

**Moyne Planning Scheme Amendment C69moyn
Port Fairy Coastal and Structure Plan**

Panel Report

Planning and Environment Act 1987

9 December 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue, you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Moyne Planning Scheme Amendment C69moyn

Port Fairy Coastal and Structure Plan

9 December 2022



Kathy Mitchell AM, Chair



Adam Terrill



Geoff Underwood

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Glossary and abbreviations

| | |
|-------|--|
| AEP | Annual Exceedance probability |
| AHD | Australian Height Datum |
| ARI | Average Recurrence Interval |
| DDO | Design and Development Overlay |
| DPO | Development Plan Overlay |
| EMO | Erosion Management Overlay |
| ESO | Environmental Significance Overlay |
| FO | Floodway Overlay |
| FZ | Farming Zone |
| GHCMA | Glenelg Hopkins Catchment Management Authority |
| GRZ | General Residential Zone |
| HARC | Hydrology and Risk Consulting |
| IN1Z | Industrial 1 Zone |
| LDRZ | Low Density Residential Zone |
| LPPF | Local Planning Policy Framework |
| LSIO | Land Subject to Inundation Overlay |
| MUZ | Mixed Use Zone |
| NFPL | Nominal Flood Protection Level |
| NRZ | Neighbourhood Residential Zone |

| | |
|--------|--|
| PE Act | <i>Planning and Environment Act 1987</i> |
| PO | Parking Overlay |
| PPF | Planning Policy Framework |
| RCZ | Rural Conservation Zone |
| SLR | Sea level rise |
| VPP | Victoria Planning Provisions |

Overview

Amendment summary

| | |
|--------------------|--|
| The Amendment | Moyne Planning Scheme Amendment C69moyn |
| Common name | Port Fairy Coastal and Structure Plan |
| Brief description | Implement the Port Fairy Coastal and Structure Plan 2018 to provide a land use and development framework for the Port Fairy township and its surrounds to 2041, including changes to zone and overlay controls and updated flood mapping |
| Subject land | Port Fairy township |
| The Proponent | Moyne Shire Council |
| Planning Authority | Moyne Shire Council |
| Authorisation | 3 March 2020, with conditions |
| Exhibition | 14 May to 28 June 2020 |
| Submitters | 128 (see Appendix A) |

Panel process

| | |
|------------------------|---|
| The Panel | Kathy Mitchell AM (Chair), Geoff Underwood, Adam Terrill Assisted by Chris Brennan, Senior Project Officer, Planning Panels Victoria |
| Directions Hearing | By video conference, 5 August 2022 |
| Panel Hearing | Hybrid – in person and by video conference from Port Fairy and 1 Spring Street, Melbourne on 5, 6, 7, 8, 9, 12, 13, 14, 15, 19, 20 and 21 September and 18 October 2022 |
| Site inspections | Accompanied, 8 September 2022, various unaccompanied by Panel members over weeks 1 and 3 while at Port Fairy |
| Parties to the Hearing | See Appendix B |
| Citation | Moyne PSA C69moyn [2022] PPV |
| Date of this report | 9 December 2022 |

Executive summary

Port Fairy is a coastal town with recognised heritage and aesthetic significance due to its location, history and ongoing ability to ensure growth and development is respectful of its character. It has two primary coastal fronts and is punctuated by rivers and loughs. Sometimes, it is subject to coastal and riverine flooding. It is a place of natural and post development beauty.

Moyne Shire Council seeks to protect the inherent built form character of Port Fairy through updated planning controls. Further, in conjunction with the Glenelg Hopkins Catchment Management Authority, it seeks to introduce a new flood control regime to protect Port Fairy from sea level rise.

To do this, the Amendment seeks to implement the recommendations of the 'Port Fairy Coastal and Structure Plan 2018' through changes to Local Policy, new zone and overlay controls, updated flooding controls and changes to operational provisions. The Structure Plan identifies a settlement boundary for Port Fairy and includes two 'Growth Areas' to cater for increased residential demand. It introduces new schedules to the Land Subject to Inundation Overlay and Floodway Overlay by planning for a 1.2 metre sea level rise to 2100.

Further, the Amendment consolidates the existing 19 Design and Development Overlay schedules that apply in the township to seven.

The big picture is commendable and can be supported. The detail is intricate and while some of it works, including the choice of the zones and overlays, much of it needs to be recalibrated and refined. That work, however, is not fatal to the Amendment and the Panel supports its introduction, subject to changes.

The Amendment itself is complex and it attracted multiple submissions, resulting in a 13-day Panel Hearing, partly in Port Fairy and partly in Melbourne. It was held in a hybrid format, conducted in person and with on-line participation. A clear benefit of being in person enabled the Panel to conduct multiple site inspections during the three weeks of Hearing to confirm many aspects in contention.

The key themes of the Amendment can be summarised as follows:

(i) Port Fairy Coastal and Structure Plan

This Structure Plan has had a long gestation period (in that it was adopted by Council in 2018) and while it will likely be out of date in a short period of time, it provides a solid basis for understanding the rationale for the future development of Port Fairy and most of the zone and overlay control changes.

The Panel concludes the Structure Plan is generally sound and should be included as a background document in the Planning Scheme as exhibited.

(ii) Flood controls

New schedules to the Land Subject to Inundation Overlay and Floodway Overlay are proposed to provide for anticipated sea level rise to 2100. There was general support and recognition the overlays were required in accordance with State policy. However, the issue of contention related to a sea level rise of 1.2 metres being adopted rather than the common practice of 0.8 metres, which has generally been adopted and supported by catchment management authorities across

Victoria. This Amendment is a departure from that, particularly for the Floodway Overlay where subdivision is ostensibly more difficult.

Council and the Glenelg Hopkins Catchment Management Authority, supported by evidence, advocated for sea level rise of 1.2 metres over 0.8 metres because of global projections and local conditions at Port Fairy. Most submissions and evidence favoured 0.8 metres based on consistent application of State policy and its current application across the State.

The Panel concludes the appropriate measure for sea level rise should be 0.8 metres (rather than the exhibited 1.2 metres). Further, the application of the Land Subject to Inundation Overlay and Floodway Overlays as proposed are generally sound and should be supported, subject to changes in sea level measure.

(iii) Zone changes

The Amendment proposes to rezone all land, without exception, in the existing General Residential Zone and the Mixed Use Zone to the Neighbourhood Residential Zone. This perplexed the Panel as it failed to be convinced why all land in these zones should be rezoned. It asked Council to explain 'what had gone wrong' in Port Fairy to date to warrant such a shift, but no answer or explanation was able to be made. Rather Council contended there was little difference between the two zones, so the change should not be an issue.

Council argued the application of the Neighbourhood Residential Zone was to protect land against inappropriate development into the future, but it fails to be cognisant of planning for diversity in housing opportunities through State policy. Nor is it consistent with its own local policy and key directions of the Structure Plan. Council was not able to demonstrate this was entirely necessary nor needed and while the Panel supports much of the rezonings, it recommends some areas remain in the General Residential Zone.

Overall, the Panel supports the application of the Neighbourhood Residential Zone to areas covered by the proposed Design and Development Overlay schedules 1, 2, 5, 6, and 7.

The Panel considers land in the General Residential Zone should remain in areas covered by the proposed Design and Development Overlay schedules 3 and 4.

Further, the Amendment seeks to rezone other land (currently in the Low Density Residential Zone and Farming Zone) to Rural Conservation Zone, a zone that has very detailed criteria for introduction. Again, the Panel was not convinced this had been well justified and it does not support this aspect of the Amendment.

(iv) Overlays

The Panel commends Council for rationalising the existing 19 Design and Development Overlay schedules into seven, and for introducing the Development Plan Overlay to assist in managing new Growth Areas. These were largely uncontested, except for the detailed provisions.

The Design and Development Overlays were largely exhibited with discretionary provisions, but this changed when Council introduced its Day 1 changes. This resulted in significant debate at the Hearing. Most submitters supported the consolidated overlays, however, many expressed concerns about drafting issues and the move towards mandatory heights, side and front setbacks, and other details.

The Panel supports the introduction of Design and Development Overlay Schedules 1 to 7, subject to these reverting back to the exhibited discretionary built form provisions and other minor changes.

The Development Plan Overlay is proposed to be applied to all of Growth Area A and part of Growth Area B. There appeared to be little logic to omitting part of Growth Area B from the Development Plan Overlay. The extent of all Growth Areas would benefit from this application. The Panel supports the application of the Development Plan Overlay to Growth Area A and recommends it be applied to all of Growth Area B.

(v) Rivers Run/Sun Pharmaceuticals

Some of the Hearing centred around the intent of proposed Amendment C75moyn which relates to a proposal to rezone land known as Rivers Run from the Farming Zone to the Rural Conservation Zone. Originally that Amendment was to be considered concurrently with this Amendment, however Council determined to convene that Panel once this report has been received. This complicated the focus of this Amendment on the strategic planning and flooding issues to be reconciled as part of this Amendment and has made it difficult for the Panel to not provide opinion on issues that ultimately relate to Amendment C75moyn.

Sun Pharmaceuticals Pty Ltd, a large and well-established industry near the entrance to Port Fairy, did not support those aspects of the Structure Plan that provided scope for the Rivers Run site to be considered as an area for residential development. Both Rivers Run Pty Ltd and Sun Pharmaceuticals Pty Ltd called extensive evidence to support their case, with both seeking clear outcomes from the Panel on matters relating to both sites.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Moyne Planning Scheme Amendment C69moyn be adopted as exhibited, but subject to the following recommendations:

- 1. Adopt the Day 1 version of Clause 21.09-3 as provided for in Document 88, Appendix 6.**
- 2. Retain land in Design and Development Overlay Schedules 3 and 4 proposed to be zoned to Neighbourhood Residential Zone in the General Residential Zone.**
- 3. Retain land along Albert Road proposed to be rezoned to Neighbourhood Residential Zone in the Mixed Use Zone.**
- 4. Retain all land proposed to be rezoned to Rural Conservation Zone in the Low Density Residential Zone.**
- 5. Retain land at Sandspit Road proposed to be rezoned to Rural Conservation Zone in the Industrial 1 Zone.**
- 6. Retain land adjacent to Belfast Lough proposed to be rezoned to Rural Conservation Zone in the Farming Zone.**
- 7. Revise all relevant planning scheme maps to reflect 0.8 metres sea level rise and undertake a 'smoothing' process of flood levels on affected properties.**
- 8. Update all relevant documents, including but not limited to Floodway Overlay Schedule 3, Land Subject to Inundation Overlay Schedule 4, Clause 21.06 and the Local Floodplain Development Plan to substitute 1.2 metres sea level rise to 0.8 metres sea level rise.**

9. Amend the draft Local Floodplain Development Plan as follows:
 - a) Insert the following definition in section 3.0 Glossary:
Accessway: An accessway is the path or route within a property used to approach a public road or flood safe place. An accessway can be referred to as a driveway.
 - b) Delete the opening statement in section 6.3 Buildings, and replace it with:
New buildings must not be sited where the flood depth exceeds 500 millimetres or the product of velocity and depth (VxD) exceeds 0.4 metres squared per second.
10. Adopt the Panel preferred version of Development Plan Overlay Schedule 4 as provided for in Appendix L.
11. Extend Development Plan Overlay Schedule 4 to cover all of Growth Area B.
12. Adopt the Panel preferred version of Design and Development Overlay Schedules 1, 2, 3, 4, 5, 6, and 7 as provided for in Appendices E, F, G, H, I, J and K.
13. Amend Figure 1 of the Port Fairy Framework Plan to Clause 21.09-3 to:
 - a) Include all land holdings of the Sun Pharmaceutical site.
 - b) Apply a reduced buffer area around the Sun Pharmaceutical site of 300 metres.

1 Introduction

1.1 The Amendment

(i) Amendment description

Moyne Planning Scheme Amendment C69moyn (the Amendment) seeks to implement the recommendations of the Port Fairy Coastal and Structure Plan 2018 (the Structure Plan) by revising the Local Areas Policy relevant to Port Fairy in the Local Planning Policy Framework (LPPF), making relevant changes to various zones and overlays, and updating the operational provisions.

As exhibited, the specific changes included:

Planning Scheme maps

- Rezone all land currently in the General Residential Zone (GRZ) and the Mixed Use Zone (MUZ) to Neighbourhood Residential Zone (NRZ1).
- Rezone the Rural Living Zone (RLZ) land in Growth Area A identified in the Structure Plan to NRZ1.
- Rezone land in the Farming Zone (FZ), Low Density Residential Zone (LDRZ) and one site in the Industrial 1 Zone (IN1Z) around Belfast Lough and outside the town settlement boundary to the Rural Conservation Zone (RCZ2).
- Apply the Commercial 1 Zone (C1Z) to properties identified for expansion of the town centre commercial area and that are currently in the GRZ.
- Amend zone maps to correct historical mapping anomalies within the Port Fairy settlement boundary.
- Apply a Development Plan Overlay (DPO4) to Growth Area A and part of Growth Area B identified in the Structure Plan.
- Replace the existing 19 Design and Development Overlays (DDO) with seven DDOs to areas identified in the Structure Plan.
- Apply an Environmental Significance Overlay (ESO7) to a 500 metre buffer around the Wannan Water – Port Fairy Water Reclamation Plant.
- Introduce a Land Subject to Inundation Overlay (LSIO4) and Floodway Overlay (FO3) to the Port Fairy Township to identify areas subject to coastal inundation and a 1.2 metre sea level rise as per the findings of the Translation of Port Fairy Coastal Hazard Assessment (Cardno, 2019).
- Extend the Erosion Management Overlay (EMO) currently applicable in Port Fairy West to areas along the primary coastal dune in South Beach and East Beach.
- Apply the Parking Overlay (PO1) to the commercial town centre area in accordance with the recommendation of the Port Fairy Car Parking Strategy 2017.

Planning Scheme ordinance

- Amend Clause 21.06 to reflect a 1.2 metre sea level rise (SLR) benchmark as proposed in the new FO and LSIO provisions.
- Amend Clause 21.09 to replace the existing Local Areas Policy for Port Fairy, including identifying a settlement boundary in the Framework Plan.
- Amend Clause 21.11 to introduce the following background documents:
 - Port Fairy Coastal and Structure Plan 2018

- Translation of Port Fairy Coastal Hazard Assessment - Port Fairy Coastal and Structure Planning Project (Cardno) 2019
- Port Fairy Car Parking Strategy 2017
- Insert Clause 32.09 NRZ and a new Schedule 1.
- Number the Schedule to Clause 35.06 RCZ to Schedule 1 and insert a new Schedule 2.
- Insert a new Schedule 7 to Clause 42.01 ESO.
- Delete existing Schedules 1 to 19 (inclusive) to Clause 43.02 DDO and insert new Schedules 1 to 7 (inclusive).
- Insert a new Schedule 4 to Clause 43.04 DPO.
- Amend Schedule 2 to Clause 44.03 FO and insert a new Schedule 3.
- Amend Schedule 2 to Clause 44.04 LSIO and insert a new Schedule 4.
- Insert Clause 45.09 PO and new Schedule 1.
- Amend the Schedule to Clause 72.03 What Does This Planning Scheme Consist Of? to insert Planning Scheme Map Nos 36EMO and 36PO.
- Amend the Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme to replace the existing Port Fairy Local Floodplain Development Plan 2013 introduced by Amendment C54 with the Port Fairy Local Floodplain Development Plan 2019 (LFDP) and incorporate the Glenelg Hopkins Catchment Management Authority Guidelines (GHCMA) for Fencing in Flood Prone Areas 2015.

The Amendment was prepared by Moyne Shire Council (Council) as Planning Authority. The Amendment was initially exhibited from 14 May to 28 June 2020 and 86 submissions were received. During the initial exhibition period, submissions raised concern regarding the technical basis for use of the FO and LSIO, and the draft LFDP, to mitigate risks to life and property from coastal inundation and flood events. In response, Council placed the Amendment on hold to enable the preparation of additional flood modelling.

Following consultation with GHCMA, Council released an updated LFDP 2021 for further public feedback from 16 December 2021 to 31 January 2022, together with updated FO and LSIO mapping and the other originally exhibited Amendment documents. Council referred all further 64 submissions received during this period to the Panel, including 22 supplementary responses from previous submitters. A further supplementary submission from Submitter 69 was referred to the Panel on 3 August 2022, as well as a supplementary submission from Submitter 4 on 11 August 2022. There was a total of 128 submitters.

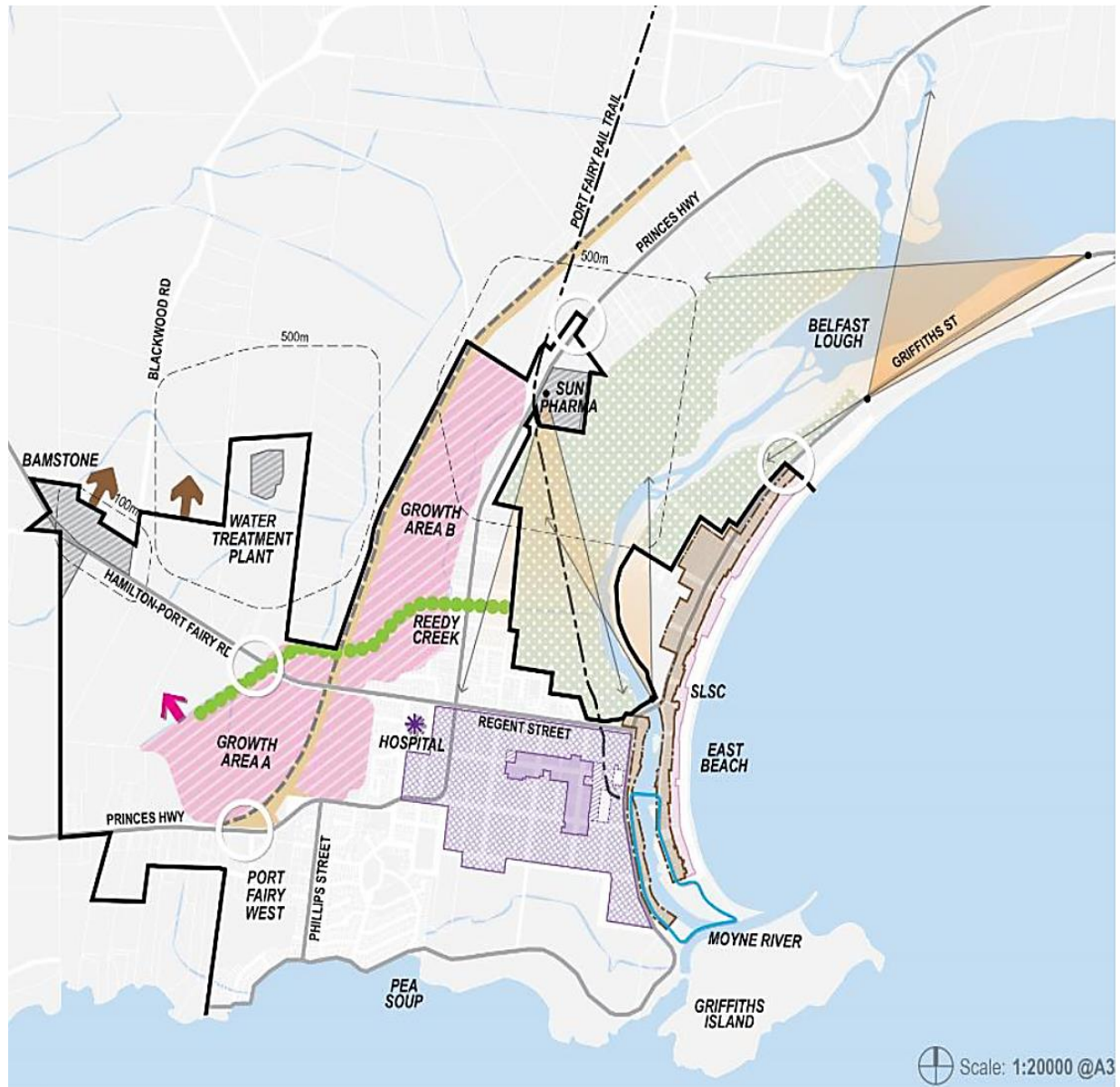
Council resolved to refer the Amendment to a Panel at its meeting of 1 March 2022. As part of its resolution, Council abandoned the following parts of the Amendment in response to submissions:

- the application of PO1 to the commercial town centre
- the application of ESO7 to the area surrounding the Wannan Water Port Fairy Water Reclamation Plan.

(ii) The subject land

The Amendment applies to land in the Port Fairy Township and immediate surrounds as shown in the coastal settlement boundary in Figure 1, Framework Plan.

Figure 1 Subject land (Port Fairy Framework Plan) ¹



¹ Exhibited explanatory report and Clause 21.09-3

1.2 Background

Council provided a summary of the background to the Amendment in its Part A submission, including a chronology of events leading to the Panel process. Table 1 is the Council summary as updated by the Panel.

Table 1 Amendment chronology of events ²

| Date | Event |
|------------------------------------|--|
| Prior to Authorisation | |
| 2008 | Port Fairy Regional Flood Study 2008 prepared |
| 2010-2012 | Port Fairy Addendum Study 2010 prepared |
| 2013 | Port Fairy Coastal Hazard Vulnerability Assessment 2013 delivered |
| September 2017 | Translation of Port Fairy Coastal Hazard Assessment 2017 received |
| 10 May – 16 June 2017 | Community consultation on the Issues and Opportunities Paper, Economic and Tourism Land Use Analysis 2016 prepared by Urban Enterprise and the Translation of Port Fairy Coastal Hazard Assessment 2017 prepared by Cardno |
| 25 October – 21 November 2017 | Consultation on draft Port Fairy Coastal and Structure Plan |
| 17 April 2018 | Councillor workshops with VicRoads, Sun Pharma and owners of land in Growth Area A to discuss matters raised in submissions to the Draft Port Fairy Coastal and Structure Plan |
| August 2018 | Council adopts the Port Fairy Coastal and Structure Plan 2018 and resolves to prepare a planning scheme amendment |
| 2019 | Translation of Port Fairy Coastal Hazard Assessment August 2019 (includes updates regarding Reedy Creek works) prepared by Cardno |
| Authorisation | |
| 3 March 2020 | Amendment authorised by DELWP, subject to conditions |
| Post Authorisation | |
| 14 May – 28 June 2020 | Amendment exhibited |
| August 2020 | Amendment placed on hold to enable additional flood modelling to be undertaken |
| August 2021 | Flood Summary Report 2021, Hydrology and Risk Consulting (HARC) |
| September – December 2021 | Consultation with GHCMA and refinement of mapping based on the additional flood modelling |
| 16 December 2021 – 31 January 2022 | Further consultation on the Flood Summary Report 2021, updated mapping, and revised Local Floodplain Development Plan 2021 |
| 1 February 2022 | Amendment process resumed |

² D88

| | |
|------------------|--|
| 1 March 2022 | Council resolved to abandon application of PO and ESO and refer submissions to a panel |
| 20, 21 July 2022 | Meetings held between Council and Coast to Country Building Approvals, and Davies Simpson Pty Ltd in relation to the Amendment |

1.3 Summary of issues raised in submissions

(i) Planning Authority and submitters

Council outlined the key issues raised by submitters in its Part A Submission, grouped by subject area as follows:

- **In relation to flooding:**
 - objections to the application of flood provisions to particular properties
 - objection to rezoning of properties in the Model Lane Precinct to RCZ
 - support for less development in the floodplain
 - requests for drafting changes to FO and LSIO schedules and LFDP
- **In relation to proposed rezonings:**
 - objection to rezoning land to NRZ
 - requests for specific properties to be rezoned or excluded from the Amendment
 - support for rezoning land to RCZ
- **In relation to Growth Area A:**
 - objection to rezoning land for residential development based on flood hazard
 - impacts on Companion Lagoon and Latham's Snipe, an endangered bird
 - proximity to the proposed Port Fairy Bypass
 - absence of a Development Contributions Plan Overlay
- **In relation to the proposed DDOs:**
 - objection to specific aspects of the DDOs
 - requests for drafting changes
 - support for rationalising schedules
- **In relation to the EMO:**
 - requests to extend EMO7 to the East Beach sea wall and objections to its extension
 - requests for drafting changes.

