the extractive industry is proposed.*

- *Use of land within the buffer areas is not limited by adverse effects created by the extractive activities.*

52. Clause 21.02-8 of the Moorabool Planning Schemes notes the following strategic work to be undertaken:

*Investigate an appropriate buffer zone around the Ballan and Bacchus Marsh Recycled Water Plants in conjunction with the relevant Water Authorities, and develop ESO's within these buffers in conjunction with the Water Authorities and the EPA.*

53. Clause 21.04-6 provides:

*Apply a Development Plan Overlay to the area contained within the Kennedy Place Industrial Estate to address amenity issues and establish buffers to residential areas.*

54. Clause 17.03-1S of the Casey Planning Scheme provides the following strategy for State Significance Industrial Land:

*Protect heavy industrial areas from inappropriate development and maintain adequate buffer distances from sensitive or incompatible uses.*

55. Plainly, there is nothing novel about the use of a planning buffer to both protect existing industrial uses from inappropriate encroachment, and to protect residents from unacceptable impacts on their amenity. The concept reflects the very basic 'Planning 101' principle of land use separation which underpins the theory and practice of the town planning profession.

56. Land use separation principles are also embedded in *Planning Practice Note 92 Managing buffers for land use compatibility (PPN92)*. PPN92, inter alia, provides:

### ***Overview of land use compatibility***

*Many industrial and other land uses have the potential to produce off-site impacts, such as noise, dust, odour and hazardous air pollutants. While these impacts can often be prevented through onsite management, unintended off-site impacts due to equipment failure, accidents, abnormal weather events and other causes may still pose risks to amenity, safety and human health. These impacts are particularly concerning where residential areas, hospitals, schools and other sensitive uses may be exposed.*

*Ensuring land use compatibility is fundamental to the objectives of planning in Victoria. Where separation between incompatible uses is not considered as part of*

*the planning process, land use conflict can occur. This often results in situations where the operation and viability of industries, including critical infrastructure, is threatened while communities are put at risk.*

### ***What are buffers and why are they important?***

*'Buffer' in the context of land use planning refers to land used to separate or manage incompatible land uses, often industrial uses and sensitive uses, to ensure land use compatibility and avoid land use conflict.*

*Although buffers are not a substitute for best practice management of off-site impacts by industry, it is recognised that even 'state of the art' facilities are not always able to eliminate the potential for unintended off-site impacts. Buffers are often still needed to protect sensitive uses from these impacts and provide certainty for industry operators.*

...

### ***The importance of strategic planning***

*As reflected in the Planning Policy Framework, the priority when planning land use and development is avoiding land use conflict in the first place. This involves understanding where existing industry and other uses with potential off-site impacts are and ensuring current zoning appropriately protects operators and surrounding communities. It also means making sure that sensitive uses and future urban growth are directed away from areas that could be affected by off-site impacts. Strategic planning around uses with potential off-site impacts should consider the capacity or need for future expansion of that use or expected changes to operations. Planning approaches might differ depending on the strategic planning scenario.*

...

### ***Avoiding land use conflict in urban renewal areas***

*Areas planned for urban renewal often contain historical industrial uses that pose potential off-site impacts. While some of these uses may be earmarked for future transition, others could*

*be encouraged to remain in the area for the employment and services they provide. Again, the use of zones and other land use planning tools to prevent land use conflict should be considered early.*

*Understanding the nature of potential off-site impacts, whether noise, dust, odour or other impacts, can help determine what type of controls should be applied. For example, while noise impacts can often be addressed by implementing design or construction standards, this may not be enough to mitigate hazardous air pollutants or odour.*

*Land within identified buffers or separation distances should be assessed to determine whether sensitive uses can be supported, including recommendations about managing future development.*

*The extent of these buffers should be reviewed by the relevant expert agency, based on all available evidence.*

*Where incompatible land uses are forecast to be transitioned out of the urban renewal area, implementation of a structure plan or development plan should be staged to ensure land use conflict can be effectively managed before transition has finished.*

...