The Panel generally concurs with that summary as provided by Council.

(ii) Agencies

Glenelg Hopkins Catchment Management Authority

The GHGMA supported the adoption of flood provisions reflecting a 1 per cent Annual Exceedance probability (AEP) flood level estimate accounting for up to 1.2 metres SLR with no additional freeboard margin. It submitted this would provide certainty for development and ensure impacts stemming from large flood events are minimised in the short to medium term (30 to 40 years).

It noted the adoption of these planning measures now was appropriate given the known risks and evidence of climate change, and particularly considering Amendment VC171 which updated policy at Clause 13 of the Victoria Planning Provisions (VPP) to base flood risk considerations across the entirety of coastal floodplains posed by at least 0.8 metres SLR.

The GHCMA commissioned and provided analysis of the trajectory of SLR along the Glenelg Hopkins Region coast and provided this in support of the Amendment (Tide Gauge Tigger Levels for Sea level Rise Adaptation Pathways, February 2022). The GHCMA recommended careful consideration in merging new and existing flood overlay mapping to ensure no perverse outcomes arose from boundary issues.

Department of Transport

The Department of Transport (DoT) did not object to the Amendment on the basis there was no change to the Public Acquisition Overlay (PAO) for the proposed Port Fairy Bypass. It considered the Structure Plan was not likely to have a significant impact on the transport system. It supported implementation of a land use framework that facilitated projected growth within the settlement boundary of Port Fairy while acknowledging the need to consider the principles of the *Transport Integration Act 2010* in implementing the Structure Plan.

While DoT did not request to be heard at the Hearing, the Panel sought its advice on the proposed Bypass in light of the submission from Mr Loorham (S9). DoT attended the Hearing and reiterated the PAO for the Bypass should be retained while the planning study to investigate its longer-term need is undertaken.

Country Fire Authority

The Country Fire Authority (CFA) did not object to the Amendment and noted bushfire risk in and around Port Fairy is predominantly by grassfire. While noting the Amendment seeks to direct growth to areas likely to be impacted by running grassfire, it submitted this risk could be effectively managed without a net increase in risk to the community. The CFA recommended inclusion of wording in DPO4 (which was supported by Council) to reference grassfire risk and requirements for fire sensitive development planning to reduce long term risk.

EPA Victoria

The submission from the Environment Protection Authority Victoria (EPA) focused on the proposed application of the ESO to land around the Port Fairy Water Reclamation Plant, which Council ultimately resolved to abandon (see 1.5[iv]).

Regarding the proposed application of a buffer to the Sun Pharmaceuticals Pty Ltd (Sun Pharma) site in the Structure Plan, the EPA noted it had not received information justifying the application of an ESO or area of land it would apply to, or whether the Buffer Area Overlay (not yet implemented in the VPP at the time of exhibition) had been considered as a possible alternative tool. In the context of the industrial land interface to 169A and 183 Princes Highway, the EPA submitted further work was needed to consider the potential interface between residential and industrial land and the implications of supporting industrial intensification of the Sun Pharma site while supporting nearby residential development.

Wannon Water

Wannon Water supported the Amendment with general commentary regarding the key servicing infrastructure requirements for future residential development of Growth Areas A and B. Wannon Water expressed support for the establishment of an industrial buffer around the Port Fairy Water Reclamation Plant and Sun Pharma site. It identified the need for a smaller buffer around its Water Treatment Plant to account for the risk of chlorine leak.

Department of Environment, Land, Water and Planning

The Department of Environment, Land, Water and Planning (DELWP), Barwon South West generally supported the Amendment. It acknowledged its partnership with Council in undertaking the Port Fairy Local Coastal Hazard Assessment (2013). DELWP's submissions on coastal policy largely related to suggested updates to reflect current policy settings and a recommendation to consider whether the EMO should be applied beyond the length of the East Beach sea wall. It supported the approach to managing biodiversity while recommending changes to the wording or mapped extent of overlays to manage the habitat, native vegetation and wetland values in Companion Lagoon and the wetland south of Thistle Place.

DELWP suggested various clarifications or additions to wording in DPO4 in relation to Companion Lagoon, and additional guidance in DDO7 or an eastward extension of ESO1 to assist in managing development impacts south of Thistle Place. DELWP suggested changes to wording in the LFDP to acknowledge the potential for localised inundation patterns in Precinct 3 to clarify that naturally occurring wetlands should not be impacted by adaptation measures. Council supported changes to DPO4 and DDO7 accordingly.

Other agencies

The Department of Education and Training and Energy Safe Victoria advised that they did not object to the Amendment and did not raise further issues.

(iii) Submissions relating to abandoned parts of the Amendment

The Panel notes Council referred all submissions to it, including those relating to the application of PO1 to the commercial town centre and ESO7 to land around the Port Fairy Water Reclamation Plant, both of which have been abandoned by Council. Council advised the Panel that submissions relating to PO1 addressed other parts of the Amendment and therefore required consideration, however, submissions 1, 3, 5, 12, 14, 36 and 71 related exclusively to ESO7. Given that Council is not proceeding with the application of ESO7, the Panel acknowledges receipt of those submissions but makes no comment about these in this Report.

1.4 Site inspections

The Panel conducted an accompanied site inspection on 8 September 2022 by bus. The route generally took in various sites within and around Port Fairy including the town centre and commercial core, the Griffiths Street and Wharf Precinct, Port Fairy West, Growth Areas A and B, the Princes Highway township gateways, and areas to the north, including the Model Lane Precinct.

The afternoon comprised a limited accompanied inspection of the Rivers Run site at 169A Princes Highway and the adjoining Sun Pharma site on an in-camera basis due to the confidential nature of Sun Pharma's operations. Attendees included representatives of Sun Pharma, Council and Rivers Run, all of whom were subject to confidentiality orders signed and agreed to by parties and endorsed by the Panel.

The Panel thanks Council for coordinating the accompanied inspection, including the preparation of the itinerary (D116).

In addition to the accompanied site inspection, the Panel took advantage of being in Port Fairy for the Hearing in Weeks 1 and 3 to informally inspect or re-inspect several sites at various times. This

was a valuable opportunity to better inform itself with the detail of a range of sites as the Hearing progressed.

1.5 Procedural issues

(i) Filing of evidence

The Panel made Directions about the filing of evidence and submissions. Disappointingly, many parties filed late, and it resulted in stresses on the office of PPV, including with parties calling to inquire about evidence and submissions and its staff working late to process and file. Some parties contacted the office to note lateness, others did not. Filing late without seeking an extension within a reasonable timeframe is disrespectful to both the Panel and the overall amendment process.

Several parties lodged requests for leave to file evidence after the due date at 12 noon on 19 August 2022. The Panel was disappointed at the failure to meet the timelines and with the lack of plausible explanation provided with the requests, some of which were made after the time of lodgement. The Panel directed that relevant parties provide a written explanation of why they were not able to file evidence on time, without adequate notice (D73). Responses were provided by parties through D79, D80, D83 and D84. No parties objected to the consideration of late evidence.

(ii) Additional Hearing day

A portion of land fronting 2 Regent Street was exhibited to be rezoned from the FZ to NRZ. Initially the landowner submitter intended to appear at the Panel Hearing. However, it provided advice to the Panel after the Directions Hearing on 5 August 2022 that as it agreed with the exhibited position of Council, it no longer sought to be heard³.

As part of its preparation for the Hearing, the Panel directed Council to provide any updates to its consideration of submissions and evidence, this was provided as Appendix 5 to D88 on 25 August 2022.

On 30 August 2022, the Panel received correspondence on behalf of S64 seeking leave to clarify a post exhibition change to abandon the proposed rezoning of 2 Regent Street to part NRZ and part RCZ. Council had changed its position to seek that the land be zoned entirely RCZ based on GHCMA advice that it would not support development of the land due to the revised extent of the FO.

Initially through Best Hooper and Mr Munt of Counsel, the submitter made written and verbal submissions (D94, D101 and D108) that this change had caused them to raise questions of procedural fairness in that they were not advised of this amended position. The submitter sought leave to provide evidence and submissions to support their position that the land be included in the NRZ. The Panel issued a ruling (D140) that the submitter could file evidence and be heard through an additional Hearing day.

Consequently, the submitter advised it accepted the offer of an additional Hearing opportunity to make submissions and it would lead evidence from a hydrologist, but it did not need to cross

³ D64

examine previous witnesses. The submitter, through Myers Planning was heard on Day 12 of the Hearing (18 October 2022), four weeks after the substantive part of the Hearing had been completed.

In addition to hearing from that submitter, the Panel used that day to convene a 'without prejudice' session on the drafting of the proposed planning scheme amendment controls.

(iii) Amendment C69moyn and C75moyn

Amendment C69moyn is the subject of this report. Amendment C75moyn is a proposal by Rivers Run Pty Ltd to rezone land known as Rivers Run from RCZ to NRZ. At one stage, Council had considered it would run these two amendments together, to be heard by the same Panel. This did not occur, and it is likely Amendment C75moyn will be heard early in 2023.

Various submissions were made at the Hearing regarding the land subject to Amendment C75moyn being included as a potential residential development area through updated mapping and a notation on the Structure Plan Framework Plan in Clause 21.09, subject to flooding and other controls.

(iv) Scope of Panel considerations

Some submitters sought changes to the Amendment that were not exhibited (S26, S80, S86, S109). For example, variously, the submissions sought to:

- include land in one of the growth areas through the DPO
- include land in the NRZ
- implement a Development/infrastructure Contributions Plan Overlay to ensure sharing of equitable costs
- amend the schedule to the LDRZ to provide for 2,000 square metres minimum lot sizes.

While the land subject to those submissions is included in the Structure Plan, none of those matters were exhibited as part of the Amendment.

Davies Simpson represented various submitters in these matters⁴. When submissions were made on behalf of the clients at the Hearing, the Panel explained that some of what was being requested was outside the scope of its consideration. Council was of the same opinion.

Later in the Hearing, Davies Simpson sought leave to table further documents and to briefly speak to these. The Panel granted that leave and it received and heard submissions orally and in writing through D150 and D151, which sought to provide further opinion on why the scope of the submissions made ought to be considered as part of this Amendment and Panel Hearing. Council tabled D185 in response.

In the opinion of the Panel, the Council's submission in reply is on point. Council reviewed relevant case law and Panel reports raised by Davies Simpson and generally dismissed its contentions. The Panel adopts Council's submissions in full, and for emphasis, paragraphs 7, 8, and 9 which note:

7. ...even accepting relevance in principle, the matters requested cannot properly form the basis of recommendations of this Panel. In no small part this is because of the absence of a procedurally fair forum in which to recommend the changes which did not form part of exhibition.

⁴ D123, D124, D150, D151

8. In respect of the land at 240 Princes Highway, this is because the proposal would create an island of NRZ land. It would represent poor planning for now and into the future given the stimulus for further zoning changes it would create. There is a risk of unfairness given that the matter has not been exhibited and is a change of the nature that neighbouring parties could reasonably be expected to be alerted to.
9. In respect of land at Lots 2 & 3 ...
 - 9.1. The land can't be included in the NRZ and the DPO4 because it has not been exhibited and the Panel has no way of evaluating whether the land's neighbours (which include an authority) would object to this. Further, by including the land within a DPO, once the development plan is prepared, all third party rights are excluded. The submission underplays this issue.
 - 9.2. An Infrastructure Contributions Overlay is not the appropriate overlay in regional Victoria and a Development Contributions Plan Overlay cannot be included into the Scheme without a considerable and dedicated program to identify works and costs required. This is a submission that is not about the Amendment.
 - 9.3. Alterations to the Schedule to the applicable zones is not part of the Amendment but even adopting the liberal view there is insufficient information before this Panel to recommend changes to these Schedules ⁵.

The Panel has broad scope to consider a range of matters through the Amendment process, but where land was not exhibited and not included in that part of the Amendment that dealt with rezoning proposals, it is difficult to consider such requests. Had the land been included, Council and other parties would have had the opportunity address relevant issues. While some of these requests may have planning merit, they need to go through another Council process to be properly considered. The Panel cannot recommend land be rezoned as the result of a single landholder request when it was not exhibited as such.

Other policy changes such as the introduction of a Development Contributions Plan Overlay cannot be contemplated as that is an extensive piece of work.

The Panel agrees with Council that there is insufficient information before it to support those aspects of the Davies Simpson submissions. Other matters raised by the Davies Simpson submitters are included in the report and particularly in Chapter 7.8.

1.6 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

⁵ D185, paras 7, 8, 9

The Amendment has multiple components. It applies to all land in Port Fairy township and includes:

- introduction of the Structure Plan
- proposed zone changes from GRZ and MUZ to NRZ
- further proposed zone changes from FZ, LDRZ and INZ to RCZ
- extension of the C1Z
- proposed flood control changes to introduce a 1.2 metres SLR benchmark
- rationalisation of the DDO and introduction of the DPO
- other matters.

For these reasons, the Panel has structured the report to consider the various issues in the following way:

- policy and planning context
- the Structure Plan
- proposed zone changes
- proposed flood control changes
- proposed built form overlay changes
- resolution of specific issues.

The Panel has generally referred to submitters by submission number, for example S33 or by name, for example, Pendragon. It refers to documents by the prefix D with the number following, for example, D66.

It is important to note how the Panel has used the various iterations of the proposed planning controls to be introduced through this Amendment.

Keeping track of these changes from exhibition has been difficult, particularly as several submitters have made detailed submissions about changes to many of these. For the purpose of this report and to ensure clarity, the Panel uses Council's version of Document 175 as its base document for this report. Specifically, these include:

- Schedule 1 to Clause 43.02 (DDO) D175c Appendix E
- Schedule 2 to Clause 43.02 (DDO) D175d Appendix F
- Schedule 3 to Clause 43.02 (DDO) D175e Appendix G
- Schedule 4 to Clause 43.02 (DDO) D175f Appendix H
- Schedule 5 to Clause 43.02 (DDO) D175g Appendix I
- Schedule 6 to Clause 43.02 (DDO) D175h Appendix J
- Schedule 7 to Clause 43.02 (DDO) D175i Appendix K
- Schedule 4 to Clause 43.04 (DPO) D175j Appendix L.

The Panel accepts all changes made by Council in D175 and then makes its changes based on the evidence and submissions before it and the recommendations made by various parties and submitters, noting Council provided further changes on the final day of the Hearing.

For all other controls, the Panel has used the exhibited documents, unless specifically noted.

The Panel thanks all who have contributed to this process through the original written submissions, expert evidence, further submissions at the Hearing and for making themselves available to attend the Hearing.

2 Planning context

Council provided a summary of the relevant sections of the Planning Policy Framework (PPF) in its Part A Submission. It submitted the Amendment enjoys strong strategic support from both the PPF and the LPPF. The Panel has cited key policy as identified by the various planning experts called to give evidence. A more complete list of relevant policy is provided in Appendix D.

Table 2 lists the town planning evidence.

Table 2 Planning evidence

| Party | Expert | Firm | Area of expertise |
|------------|---------------|------------------|-------------------|
| Council | John Glossop | Glossop Planning | Planning |
| Rivers Run | Stuart McGurn | Urbis | Planning |
| Pendragon | Stuart McGurn | Urbis | Planning |
| Sun Pharma | Amanda Ring | UPco | Planning |

2.1 Submissions and evidence

Victorian planning objectives

Council submitted in its Part A submission that the Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by:

- Establishing a long term land use and development framework which provides direction for residential, commercial and industrial growth as well as accommodating projected future growth.
- Directing growth to areas that avoid or minimise exposure to existing and future natural hazards (coastal and riverine flooding and coastal erosion).
- Protecting neighbourhood and streetscape character and heritage values of the township.
- Ensuring that future growth is designed to complement the existing urban fabric.
- Supporting the efficient use of land, infrastructure and services ⁶.

Relevant policy includes:

State/regional:

- Clause 11.01-1R: Settlement – Great South Coast
- Clause 11.02-1S: Supply of urban land
- Clause 11.02-2S: Structure Planning
- Clause 11.03-4S: Coastal settlements
- Clause 13.01-1S: Natural hazards and climate change
- Clause 13.01-2S: Coastal inundation and erosion
- Clause 16:01-1S: Integrated housing
- Clause 17.02-1S: Business
- Clause 17.03-1S: Industrial land supply.

⁶ Council Part A Submission

Local:

- Clause 21.02: Municipal Overview
- Clause 21.03: Factors Influencing Future Planning and Development
- Clause 21.05: Settlement and Housing
- Clause 21.06: Environment
- Clause 21.09-3: Local Areas – Port Fairy.

Mr Glossop provided a summary of State and local policy and identified the following strategies in Clause 11.03-4S in relation to settlement boundaries and planning for coastal hazards:

- 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 ⁷.

Clause 21.02, 21.03 and 21.05 all recognise the significant status of Port Fairy as a major town and the main coastal settlement and predominant service centre in Moyne Shire. Clause 21.06 recognises the flooding and environmental factors present in Moyne's coastal settlements including Port Fairy.

Mr Glossop highlighted the specific vision for Port Fairy at Clause 21.09-3:

- 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 ⁸.

Mr McGurn provided extensive citation of many of the same policies identified by Council in his evidence, including policy recognising Port Fairy's status as a significant town in the Great South Coast Region. Mr McGurn highlighted the various state policies recognising the need to manage flood risk and cited State policy at Clause 13.01-2S (Coastal inundation and erosion) 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 ⁹.

Mr McGurn acknowledged there is tension in balancing demand for housing with protection of existing character and environmental constraints and noted this is common in many coastal environments, but particularly so in Port Fairy where geography gives rise to potential flood risk across the township.

Mr McGurn's evidence noted the opportunity for development of the Rivers Run Estate land to be balanced against these constraints. In a similar vein, Mr Glossop acknowledged there are clearly competing directions in policy with respect to accommodating growth in the town while protecting heritage and existing character. In terms of flood risk, Mr Glossop identified that:

⁷ Moyne Planning Scheme Clause 11.03

⁸ Moyne Planning Scheme Clause 21.09

⁹ Moyne Planning Scheme Clause 13.01

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.

He concluded:

From a town planning perspective, the approach to identifying coastal hazards is consistent with the broad approach to policy at Clause 13.01-2S.

Ms Ring drew out similar policy themes. With respect to Clause 13 and the management of flood risk, she highlighted policy that planning should:

- Identify, prevent and minimise the risk of harm to the environment, human health, and amenity through:
 - Land use and development compatibility
 - Effective controls to prevent or mitigate significant impacts.
- ensure development and risk mitigation does not detrimentally interfere with the important natural processes.
- prepare for and respond to the impacts of climate change.

In the context of Sun Pharma's land, Ms Ring drew attention to policy at Clause 13.05-1S and Clause 13.06-1S with respect to noise and air quality management and the need for appropriate separation between incompatible land uses. She concluded:

Diversification of the economy is encouraged noting the Great South Coast's generally heavy reliance on agriculture and tourism. To this end, and as for housing, policies in the planning scheme anticipate an appropriate supply of land being available for industrial activities and, further that existing industrial activity in industrial zones be protected from the encroachment of commercial, residential and other sensitive uses that stand to adversely affect industrial viability.

2.2 Other relevant planning strategies and policies

(i) Great South Coast Regional Growth Plan

The *Great South Coast Regional Growth Plan* provides broad direction for land use and development across the South Coast region, as well as more detailed planning frameworks for the key regional centres of the various municipalities, including Moynes. It designates Port Fairy as a 'district' town suitable for 'medium' level of growth.

The Explanatory Report outlined how the Amendment supports the *South Coast Regional Growth Plan*, including by:

- facilitating the district town of Port Fairy to support local communities, industry and services
- supporting development and investment in small towns that are facing economic and population challenges
- supporting and promoting active and attractive towns through the provision and enhancement of open space, trails, streetscapes and gardens.

(ii) Municipal Strategic Statement

Council submitted in its Part A submission that the Amendment supports and implements the Municipal Strategic Statement by:

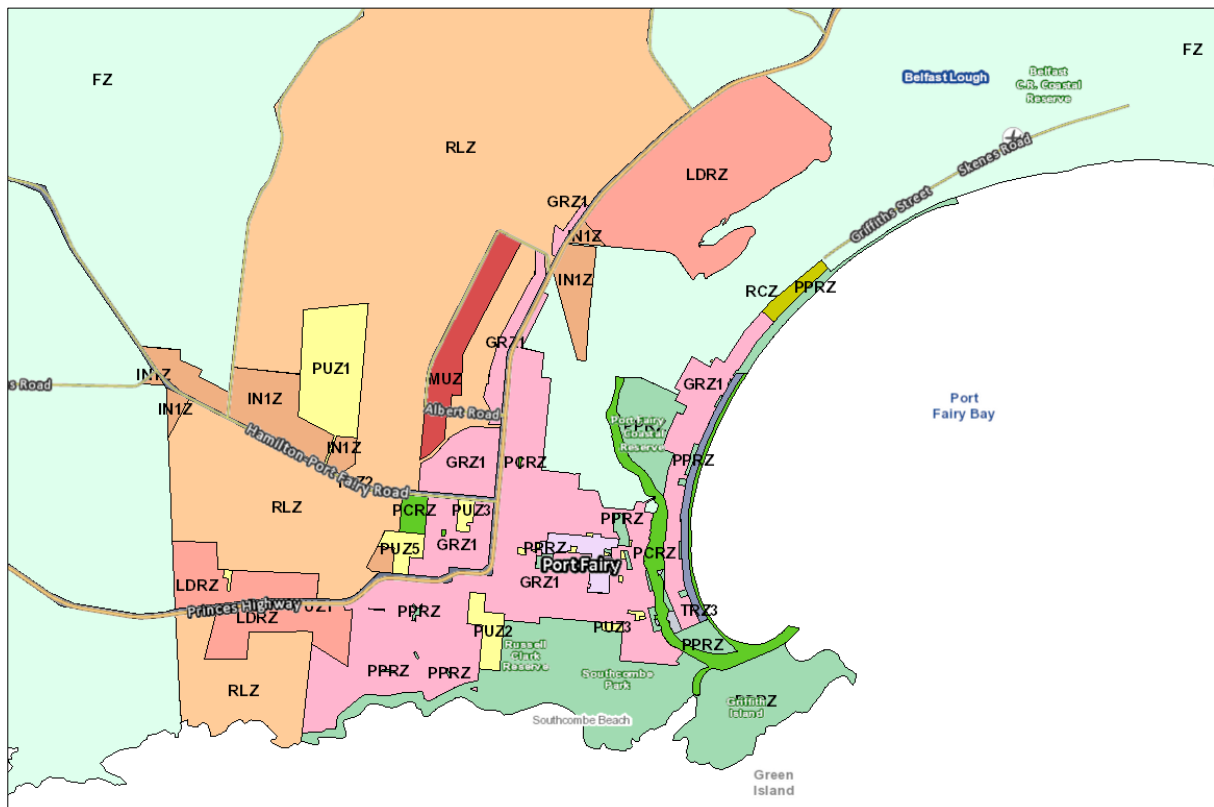
- accommodating population growth, defining a settlement edge, maintaining a compact urban form and avoiding rural living and low density residential, except in areas zoned for those purposes

- avoiding any increased risk to human life and property from flood damage through appropriate risk assessment and identification of flood hazard and ensuring new development is compatible with flood hazard
- protecting the existing built form, neighbourhood and landscape character, and heritage of Port Fairy and its surroundings.

2.3 Planning scheme provisions

(i) Zones

Figure 2 Current zone overview map of Port Fairy



Current zoning in Port Fairy is shown in Figure 2. Residential areas of Port Fairy are predominately in the GRZ with the commercial core zoned C1Z. Large peripheral areas of RLZ to the north and west outskirts of Port Fairy act as an interface between the township and surrounding FZ land. This includes Growth Area A to the west side of Port Fairy. The FZ extends across the Belfast Lough and to land on the western side of the Moyne River, extending south along the Port Fairy – Warrnambool Rail Trail down to Regent Street, including the Rivers Run land.

Outlying areas of LDRZ apply at the township gateways on the Princes Highway including Port Fairy West and the Model Lane Precinct. A tract of MUZ applies along Albert Road to the north of the Town known as Growth Area B. Areas of PPRZ apply to land to the south facing the Southern Ocean including Southcombe Park Recreation Reserve, Russell Clark Reserve, and sections of the Port Fairy West foreshore. Areas of IN1Z apply to existing industrial uses including the Sewage Treatment Plant and Water Reclamation Plant and the Bamstone and Sun Pharma sites. The purposes of the predominate zones are identified further.

The purposes of the GRZ are:

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

The purposes of the C1Z are:

- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

The purposes of the RLZ are:

- To provide for residential use in a rural environment.
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The purposes of the LDRZ are:

- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

The purposes of the FZ are:

- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To provide for the use and development of land for the specific purposes identified in a schedule to this zone.

(ii) Overlays

The predominant overlays covering Port Fairy include 19 existing DDO schedules and the Heritage Overlay applied to precincts or places across the established parts of the township. Overlays to manage flood risk in Port Fairy are extensive and include the LSIO and FO. The PAO applies to the reservation for the proposed Port Fairy Bypass. The purposes of the predominate overlays are identified below.

The existing 19 DDO schedules specify height, design and siting requirements to manage development in Port Fairy, cognisant of its historic and neighbourhood character. The high-level purpose of the DDO is:

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

The purposes of the HO are:

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The purposes of the LSIO are:

- 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.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To minimise the potential flood risk to life, health and safety associated with development.
- To reflect a declaration under Division 4 of Part 10 of the Water Act, 1989.
- To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.
- To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.

The purposes of the FO are:

- To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding.
- To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.
- To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989 if a declaration has been made.
- To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

(iii) Other provisions

Relevant particular provisions include:

- Clause 52.06: Car parking
- Clause 54: One dwelling on a lot
- Clause 55: Two or more dwellings on a lot and residential buildings
- Clause 56: Residential subdivision.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discussed how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

The Explanatory Report identified the Amendment's compliance with Ministerial Direction 13 (Managing Coastal Hazards and the Coastal Impacts of Climate Change) which establishes requirements for consideration of climate change impacts for an amendment that would lead to the development of non-urban land in coastal Victoria

Planning Practice Notes

The Panel has had regard to the following planning practice notes (PPN):

- PPN12: Applying the flood provisions in planning schemes
- PPN23: Applying the Incorporated Plan and Development Plan Overlays
- PPN36: Implementing a Coastal Settlement Boundary
- PPN42: Applying the Rural Zones
- PPN43: Understanding Neighbourhood Character
- PPN53: Managing Coastal Hazards and Coastal Impacts of Climate Change
- PPN57: Parking Overlay (noting that Council has resolved to abandon the application of the Parking Overlay)
- PPN59: The role of Mandatory Provisions in Planning Scheme
- PPN90: Planning for housing
- PPN91: Using the residential zones.

3 Port Fairy Coastal and Structure Plan

3.1 Background and key issues

The Amendment seeks to implement the actions and recommendations of the Structure Plan through Clause 21.09-3. The Structure Plan applies to all urban land within Port Fairy as well as adjoining rural areas that might influence the role, function or identity of the settlement area. It includes an area of land to the west where the Port Fairy West Structure Plan was prepared and implemented under a separate process.

The Structure Plan was prepared by Council, DELWP, the GHCA and a consultant team comprising Hansen Partnership, Martyn Transport, Cardno and Urban Enterprise. Council resolved to adopt the Structure Plan on 28 August 2018. The Structure Plan:

... will provide a long term future land use and development framework for the township of Port Fairy to 2041. Its key directions will provide growth opportunities that recognise the vulnerability of the township to coastal and river flooding, recognise Port Fairy's valuable economic and community role together with its significant landscape, environmental, aboriginal cultural and heritage features ¹⁰.

The Structure Plan includes the Port Fairy Overall Structure Plan at Figure 7. This is depicted as Figure 3 in this report.

The exhibited plan to Clause 21.09-3 (Local Areas) is shown in Figure 1. The Panel notes that while the two plans are almost identical, they have different legends and titles.

One difference is that the 500 metre policy buffer for the Sun Pharma and the Bamstone/Water Treatment sites is not shown on the Overall Structure Plan but is included in the Framework Plan. Nothing turns on this, except to note the inconsistency. The Framework Plan is to be included directly into the Planning Scheme and is the critical plan to which any Panel recommendations will be made.

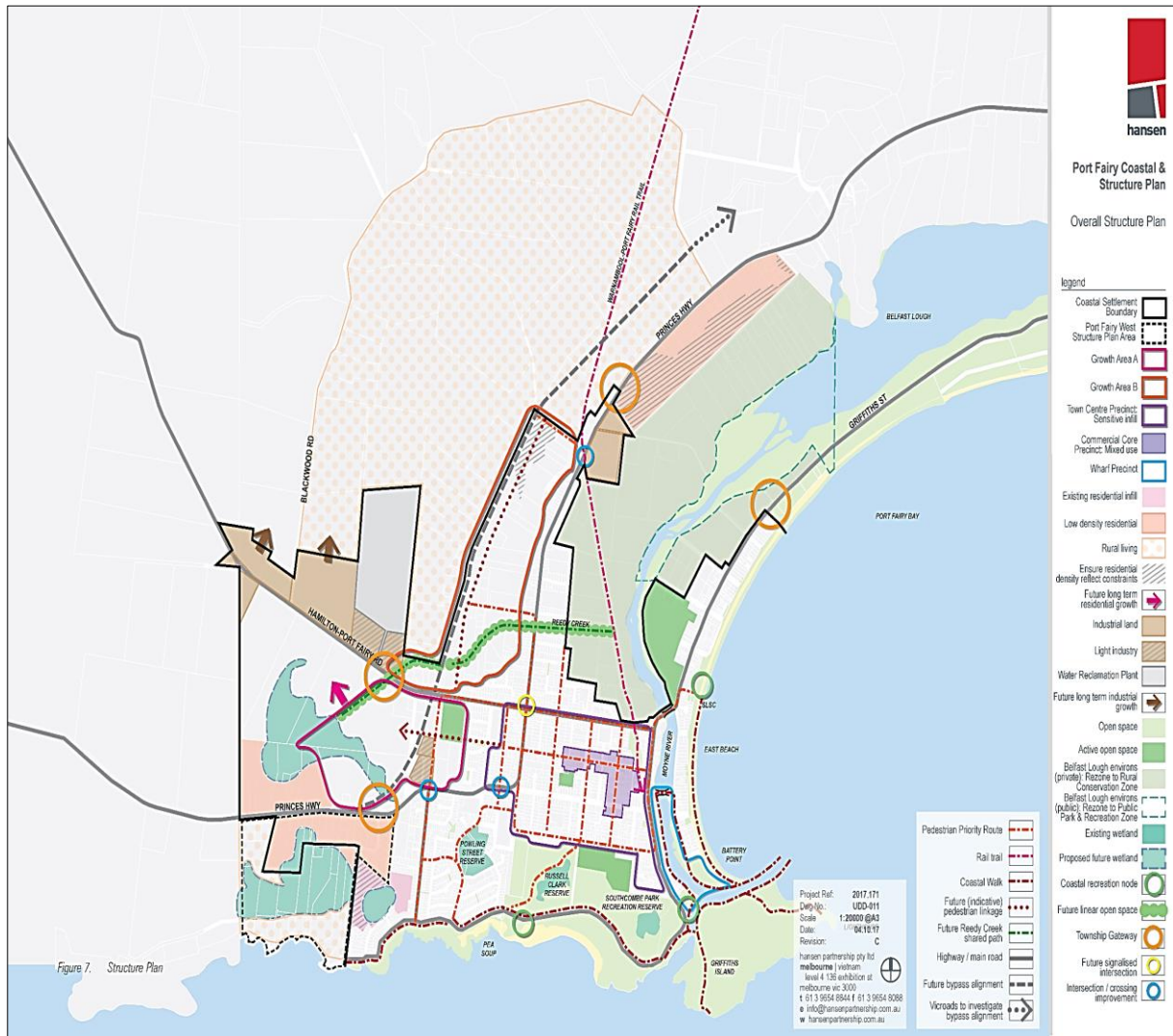
To implement the Structure Plan, the Panel notes Clause 21.09-3 is a substantial rewrite and includes new and updated context, vision, strategic directions (including with objectives and strategies), and reference documents. The Day 1 version of Clause 21.09-3 provided significant changes to the exhibited version ¹¹ and while there was some discussion about aspects of policy, the Panel considers the revised version is a significant improvement on the existing policy and should be adopted.

Clause 21.06 (Environment) has been updated to reflect the *Marine and Coastal Policy 2020*, increased SLR to 1.2 metres for Port Fairy and other minor changes. These matters are dealt with in Chapter 5.

¹⁰ Structure Plan, p6

¹¹ D88, Appendix 6

Figure 3 Port Fairy Overall Structure Plan ¹²



3.2 Submissions and evidence

Council noted the Structure Plan provides for the long-term future land use and development of Port Fairy township by:

- establishing a framework for future residential, commercial and industrial land use;
- maintaining 15+ years of housing growth, including infill and greenfield developments across the municipality;
- recognising the town’s vulnerability to coastal and riverine flooding; and
- recognising the significant landscape, environmental, aboriginal cultural and heritage features of the township and its surrounds ¹³.

The key directions of the Structure Plan provide the overarching vision for Port Fairy that:

1. Respond to the housing needs of existing and future residents
2. Recognise the critical importance of Port Fairy’s character and heritage
3. Protect the settlement’s sensitive coastal surrounds

¹² Figure 7, Port Fairy Structure Plan

¹³ D88

4. Recognise the regional importance of Port Fairy's tourism industry
5. Plan for future local employment opportunities
6. Prioritise the creation of a walkable and cycle-able town
7. Develop a network of diverse open spaces
8. Support equitable access to services and facilities for all
9. Plan for a resilient and engaged community
10. Be pragmatic but use the precautionary principle in responding to flooding impacts
11. Adopt best practice in response to climate challenges
12. Protect the rural surrounds and improve town centre approaches
13. Connect and embrace the wharf environs.

The Structure Plan contains objectives, strategies and actions under the following themes:

- Settlement and housing
- Economic development
- Built environment and heritage
- Connectivity
- Coastal hazards
- Landscape and environment
- Liveability.

The Structure Plan was informed by and based upon two key studies, including:

- *Translation of Port Fairy Coastal Hazard Assessment August 2019*, prepared by Cardno
- *Economic and Tourism Land Use Analysis 2017* prepared by Urban Enterprise.

The Structure Plan is supported by flood studies and their implementation through application of the LSIO and the FO.

Several reference documents (now known as background documents) are listed in Clause 21.09, including the *Port Fairy Coastal and Structure Plan 2018*.

Clause 21.09 provides the policy for the Local Areas of Moyne, which includes Peterborough, Mailors Flat, Port Fairy, Mortlake and Port Fairy West. Clause 21.09-3 deals with Port Fairy. As noted, the Amendment proposed significant changes to Clause 21.09-3, most of which was uncontested. In terms of 'Local area implementation', it notes:

Ensure that any proposed use or development within Port Fairy is generally consistent with the Port Fairy Framework Plan (Figure 1) and the Port Fairy Coastal and Structure Plan 2018.

Mr Glossop's evidence highlighted the changes to the Planning Scheme proposed by Council to give effect to the Structure Plan and concluded that in implementing the outcomes of the Structure Plan, the Amendment was strategically justified. He gave evidence the Structure Plan identified the need to provide updated strategic direction to Port Fairy, cognisant of the:

- housing needs of its current and expected population;
- role that the township plays in providing tourism and employment opportunities;
- environmental attributes and constraints of the township and its surrounds;
- need to protect the character and heritage of the township; and
- need to adapt to expected sea level rise and plan for the protection of the township¹⁴.

¹⁴ Glossop evidence, para 29

Mr Glossop observed the supply of land to meet Port Fairy's housing needs was constrained and he noted the Spatial Economics *'Land Supply and Demand Analysis'* estimated eight years supply of land. This is important to the Panel's consideration of the identified growth areas and the Council's proposal to rezone all residential land to NRZ.

He concluded by endorsing the Structure Plan, noting it demonstrated "... *the current planning framework for Port Fairy is unable to meet the township's challenges and opportunities*"¹⁵. However, Mr Glossop supported the rezoning of all GRZ land to NRZ.

For Pendragon, Mr McGurn gave evidence and noted:

The Structure Plan is a major step in setting future opportunities for growth and development in Port Fairy. Given the constraints to growth identified within the Town, care should be taken to ensure that the Structure Plan does not unreasonably constrain opportunities that exist across the township¹⁶.

He noted the time of its preparation, the impact of COVID-19 and changed population trends:

It is noted however that given the Structure Plan was prepared in 2018 it was informed by 'pre covid' population estimates and information available from the 2016 census. At this time it was already observed that there was an accelerating growth rate in Port Fairy of 1.33% per annum between 2011 – 2016 - relative to an average rate of 1.22% from 2001 - 2016.

By contrast, the growth rate identified for Port Fairy in the 2021 ABS census is 2.5 % per annum between 2016 and 2021. The recording of an increased growth rate is consistent with regional migration trends stemming from heightened 'lifestyle' desirability and increased workplace flexibility as a result of the Covid 19 pandemic¹⁷.

Figure 12 of the Structure Plan *'Economic Development'* includes two 500 metre 'industry buffers' relating to the Sun Pharma and Bamstone sites. The proposed buffers are included in the Framework Plan at Clause 21.09, but not in the Overall Structure Plan at Figure 7. The proposed buffer includes the whole of the Rivers Run site as well as much of Growth Area B. It was referred to as a policy buffer at the Hearing, and the Panel recognises it is not a designated EPA buffer. Sun Pharma supported the 500 metre buffer, Rivers Run contended it should be 300 metres. This is discussed further in Chapters 7.1 and 7.2.

The Structure Plan includes a reservation for the proposed Port Fairy Bypass. This was the subject of a submission seeking clarification of the timing and the route. The Panel subsequently sought a response from DoT which is further discussed in Chapter 7.9.

3.3 Discussion

The Panel acknowledges the key underlying theme of the Structure Plan is the preservation and enhancement of the inherent character of Port Fairy. It is a recognised coastal town that is highly regarded for its low rise and intact heritage character.

The Panel considers the Structure Plan provides a useful overview of Port Fairy from approximately mid-2015 to 2018. Unfortunately, by the time this Amendment is resolved and included in the Moyne Planning Scheme, the Structure Plan will be at least five years old (since adoption) and even older since its preparation. Much has changed over that period, particularly in relation to the

¹⁵ Glossop evidence, para 35

¹⁶ D78, para 45

¹⁷ D78, para 50, 51

impacts of COVID-19 and the resultant increase in residential population, including the higher cost of housing.

The Structure Plan provides a designated settlement boundary which includes two growth areas nominated for residential expansion, as well as identifying the Rivers Run site as a potential residential expansion area.

Given the passage of time from preparation to adoption to the Panel Hearing, the Panel wonders whether some aspects of the Structure Plan could have been updated to reflect changes because of COVID-19 and other market influences. However, that is not fatal to implementation of the Structure Plan.

As Port Fairy is the nominated district town in Moyne Shire, it is important there are adequate opportunities for growth, increased diversity, affordable housing and adequate zoned land for residential, industrial and commercial development, including possibly a second supermarket site. The Structure Plan provides guidance on this, particularly in identifying additional areas for residential growth and industrial development.

It will be important that all aspects of the Amendment 'sing to each other', in that the proposed DDOs and DPOs do not unduly restrict development potential by imposing mandatory and unreasonable height limits on future growth in some areas.

One of the underlying themes the Panel sought to understand was what has occurred in Port Fairy that has led to Council seeking higher levels of protection in terms of built form. The Panel raised issues in relation to the widespread application of the NRZ and the need to protect the historic heritage of Port Fairy. This was not well addressed by Council or its planning expert in trying to understand 'what had gone wrong' in planning for Port Fairy to lead to wholesale zone changes.

Notwithstanding, the Structure Plan provides the general principles for how Port Fairy should grow, and it explains and provides the context for policy. It is a generally substantial piece of work that has been prepared over a long period of time. While the Structure Plan is somewhat out of date (for example, housing statistics, population trends), it does provide a reasonable overview and strategic direction.

There are several site or area specific issues about the Structure Plan that are dealt with through the following chapters of this report.

Prior to the Hearing, Council undertook a detailed review of the exhibited policy at Clause 21.09-3, and it made many changes to streamline the provisions. This was included as the Day 1 version through D88, Appendix 6. In effect the Part A Day 1 version of Clause 21.09-3 is arguably a substantial rewrite of the exhibited version, which itself was already a substantial rewrite of existing policy. The Day 1 version removes quite a bit of text and it makes for a more focused policy. As this was not contested and as it has resulted in significant improvements, the Panel supports its adoption.

3.4 Findings and recommendations

The Panel finds:

- The Structure Plan is a useful document that provides a high-level overview of the future strategic direction for planning in Port Fairy.
- The Structure Plan will need to be revised in coming years.
- The Structure Plan will be listed as a background document in the Moyne Planning Scheme (an as noted in Clause 72.08, a background document does not form part of the planning scheme)
- The Panel does not recommend any changes to the Structure Plan.
- The local policy at Clause 21.09-3 provides good direction for development in Port Fairy and is supported.

The Panel recommends:

- 1. Adopt the Day 1 version of Clause 21.09-3 as provided for in Document 88, Appendix 6.**

4 Proposed zone changes

4.1 Background

The Amendment seeks to:

- rezone all land currently in the GRZ and the MUZ to the NRZ
- rezone the RLZ land in Growth Area A to the NRZ
- rezone land in the FZ, LDRZ and one site in the IN1Z around Belfast Lough and outside the town settlement boundary to the RCZ
- rezone land in the GRZ for properties identified for expansion of the town centre commercial area to the C1Z.

4.2 Neighbourhood Residential Zone

(i) Introduction

The Amendment seeks to apply the NRZ widely across Port Fairy, including land currently zoned:

- GRZ - the majority of the built up areas of Port Fairy, including land surrounding the town centre
- MUZ - a thin strip of land on Albert Road on the northern periphery of Port Fairy that is currently developed as large residential blocks and some businesses
- RLZ - undeveloped land on the western edge of Port Fairy, currently used for grazing, and included as part of Growth Area A in the Structure Plan.

As part of the exhibited Amendment, one schedule was proposed to the NRZ. At the commencement of the Hearing, as part of Council's Part A submission, a second NRZ schedule was put forward by Council to apply only to the growth areas, arising from the evidence of Mr Glossop to 'decant' some built form requirements from the DDO to the NRZ in the growth areas.

Currently, the NRZ has not been applied in Port Fairy, or anywhere in Moyne.

(ii) Submissions and evidence

Council submitted the conversion of all residential land from the GRZ to the NRZ was justified because of the need to preserve the predominant one and two storey built form character of Port Fairy. It contended:

... the NRZ will allow development to meet demand while also ensuring that new development respects and responds to the low-scale, heritage character of Port Fairy ¹⁸.

By way of context, Council stated the GRZ was the 'default' zone that was historically applied to Port Fairy in the absence of a housing strategy, and that it was intended to be reviewed in time. It noted the Structure Plan, in delivering a land use and planning framework for Port Fairy, recommended the NRZ for all residential land except the growth areas.

Council took the Panel through a comprehensive comparison of the GRZ against the NRZ, noting that recent NRZ changes had 'liberated' the zone. It concluded the only material difference in operation was related to height.

¹⁸ Council Part B Submission, para 69

Council cited PPN90: *Planning for housing* (PPN90), which indicates the NRZ is appropriately applied to:

- areas where there is no anticipated change to the predominantly single and double storey character; and
- areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area.

Council contended that because 15 years of land supply is accommodated at the municipal level, and that Port Fairy is constrained, the NRZ was an appropriate tool. Council acknowledged the application of the NRZ may at first glance be counterintuitive but contended a close reading of the relevant PPN90 supported its application.

In closing submissions, Council indicated it was open to considering the GRZ for the growth areas.

Council's position was supported by the evidence of Mr Glossop, who identified competing directions in the Structure Plan between those that sought to support its role as a district town identified for medium growth, and those that sought to retain a low scale of development. Mr Glossop noted PPN91 and suggested the GRZ should be applied to areas where housing of three storeys exists or is planned for, and that the various DDOs already limit buildings to between five and eight metres (one or two storeys).

Notably, Mr Glossop was open to application of the GRZ to the growth areas (although he preferred the NRZ), taking support from the Structure Plan which suggested the GRZ in this instance.

Under cross examination by Conway (S121), Mr Glossop agreed that in choosing the right zone, the purpose of the zone was also relevant, not just its built form requirements.

Pendragon (S20) did not oppose the rezoning of its land to NRZ.

In canvassing a less restrictive zone than the NRZ, Mr McGurn (for Pendragon), pointed to the Moyne Shire Council Plan 2021 - 2025 which listed housing supply and affordability as urgent issues, and that the Structure Plan were prepared pre Covid - 19, based on population growth rates that the most recent census (2021) showed to be too low. He concluded:

When considering the factors affecting residential growth in Port Fairy, I consider that there remains a need to explore all potential options for future housing supply that are suitably located in the context of the township.

Mr McGurn highlighted the importance of the zone purpose in making decisions around its spatial application:

The rezoning of the land from the General Residential Zone to the Neighbourhood Residential Zone is by its nature more restrictive given the purposes of the zone and the relative heights imposed in each case.

Conway referred to the use of the NRZ for growth areas as 'novel' and cited several strategic objectives that underpin the Amendment, including housing diversity, affordable housing, compact urban form and housing that responds to demographic change. Based on this, he submitted the GRZ was a superior fit for Growth Area A.

Several Albert Road residents (including S43, S45) questioned or opposed the rezoning from MUZ to NRZ because of implications for the use of heritage buildings and servicing reasons.

A number of landowners supported rezoning to NRZ, including:

- Carter (S86), a landowner to the west of Growth Area A on Princess Highway, because of its proximity and nexus to the growth area.
- Starling (S109), for its land on the northern edge of Port Fairy, because it shared the general characteristics of the urban fabric of Port Fairy.
- Burris (S122), a landowner to the north west of Growth Area A, because of its potential to address housing affordability in Port Fairy. This is land indicated for long term residential growth and is within the settlement boundary.

(iii) Discussion

The Panel considers that in strategic planning, there is often a disconnect between the directions of the strategic work underpinning an amendment and the choice of planning controls chosen to implement it. This can lead to an ineffective outcome, or, worse, a counter-productive one.

It is noted the NRZ is not currently used anywhere in the Moynes municipality and that it is the most restrictive of the three standard residential zones. Its wholesale application over the entirety of Port Fairy's residential areas, without use of the other zones, does not faithfully implement the Structure Plan, nor does it implement state policy. In particular, the Panel considers its application will not provide for the required 'medium' level of growth.

The Structure Plan is clear that housing diversity is an issue, and it should be addressed. Indeed, its first key direction is to "*respond to the housing needs of existing and future residents*"¹⁹. It further notes "*Port Fairy does not have a very diverse housing stock*"²⁰.