***Managing buffers where there is existing or potential land use conflict***

*While ensuring land use compatibility is a key planning objective, this is difficult where incompatible land uses already encroach, or are likely to encroach, within the buffers of industries and other uses with potential off-site impacts. Options to manage land within buffer areas include pursuing land use transition and restricting use and development.*

57. The Panel on Day One of the hearing asked that Sun Pharma's submissions address who should bear the burden of any buffer in relation to the Site. *Latrobe C105* (PSA) [2019] PPV 16 (15 March 2019), discussed further below, addressed this very question in relation to a policy buffer proposed in relation to an existing industrial use:

*The issue of buffers is complex in that it is rare that a buffer is ever solely contained within the site of the land use that the buffer applies to. And that is the case here. The Panel heard that buffers are essential for instances when normal operations breakdown or malfunction.*

58. Similarly in this case, Sun Pharma submits it would be unusual, and indeed unfeasible for buffers to be contained wholly within the Site itself. It is the very reason why land use separation principles are embedded in the planning scheme at for example clauses:

- (a) 13.05-1S;
- (b) 13.06-1S;
- (c) 13.07-1S;
- (d) 17.03-1S;
- (e) 17.03-2S; and

- (f) Zoning patterns which itself provides an existing buffer here. In this respect, the questions from Member Terrill to Dr McKinlay were enlightened – that is, there has been no reason for Sun Pharma to object in this sort of forum or in VCAT because the zoning patterns has provided a buffer protection.

59. If policy buffers were required to be entirely contained wholly within a site would mean that the policy framework would have no work to do at all. Strategic planning requires assessments of land use capability, and sufficient separation so as to ensure existing industrial operations are not prejudiced by new development, particularly any development that contemplates the introduction or intensification of sensitive uses.
60. Mr Ramsey’s evidence shows that despite good management practices, off-site amenity impacts and potential impacts remain and complaints have and continue to be made.
61. In *Latrobe C105* (PSA) [2019] PPV 16 (15 March 2019), the Panel Amendment proposed widespread changes to policy, zoning and schedules applying to residential, farming and industrial land in response to demographic and structural economic changes. One submitter to the amendment was the Sibelco Lime Processing Facility. The issues raised included the effective management of land use in the buffer to the facility.
62. The panel report included the following discussion on pages 29-34:

*The Council submitted that future amenity impacts will increase over time and that good planning should seek to avoid these conflicts. The Council submission therefore is that it is appropriate and responsible planning policy to foreshadow that the area should transition to alternate uses if and when the current operations cease.*

*The Council submission is that Sibelco “takes its responsibility for its environment impacts seriously, and it maintains an amicable relationship with the neighbouring community”. Council said it had identified heavy industry precincts for this type of use in more suitable locations and the Panel was advised that these precincts were now available for development as a result of recently approved planning scheme amendments.*

*The Council submitted that it had not changed the zoning of the land in the precinct in Amendment C105, and that it sought only to identify the long term potential for transition to occur in the future through policy to that effect. The Council said that most of the residential development to the north existed prior to Sibelco purchasing the plant and that only a limited number of infill dwellings had occurred since.*

*Mr Peake for Sibelco said the facility has existed on the site for 70 years and operated originally as a concrete facility. He said the site and has been owned by Sibelco since the 1990's and has operated as a lime processing facility since. He said the plant is there and it is the heavy industry anchor in the heavy industry IN1Z.*

*He said it is contrary to the purpose of state planning policy to entertain the notion of either rezoning the IN1Z land whilst the plant exists, or to countenance actions that facilitate further encroachment of incompatible uses closer to the plant within the buffer to the plant. He said the existence of new industrial precincts in other locations is not relevant to this site and this existing use.*

*He stated that Sibelco had identified a cost of about \$131 million to relocate the facility, and that Sibelco would not rebuild it.*

*Mr Peake said that there has never been a comprehensive assessment of net community benefit to substantiate the policy direction the Council has been pursuing, nor the feasibility of it, and that the current and proposed planning policy and controls are causing deliberate planning blight. He said alternate strategies may be more suitable given the existence of the plant.*

...

*She said the plant produced high grade quicklime and other lime products with low impurity levels that is in limited supply in Victoria and is best suited to high standard industrial processes. She noted Sibelco was the only producer of this grade of lime product in Victoria and that the nature of the products meant that a supply buffer could not readily be maintained.*

*Ms Kinsman said that the plant operated 24 hours a day 7 days per week and noted that Sibelco voluntarily did not operate some part of the plant equipment at night to mitigate possible noise from elevated equipment.*

*She said that users of Sibelco products often required urgent delivery when industrial processes malfunctioned, such as at Australian Paper Mills, and that truck movement occurred at all hours as lime products were dispatched, and also returned if they could not be utilised. She said that Quicklime was required to be stored in nonreactive storage facilities and that if a load could not be used for a given job because of weather or other circumstances, then it was returned to the plant at Traralgon for storage.*

...