The Panel does not agree with Council's conclusion that in respect of existing areas, no change to built form character is contemplated. Rather, the Structure Plan has numerous directions to improve housing diversity. Greater housing diversity is strongly supported by State policy, and the Regional Growth Plan which calls for a 'medium' level of growth as part of its 'District' town designation.

While the Panel agrees with Council that the NRZ has been somewhat liberated, that it is closer in terms of objectives and some requirements to the GRZ, and that it is not the heavily restrictive zone it once was, the purpose of the zone matters. The GRZ has an explicit reference to housing diversity in its purpose, a purpose not found in the NRZ.

As a nominated District town centre in Moynes, it is important there are adequate opportunities for suitable growth, increased diversity of housing, and affordable housing, recognising this should not compromise the historic built form of Port Fairy.

Accordingly, the Panel supports sensitive development within some areas of Port Fairy, perhaps rising to three storeys in some limited locations, as the GRZ allows. The Panel is comforted in this position by the suite of reformed DDOs and existing HOs that will temper building scale and protect valuable heritage buildings. The Panel acknowledges the low scale urban form of Port Fairy and believes this should not generally change. However, the Panel does not consider retaining the zoning status quo in some locations – that is the continued application of the GRZ – is incompatible with that direction.

¹⁹ Structure Plan, Page 21

²⁰ Structure Plan, Page 24

At the commencement of the Hearing, the Panel asked Council to highlight what had gone wrong in Port Fairy to require the wholesale application of the NRZ over all existing and planned residential. During its site inspections, the Panel noted many examples of recent, well designed, infill housing. This housing had been approved under the current GRZ. Council was not able to satisfactorily respond to this question and the Panel is no clearer on this issue. The Panel was not pointed to any area that had been compromised by new growth in the GRZ.

Indeed, a fair reading of the Structure Plan suggests that greater attention should be paid to increasing housing diversity, something a more restrictive zone than the zone currently in operation will not deliver.

The Panel believes that despite its reservations on the use of the NRZ, it is justified in selected locations where existing constraints apply. The reformed DDOs, based on character assessments for Port Fairy's urban areas, provide a useful framework for zone selection. The Panel recommends land proposed to be in DDOs 1, 2, 5, 6 and 7, all of which are special character areas with more valued characteristics, should be zoned NRZ. All other residential areas, including land proposed to be included in DDOs 3 and 4, should remain as GRZ.

The Panel encourages Council to reassess the application of the residential zones as part of a future amendment. Such an amendment should be guided by a 'post covid' housing study that reflects the latest census and the impacts of remote working and demographic shifts to high amenity, regional areas. This should also include a more accurate assessment of the land supply in the growth areas (see below).

In relation to the growth areas, the Panel believes the NRZ is an unusual choice of tool. There may be opportunities for sensitive medium density housing, such as townhouses, rising to three storeys in some locations. The GRZ is a better tool in this instance.

The Panel takes these positions because it is concerned the supply of land has been overestimated, and demand underestimated, which over time risks making an already severe housing affordability problem much worse.

The Panel does not share Council's optimism on land supply. The site visits, and Panel's questioning, revealed much of Growth Area A, the major growth front relied heavily on for land supply, is probably undevelopable. Strangely, Growth Area A includes the cemetery, showgrounds, and an older industrial area – all of which are not readily developable for housing.

Further, it is constrained by Companion Lagoon, which has significant environmental values that need to be protected. VicRoads own a large portion of Growth Area A and this land is unlikely to be developed until the potential bypass location is resolved. The Panel is not clear whether the Residential Land Supply Assessment for Moyné²¹ has adequately considered these constraints. This is not to mention the flooding constraints that limit growth elsewhere. In such a heavily constrained town, the Panel believes that opportunities for growth need to be maximised if the directions of the Structure Plan are to be met.

On the matter of demand, as Mr McGurn highlighted, the recent census has illustrated accelerating population growth rates in the context of a town where the Structure Plan acknowledges demand may be constrained by low supply.

²¹ Spatial Economics, 2021

The Panel notes the objection from an Albert Road resident (S43) to rezoning from MUZ to NRZ. In line with its recommendations about the application of the GRZ in favour of the NRZ in DDO3 and DDO4, the Panel believes that while the GRZ may be a better fit, it was not exhibited and there was little discussion about its use. Accordingly, this area should remain in its current zoning of MUZ.

In the context of its concerns about housing supply and demand, the Panel supports further opportunities within the settlement boundary to the north-west of Port Fairy to be brought forward for development. This includes S86 along Princess Highway, and S122 along Hamilton-Port Fairy Road, both of which represent logical extensions to Growth Area A. Both sites may have merit for future rezonings. However, given the lack of available information and absence of exhibition, these sites should be considered as a possible future rezoning as part of a separate planning scheme amendment process.

In relation to S109, the land is small, not in the settlement boundary and not contiguous with the urban area, and so should not be rezoned to NRZ or GRZ.

(iv) Findings

The Panel finds:

- There should be increased housing diversity in Port Fairy for opportunities for residential growth through the application of the various residential zones.
- The widespread application of the Neighbourhood Residential Zone across all residential land in Port Fairy is not supported.
- The application of the Neighbourhood Residential Zone to land proposed to be in Design and Development Overlay Schedules 1, 2, 5, 6, and 7 is supported.
- Land proposed to be included in Design and Development Overlay Schedules 3 and 4 should remain in the General Residential Zone.
- Land in the Mixed Use Zone along Albert Street should remain in its current zone.

4.3 Rural Conservation Zone

(i) Introduction

The Amendment seeks to rezone the following land surrounding Belfast Lough and Moyne River to RCZ2:

- land south of Model Lane that is currently in LDRZ
- land east and west of Moyne River that is currently in FZ
- land south of Sun Pharma at 50 Sandspit Road that is currently in IN1Z.

(ii) Submissions and evidence

Council advocated the use of the RCZ on the basis of the area's aesthetic landscape and environmental values. It highlighted the Structure Plan's identification of the Belfast Lough as

- having high environmental value as flora/fauna habitat
- being of significant landscape value with views across and within the Lough from key gateways and vistas into, and within, Port Fairy
- being subject to existing riverine and estuarine flooding, and future sea level rise.

Council argued the zone recognised the environmental sensitivity of the Lough whilst allowing continuing use of the land for farming and residential development of one dwelling per lot. It justified this zoning because the Structure Plan identified sufficient land to accommodate growth on land that was not subject to the same level of risk, or environmental values, as the Belfast Lough environs.

It noted the land is outside the settlement boundary and as a 'special landscape' deserved to be acknowledged through the zoning.

Mr Glossop provided qualified support for the RCZ, in commenting:

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.

And that further:

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.

The RCZ was opposed by many Model Lane residents. In representing a group of submitters, Ms Kaczmarek argued the rezoning lacked a proper strategic planning basis. She noted the RCZ was a highly restrictive zone, where the use of the land for a dwelling or farming is subordinate to the environmental values of the land.

Ms Kaczmarek highlighted the following clause from PPN42:

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

Ms Kaczmarek argued the conservation values of the land had not been established through a biodiversity assessment or the like, nor had such an assessment informed the Structure Plan. She asked the Panel to consider if the specific values identified in the RCZ schedule were in fact present on the land and were consistent with the purposes of the zone.

Ms Kaczmarek contended that flooding was not an environmental value consistent with the purpose of the RCZ or PPN42. Rather, it was a constraint managed by other planning scheme tools, such as the FO or LSIO.

In determining whether such environmental values exist, Ms Kaczmarek made the distinction between the developed areas around Model Lane and the floodplain land adjacent to the Moyne River and Lough.

In arguing against the more restrictive RCZ, Ms Kaczmarek commented on the issue of housing supply and demand, saying:

.... here and now, there is a genuine housing crisis in Port Fairy. For instance, Council recently endorsed a plan for the Mayor, Ian Smith to write to resident ratepayers asking them to consider making their property available for long term lease in a bid to ease housing pressures in the shire.

Submission 13 opposed the rezoning of land to RCZ on the basis that it would impact use of the land in the future.

Other submitters (S82, S104, S119, S124) supported the zoning to RCZ to protect the biodiversity values of Belfast Lough.

Submission 210 supported the RCZ to protect Belfast Lough, as one of the “*most significant landscape features of Port Fairy*”. The submitter highlighted view lines across the Lough from various vantage points and the value of such views being uncluttered by buildings. The submitter noted the similarities of the Belfast Lough to the Coorong in South Australia:

Like the Coorong, the Belfast Lough is a river trapped behind a barrier dune. The Lough is part of an important string of wetlands that define the Belfast Coastal reserve.

Further, the submission provided commentary that the area’s clear flooding regime was an environmental value that added to the reasons why it was suitable for RCZ and provided helpful mapping from State Government that highlighted the biodiversity values of the Lough and River.

In relation to the Industrial Zone at Sandspit Road, S58 opposed the rezoning of the land to RCZ because it may limit the potential expansion of the industrial areas or provision of new industrial uses close to existing industry (Sun Pharma). For this submitter, Ms Kaczmarek argued the rationale for this rezoning remained unclear, as it had not been part of any meaningful industrial land study.

While Rivers Run did not object to the rezoning of its land from FZ to RCZ, Mr McGurn gave evidence that a separate planning scheme amendment (C75moyn) seeks to rezone it to a zone suitable for urban purposes.

(iii) Discussion

The Panel notes the RCZ is a highly restrictive zone that places limits on uses and development not found in other zones. Not surprisingly, the bar to apply such a zone is high and it should be strategically justified by clear identification of significant conservation values.

PPN42 is the most relevant guidance on the application of the RCZ. It identifies the zone is “*primarily concerned with protecting and conserving rural land for its environmental features or attributes*”.

PPN42 highlights the RCZ is “*a conservation zone that caters for rural areas with special environmental characteristics*” with the following relevant purposes:

- 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 environmental and landscape values of the area.
- To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes ²².

Relevantly, PPN42 goes on to say the “*conservation values of the land must be identified in the schedule to the zone and could be historic, archaeological, landscape, ecological, cultural or scientific values*” ²³.

²² PPN42, page 5

It is clear from the Practice Note and the objectives of the RCZ that it is a rural zone applied to areas with recognised conservation values or environmental characteristics.

Firstly, having regard to its current zoning (LDRZ), the dominance of dwellings and associated outbuildings, and expansive gardens, the Panel is not convinced that the Model Lane precinct is a 'rural' area or 'rural land'.

Secondly, the Panel agrees with Mr Glossop that the application of a more restrictive zone, which in some ways could be considered as a back zoning, requires the environmental values of the land be well founded and established.

The Panel agrees with the submission from Ms Kaczmarek that there is a lack of information to substantiate this, and notes that Council provided little information to clarify its rationale, including in its closing submission.

While the Panel does not consider the case to rezone the land has been made, it does acknowledge the biodiversity values of the Lough and River, which was well expressed in the submission and mapping provided by S210. However, this information was not provided by Council, nor was it included in the supporting material to the exhibited Amendment, nor could it be tested.

Further, it appears that these values may not extend all the way to the Model Lane precinct. The Panel agrees with Ms Kaczmarek that a distinction can be made between land immediately adjacent to the Lough and River, which retains its natural values, and land near Model Lane, which is substantially altered with houses, sheds, and introduced gardens.

For these reasons, and given that land in two zones is undesirable, a better tool to protect the environmental values of the Lough and River may be the Environmental Significance Overlay, as it applies further upstream. However, this is not before the Panel and the Panel can make no recommendations in this regard.

In relation to view lines and other landscape issues, views to the Lough from Regent Street for example, or parts of the Rail Trail, are already dominated by Sun Pharma and other buildings. In saying this, the Panel notes the current LDRZ restricts the density of development and even under current controls, only a modest amount of additional housing is allowed. This area is clearly distinguished by its current zoning to the remainder of Port Fairy, and it will be protected from more intensive residential development in any event.

The Panel considers the IN1Z land on Sandspit Road provides a useful extension to the industrial precinct and may be reasonably considered for new industrial uses, subject to resolving flooding and other amenity issues in time, if required. The case to rezone this land to RCZ has not been made.

The question then turns to the remaining land proposed to be rezoned to RCZ, that is the FZ land south of Model Lane. For similar reasons as explained above, the rezoning of this land has not been justified and it should remain as it is currently zoned.

²³ PPN42, page 6

(iv) Findings

The Panel finds:

- The proposed application of the Rural Conservation Zone is not justified, it does not meet the requirements of Planning Practice Note 42 and is not appropriate given the undefined conservation values of the precinct.
- The Model Lane precinct should remain in its current zoning.
- The Industrial 1 Zone land on Sandspit Road should remain in its current zoning.
- Other Farming Zone land proposed for Rural Conservation Zone should remain in its current zoning.

4.4 Commercial 1 Zone**(i) Introduction**

The Amendment seeks to rezone land in the town centre area from the GRZ to C1Z.

(ii) Submissions and evidence

Council supported rezoning of additional land to the C1Z based on the strategic support offered in the Structure Plan, which seeks to retain the town centre as the main retail hub and to discourage larger retail stores elsewhere. Flowing from this, the Structure Plan supported several areas such as Bank Street and Princess Street be rezoned to C1Z to allow for future retail expansion. In relation to future demand, the Structure Plan noted:

The overall forecast is for growth in commercial floorspace in Port Fairy of 10,400 square metres over the period to 2036. This includes 5,000 square metres of additional retail floorspace over 20 years (which includes food and services). Most of this space is likely to be accommodated in small and medium sized stores similar to existing development ²⁴.

Coast to Country Building Approvals (S22) supported the proposed rezoning of 14 Princess Street to C1Z on the basis of a long history of commercial uses. It further sought the rear of 39 Bank Street (S56) be rezoned to C1Z to cater for the projected demand for retail floorspace and to consolidate the holdings of land associated with the IGA supermarket.

Submission 18 requested the rezoning of 65 Bank Street to C1Z as a logical extension to the town centre commercial area. Council noted that while the land was considered in the Structure Plan, it was not supported because of its location at the periphery of the town centre, and its abuttal to neighbouring residential uses.

Coast to Country Building Approvals (S53a) requested land at 5A Barclay Street, currently used for storage and parking, be zoned to the C1Z to reflect the use of the land as part of the local IGA supermarket fronting Sackville Street. Further, it requested, for the sake of zoning consistency, land at rear of 30A-38 Sackville be rezoned to C1Z.

Under questioning, Mr Glossop supported the rezoning of the rear of 30A-38 Sackville Street to C1Z but was uncertain about 5A Barclay Street because of surrounding residential interfaces.

²⁴ Structure Plan, p36

In closing submissions, Council argued the rezoning of 5A Barclay Street was immaterial as it had the benefit of existing use rights, and as the land abutted residential properties, a rezoning was not necessary or warranted. In relation to 30A-38 Sackville Street, Council noted it already proposed to include this land in an anomalies amendment to correct its zoning to C1Z.

(iii) Discussion

The Panel regards the series of C1Z rezonings to expand the commercial and retail core as sensible and strategically justified. In some cases, this would correct zoning anomalies, in other cases, it would deliberately expand the town centre to the east to cater for the projected growth in demand for commercial and retail floor space. This represents sound planning and the Panel commends Council for taking a proactive approach to maintaining the primacy of the town centre. These rezonings are supported.

The Panel agrees the existing IGA supermarket is a critical local retailer. It makes a strong economic contribution to the town and should be encouraged to remain in its current location. Further, a sensitive expansion would assist in accommodating future retail demand.

In relation to the rear of 30A-38 Sackville Street, the Panel agrees that it represents an anomaly and that it is sensible to extend the C1Z to cover all the land on the titles. Council have committed to rezoning the land in another process.

In relation to 5A Barclay Street, the Panel is concerned with interface issues on surrounding residential land and notes the difficulty in rezoning an encumbered island of land to C1Z. There is no justification for rezoning this land to C1Z.

The rezoning of 14 Princes Street and 39 Bank Street to C1Z were not contested and are supported as exhibited.

The Panel agrees with Council that the land at 65 Bank Street is not well located for C1Z, and as it is some distance from the preferred direction of the town centre growth towards the east, its rezoning is not supported.

(iv) Findings

The Panel finds:

- Rezoning of land at 14 Princes Street and 39 Bank Street to Commercial 1 Zone is supported.
- The request for rezoning of land at 5A Barclay Street to Commercial 1 Zone is not supported.
- The request for rezoning of land at 65 Bank Street to Commercial 1 Zone is not supported.

4.5 Recommendations

The Panel recommends:

- 2. Retain land in Design and Development Overlay Schedules 3 and 4 proposed to be zoned to Neighbourhood Residential Zone in the General Residential Zone.**
- 3. Retain land along Albert Road proposed to be rezoned to Neighbourhood Residential Zone in the Mixed Use Zone.**

- 4. Retain all land proposed to be rezoned to Rural Conservation Zone in the Low Density Residential Zone.**
- 5. Retain land at Sandspit Road proposed to be rezoned to Rural Conservation Zone in the Industrial 1 Zone.**
- 6. Retain land adjacent to Belfast Lough proposed to be rezoned to Rural Conservation Zone in the Farming Zone.**

5 Proposed flood control changes

5.1 Background

The Amendment seeks to:

- introduce LSIO4 and FO3 to the Port Fairy Township to identify areas subject to coastal inundation and include a 1.2 metre SLR.

Table 3 lists the hydrology, flooding and drainage evidence.

Table 3 Hydrology, flooding and drainage evidence

| Party | Expert | Firm | Area of expertise |
|---------------------------|-------------------------------|-----------------------------|-------------------------------|
| Council | Rob Swan | HARC | Flooding/hydrology |
| Glenelg Hopkins CMA | Christine Lauchlan-Arrowsmith | Streamology Pty Ltd | Water and coastal engineering |
| Pendragon Pty Ltd | Warwick Bishop | Water Technology | Hydrology |
| Rivers Run Estate Pty Ltd | Warwick Bishop Nina Barich | Water Technology Incitus | Hydrology Flooding |
| Pevitts | Warwick Bishop | Water Technology | Hydrology |

Mr Swan gave evidence for Council on hydrological matters including whether the Amendment properly addressed relevant coastal and riverine flooding hazards. Dr Lauchlan-Arrowsmith gave evidence for the GHCMA about coastal flooding and adaptation responses. Mr Bishop and Ms Barich gave evidence for landowners who opposed the application of the 1.2 metre SLR and the consequential application of the FO and the LSIO on relevant properties.

To narrow the areas of dispute and difference, the Panel directed the witnesses to meet to prepare a statement of agreed opinions and facts. A report of the conclave was tabled as D95. The Panel appreciates the efforts of the experts and acknowledges the usefulness of the report which records the following general points of agreement:

1. The use of LSIO and FO to inform development to avoid or minimise flood risk resulting from riverine inundation is appropriate.
2. The use of LSIO to inform development to avoid or minimise flood risk resulting from coastal inundation is appropriate.
3. The use of FO to inform development to avoid or minimise flood risk resulting from coastal inundation is appropriate (Agree: Lauchlan-Arrowsmith, Swan; Disagree: Bishop, Barich).
4. Flood-related overlays are intended to highlight potential flood risk and trigger referral to the floodplain authority to assess potential development proposals and if appropriate, set conditions.
5. Flood-related overlays are not intended to determine land-use or sterilise land from potential development.
6. Development access and egress on Council roads should not be assessed against the 1.2 m SLR scenario (Agreed: Barich, Bishop, Swan; No opinion: Lauchlan-Arrowsmith).
7. A nominal 2100 planning horizon is appropriate to consider future flood risks related to climate change. (Disagree: Barich – this is dependent upon the SLR adopted. If adopting 0.8 m SLR, 2100 is acceptable)
8. The application of a SSP5-8.5 scenario is notionally a conservative scenario and appropriate as a precautionary position for planning purposes (individual experts

disagree on the interpretation and application of this scenario, in terms of applicable SLR allowance as detailed in the SLR section below).

9. The application of at least a 0.8 m SLR at the ocean boundary is appropriate when considering a nominal 2100 planning horizon ²⁵.

At the commencement of the Hearing, the Panel summarised the conclave report as confirming no dispute about the methodology of the modelling underpinning the proposals. The key issues in dispute related to the application of a SLR of 1.2 metres and the consequential extent of land affected by flooding against the areas that would be covered by a SLR of 0.8 metres. This became the core issue for the Panel.

Regarding planning evidence, Mr Glossop for Council supported the use of the FO and the LSIO as appropriate tools from the suite of controls in the VPP ²⁶. Mr McGurn for Rivers Run accepted the use of the FO and the LSIO but deferred to the evidence of Mr Bishop for the suitability of the application of the appropriate overlay according to local conditions ²⁷.

The Panel was advised Port Fairy and surrounding districts experienced extreme flooding in 1946 in an event considered to have been larger than a 0.2 per cent AEP event ²⁸. An attachment to D156, the presentation for S63, provided a record of past flood events and stated:

Historic Riverine Floods

Stream records show that Port Fairy has experienced frequent flood events since the early 1970's, ... The largest flood event on record was in 1946. More recently Port Fairy has experienced floods in 1975, 1976, 1978, 1983, 1984, 1996, 2001, 2010, 2016 and 2020. The October 2020 flood event was the largest recent flood event on record ²⁹.

All these events were less severe than the 1946 flood but the extent and severity of the 2020 flood was widespread. The document stated:

The October 2020 flood event was the largest recent flood event recorded in Port Fairy, a 1 in 20 year flood. This event caused considerable damages to buildings, roads, bridges and other infrastructure not only in Port Fairy, but also in Kirkstall, Koroit, Crossley, Rosebrook and Killarney. Deep flooding impacted over 63 buildings, including 47 buildings at the Port Fairy Gardens Caravan Park, which was evacuated. More than 12 buildings were impacted by flooding north of Port Fairy in Kirkstall, Koroit, Crossley, Rosebrook and Killarney. An additional four buildings were flooded above floor in Port Fairy. Minor and major roads are impacted by flooding within and surrounding Port Fairy ... ^{30 31}

Document 156 noted the 2014 flood event caused by estuarine and storm surge flooding:

Flooding of an estuary is caused by high river flows not being able to flow into the sea due to high tides or storm surges. Estuarine flooding is known to occur in Port Fairy along the Moyne River. Flooding impacted the Moyne River Estuary on the 24th of June 2014 due to a storm surge event. This flood inundated ten properties adjacent to the Port Fairy Wharf, refer to the map below showing the approximate flood event. While there were no buildings recorded to be flooded above floor, the peak flood level was close to flooding a number of floor levels ... ³².

²⁵ D95

²⁶ D74

²⁷ D78, p62

²⁸ D18

²⁹ D156, p27

³⁰ D158, p24

³¹ D156 provided some photos of the 1946 flood event

³² D156, p46

Council's Part B submission included newspaper reports of the 1946, 2012 and 2020 flood events³³. One article referred to the 2020 event as a one-in-50-year event with another reporting the flood level reaching 4.43 metres AHD.

During its inspections of the Port Fairy Wharf area, the Panel observed information boards that recorded past events and forewarned of further flood events. Through this type of record, and historical newspaper reports, the Port Fairy community acknowledges the record of past flooding and the probability of future flooding from climate change, rising sea levels and additional rainfall.

State policy supports municipalities to update flood controls by amendments to planning schemes. Council submitted the Amendment is consistent with State planning policy:

... to minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning with a strategy to site and design development to minimise the risk to life, health, property, the natural environment and community infrastructure from natural hazards³⁴.

The Moyne Planning Scheme currently applies the FO with schedules 1 and 2 as well as the LSIO schedules 1, 2 and 3 across various areas affected by flooding. The Amendment introduces FO3 and LSIO4 to apply to areas in Port Fairy based on further studies and modelling as the basis for the proposed controls.

Mr Swan's evidence provided a history of the studies, including:

- Port Fairy Regional Flood Study, 2008, Water Technology 2008
- Port Fairy Regional Flood Study – Sea Level Rise Modelling, Water Technology, 2010
- Port Fairy Coastal Hazard Vulnerability Assessment, Water Research Laboratory of the University of NSW, 2013.
- Translation of Port Fairy Coastal Hazard Assessment, Cardno, 2019³⁵.

Mr Swan's evidence statement set out his involvement with flood studies at Port Fairy; he was author of the 2019 Cardno report, the author of the 2021 Flood Modelling Summary and now as witness for Council. Two comments from Mr Swan are notable:

- It is important to note that each study, moving forward in time, has built on the outcomes of the previous projects³⁶.
- The decisions regarding the choice of flood planning overlay were ultimately those of the GHCMA³⁷.

The Amendment was first exhibited from May to June 2020. Following discussions between Council and the GHCMA about the appropriate flood controls that could be adopted at Port Fairy, further hydrological modelling was undertaken by Mr Swan's company, HARC. He described the additional work as:

Modelling of a number of additional combinations of sea level rise, ocean storm events and riverine flows and form the underlying data for the updated planning maps that are proposed for this amendment. Part of this analysis was providing mapping of potential Land Subject to Inundation Overlay and Floodway Overlay controls, using the guidelines provided by the GHCMA³⁸.

³³ D99, Appendix E

³⁴ D88, Appendix 1

³⁵ D63, section 7

³⁶ D63, p7

³⁷ D63, section 6

³⁸ D63, section 6

The output of the subsequent *Translation of Port Fairy Coastal Hazard Assessment 2018* underpinned the Amendment. The report noted:

The aim of the project was to provide the best available information for understanding the likely change in Port Fairy's flood risk profile for the purpose of climate change adaptation planning. The project initially included combinations of events that were primarily driven by higher ocean conditions, but additionally include a coincident 1% AEP riverine and 1% AEP ocean flood combination for a range of sea level rise cases, at the request of the GHCMA. This was because the GHCMA wanted a single set of flood overlays to cover both riverine and ocean flood events, as opposed to various schedules to the overlay ³⁹.

Building on the Cardno 2019 study, HARC produced a Flood Summary Report (August 2021) to review scenarios as requested by GHCMA, as well as to deal with:

- a change in ocean boundary level estimates based on best available information
- consideration of the appropriate river/storm tide coincident events in the Moyne River estuary (including Belfast Lough)
- an analysis of relative dominance of storm tide versus riverine flood risk in the Moyne River estuary portion of the floodplain ⁴⁰.

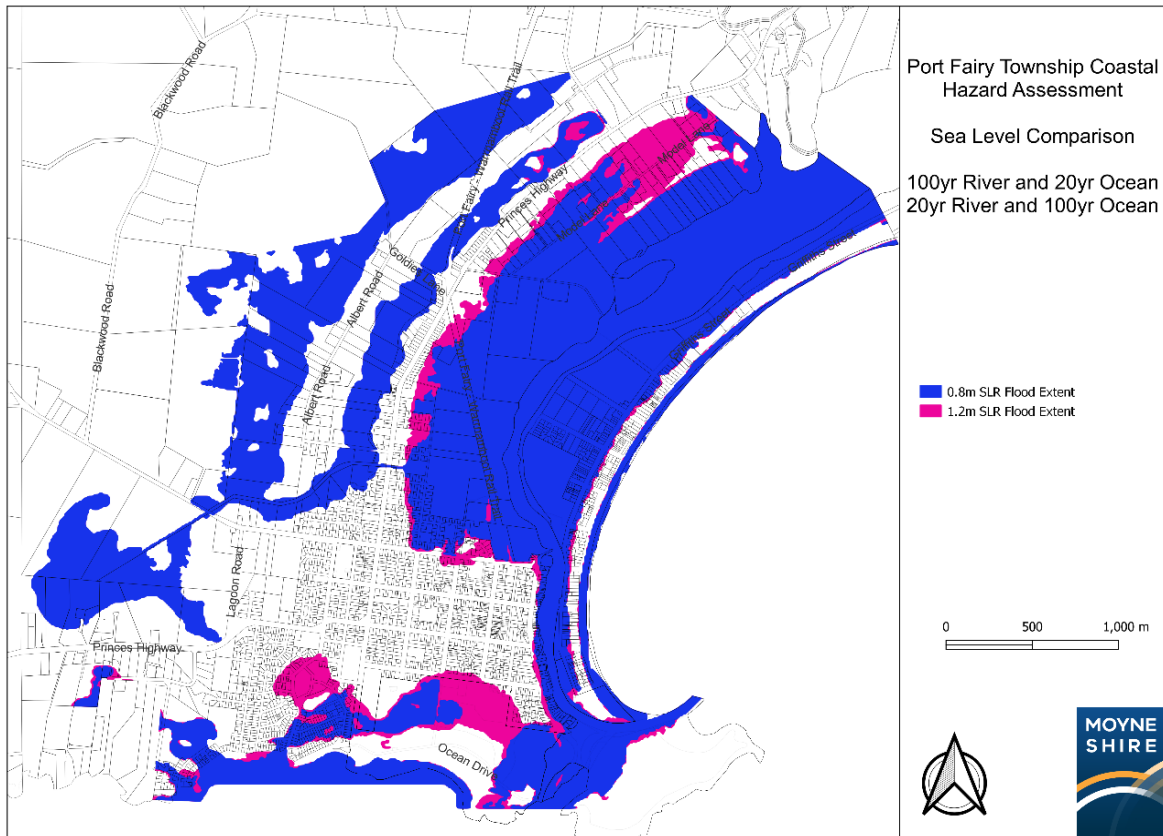
This work led to new mapping and subsequent re-exhibition of the Amendment to allow consultation with the community on the higher proposed SLR of 1.2 metres. The re-exhibition drew new submissions and supplementary submissions to many made during the initial exhibition.

A key issue with the application of the higher SLR of 1.2 metres against 0.8 metres is the extent of land that warrants classification as FO against LSIO. The difference in extent is shown red in Figure 4, a plan produced by Council in response to a direction from the Panel.

³⁹ D63, section 7.3

⁴⁰ D18

Figure 4 Map showing difference of extent of sea level rise of 0.8m and 1.2m ⁴¹



Development of land affected by flooding is contemplated under PPN12 which states:

Flooding is a natural hazard but, unlike most other natural hazards, floods are to a great degree predictable in terms of their location, depth and extent. This means that appropriate measures can be developed to reduce flood damage. Land use planning is recognised as being the best means of avoiding future flooding problems. Through careful planning, flood risks to life, property and community infrastructure can be minimised and the environmental significance of our floodplains protected ⁴².

They key issues relate to:

- what SLR measure should be adopted
- whether and where to apply the FO or the LSIO
- the LFDP and policy provisions.

5.2 Sea level rise

(i) Introduction

Both the FO and the LSIO are appropriate overlay controls to identify land with particular flood characteristics and have been used extensively across Victoria for many years. These can be applied to relevant conditions according to the estimated flood hazard class with the FO for high flood depths (above 500 millimetres) and/or velocities and the LSIO (below 500 millimetres) where there is lower risk.

⁴¹ D86g

⁴² D24

For each overlay, the Panel needs to consider the SLR to be adopted. Council and the GHCMA and its witnesses contended SLR of 1.2 metres as exhibited should apply, while most submitters and their evidence contended a SLR of 0.8 metres should apply.

(ii) Submissions and evidence

State policy at Clause 13.01-2S (Coastal inundation and erosion) states:

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. *Panel emphasis*

In its Part A submission, Council submitted Port Fairy's vulnerability to riverine and coastal inundation will increase as sea levels rise, and stated:

Failure to plan for and adapt to these increased risks will further expose the township to potentially severe and long-term consequences, such as loss of life, property and financial losses, health issues, and the loss of unique and essential natural systems and species ⁴³.

Council's submissions, presentations and cross examination of witnesses aimed to confirm the application of 1.2 metres SLR. Council and the GHCMA sought that benchmark for myriad reasons stemming mostly from flood studies and because Council had undertaken long term strategic planning through the Structure Plan. In its closing submission, Council submitted:

... it has placed itself to meet its relevant planning objectives concerning land supply and development of Port Fairy adopting a 1.2 metre scenario. This Council is in the position of having carefully planned for growth of the township and can afford to put in place policy that ensures that the societal risks associated with flood impacts are unlikely to occur. This constitutes good planning. It constitutes orderly planning. It is planning that might not be possible in another municipality because of other constraints but the opportunity is present in Port Fairy ⁴⁴.

Both Dr Lauchlan-Arrowsmith and Mr Swan supported SLR of 1.2 metres.

Dr Lauchlan-Arrowsmith noted this was warranted as an adaptation response to manage the risk from increased flooding. She said the measure was responsive to local conditions for Port Fairy with "... a 1.2m increase in sea level expected at Portland (and Port Fairy) by around 2098" ⁴⁵. This, she said, was consistent with a recommendation of the Intergovernmental Panel on Climate Change (IPCC) 6th Assessment Report (IPCC, 2022) to apply the 95th percentile in the range of SLR projections based on rising global temperatures and increased rainfall.

In a report to the GHCMA 'Tide Gauge Trigger Levels for Sea Level Rise Adaptation Pathways' (February 2022), Dr Lauchlan-Arrowsmith advised:

Like all coastal CMAs in Victoria, Glenelg Hopkins CMA uses coastal flood risk mapping that shows likely impacts of higher mean sea levels on coastal development into the future. This information has been used to set planning permit conditions for more than a decade in the form of Nominal Flood Protection Levels (NFPL). In general, the NFPL is the minimum recommended height for building floors to avoid the risk of over-floor flooding during the adopted 1% AEP design flood scenario.

Coastal flood risk management requires complex planning judgements to be made in terms of the timeframe over which land might be beneficially used and developed before the benefits of use and development are outweighed by the risks associated with flooding.

⁴³ D88, p21

⁴⁴ D171, para 14

⁴⁵ D102, slide 14

Making these judgements is very challenging given the inherent uncertainty in the rate of sea level rise and the likely timing of sea level rise impacts. But what is certain is that sea level will continue to rise for centuries (or more), and the adequacy of NFPL conditions placed on development today will diminish into the future to the point where they are no longer adequate, so a set and forget approach to land use and development conditions is not a viable long-term option ⁴⁶.

Mr Swan's evidence noted:

- Although SLR of 1.2m is unlikely by 2100, adoption of this level ensures that redevelopment or rezoning of land below this level will be appropriately managed for future generations ⁴⁷
- Australian Rainfall and Runoff indicates that at 2100, rainfall intensities are expected to increase at Port Fairy by approximately 19%. An increase in rainfall intensity has not been included in the development of the combined overlays, but would increase flood levels through the Moyne River system, regardless of the sea level conditions ⁴⁸.

Mr Bishop's evidence for S20, S64 and S69 included common conclusions, where he stated:

- adoption of 1.2m SLR for Port Fairy is not appropriate and is inconsistent with planning levels along the rest of Victoria and Australia
- allowance of 0.8m SLR is appropriate for the designation of areas at risk of future flooding in Port Fairy ⁴⁹.

Ms Barich, in summary of her evidence, said:

A 0.8m sea level rise is consistent with the State Planning Policy Framework and will provide Council with ample control over development in flood prone land. It is reflective of the current scientific research conducted into sea level rise indicating a rise of between 0.4 m and 1.2 m by the year 2100 for the nearby town of Portland, with a median rise of 0.72 m by 2100. These values in sea level rise are based on is a high reference scenario with no additional climate policy, so it is unlikely that we will reach the 1.2 m sea level rise by 2100. Even the Port Fairy Coastal Hazard Vulnerability Assessment reported a 1.2 m sea level rise as unlikely ⁵⁰.

Both Mr Bishop and Ms Barich opposed the adoption of 1.2 metres SLR based on the 95 per cent percentile for the SSP5-8.5 ⁵¹. Mr Bishop gave evidence that:

The IPCC 2100 SLR value for Portland is 0.72 m. Whilst there has been an increase to the global mean, the 0.8 m benchmark is still appropriate. The "SSP8.5 – low confidence" is an extreme scenario. Planning for the extreme is an inefficient approach. Risk is the product of likelihood x consequence. When likelihood is low, high consequences still result in relatively low risk. Adaptation measures, not just for new development but existing development, will be required in the event of such extreme outcomes ⁵².

Ms Barich gave evidence that:

It is worth noting that the SSP5-8.5 is a pathway based on no changes to emissions and no additional climate change policy adopted by any governments, therefore it is a very conservative estimate. The 95th percentile for the SSP5-8.5 predicts the 1.2 m level sea rise in 2100, which is an extreme abnormality. Therefore, it is very unlikely that this scenario will actually occur ⁵³.

⁴⁶ Attachment 4 to the GHCMAS 576a, noting elements of the report appeared in evidence statements D66 and D102

⁴⁷ D63, p13

⁴⁸ D63, p15

⁴⁹ D82, D77 and D176

⁵⁰ D75, p19

⁵¹ SSP - Shared Socioeconomic Pathways referred to in the Intergovernmental Panel on Climate Change emissions scenarios

⁵² D82, p47

⁵³ D75, p13

Ms Barich’s evidence noted “*Australian Rainfall and Runoff does not require the adoption of the 95th percentile in stormwater and flood computations*”⁵⁴.

Mr Bishop’s evidence was that:

Adoption of RCP8.5 is already a conservative planning position and adopting a projected 2100 SLR value close to the mean/median (0.8 m as per the standard across most of Australia) is a prudent approach⁵⁵.

Ms Ring for Sun Pharma, noting flood modelling was outside her expertise, considered whether the adoption of a benchmark SLR of 1.2 metres complied with State policy. She submitted:

The Moyne River and Belfast Lough and their environs are low-lying and by virtue of the terms “no less than” and “not less than” at Clauses 13.01-2S, 21.03 and 21.09-5, it is open to the Panel to consider and agree the more conservative approach that Council, with the support of the DELWP, has taken in relation to floodplain management⁵⁶.

Both Mr Bishop and Ms Barich advised the Amendment should continue to apply State policy of the use of not less than 0.8 metres SLR. They referred to the *Marine and Coastal Policy* (March 2020) and its companion *Marine and Coastal Strategy 2022* for support, plus Ms Barich referred to the *Victorian Floodplain Management Strategy* (2016). In response, the GHCMa noted the new level(s) that may arise from a review of Victoria’s benchmark for SLR are unknown.

The Cardno *Translation of Port Fairy Coastal Hazard Assessment 2019* presented mapping of various flood scenarios to illustrate probable outcomes based on the depth of water, velocity of flows and the hazard class and other factors⁵⁷. The scenarios ranged from present day through to 2100:

- present day maps allow 0.2 SLR
- 2030 maps allow 0.4 SLR
- 2050 maps allow 0.8 SLR
- 2100 maps allow 1.2 SLR.

The maps provide a picture of the differing outcomes submitted to the Panel by the experts considering the nominal planning horizon of 2100 and the SLR to be adopted.

The Cardno report presents a scenario for a 100-year ARI Catchment Flood Event with a 100 year ARI Coastal Inundation Event (that is, 1% probability for each of the riverine and coastal flood events) with 0.8 metres SLR at the year 2080. The map, reproduced at Figure 5, illustrates:

- the varying depths of water across the modelled flood plain
- the extents of water to a depth more than 500 millimetres generally in the vicinity of Belfast Lough, the Moyne River, Reedy Creek and other locations subject to inundation
- the extents of water to a depth less than 500 millimetres generally away from those areas.

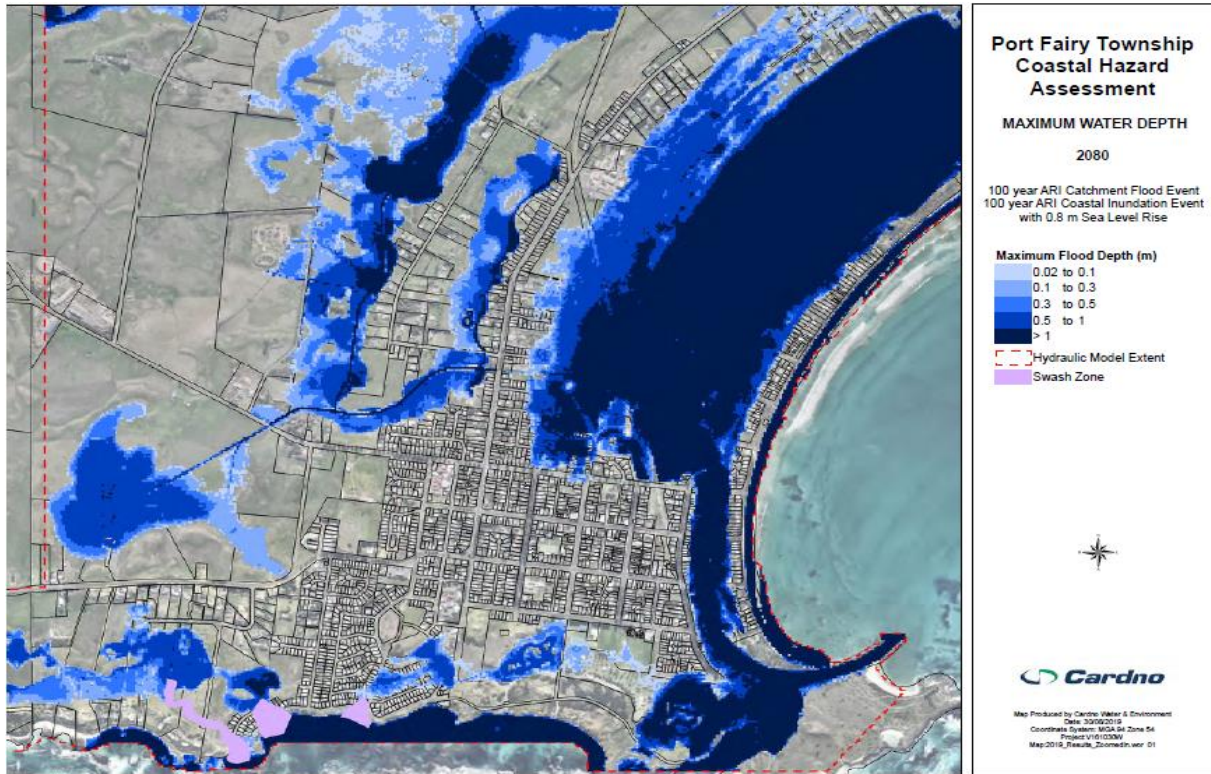
⁵⁴ D75, p20

⁵⁵ D75, p22

⁵⁶ D70, p38

⁵⁷ D16

Figure 5 Map showing 100-year ARI Catchment Flood Event and 100-year ARI Coastal Inundation Event with 0.8m sea level rise to the year 2080

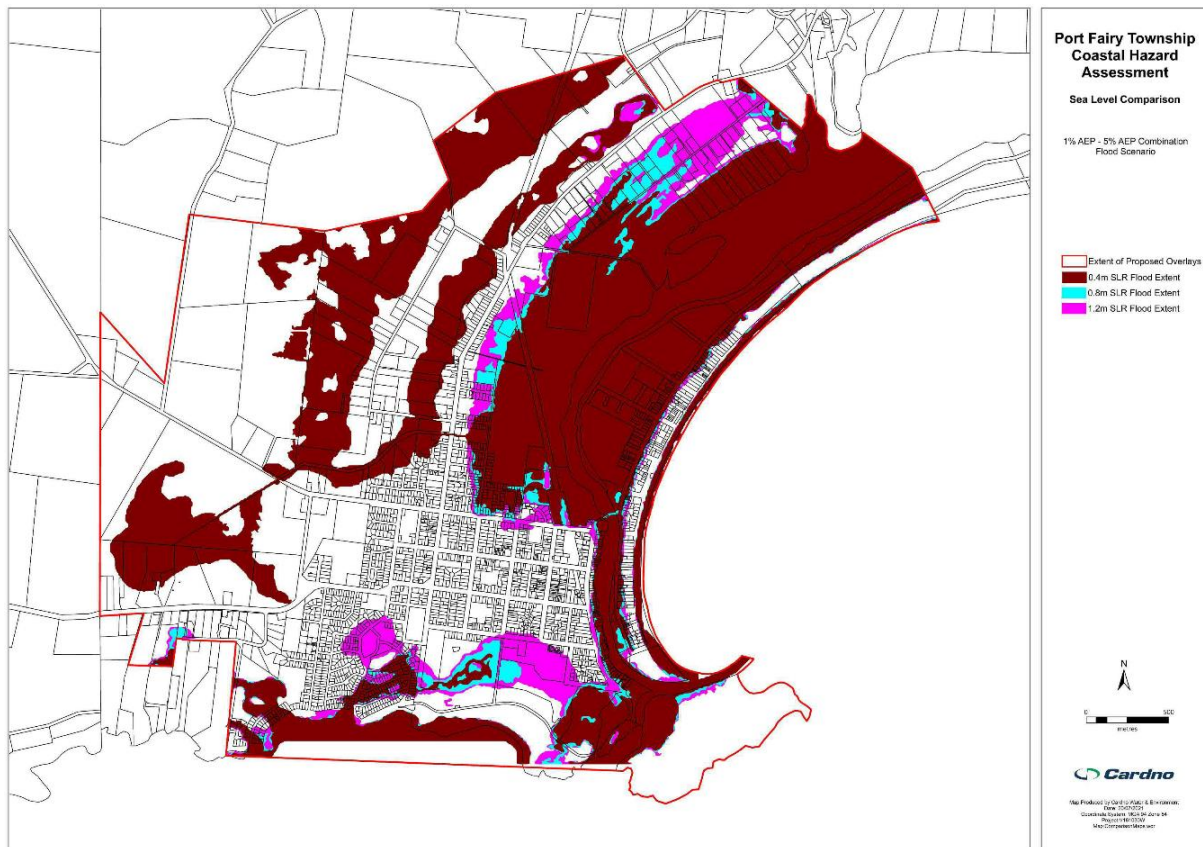


As a result, it is possible to imagine the areas where a FO is warranted in locations where depth of water is more than 500 millimetres and the LSIO in locations where depth is less than 500 millimetres.

The source document, the Cardno Translation of Port Fairy Coastal Hazard Assessment 2019 report, was provided by Council as background material for the Panel. Mr Swan, the author of the report was not questioned on it nor was any evidence lead by any party.

In the HARC Flood Summary report 2021, Mr Swan included maps showing the outcome of scenarios modelling SLR of 0.4 metres, 0.8 metres and 1.2 metres. Figure 6 is a map extracted from the Cardno report showing the extents of a 1 per cent AEP and 5 per cent AEP combination flood scenario to the year 2100.

Figure 6 Map showing the extents of a 1% AEP and 5% AEP combination flood scenario to the year 2100



The map shows the expanded areas subject to inundation under the various SLR scenarios of 0.4, 0.8 and 1.2 metres.

Where Figure 5 shows the depth of water, Figure 6 shows the lateral extents. Notably, the extents appear to be similar in both maps notwithstanding Figure 5 is for 2080 and Figure 6 is for 2100.

The Panel acknowledges the map at Figure 5 is at the year 2080 whereas State policy is *Plan for sea level rise of not less than 0.8 metres by 2100*.

Submissions for other landowners rejected the application of 1.2 metres SLR as an inappropriate benchmark and sought the application of 0.8 metres as the measure.

Submission 69 adopted the evidence of Ms Barich about the review of policy for 0.8 metres SLR under the *Marine and Coastal Policy*; and noted there should be “*a consistent and state wide approach to the adoption of a 0.8m SLR*”⁵⁸. Further, although agreeing with Council that the use of the words “*not less than*” means that the benchmark is considered a “*floor*” as opposed to a “*ceiling*”, S69 contended “*any departure from the benchmark of 0.8m by 2100 should be undertaken as part of a whole-of-government reform, rather than on a council-by-council, town-by-town basis*”. The submitter commented “*Until the State Government implements a revised benchmark, the policy in the Scheme should be followed*”.