*She said that the maintenance of the buffer around the plant from encroachment of incompatible uses was vital and said that the buffer played an important role when there are plant or equipment malfunctions that usually result in release of*

*lime dust into the atmosphere - for example when dust collection bags in the dust control system burst. She said that the plant had received very low levels of complaint from neighbours and that complaints that had been received had generally related to noise from elevated bits of equipment that Sibelco voluntarily no longer operates at night.*

*She outlined investments proposed by Sibelco at the plant which have current approvals to proceed, that will further improve overall operations at the facility, further reduce noise from trucks and front end loaders, and further contain lime dust.*

*She said that uncertainty about the longer term future for the plant raised by language in the Amendment did create uncertainty for Sibelco as well as impacting worker morale and job security.*

*Evidence by John Henshall for Sibelco was that the plant had a jobs multiplier of 6.6. He said that Traralgon had 17 - 22 years urban land supply and that the Janette Street precinct has a potential yield of 400 lots - about 1.5 years supply. He said that because of the underlying land values and general location, any likely future urban use would be traditional low density residential.*

*He said that whilst land to the north of the Sibelco site had been zoned Mixed Use Zone for about 20 years, there had been not effective development of higher density outcomes in that time. He said the area does not have the underlying land values to justify the real world development of mixed use or higher density urban uses. He said that developers will select land that has higher amenity value to begin with and that the market for renewal is likely to favour areas north of the railway line first.*

*Mr Henshall's evidence was that there are a range of non- residential uses that could co- locate near the Sibelco site and would represent a better land use outcome.*

*Mr Ramsey, PJ Ramsey and Associates for Sibelco said that the improvements proposed by Sibelco will result in improved environmental performance including improved dust control and filtration during normal operations. He said that EPA recommended buffers are there as a safeguard for when pollution source controls break down. He said that about 10 per cent of the 500 metre buffer has houses on it. He said that in his experience encroachment usually leads to closure of the industrial use over time. He said you cannot engineer out the need for the buffer.*

*David Crowder from Ratio Consultants said that the Industrial land use strategy was good but that it did not include any cost benefit or net community benefit analysis of the impact of the proposed council strategic direction on Sibelco. He said there had been no real world analysis of the likelihood of Sibelco moving nor of the regional benefits of Sibelco versus the costs if they close or the facility is moved out.*

*He said that Sibelco was a large entrenched industrial use and that it was premature to include policy or other language in the planning scheme that would lead to potential for incompatible uses to develop near the Sibelco plant.*

...

*He said that Sibelco is an existing use and that it would be better strategic planning to recognize that it exists, and actively plan for uses that are compatible with that. He said that policy should embrace Sibelco, buffer the site with more suitable zoning and uses around the periphery, specifically discourage further residential development south of Janette Street and not provide for residential development to the south of Sibelco.*

*Graeme Campbell, SLR Acoustics for Sibelco, said that modelling he had undertaken showed that the proposed plant upgrades will allow throughput to increase with noise impacts remaining about the same as they are now. He said that any future increases in sensitive receptors within the 500 metre buffer to the plant would increase non-compliance. He said any residential use to the south of the plant, currently zoned farm zone, would increase non-compliance. The modelling he had undertaken demonstrated the effect existing structure in the precinct had on mitigating noise propagation near the ground, particularly to the north of the site. He noted that most noise complaints had resulted from elevated machinery.*

### **(iii) Discussion**

*... the Panel accepts that the Sibelco lime plant does exist and on the basis of evidence to the panel is successfully operating and will continue to do so for many years. There appears to be no disputing that the lime products produced by Sibelco are significant to the regional economy and for industrial processes undertaken by businesses in the region and beyond. The evidence before the Panel is that site is well run and that Sibelco has worked effectively to address a very low number of noise or other complaints when they have occurred.*

*The Panel has not seen any evidence during this hearing to demonstrate that there has ever been any thorough net community benefit or feasibility analysis undertaken, as recommended by the Panel in the C62 Amendment, to confirm or scope the practical realities of transitioning land in the area to residential or other urban uses.*

...

*The inspection undertaken of the area did confirm that the area has a varying mix of existing land uses and a general feel of neglect. The Panel is persuaded by the view put by Mr Peake and Mr Henshall that the current strategy being pursued by the Council is causing an effective planning blight, and in all probability is causing some landowners to just do nothing on their land on the presumption that at some stage the land use zoning will change.*

*The issue of buffers is complex in that it is rare that a buffer is ever solely contained within the site of the land use that the buffer applies to. And that is the case here. The Panel heard that buffers are essential for instances when normal operations breakdown or malfunction. The Panel heard that the processes at the Sibelco plant that need to halt when malfunctions occur can be shut down quickly. The evidence before the Panel is that development has occurred historically on most if not all of the residential zoned land within the buffer of the plant. It is noted*



*that further development change within the existing Mixed Use zoned area is likely over time. The potential development intensification around the precinct is relatively limited under current settings in the absence of deliberate actions to intensify the potential.*

*Notwithstanding this, effective mechanisms to ensure that future development takes account of the existence of the Sibelco facility will be needed if the Sibelco plant continues as Sibelco say for at least another 30 years. This is particularly the case where sensitive uses are permitted as of right due to the underlying zoning.*

***(iv) Conclusions and recommendations***

...