Submitter 20 opposed the measure of 1.2 metres SLR and supported the evidence of Mr Bishop because the Amendment adopts “*a number of conservative approaches but on top of each other*”

⁵⁸ D141, para 147

and it is *“reasonable to question how appropriate and balanced that might be”*⁵⁹. They adopted Ms Barich’s statement *“it is highly unlikely that SLR of 1.2m will ever be experienced in Port Fairy”* and what was stated as a concession by Mr Swan that *“adoption of the higher SLR scenario may be too conservative or apply conditions that plan for risks that may begin to occur in 2100 or beyond for buildings or works with a design life that ends before this time period”*⁶⁰.

Submitters 6, 21 and 58 contended:

It is appropriate that significant departures from the State standard should be led by the State. If there is a risk to life and property, it is not appropriate that it be addressed in an ad hoc fashion and left to the whims of local politics. There is no reason that Port Fairy should have different standards than Point Lonsdale. If the Panel has any reservations about the 1.2m standard, it would be appropriate for it to make a recommendation that the standard be reconsidered at a State level⁶¹.

The experts differed on the timing of the impact of increased SLR.

Dr Lauchlan-Arrowsmith’s evidence included estimations of timeframes for acting to protect from flood impacts and for achieving SLR of 0.8 metres and 1.2 metres. As stated, she predicted a 1.2 metre increase in sea level could be expected at Port Fairy by around 2098 and, in different scenarios, she predicted a SLR of 0.8 metres to occur within a 22 year window from 2080 to 2102 (not including the low confidence scenario), with a similar range for 1.2 metres SLR (2098 to 2118)⁶².

Her uncertainty about predicting time of events was explained in her evidence:

Coastal flood risk management requires complex planning judgements to be made in terms of the timeframe over which land might be beneficially used and developed before the benefits of use and development are outweighed by the risks associated with flooding. Making these judgements is very challenging given the inherent uncertainty in the rate of sea level rise and the likely timing of sea level rise impacts. But what is certain is that sea level will continue to rise for centuries (or more), and the adequacy of NFPL conditions placed on development today will diminish into the future to the point where they are no longer adequate, so a set and forget approach to land use and development conditions is not a viable long-term option⁶³.

Mr Swan’s evidence noted:

Under the current range of IPCC emissions scenarios is it likely that 0.8 m of SLR will be exceeded at some point in the future. It is the timing of this change that will vary depending on the trajectory the climate takes, based on the speed and extent of the global response to limit global warming over the next 2 to 3 decades⁶⁴.

Ms Barich advised SLR of 1.2 metres will not likely occur for 60 to 80 years and communities should not be penalised by the adoption of flood hazards that may not occur.

Council’s closing submission noted *“we are not yet at the time period when we can safely know what climate change impacts on sea level rise will be”*⁶⁵.

⁵⁹ D145, para 24

⁶⁰ D145, para 24

⁶¹ D155, para 47

⁶² D66, p22

⁶³ D66, p24

⁶⁴ D82, p23

⁶⁵ D171, para 16

Council referred to the IPCC report and recommendations in each of its Part A and closing submissions. In the Part A submission, Council submitted:

Importantly, in support of the adoption of a 1.2m SLR, the report (that is the HARC Flood Summary Report 2021) states:

The level of the maximum 0.8m SLR cases plus a 300mm freeboard level is unlikely to provide protection against flood levels likely to occur in the area when sea level rise exceeds the 0.8m threshold, noting that the latest IPCC report (Sept. 2019) for the Oceans and Cryosphere has revised upward the projected global average increase in sea level to 1.1 metres by 2100⁶⁶.

In its closing submission, Council submitted:

The position advanced is that the IPCC SSP5.8-5 scenario is 'plausible but very conservative for planning past mid-century'. Council observes that no experts have sought to depart from the use of SSP5.8-5 scenario as the basis for planning for applying sea level rise benchmarks. It is the appropriate scenario to form the basis of sea level rise projections and the Panel should on the evidence accept this.

The dispute is confined to whether the mean or 95 percentile of the scenario should be adopted. As is put by all parties this is a matter risk and the appetite for risk⁶⁷.

The issue for the Panel was addressed when Council added:

This Panel is being urged to form a concluded view that the SSP5.8-5 scenario is appropriately conservative as a measure but that it has assessed and formed the view that the 95th percentile of that scenario is not (rather than the mean). It is unenviable position for the Panel⁶⁸.

The adoption of a freeboard margin adds to the complexity. The 1% AEP design flood scenario is commonly adopted by responsible authorities and flood plain management agencies when considering the minimum recommended height for building floors to avoid the risk of over-floor flooding. Application of a freeboard margin requiring elevated floor levels of dwellings and other buildings is a means to protect against overtopping of the floor level.

The GHCMA adopted Dr Lauchlan-Arrowsmith's tide gauge adaptation pathway approach in proposing to set the NFPL based on 1.2 metres SLR with no freeboard above the NFPL. The GHCMA submitted:

Setting floor levels based on a flood level estimate with no freeboard is not new for Port Fairy and Floors set at the 1.2m SLR flood level estimate with no freeboard margin will in general, be marginally higher than floors set using the current controls⁶⁹.

Mr Swan compared the proposed use of 1.2 metres SLR and a maximum 1% flood envelope with no freeboard to Melbourne Water's approach using 0.8 metres SLR and a 600 millimetre freeboard. The figures produced similar NFPL, from which Mr Swan noted:

With the exception noted above, the LFDP appears to provide reasonable flexibility for applicants to provide innovative responses to flood related issues⁷⁰. I note that although the LFDP nominates the NFPL, it allows for the GHCMA to vary that level in response to the specific application, if necessary. The NFPL adopted is effectively equivalent to that that would be calculated using the approach adopted by Melbourne Water, noting that this nominally uses a 0.8m sea level rise⁷¹.

⁶⁶ D88, para 45

⁶⁷ D171, para 9

⁶⁸ D171, para11

⁶⁹ D125, slide 20

⁷⁰ The exception was to do with access issues not relevant to the freeboard issue under consideration

⁷¹ D63, Section 9.1

Submitter 20 argued against this approach:

78. The evidence of Mr Bishop (which is also supported by Ms Nina Barich) is that the proposed 1.2m SLR with no freeboard will result in great cost to the community and is not necessary. The evidence before the Panel of Ms Barich is that the application of a NFPL based on 1.2m SLR is not the equivalent of 0.8m SLR plus freeboard and will result in significant fill and additional cost to developers and the community.

79. If a NFPL is to be specified (which on the evidence of Mr Bishop is that it need not be) it should not be based on 1.2m SLR but 0.8m SLR. If a freeboard is to be specified it should be 300mm not 600mm ⁷².

Submitter 20 cited Mr Bishop's evidence about his preferred approach with freeboard. He noted:

I do not support this approach. The application of freeboard to well defined design flood levels is a standard industry practice across the country in every jurisdiction. Adopting this approach will lead to confusion and misunderstanding by both the community and water professionals. It also has the disadvantage that an area of uncertainty (a discontinuity) occurs in the transition from coastal to riverine flooding.

A reasonable approach to flood risk management can be achieved through the adoption of a standard design flood level plus freeboard method ⁷³.

Submitters 6, 21 and 58 supported the application of a freeboard with SLR of 0.8 metres; they stated:

The practical distinction between the 1.2m SLR with no freeboard or 0.8m SLR with 600mm freeboard is an important one in terms of a development's ability to realistically achieve mitigation measures. Consequently, our clients support the application of a 0.8m SLR together with the provision of a 600mm freeboard which allows for development to take realistic steps to mitigate flood risks ⁷⁴.

(iii) Discussion

There is universal acceptance of climate change and likely impacts from increased rainfall, runoff, and ocean activity globally, not just at Port Fairy. No submitter sought to challenge the need to plan for a SLR of at least 0.8 metres, nor the science behind SLR. The opposition related to planning for an increase in SLR to a benchmark rejected as unlikely or too distant, one which did not accord with the usual benchmark or practice and one which the State Government had not mandated.

Port Fairy has a long history of flooding. There is acceptance of further future flooding from riverine, ocean and tidal activity, as well as from a combination of both in those parts of the township where there is a confluence of flows in the Moyne River and from the sea. There is general acceptance parts of the township will flood. Planning controls are to manage subdivision and construction of dwellings on land liable to flooding. Council submitted there are societal benefits accruing from effective controls ⁷⁵.

The Panel accepts the need to use the latest climate science to plan for increased flooding and to generally limit development in areas most susceptible to flooding. The issue for the Panel is the threshold that should be the basis for flood controls under the planning regime. The Panel recognises the thrust of State policy to minimise impacts and adapt to impacts of climate change. As noted, PPN12 recognises flooding is a natural hazard and *"Through careful planning, flood risks*

⁷² D145

⁷³ D82, p48

⁷⁴ D155, para 48

⁷⁵ D88, para 16

to life, property and community infrastructure can be minimised and the environmental significance of our floodplains protected”⁷⁶.

To paraphrase Council, the source of water is an irrelevancy to flooded Victorian communities. There may be a societal expectation that development should not be allowed in locations subject to any inundation, but that is not State policy. Clearly, policy is about protecting property by making allowances for the 1% AEP, planning for SLR of not less than 0.8 metres and to require building levels at a height above the NFPL.

The issue before the Panel was summarised in Dr Lauchlan-Arrowsmith’s evidence. She said the issue is about making judgments on the timeframe over which land can be used before the benefits of use and development are outweighed by the risks associated with flooding. The issue for the Panel is to consider the probability of a rise in sea level of 1.2 metres when the timeframe is distant and the impact this may have on orderly planning in the meantime.

Submissions and evidence about what SLR to adopt move around a nominal horizon date:

- Dr Lauchlan-Arrowsmith’s evidence supporting a SLR of 1.2 metres was based on long term horizons and IPCC forecasts with 1.2 metres increase in sea level expected at Port Fairy by around 2098. Her evidence and response to questions from the Panel confirmed that whatever SLR was adopted, it would be under review such that the outcome of the Amendment was not a set and forget result.
- Mr Swan’s evidence included the statement SLR of 1.2 metres is unlikely by 2100
- Ms Barich’s evidence was the median rise is 0.72 metres by 2100
- Mr Bishop’s evidence was the IPCC 2100 SLR value for Portland is 0.72 metres by 2100 SLR value close to the mean/median 0.8 metres as per the standard across most of Australia is a prudent approach.

The experts did not agree on a particular year with their predictions. Their evidence confirmed uncertainty of the timing of impacts from flooding into the future. The Cardno report provided information to support SLR of 0.8 metres by 2080. On that basis, State policy to plan for SLR by 2100, is achieved. On other evidence, the SLR of 1.2 metres may not be achieved by 2100.

The Panel endorses Dr Lauchlan-Arrowsmith’s statement that the controls to apply under the Amendment are ‘not set and forget’. Council and the GHCMA will continue to monitor policy changes and actions by governments to influence SLR. In that circumstance, the Panel is not concerned at adopting the year 2080 as a suitable base year for the setting of controls at 0.8 metres SLR.

The Panel accepts there are reasons in addition to the modelling to adopt the 0.8 metres SLR. Doing so:

- is consistent with State Planning Policy, and
- will lead to the application of flood controls for Port Fairly consistent with the statewide application of policy, and
- the GHCMA has not adopted a SLR of 1.2 metres elsewhere in its jurisdiction.

The Panel does not take the position that a SLR of 1.2 metres will not occur. As the witnesses agree, the future cannot be predicted with certainty. This is consistent with Council’s closing

⁷⁶ D24

submission as quoted - “we are not yet at the time period when we can safely know what climate change impacts on sea level rise will be”.

The position adopted by the Panel is based on all the information presented to it in the Hearing, through the evidence of experts and submissions.

The Panel accepts the controls based on 0.8 metres SLR will provide Council with ample control over development of flood prone land.

The Panel recognises the adoption of 0.8 metres SLR will require the preparation of revised mapping and that this mapping will require ‘smoothing’ in accordance with the GHCMAs policy as described in Council’s Part A submission (and as raised by submitters and discussed at the Directions Hearing)⁷⁷. However, the Cardno maps should facilitate the work which will benefit from the mapping exercise prepared for the initial exhibition of the Amendment.

The Panel does not consider any measure of freeboard is warranted.

(iv) Findings

The Panel finds:

- State planning policy requires future planning for areas liable to flooding to allow for sea level rise of not less than 0.8 metres to 2100.
- Both the Floodway Overlay 3 and the Land Subject to Inundation Overlay 4 adopt the benchmark of 0.8 metres sea level rise.
- The map at Figure 5 in this report is a suitable basis for recalculating the planning scheme maps.

5.3 Application of the Flood Overlay

(i) Introduction

State planning policy for Climate Change Impacts is at Clause 13.01 in the Moyne Planning Scheme. Provisions dealing with Natural hazards and climate change and Coastal inundation and erosion are at Clause 13.01-1S and 13.01-2S respectively.

The Amendment proposed FO3 will apply to land subject to an inundation depth of 0.5 metres and above, or combined water velocity and depth hazard factor of more than 0.4m²/sec, under a 1 per cent AEP flood event with a 1.2 metre SLR.⁷⁸ (Panel emphasis)

A purpose of the FO is:

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

In the Moyne Planning Scheme, the FO is applied to land in and around the Port Fairy township affected by past flood events or where flooding might occur according to modelling.

PPN12 guides planning authorities on the application of the FO; it states:

The FO applies to mainstream flooding in both rural and urban areas. These areas convey active flood flows or store floodwater in a similar way to the UFZ, but with a lesser flood risk.

⁷⁷ D88, para 14

⁷⁸ D99, para 11.1

The FO is suitable for areas where there is less need for control over land use, and the focus is more on control of development. As with the UFZ, in some cases the FO can cover the full extent of land subject to inundation, for example, in situations where the floodplain is relatively narrow and deep ⁷⁹.

PPN12 advises where the FO can be applied; locations include:

- rural land which is mainly undeveloped
- urban land which is mainly undeveloped
- land which is unsuitable for intensive urban development but may be suitable for development compatible with the flood risk (for example, public purpose uses, such as school grounds, golf courses, sports grounds and recreation areas)
- urban land that is fully or substantially developed (for example, currently zoned residential, commercial or industrial areas) ⁸⁰.

DELWP's *Guidelines for Development in Flood Affected Areas 2019* describes the intention of a FO:

Floodways are those parts of the floodplain that are important for the discharge or storage of water during major floods. They are usually aligned with naturally defined waterways, channels and depressions and often carry relatively deep and high velocity flows.

Floodways can be defined in various ways, depending on what data is available. Some common methods include considering various combinations of depth and flow velocity, identifying those parts of the floodplain that are important for conveying or storing floodwater, or mapping a flood extent corresponding to a major flood, say a 10% AEP event ⁸¹.

The publication includes a precursor to the application of a FO:

Before flood provisions can be introduced to a planning scheme, information on the type and extent of flooding is required to accurately map land affected by flooding and apply the most appropriate flood provision.

Unlike most controls for the use and development of land, the flood zone and the flood overlays do not represent the full extent of flooding. Floodplain management planning is about planning for an acceptable level of risk ⁸².

PPN12 provides a definition of a floodway:

Floodway: The channel, stream and that portion of land subject to inundation necessary to convey the main flow of floodwater, and usually comprising the high-hazard portion of the floodplain where most development is to be avoided. Floodways are often, but not necessarily, the areas of deeper flow or the areas where higher velocities occur ⁸³.

The GHCM defined floodway for the purpose of land use and development planning:

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

- the 100 YR ARI flood depth is likely to reach or exceed 0.5 metres; and/or
- the estimated 100 YR ARI flood hazard factor (velocity x depth) can be expected to reach or exceed 0.4m²/sec.⁸⁴

Council submitted this definition confirmed the adopted overlays are risk-based flood controls and tools to apply the FO in preference to the LSI0 depending on the depth and velocity of flood waters. Council submitted "*This is logical and appropriate*" ⁸⁵.

⁷⁹ D24, p6

⁸⁰ D24, table 1, p11

⁸¹ D22, p19

⁸² D22, p17

⁸³ D24, p9

⁸⁴ D99, para 12

⁸⁵ D99, para 15

The Amendment proposes LSIO4 will apply to land subject to an inundation depth below 0.5 metres, and/or combined water velocity and depth of less than 0.4m² hazard factor of 0.4 metres squared per second under a 1 per cent AEP flood event with a 1.2 metre SLR.⁸⁶ (Panel emphasis)

The purposes of the LSIO include:

- 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.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To minimise the potential flood risk to life, health and safety associated with development.

DELWP ‘*Guidelines for Development in Flood Affected Areas 2019*’ describes the intention of a LSIO:

The Land Subject to Inundation Overlay applies to riverine and coastal flooding and represents the area of land flooded by the 1% AEP flood. If the high hazard Floodway Overlay component has also been identified, it is excluded from the Land Subject to Inundation Overlay⁸⁷.

PPN12 describes the basis for assessing flood events:

In Victoria, the DFE for land use planning and building purposes is the 100-year ARI (average recurrence interval) flood, which occurs on average once every 100 years. This is the basis for declaring flood levels and flood areas under the *Water Act 1989* and for setting minimum building floor levels under the *Building Act 1993*⁸⁸.

PPN12 provides a definition of land subject to inundation:

The estimated area that would be inundated by the DFE. This will vary for different purposes, but should be based on the 100- year ARI flood for land use planning. Its extent will be less than the extent of flood-prone land, which is based on the PMF⁸⁹.

PPN12 guides planning authorities on the application of the LSIO over land that will be inundated. The LSIO does not preclude development of land that is inundated but requires a development application be made to allow the individual conditions and circumstances of the proposal to be evaluated.

The key issues to be resolved are:

- where the FO should be applied
- where the LSIO should be applied.

(ii) Submissions and evidence

Council’s closing submission discussed the application of controls for floods influenced by SLR:

The limited number of cases demonstrate that there is no established practice yet and certainly no prior contested application of the FO as a climate change flooding tool. The Panel should not approach the evaluation of this matter on the basis that there is any settled application principles⁹⁰.

⁸⁶ D99, para 11.2

⁸⁷ D22

⁸⁸ D24, p1

⁸⁹ D24, p9

⁹⁰ D171, para 32

Council submitted *“The LSIO4 is applied to areas within the flood fringe or area of land subject to inundation excluding the floodway. This is consistent with PPN12”*⁹¹.

Various submissions preferred the application of the LSIO to the FO, particularly where the extent of flooding is based on SLR of 0.8 metres such that the depth of water warrants classification of the hazard level as low. For example, Mr Bishop preferred the LSIO as, in his opinion:

The Floodway Overlay is not an appropriate planning control over areas of coastal inundation (where there is no waterway impact). In these areas the LSIO can adequately capture inundation risk and allow for appropriate conditions on development through the referral process⁹².

Ms Barich gave evidence the LSIO was more appropriate where the hazard class was low and the depth of inundation not more than 300mm⁹³.

Numerous submitters and experts preferred the LSIO to the FO for reasons that the level of inundation did not justify the application of the FO to respective sites.

In addition, many submitters raised issues about the ability to subdivide if their land is included in the FO and be subject to the LFDP.

(iii) Discussion

The benchmarks of depth of water and velocity set the FO to apply where risk to property and life is high. The provisions of the FO, including its purposes, make the FO the preferred control to limit development of land where the level of inundation poses a risk assessed as a high hazard category.

There is no dispute between the parties about the objective use of the FO in that it should be applied where conditions warrant. The Panel agrees depth of water and safety should be the considerations for selection and application of the overlay.

The dispute arises in the rationale for use of the FO upon the cause of flooding coming from riverine impacts, coastal impacts only or coastal induced flooding. Council encapsulated the position in its Part B submission where, after defining Riverine Flooding and Coastal Flooding, it submitted:

In one sense it is the case that the difference between riverine and coastal flooding is an irrelevancy. A person whose dwelling or land is inundated by water is not materially impacted one way or another way if that water is derived from the sea, from riverine processes or in part by both⁹⁴.

Tieman and Pendragon dealt widely with this and confirmed the clarity of State policy on the need to plan to address flood risk. The FO is one of the tools available with various publications advising on its use. Although there was contention about the ability to use the FO for riverine flooding and coastal flooding, there was no argument against the use of controls to identify where high hazard flooding occurs. No submitter argued against the use of controls to identify where flooding occurs; the submissions were about the use of the FO and the LSIO and the base SLR that influenced what might be high hazard areas or low hazard areas.

⁹¹ D99, para 13

⁹² D77, p52

⁹³ D75, p7

⁹⁴ D171, para 36

Based on the material presented about the severity of the past flood events and locations affected by flooding, whether caused by riverine flooding, coastal induced or a combination of both, the Panel supports the use of the FO based on 0.8 metres SLR.

In setting the benchmarks of depth of water and velocity less than those for the FO, the control separates the FO from the LSIO. In this way, the LSIO applies where the level of inundation poses less risk to life and property and allows development to be considered on its merits with the ultimate managed such that outcomes do not increase risk of flooding.

PPN12 differentiates land which conveys flood waters from land which is subject to backwater impacts and passive ponding of water. PPN12 guides the application of the LSIO to rural and urban areas where the floodway has been identified, and where the LSIO covers the balance of the land, especially in areas that are 'flood fringe' locations, with lower flood depths, lower flow velocities and lower potential flood risk. These criteria support Council's use of the LSIO.

Advocates for various landowners preferred the LSIO and, by opposition to the FO, sought its broader application. This was because it was common ground that application of the LSIO allowed applications for planning permits for subdivision and for buildings and works consistent with the flood controls with decision criteria in the provisions of the relevant zone and overlay and according to any LFDP.

With the Panel's recommendation of 0.8 metres SLR, the provisions of LSIO4 must be amended to delete reference to 1.2 metres SLR and to make any consequential edits.

(iv) Findings

The Panel finds:

- Most of the area to be covered by a flood provision will be subject to the Land Subject to Inundation Overlay Schedule 4.
- The use of the Floodway Overlay is justified where the expected depth and flow of water creates a high hazard category and poses a risk to life and property.
- The application of Floodway Overlay Schedule 3 is consistent with State policy.
- The provisions of the Floodway Overlay Schedule 3 should be amended to reflect 0.8 metres sea level rise.
- The Land Subject to Inundation Overlay is commonly applied where development can be managed, and the outcomes do not increase the risk of flooding.
- The application of the Land Subject to Inundation Overlay Schedule 4 as proposed is appropriate for those areas where modelling has shown inundation is to a relatively shallow depth.
- The provisions of the Land Subject to Inundation Overlay Schedule 4 should be amended to reflect 0.8 metres sea level rise.

5.4 Local Floodplain Development Plan and policy

(i) Introduction

The exhibited Amendment sought to:

Amend the Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme to replace the existing Port Fairy Local Floodplain Development Plan 2013 introduced by Amendment C54 with the Port Fairy Local Floodplain Development Plan 2019⁹⁵.

The Panel bases its consideration of the LFDP on the Day 1 version.

In terms of policy, Council's Part A submission noted the Amendment proposed changes to Clauses 21.06, 21.09-3 and 21.11. The exhibited changes were to:

- Amend Clause 21.06 to reflect a 1.2 metre SLR benchmark as proposed in the new FO and LSIO provisions.
- Amend Clause 21.09 to replace the existing Local Areas Policy for Port Fairy. This includes identifying a settlement boundary as identified in the *Port Fairy Coastal and Structure Plan 2018*.
- Amend Clause 21.11 to introduce the following background documents:
 - Port Fairy Coastal and Structure Plan 2018
 - Translation of Port Fairy Coastal Hazard Assessment - Port Fairy Coastal and Structure Planning Project (Cardno) 2019
 - Port Fairy Car Parking Strategy 2017⁹⁶.