- *The current proposals reflected in C105 as exhibited and including post exhibition changes proposed by the Council will have the effect of making it increasingly difficult for Sibelco to continue to operate. Notwithstanding that Sibelco has existing use rights, the successive layering of policy statements proposed to be reinforced through the C105 Amendment are likely to make it increasingly difficult for Sibelco or the Council for that matter to make future decisions that support Sibelco's continued operation.*

...

*The Panel recommends:*

*Change the planning scheme and supporting strategies to support the ongoing operation of Sibelco and abandon strategies to transition the area...*

63. Sun Pharma relies on the conclusions of Ms Ring<sup>32</sup>:

*I anticipate that the confirmation of the coastal settlement boundary and related proposed changes to planning controls and policies (which I canvass in this report) in this northern part of Port Fairy, will enable Sun Pharma to:*

- *Continue its operations at the site with presently manageable responses to complaints.*
- *Not place further pressure on sensitive uses that could require Sun Pharma to initiate additional remedial actions to alleviate or mitigate off site impacts.*
- *Have confidence in retaining its Known Consignor Scheme and Australian Trusted Trader accreditations which it understandably values.*
- *Not be unreasonably constrained when considering opportunities for expansion subject to clarity in relation to a specific strategy relating to expansion which I highlight in this report.*
- *Continue to make a significant contribution to the local, and Victorian economies producing a globally significant supply of product critical to*

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<sup>32</sup> Ring, page 42.

*manufacture of very effective pain medicines for application around the world.*

64. Sun Pharma relies on Ms Ring's conclusions.
65. With specific regard to the urgings of Rivers Run and the 'asterix' in the Structure Plan within the Scheme as a Reference Document, Sun Pharma notes a number of panels have queried the utility of Reference Documents in this way.
66. As the Panel for *Greater Geelong C129 (PSA)* [2008] PPV 64<sup>33</sup>:

*The treatment of Reference Documents within the Amendment raises a number of issues for us, including their statutory role, how we should respond to submissions that sought changes to them; and the process of implementing them.*

...

*We do not support an approach whereby Reference Documents are relied upon as a de facto statutory tool. Where elements of those documents are intended to have statutory weight, then they should be implemented through appropriate VPP tools. Where they provide broad strategies at an MSS level these strategies need to be an explicit part of the MSS.*

67. The *Fishermans Bend Planning Review Panel (AC)* [2018] PPV 71 noted the importance of updating referenced documents:

*If the Review Panel's recommendations in relation to the draft Amendment are accepted, there will be a significant disjunct between the draft Framework and the draft Amendment. Given the Review Panel recommends that the draft Framework be retained as a Reference Document, it may be appropriate to update the draft Framework to make it consistent with the Amendment.*

The Council has through this amendment implemented those parts of the Structure Plan that is appropriate through VPPs tools. It is submitted that the Panel might here conclude that including the Structure Plan as a Reference Document here is of no utility. **Conclusion**

68. Sun Pharma's pharmaceutical manufacturing facility at the Site is of global significance due to the quantity of starting material for opiate based pain relief medicines it produces. It is of local significance to Port Fairy as the town's major employer.

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<sup>33</sup> *Greater Geelong C129 (PSA)* [2008] PPV 64, page 19-22.

69. Sun Pharma seek the following recommendations from the Panel:

- (a) outline all of Sun Pharma's land on the new *Figure 1 – Port Fairy Framework Plan* at page 18 of 25 of Clause 21.09-3 to reflect its land holding and zoning;
- (b) resist any submission on behalf of Rivers Run that this Panel should seek to influence the C75 panel by including an asterisk and legend reference to potential residential expansion on their land on *Figure 1 – Port Fairy Framework Plan*;
- (c) that the Industrial Buffer Zone annotation be retained on the *Figure 1 – Port Fairy Framework Plan*; and
- (d) that the Panel dismiss the pleas of the Rivers Run group for what they are – pleas from land speculators in the absence of any strategic merit.

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Instructed by Rigby Cooke Lawyers

14 September 2022