Council's Part B submission advised the change to Clause 21.09-3 Port Fairy was to:

- clarify and consolidate objectives and strategies relating to Housing and Settlement, Environmental and Landscape Values, Environmental Risks and Amenity, Built Environment and Heritage, Economic Development, Transport and Infrastructure; and
- update Port Fairy 'Context'⁹⁷.

(ii) Submissions and evidence

The exhibited Amendment included a draft LFDP, the purpose of which is to support *"a performance-based approach to decision-making that reflects best practice in minimising the risks associated with development of land in the floodplains of the Moyne River and the Southern Ocean"*⁹⁸.

Council noted the purpose of the LFDP, following the guidance of PPN12, is:

- to provide a set of requirements and guidelines for development in a particular area. It should address local circumstances and record local flooding information.
- to simplify and streamline the consideration of planning permit applications and avoid the need to prepare a flood risk report⁹⁹.

Council's Part A submission tabled a revised version of the LFDP. The submission advised the exhibited version had been reconsidered by Council officers after consideration of submissions received during exhibition, and upon consultation with the GHCMA¹⁰⁰. The submission advised the changes were framed to enforce the character of Port Fairy in accordance with the directions of the Structure Plan. The changes include setting a town boundary and inserting a map of the extended township areas.

Council's Part B submission described the changes:

Amend draft Local Floodplain Development Plan Incorporated Document by:

⁹⁵ D88, Part A para 72

⁹⁶ D88, para 72

⁹⁷ D99, para 7.11

⁹⁸ Section 1.0 Purpose, of LFDP

⁹⁹ D88, para 48

¹⁰⁰ D88, para 47

- inserting a factor that influences flood risk at 2.0 Purpose of the Overlays that reads ‘the potential for dominance of riverine floods in the Moyne River estuary/Belfast Lough portion of the floodplain, versus the potential for floods in this area that are dominated by ocean storm tides’;
- updating the Flood History at 4.1, Effect of Climate Change on Flood Risk at 4.2 and Flood Information at 4.3;
- updating the Nominal Flood Protection Level at 4.5;
- updating and clarifying some performance criteria at 6.0;
- clarifying decision guidelines 1 and 3 at 7.0;
- making minor typographical and formatting changes ¹⁰¹.

The Panel notes Council’s statement about the character and elements to be protected under policy in the Part B submission.

74. The existing policy for Port Fairy in Clause 21.09-3 seeks to retain and enhance its coastal and river character and protect vegetation. It also seeks new development that respects the historic built form and natural environment and building heights that reflect traditional elements of heritage buildings in the town ¹⁰².

There was little discussion about the revisions to the local policies.

(iii) Discussion

The construction of the LFDP was the subject of submissions from parties. Council proposed the LFDP as an Incorporated Document intended to assist the understanding of the basis and operation of the planning controls as well as to assist with applicants in making an application for development for land within the FO and the LSIO. Council confirmed the principles sought to set out the basis transparently and concisely for the planning controls as well as to describe how and where these applied and how these would be administered. Submitters supported the incorporation of a LFDP but opposed some aspects of the detail.

Submitters (including Rivers Run, S63, Pendragon and Hyland, Atkins and Tieman [S6, S21 and S58]), sought changes to the LFDP. In summary, key changes included:

- apply SLR of 0.8 metres
- improve the operation of the controls, including through clarifications of text
- better address the circumstance of individual properties.

Each submitter tabled amendments to Council’s versions of the LFDP.

Although submitters sought changes to the LFDP, none disagreed with its intent. The focus of submissions turned on how the LFDP would apply given divergent interpretations of the head provisions of the FO as applied by Council and by submitters.

In its Part A submission, Council stated:

The LFDP works in conjunction with the FO and LSIO. The requirements in the LFDP prevail over the FO and LSIO. This allows the controls to target local requirements ¹⁰³.

In its closing submission, Council rebutted interpretations of Clause 44.03 other than its own. Council stated:

¹⁰¹ D99, para 7.9

¹⁰² D99, para 74

¹⁰³ D88, para 49

The Council has approached the application of the FO in combination with the use of the LFDP with the purpose that it would permit, in certain circumstances, the development of lots wholly within the FO and LSIO.

In these circumstances the risk adverse approach to adopt the use of the FO in combination with the LFDP ¹⁰⁴

The various interpretations of the controls influenced the changes each submitter presented. In summary, submitters disagreed with Council's interpretation that the provisions of Clause 44.03 allowed for the subdivision of land within the FO. Submitters expressed concern about the ability of the LFDP to allow for subdivision in the FO. As submitted by S6, S21 and S58, they were keen to avoid an unintended consequence of prohibiting subdivision, which was the opposite position intended by Council ¹⁰⁵.

During the final drafting session, the Panel asked Council numerous questions about the drafting of the LFDP with the aim of testing the acceptability of changes sought by submitters. Mostly, Council did not accept the need to make changes as sought. There are two matters where the Panel supports changes: one against the Council and one with support from Council.

Submitters 63, 6, 21 and 58 sought changes to vary access restrictions across flooded land where access would be denied under the provisions as drafted in the LFDP. Each submitter proposed word changes to insert a definition of 'accessway'. The Panel accepts a definition can clarify rights of access, notwithstanding Council did not support the inclusion of a definition or either proposal. The Panel recommends what it regards as a suitable combination of the approach proposed by these submitters by including the insertion of the following definition of Accessway:

Accessway: An accessway is the path or route within a property used to approach a public road or flood safe place. An accessway can be referred to as a driveway.

The second matter was to correct what appeared to be a drafting error. Council accepted the Panel suggestion that the drafting of new clause 6.3 in the LFDP omitted the word 'not' such that the unintended outcome would potentially be to allow building in high hazard locations. Council agreed with an amendment to section 6.3 Buildings, to delete the proposed opening statement and insert the following:

New buildings must not be sited where the flood depth exceeds 500 millimetres or the product of velocity and depth (VxD) exceeds 0.4 metres squared per second.

The recommendation to adopt the SLR of 0.8 metres will lead to the broader application of the LSIO in place of the FO. The effect will be to create certainty about the opportunity for permit applications. Where the FO applies, the LFDP can work in combination.

The Panel has recommended the provisions of FO3 and the LSIO4 be amended to delete reference to 1.2 metres SLR and to make any consequential edits. The Panel makes the same recommendation for the LFDP. That is, the LFDP must be amended to insert 0.8 metres.

As drafted, and with the amendments the Panel recommends, the LFDP should be able to achieve its purpose of assisting planning permit applications.

With regard to local policy in Clause 21.09 of the planning scheme, Council's Part A submission noted submissions that sought amendments to Clause 21.09-3 Local Areas – Port Fairy to clarify

¹⁰⁴ D171, para 34 on

¹⁰⁵ D155, para 48a

and consolidate policy¹⁰⁶. This was reflected in Council's Part A submissions in D88, where Appendix 6 was substantially revised.

The Panel notes Clause 21.09-5 applies to Port Fairy West which is identified as the area "*located to the west of the Port Fairy Township and is bound by the Princes Highway to the north, the Southern Ocean to the south, rural properties to the west and the existing urban zoned areas of Port Fairy to the east*"¹⁰⁷. No changes were proposed to Clause 21.09-5.

However, in the light of the Panel recommendations to adopt 0.8 metres SLR, consequential changes are required to Clause 21.06 to reflect this.

(iv) Findings

The Panel finds

- The Local Floodplain Development Plan is a useful guiding document to assist in implementation of the Floodway Overlay and Land Subject to Inundation Overlay and is supported as an Incorporated Document.
- The Local Floodplain Development Plan be amended to edit the definition of 'accessway', to edit the siting requirements for new buildings and to reflect 0.8 metres sea level rise.
- The local policy changes included in the Day 1 version of Clause 21.09-03 are appropriate.
- Clause 21.06 needs to be revised to reflect the Panel recommendation of 0.8 metres sea level rise.

5.5 Recommendations

The Panel recommends:

7. **Revise all relevant planning scheme maps to reflect 0.8 metres sea level rise and undertake a 'smoothing' process of flood levels on affected properties.**
8. **Update all relevant documents, including but not limited to Floodway Overlay Schedule 3, Land Subject to Inundation Overlay Schedule 4, Clause 21.06 and the Local Floodplain Development Plan to substitute 1.2 metres sea level rise to 0.8 metres sea level rise.**
9. **Amend the draft Local Floodplain Development Plan as follows:**
 - a) **Insert the following definition in section 3.0 Glossary:**
Accessway: An accessway is the path or route within a property used to approach a public road or flood safe place. An accessway can be referred to as a driveway.
 - b) **Delete the opening statement in section 6.3 Buildings, and replace it with:**
New buildings must not be sited where the flood depth exceeds 500 millimetres or the product of velocity and depth (VxD) exceeds 0.4 metres squared per second.

¹⁰⁶ D88, para 84.7

¹⁰⁷ D88

6 Proposed built form overlay changes

6.1 Background

The Amendment seeks to:

- Apply DPO4 to Growth Area A and part of Growth Area B
- Replace the existing 19 DDO schedules with seven DDO schedules.

6.2 Development Plan Overlays

(i) Introduction

The Amendment seeks to apply a new DPO4 to guide the development of land in the growth areas as identified in the Structure Plan. Further, it aims:

To encourage a diverse range of new and affordable housing opportunities within Port Fairy.

To deliver new subdivisions which are responsive to the character and visual amenity of Port Fairy through high quality urban design and which support a new community with strong, walkable linkages to the existing township.

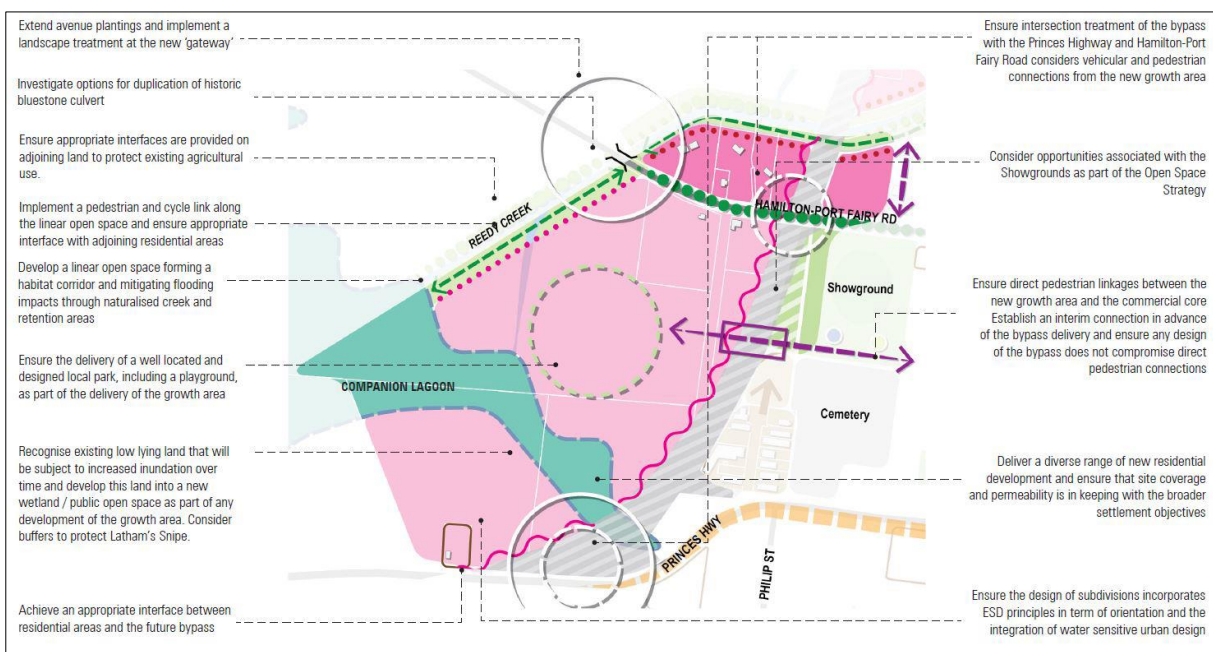
To deliver a new linear reserve for residents and visitors to Port Fairy along the Reedy Creek corridor.

To deliver new development that is responsive to the environmental constraints of the area such as flooding, including that associated with sea level rise, and to protect and enhance the Companion Lagoon and its habitat values.

It is noted the DPO is not proposed to be applied to land within the settlement boundary that is best described as the extension of Growth Area A.

The DPO contains a Precinct Plan, which originated from Figure 9 of the Structure Plan. A key element of this Precinct Plan is the recognition and protection of Companion Lagoon, as shown in Figure 7.

Figure 7 Growth Area A Precinct Plan as shown in exhibited Development Plan Overlay Schedule 4



The DPO requires a Development Plan be prepared before a permit can be issued, with some exemptions. The Development Plan must generally be in accordance with the Precinct Plan.

(ii) Submissions and evidence

Council advocated DPO4 was the appropriate tool to guide development of the growth areas.

Conway supported the use of the DPO, however noted DPO4 was prepared on two misunderstandings, namely:

- the land is subject to the effects of sea level rise
- Reedy Creek forms part of the land to be covered by the DPO.

Conway argued that as Reedy Creek was not physically located on its land, the requirement for works to embellish Reedy Creek as a waterway corridor, as indicated in the Precinct Plan, should be deleted.

A similar point was made in relation to the Bank Street pedestrian link. Conway questioned its ability to construct the pedestrian link to Bank Street as shown in the Precinct Plan, as much of the link was outside its land.

Conway submitted Lagoon Road should be recognised in DPO4 as an important public access road, and the Road Closure Overlay that affects this road should be removed. Although accepting that Companion Lagoon needed to be responded to in any development, Conway contended DPO4 should better reflect its location, which is mostly outside their land.

In cross examination, Mr Glossop agreed the main purpose of DPO4 was to ensure the growth area set aside land for Companion Lagoon. He stated that while Reedy Creek may not be on the Conway land, it is very close to it and any development should recognise the creek through naturalising part of the creek corridor and be generally setback. On the issue of the pedestrian link, Mr Glossop believed the Conway land should make provision for the link, even if it could not provide the entire link to Bank Street.

Submitter 73 was concerned the Amendment did not adequately protect the biodiversity of Companion Lagoon or the habitat for Latham's Snipe, an important migratory shorebird, and submitted the existing wetland area, and a 100-metre buffer, be protected from development.

DELWP (S38) suggested several additions to DPO4 to better protect habitat, native vegetation, and wetland values present in Companion Lagoon. The CFA (S83) encouraged wording that recognised grassfire risk and requirements for fire sensitive development planning.

Considering submissions made, Council proposed several changes to the exhibited Amendment to better reflect the environmental values of Companion Lagoon in its Part A submission.

(iii) Discussion

The Panel notes that while the Explanatory Report and the first objective of the DPO indicates it applies to parts of Growth Area B, the exhibited maps do not reflect this. Under questioning, Council said that it did not apply to Growth Area B. The Panel is unclear on this issue.

The Panel believes the rationale for applying the DPO to Growth Area A equally applies to Growth Area B. Growth Area B would benefit from the same level of guidance and coordination on key structural elements and built form. The Precinct Plan for Growth Area B found in the Structure Plan (Figure 10) represents a considered and well resolved plan, and should be included in DPO4, in a similar manner to the Precinct Plan for Growth Area A.

Conway argued it should only provide those elements of the Precinct Plan on its land, and on that basis, some references in the DPO be deleted. The Panel disagrees. The Conway land comprises the shoulder of Reedy Creek and so any development of that land provides an opportunity to provide part of the creek corridor, through naturalisation and landscaping. The adjoining landowner, at the time of development, can provide the remainder of the corridor. The Structure Plan's vision for a revitalised and accessible Reedy Creek represents a positive urban design outcome and should be realised over time.

Similarly, the Conway land is not expected to provide the entire pedestrian link to Bank Street, however, land should be set aside to ensure the link can be realised over time. The same applies to Companion Lagoon. The redevelopment of the Conway land must protect those parts of Companion Lagoon on their land, with the balance protected when the neighbours develop. As typically occurs, the approach to the provision of the Precinct Plan will be staged, timed to occur when the landowners choose to develop.

Conway made several strong and helpful drafting suggestions, most of which were accepted by Council as clear improvements.

The Panel observes a thorough review by a skilled drafter would have ideally occurred prior to the exhibition of the Amendment.

Council and Conway reached agreement over the post panel version of the DPO (D175) except for a small number of outstanding issues summarised in Conway's final DPO version (D181). For the most part, Conway's suggested changes reflected its arguments about the location of various elements and the landowner's ability to deliver them.

Conway suggested other minor changes, some of which have been supported (refer to Appendix L for the Panel's recommended DPO4). Of note of those not supported is the argument that if the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) applied and protected Latham's Snipe, this would represent duplication with the DPO. The Panel disagrees because the EPBC process may or may not apply, and if it does, it will address only certain matters, and is not part of an integrated design process for a growth area.

On the issue of the precise location of Reedy Creek, the Panel notes the Precinct Plan is an indicative plan, and the development plan prepared under the DPO needs to be 'generally in accordance' with it. This flexibility provides opportunity during the development plan or planning permit stage to account for minor spatial differences. These processes are better suited for such a task. Accordingly, no changes to the DPO or Precinct Plan are supported.

However, Conway's suggestion to show an arrow on the Growth Area A Precinct Plan to highlight the future urban expansion to the west and north west, in accordance with the Structure Plan is supported, as is the need for a legend.

(iv) Findings

The Panel finds:

- The rationale for the application of Development Plan Overlay Schedule 4 was generally accepted by submitters, with some addressing drafting matters or elements of the Precinct Plan.
- The use of Development Plan Overlay Schedule 4 to guide future development of growth areas is appropriate and uncontroversial, with the Panel recommendations primarily relate to drafting issues and its spatial application.

- Companion Lagoon is a very important environmental feature and should be protected from development to maintain its habitat values, including for Latham's Snipe. The Precinct Plan acknowledges this and clearly shows a large area to be protected. The exact size and shape of the area to be protected, including any additional buffer area is best determined at the Development Plan and planning permit stage when further biodiversity assessments are available.
- The Development Plan Overlay Schedule 4 changes recommended by Council in its Part A submission to give greater recognition to the biodiversity values of Companion Lagoon are supported.
- Development Plan Overlay Schedule 4 would benefit from greater recognition of fire risk, as noted in Council's Part A submission.
- The Development Plan Overlay Schedule 4 should apply to Growth Area B and contain the Precinct Plan from Figure 10 of the Structure Plan.
- The role and future of Lagoon Road as part of Growth Area A should be determined during the Development Plan process when there is greater clarity on the potential Port Fairy bypass and the future urban structure.
- Appendix L contains the Panel's preferred version of Development Plan Overlay 4.

6.3 Design and Development Overlays

(i) Introduction

The Amendment seeks a substantial change to the suite of DDOs that currently apply across Port Fairy by simplifying 19 DDOs to seven. The Amendment seeks to combine areas that share similar characteristics through a smaller number of consistently drafted DDOs to aid the community and decision makers. It takes its cue from the Structure Plan that highlights the overlap between the overlays and the opportunity for simpler controls.

The seven new DDOs proposed are:

- DDO1 – Port Fairy Commercial Core Precinct
- DDO2 – Port Fairy Town Centre Precinct
- DDO3 - Port Fairy Settlement Approaches
- DDO4 – Port Fairy Residential Areas Precinct
- DDO5 – Port Fairy East Beach Precinct
- DDO6 – Port Fairy Griffiths Street and Wharf Precinct
- DDO7 – Port Fairy South Coast Precinct.

Each of the DDOs has distinct design objectives and offers a range of discretionary and mandatory controls on site coverage, building massing and height, and setbacks.

(ii) Submissions and evidence

The rationale for, and purposes of the DDOs were generally accepted and without controversy. Submitters commented favourably on the reduction and simplification of the DDOs, and submissions focussed on the quantifiable built form requirements, and whether the requirements should be mandatory or discretionary.

While the exhibited version of the DDOs contained some mandatory controls, the bulk of the controls were discretionary, expressed as 'should'. In its Part A submission, Council provided significantly revised DDOs that changed many of the discretionary controls to mandatory.

Council contended the rationalisation of 19 DDOs into seven was sound planning. It noted it was open to drafting changes and defended its heavy use of mandatory controls on the basis that the controls were not intended to be discretionary.

In advocating for greater mandatory controls, Council noted:

Port Fairy's village character is an asset that the township trades off. It is a low scale character. Council considers the maintenance of this almost uniform height across the centre (to be important) ¹⁰⁸.

Council noted the existing DDOs were a major source of triggers for permits to date, and they had been successful in controlling development.

In evidence, Mr Glossop supported the approach to the rationalised DDOs in general, but noted that based on his understanding of PPN91, there was a preference that built form guidance be directed in zone schedules where practical. He supported the 'decanting' of some requirements of the DDOs from the two growth areas into the zone schedules.

During the Hearing, Council sought to implement this 'decanting' by introducing a new schedule as NR22 and removing DDO4 from the growth areas.

Mr McGurn had concerns with the DDOs, particularly the use of mandatory controls. He too supported the decanting of its controls to the zone if it had broad applicability.

Submission 26 noted the site coverage and setbacks of the DDOs meant that lots need to be large to accommodate a normal sized dwelling, potentially over 500 square metres. The landowner of 103-105 Princes Highway (S80) argued against the site coverage, building setback and subdivision controls in the DDOs as being too limiting.

Several submissions (S15, S22, S53, S55, S56, S57) did not support the mandatory height limits in DDO1 on the basis that the land was within the C1Z. As part of more extensive commentary, Coast to Country (S48) criticised the mandatory controls and offered a number of specific drafting changes to the measurable controls.

Pendragon (S20) argued that DDO4 contained built form requirements that were excessive and unjustified, particularly in relation to side setbacks. It further cast the mandatory requirements as unnecessary, not supported by expert evidence, and would unduly constrain development. It contended:

... there is no reason why the DDO4 should depart from both the language and the very clear intention of the Structure Plan in circumstances where not a single town planning witness suggested that the DDO4 should include any mandatory built form requirements for any matter other than the height of a building. Mr Glossop was at pains to say that he did not recommend the extensive changes to the proposed DDO4 now advocated for by Council. They are unsupported by any neighbourhood character or other study and there is no analysis of how they would promote or (more likely) inhibit the realisation of the clear strategic support for housing within the coastal settlement boundary. They have seemingly come from nowhere ¹⁰⁹.

¹⁰⁸ D171, para 84

¹⁰⁹ D145, para 85

This sentiment was shared by S27 and S74 who opposed the DDO on the basis that it would further affect development and present more red tape and unreasonable costs.

Conway argued that Council's 'decanting' was not policy neutral, and offered alternative drafting to the zone schedule, much of which Council then supported. Conway further argued against the mandatory controls in DDO4.

Several other submitters requested small changes to the schedules, particularly on the issue of building height and setbacks.

(iii) Discussion

To use an overused word in planning, the Panel acknowledges Port Fairy is indeed a 'special' place. As a small coastal settlement at the mouth of the Moyne River, with a rich marine and agricultural history, the town has a character that is both unique and appealing.

A key part of this character is the historic town centre, which features an eclectic mix of buildings of different ages and functions. There are a variety of building setbacks, heights, styles and footprints. It is fair to assume most were developed without the benefit of rigid planning controls. The Panel believes that any built form controls need to avoid sameness and the creation of homogenous buildings, rather allowing for a continuation of the variety and uniqueness that is evident today.

The Panel is confident that a balance can be struck that allows sensitive development that provides for additional housing and commercial opportunities, while preserving the town's unique values.

The overuse of mandatory controls can limit development in a way that impacts housing diversity and affordability, something that is both contrary to State and Regional Policy and the directions of the Structure Plan.

Council's Part A version of the DDOs sought to make many of the built form controls mandatory, whereas most in the exhibited version were discretionary. The Panel remains unclear on the reasons for this change at this late stage in the Amendment. Under cross examination by Coast to Country for its various clients, Mr Glossop noted he had not suggested the DDOs be made mandatory, and that "*... he could understand the benefits of discretionary controls in commercial zones*".

The Panel generally agrees with Pendragon that the mandatory controls added to the DDOs as part of Council's Part A version "*... came from nowhere*". Submitters may have chosen not to participate in the process because they were satisfied with discretionary controls.

PPN59 sets out the criteria by which mandatory controls can be assessed, saying:

Mandatory provisions in the VPP are the exception.

Mandatory provisions will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes ¹¹⁰.

Having regard to these criteria, the case for mandatory controls has not been made. In a town experiencing a housing shortage, where the Structure Plan calls for greater housing diversity, mandatory controls should be the exception, not the rule.

¹¹⁰ PPN59, p2

The Panel welcomes the reduction in the number of DDO schedules and commends Council on a process that will lead to a more accessible and understandable suite of DDO schedules. The simplification of drafting is also supported.

The Panel has carefully reviewed the various versions of the DDO schedules and generally adopts Council's version (D175), except for changes:

- to convert the mandatory controls to discretionary
- to delete the building height limits in DDO Schedules 3 and 4 as greater flexibility is warranted in these areas and the zone already provides adequate height controls
- that adopt some of the neutral drafting suggestions by Coast to Country as clear improvements
- that generally improve drafting.

The Panel is drawn to the 'decanting' of some DDO built form controls to the zones, but as this was not exhibited or advanced in any serious way by Council or its experts, including, for example, by providing clauses at the start of the Hearing, the Panel has not taken it forward. Accordingly, DDO4 should continue to apply to the growth areas, as Council's final position that it should be removed was conditional on the 'decanting'.

Coast to Country made many post hearing drafting suggestions. Some of these have been accepted as reasonable or neutral drafting improvements. Of note is the suggestion that site coverage controls be added to DDO2, a change not supported by Council. The Panel does not believe the case for such limits has been made and considers that a permit process can deal with such issues on merit. The Panel notes the existing purpose that encourages small building footprints and need for buildings to respect the pattern of buildings in the area.

As a final observation, the Panel is concerned by the ongoing debate and increasing divergence in the use of mandatory and discretionary controls and believes there is a need for reform and clearer state-wide guidance.

A further confusion is the fact that an apparently mandatory control containing the word 'must' may in fact not be mandatory because the discretion in the head clause is only 'turned off' if the schedule states that "*a permit may not be granted to ...*"¹¹¹. This confusion leads to unnecessary debate and delay. If a control says that "*a building must not exceed the height of 9 metres*", the community has a right to expect that to be the case.

In that light, the Panel is drawn to the solution advanced by Council and recommended, for example, in Amendment C407melb that puts an end to the need to repeatedly state that a permit can or cannot be granted to vary a requirement. It says:

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

This results in clearer, simpler drafting that professionals and non-professionals can have faith in.

¹¹¹ The parent provision states: "*A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.*"

(iv) Findings

The Panel finds:

- The rationalisation of 19 Design and Development Overlay schedules to seven is a positive outcome of the Amendment and is supported.
- There were significant changes to what was exhibited, and what was proposed by Council in its Part A and final submissions, in that the Design and Development Overlays went from being largely discretionary to mandatory.
- The mandatory provisions are not supported.
- Other changes are required to remove duplication with the residential zones and to ensure consistency.
- Design and Development Overlay Schedule 4 should apply to the growth areas.
- Appendices E to K contain the Panel's recommended versions of the Design and Development Overlays.

6.4 Recommendations

The Panel recommends:

- 10. Adopt the Panel preferred version of Development Plan Overlay Schedule 4 as provided for in Appendix L.**
- 11. Extend Development Plan Overlay Schedule 4 to cover all of Growth Area B.**
- 12. Adopt the Panel preferred version of Design and Development Overlay Schedules 1, 2, 3, 4, 5, 6, and 7 as provided for in Appendices E, F, G, H, I, J and K.**

7 Specific sites and areas

7.1 Rivers Run

(i) Introduction

The Amendment proposes to rezone land known as Rivers Run from the FZ to the RCZ. Further, through the Structure Plan, it proposes a 500-metre policy buffer be implemented around the Sun Pharma site which will fall cover most of the Rivers Run land.

The Executive Summary and Chapter 1.5(iii) of this report provide some background and context to this issue.

The Panel had the benefit of a detailed inspection of both the Rivers Run and the Sun Pharma sites.

(ii) Submissions and evidence

Figure 8 ‘Settlement and Housing’ of the Structure Plan included a red star on the Rivers Run site with the following notation:

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 Sun Pharma & the EPA ¹¹²).

Apart from the issues dealing with the FO and LSIO (see Chapter 5), Rivers Run sought a specific recommendation from the Panel that a notation be added to Figure 1 of the Framework Plan “... to recognise that the Rivers Run site is a potential site for residential expansion subject to resolution of flooding and interface issues” ¹¹³.

Further, Rivers Run contended this Amendment should not prejudice consideration of Amendment C75moyn on its merits (which is likely to be heard in early 2023). It contended its evidence was sufficient to demonstrate:

There is potential community benefit as a result of this rezoning in the form of the delivery of well located, well serviced, diverse and affordable “shovel-ready” housing; and

There are no “show stopping” issues at this stage of the process that should result in an immutable settlement boundary to the exclusion of the site being explored through a parallel Amd C75 process ¹¹⁴.

Mr McGurn gave evidence for Rivers Run and noted the site’s potential “... to contribute to the opportunity for future residential development balanced against the constraints of the land”.

In discussing the role of the Structure Plan in relation to his client’s site, Mr McGurn noted:

It is apparent that a key tension of the Structure Plan is managing the demand for housing with protection of established character and environmental constraints. This is a common balance in many coastal environments, but a particularly pointed issue in Port Fairy where the irregular coast line, Moyne River and low lying land give rise to potential flood risk across the township ¹¹⁵.

¹¹² Structure Plan, p27

¹¹³ D141, para 14f)

¹¹⁴ D141, paras 28a) and b)

¹¹⁵ D67, para 43

Rivers Run questioned the extent of land that might be available for residential development in Growth Areas A and B, noting the uncertainty regarding future lots and timeliness of delivery. It noted its land:

- offered a “*genuine shovel-ready option*” within single ownership
- had multiple development fronts
- provided for diversity in size and location
- had good connectivity within its holdings and external to it.

In support of its case, Mr McGurn gave evidence that at a high level, there was support to consider the suitability of the land for residential purposes and its inclusion in the coastal settlement boundary due to (inter alia):

- the land is 1.5 kilometres from the town centre, with good connectivity and multiple access points
- development will not give rise to sprawl
- the land is contiguous to other residential land
- the land has no agricultural value
- there are no biodiversity or vegetation constraints.

Mr McGurn concluded the Structure Plan (and associated documents) identified increasing demand for housing in Port Fairy and a need for increased diversity to support an ageing population and housing for key workers and families.

Rivers Run questioned the 50 metre buffer, this is considered in Chapter 7.2.

Further, Council commented that the issue of where the ‘asterisk’ came from was not the biggest issue in this case, rather it should be seen as a vehicle in which to stimulate a further process.

(iii) Discussion

Rivers Run are no doubt frustrated by this process, because essentially it will need to argue its case twice – at this Panel Hearing and then more fulsomely at the Amendment C75moyn process. Council acknowledged that frustration in its closing and advised that Amendment will go before Council in February 2023.

The referral of Amendment C75 to a Panel will properly review all aspects of the Rivers Run proposal, it is not for this Panel to do so. In fact, given that process is yet to occur, this Panel has been conservative in its commentary about Rivers Run.

The Panel does wonder why the Rivers Run site was not included as a growth area in the same way as Growth Areas A and B given the obvious constraints on growth in Port Fairy. Rather it was given a notation on a plan (but not included as part of the Framework Plan at Clause 21.09) with very little strategic understanding why it was notated. If Council is seeking to support a third growth area, it should have designated it appropriately. With the notation only, it is unclear of the status this should be afforded. However, due to an imminent Panel Hearing to consider the Rivers Run site in more detail, the Panel makes no recommendation for change to this notation.

While Rivers Run sought a change to the plan at Clause 21.09, the Panel does not consider it necessary. It will remain as a notation in the Structure Plan, which is included as a background document to the Planning Scheme.

Issues of flooding are central to the capacity to utilise this site for residential development. The recommendation of this Panel about land currently proposed to be in the FO may have a bearing

on the extent of development to be allowed on the Rivers Run site, but that recommendation of the Panel is holistic, in that it was made taking a range of factors into account, not just the Rivers Run site.

Regarding the policy buffer, the Panel agrees with Council that the buffer “... will serve a useful purpose in alerting the broader community to the planning issues in this area when lodging applications”¹¹⁶. The issue in dispute is whether the buffer should be 500 metres as exhibited or reduced to 300 metres as requested by Rivers Run. The Panel notes the buffer extends over much of Growth Area B as well.

Given the detail of the proposal for the Rivers Run proposal is to go to a Panel in 2023, the Panel does not support rezoning the site to RCZ at this stage as there was little strategic support for it.

For these reasons, the Panel considers the land should remain in the FZ until Amendment C75moyn is properly tested and resolved. However, the land should not be included within the settlement boundary at this time, nor should Figure 1 of the Framework Plan in Clause 21.09-3 include designation of the land as a potential residential development area. Those changes can be resolved at the time of the merits assessment through Amendment C75.

(iv) Findings

The Panel finds:

- Land in the Rivers Run site should remain in the Farming Zone until Amendment C75moyn to the Moyne Planning Scheme is resolved.

7.2 Sun Pharma

(i) Introduction

Sun Pharma owns and operates a highly secure pharmaceutical manufacturing facility at 195 and 199 Princess Highway on a site that has been used for industrial purposes for over 100 years.

The Panel had the benefit of a detailed site inspection of that facility.

The key issues Sun Pharma submitted and gave evidence on related to protecting its interests through its support of the Structure Plan and the 500 metre ‘policy buffer’. In noting that, Sun Pharma was critical of the notation of an asterisk that identified the Rivers Run site as an area of potential growth in the future. It further sought a change to the map at Clause 21.09-3 to reflect its land holdings.

(ii) Submissions and evidence

Sun Pharma was perplexed about the ‘red star’ and sought to understand the strategic basis for its inclusion. Council was not able to inform the Panel on that issue.

Ms Ring gave evidence for Sun Pharma and while generally supporting the Amendment, she contended it should acknowledge the industrial activity at the Sun Pharma site to ensure its future will not be unreasonably compromised by new development. In essence, Ms Ring could see no planning reason why the Amendment should not proceed, subject to some changes in policy at

¹¹⁶ D171, para 63

Clause 21.09-3, including that the Framework Plan include all of Sun Pharma's land to the south of 199 Princes Highway.

Mr McGurn noted the site's proximity to the Sun Pharma facility and there could be potential for off-site impacts, including emissions. He noted the proposed 500 metre policy buffer, which he acknowledged includes other areas of residential land, both existing and proposed. The Panel notes Dr Ramsay supported a buffer but advised it need not be more than 300 metres. Dr Cowan and Mr Hancock both supported it remaining at 500 metres.

While not opposing the buffer outright, Rivers Run preferred it to be 300 metres.

The Panel sought advice from parties about who should bear the burden of a buffer in relation to the Sun Pharma site. In addressing this, Sun Pharma submitted established industry is protected through State policy, variously at Clauses 13 and 17 where it notes buffers are unlikely to be included wholly on industrial land.

Sun Pharma called evidence from Dr Ramsay who, in taking into account potential noise and odour impacts, recommended a 300 metres buffer, primarily for odour reasons. His evidence included a table at Appendix D listing complaints about operations at Sun Pharma. Of five complaints since 2018, four related to odour. Two of those related to use of the calamity tank with two listed as 'not confirmed'. The Panel was advised by Sun Pharma the nature and number of complaints had reduced with improved equipment and operating procedures¹¹⁷.

In closing, Council agreed with Sun Pharma that the Framework Plan in Clause 21.09-3 be updated to include the whole of the Sun Pharma holdings in the plan. Further, Council observed the buffer would serve a useful purpose as an alert to the community in the consideration of future planning applications.

(iii) Discussion

The Panel acknowledges the role and importance of Sun Pharma to not only Port Fairy, but to Victoria and more generally, globally. There is no question it is a well-established facility that provides for an important market in delivering its products. It notes the expansion plans, and that Sun Pharma intends to remain at its current site.

The tension between the now exhibited Amendment C75moyn which will result in a significant subdivision if approved adjacent to its site cannot be resolved through this Hearing.

The Panel recognises a policy buffer does not have the same weight or imperative as an EPA defined buffer, or one subject to the Planning Scheme in that a Buffer Area Overlay is not proposed for the site. It is there as an alert for prospective residents in the area. PPN92 'Managing buffers for land use compatibility' emphasises the importance of buffers to separate and manage incompatible land uses. 'Dwelling' is a recognised sensitive land use. The Practice Note highlights the importance of strategic planning and notes sensitive land uses and future urban growth should be directed away from areas that could be affected by off-site impacts.

In noting that, there was very little evidence before the Panel that the Sun Pharma site has been subject to complaint or nuisance from residents over its history, with no complaints in recent years.

¹¹⁷ D81

Based on the evidence of Dr Ramsay who specifically considered the buffer issue, the Panel supports a 300-metre buffer around the Sun Pharma site.

The Panel agrees with Council and Sun Pharma that all its land holdings should be included in the Framework Plan at Clause 21.09-3.

(iv) Findings and recommendations

The Panel finds:

- The policy buffer around the Sun Pharma site is appropriate but should be reduced to 300 metres.
- While questions remain about the inclusion of the 'asterisk' for the Rivers Run site in the Structure Plan, the Panel makes no recommendations about its removal.
- The maps at Clause 21.09-3 should include all of Sun Pharma's land.

The Panel recommends:

- 13. Amend Figure 1 of the Port Fairy Framework Plan to Clause 21.09-3 to:**
 - a) Include all land holdings of the Sun Pharmaceutical site.**
 - b) Apply a reduced buffer area around the Sun Pharmaceutical site of 300 metres.**

7.3 Pendragon

(i) Introduction

Pendragon owns approximately 11.2 hectares of land at 4 Bowker Court, Port Fairy. It did not oppose the rezoning of its land from GRZ to NRZ, nor the proposed DDO4 to its land. It did not support the application of the FO to its land, the extent of the mapping of the FO and LSIO, the application of 1.2 metres SLR and some wording in the LFDP.

Most of these matters are dealt with in Chapters 4, 5, and 6.

As it currently stands, there are no overlays on the land.

The Panel had the benefit of a detailed site inspection of that site.

(ii) Submissions and evidence

The key submissions in support of its position relate to the extent of land that may be deemed unsuitable for residential development. The land is noted as an infill residential development area and Pendragon was concerned that potential yield would be compromised by the application of the FO.

Pendragon argued that while it understood the need for flood controls, these have been considered in isolation, there are a range of other policy imperatives such as housing growth and supply that must concurrently be considered.

A primary contention from Pendragon was that the flood risk factors in PPN12 are not the hazards that affect their land.

Additionally, Pendragon made several recommendations about the drafting of DDO4, particularly in relation to language, prescription, consistency and clarity, much of which the Panel has picked up on.

These issues were confirmed by Mr McGurn whose evidence, while noting some of the potential constraints by flooding and heritage, supported additional infill housing in this location. The Panel was surprised that while making a number of contentions and conclusions, Mr McGurn did not make any specific recommendations to change any aspect of the exhibited Amendment. When asked if he had any specific recommendations, Mr McGurn was non-committal, rather he relied on his report to note the issues with aspects of the Amendment provisions.

Council acknowledged the Pendragon site as a significant infill development opportunity but did not agree the application of the FO in particular would render the site undevelopable. It suggested approximately 3.6 of the 11 hectare site would be impacted, and the ultimate subdivision could design around that.

(iii) Discussion

The Panel agrees the Pendragon land provides a significant opportunity for residential infill and agrees it is one of the few larger scale available sites for this purpose. As it is a development site and is well away from the historic core of Port Fairy, its retention in the GRZ is an acceptable outcome.

The FO has been well tested and the Panel supports its application in this location, albeit at 0.8 metres SLR.

The Panel has resolved the Pendragon land should remain in the GRZ and be subject to DDO4. It is not unusual for subdivisions to be designed around water and drainage bodies and sometimes what may be a constraint can result in superior landscape and urban design outcomes if using natural features and done well.

(iv) Findings

The Panel finds:

- The Pendragon land should remain in the General Residential Zone and be subject to Design and Development Overlay Schedule 4.

7.4 Pevitt land

(i) Introduction

The Pevitts own a significant holding of 4.46 hectares of land at 2 Regent Street Port Fairy. The exhibited Amendment proposed to rezone most of its land to RCZ with a small balance of land fronting 2 Regent Street (to approximately 5.5 metres) to NRZ. Further, the Amendment proposed to delete DPO10 and replace it with DDO6 to the area proposed to be rezoned to NRZ. The Pevitts supported the exhibited Amendment and consequently did not seek to be heard.

Council changed its position regarding the land proposed to be rezoned to NRZ and the Pevitts then sought to be heard [see Chapter 1.3(ii)]. Council noted in its summary of submissions that updated flood modelling undertaken post the submission led to extension of the FO on the land, including the front portion on Regent Street ¹¹⁸.

Council did not directly advise the submitter of this change.

¹¹⁸ D88, Appendix 3

D184 set out the Pevitt submissions and D177 included additional evidence from Water Technology. The Panel understands the area of land can accommodate three dwellings.

The Panel had the benefit of inspecting this land on several occasions and was assisted by the Pevitts who marked out the area it proposed to be rezoned to NRZ.

The following discussion focuses on the front portion of land holding commonly known as 2 Regent Street.

(ii) Submissions and evidence

The Pevitts characterised the land as being “... a logical inclusion within the settlement boundary and is well placed to provide moderate housing supply (up to 3 lots)”¹¹⁹. In submission, the Pevitts observed that up until the Panel Hearing, they had a level of comfort that some moderate residential development on the frontage could be realised. It was noted the original Council position post exhibition did not vary that the land be included in the NRZ, it was Council’s further consideration of submissions that this position changed, largely based on concerns about flooding and SLR. (This issue has been discussed in Chapter 5 and will not be repeated.)

Council did not address this submission in its closing, except to confirm it did not resile from its position in relation to the flood overlays¹²⁰.

(iii) Discussion

The Panel notes the location of the land adjacent to the town centre and its overall accessibility. Further, it notes the amended extent of flood mapping.

Overall, the Panel considers the front portion of land at 2 Regent Street will not be compromised if it was included in the NRZ. It has excellent accessibility to the town centre; it will be a natural infill opportunity and it will provide for additional housing in a constrained environment.

(iv) Findings

The Panel finds:

- The area of land fronting 2 Regent Street should be included in the Neighbourhood Residential Zone and Design and Development Overlay Schedule 6, as exhibited.

7.5 Bamstone

(i) Introduction

Bamstone owns and operates a stone processing facility at 204 Hamilton-Port Fairy Road, at which it receives bluestone from three nearby accredited Bamstone quarries. The Panel was advised it is family owned and operates under existing use rights in the IN1Z, with DPO1.

The Panel had the benefit of visiting the general surrounds of the site.

¹¹⁹ D184, para 13

¹²⁰ D171

(ii) Submissions and evidence

It is noted the now abandoned ESO7 was exhibited to apply to the site. Further, changes were made to Clause 21.09-3 aimed to ensure that development in Port Fairy was consistent with the Structure Plan. In this regard, Bamstone submitted it supported the role of the Framework Plan in Clause 21.09-3, including that Council would be undertaking further strategic work to expand the IN1Z to the north of its land as well as introducing a buffer overlay around the site and discouraging any residential growth near the site until this work is done.

(iii) Discussion

The Panel supports the intent of the strategic direction as it affects the Bamstone land and notes that with the abandonment of ESO7, there is no contest from Bamstone.

(iv) Findings

The Panel finds:

- The issues have been satisfactorily resolved in relation to the Bamstone site.

7.6 Conway land**(i) Introduction**

Conway made a submission in relation to Lot 79 on the Hamilton-Port Fairy Road where its land is proposed to be included in Growth Area A, by applying the NRZ, DPO4, DDO4, LSIO and the FO. Council proposed two changes to that land, including removing DDO4 from Growth Area A and including a new schedule 2 to the NRZ that is specific to Growth Area A.

The Panel had the benefit of visiting the site and its surrounds and walking the area.

(ii) Submissions and evidence

While Conway supported the general intent of the Amendment and Council's revised position, it submitted the purpose of its submission "*... is to ensure that the right balance is struck that Growth Area A can fulfill its intention and add meaningful residential land supply within Port Fairy whilst at the same time ensuring that the character of Growth Area A is respectful (as opposed to mimicking) the town's existing character*"¹²¹.

While Conway submitted using the NRZ for a growth area was novel, it did not object to it and contended that for a growth area, the purposes of the GRZ "*... represent a superior fit*"¹²².

Conway made several suggested changes to NRZ2, DPO4 and DDO4, many of which Council accepted. The Panel has recommended further changes to DDO4 and DPO4, but not NRZ2.

(iii) Discussion

The Panel agrees the GRZ is a preferred zone for the proposed growth areas of Port Fairy. The zone will provide for enhanced flexibility and diversity, as well as options for choice.

¹²¹ D146, para 10

¹²² D146, para 17

(iv) Findings

The Panel finds:

- The Conway land should remain in the General Residential Zone and be subject to modified Design and Development Overlay Schedule 4 and Development Plan Overlay Schedule 4.

7.7 Smith and Hocking land**(i) Introduction**

Two submissions were made in relation to the development of residential lots on Griffiths Street.

(ii) Submissions and evidence

Smith (S63) sought the development of a vacant block of land at 196 Griffiths Street, and while supporting the proposed NRZ and DDO, sought amendments to the LFDP to recognise the distinction between riverine and coastal flooding, and to more generally allow for a more tailored response to flooding.

Hocking (S19) offered conditional support for the Amendment in relation to their property at 186 Griffiths Street that they wish to develop. Such support was based on having an ability to subdivide this property and develop for housing. Little detail was provided in the submission as to the type of subdivision and development intended.

(iii) Discussion

Talking generally, both properties under the Panel's recommendations would be zoned NRZ and have a DDO that allows flexibility through discretionary controls.

In relation to Smith (S63), Chapter 5.4 addresses the adequacy of the LFDP.

In relation to Hocking (S19), the Panel notes that subdivision is possible under the NRZ and DDO, and there is discretion in the DDO for a variety of dwelling sizes and configurations.

(iv) Findings

The Panel finds:

- The Panel supports the application of the Neighbourhood Residential Zone and Design and Development Overlay Schedule 6 to the Smith and Hocking land at 186 and 196 Griffiths Street, subject to its recommendations in relation to discretionary controls.

7.8 Davies Simpson land**(i) Introduction**

The Panel has commented on the extent of some of the issues raised in the various Davies Simpson submissions on behalf of its clients in Chapter 1.3(v) and in relation to proposed rezonings at Chapter 4.2. Other matters to be considered relate to:

- 105 – 105 Princes Highway in relation to a proposed 16 lot subdivision (S80)
- A personal submission as a resident of Port Fairy (S26).

(ii) Submissions and evidence

Submission 80 raised several issues in relation to the impact on a proposed 15/16 lot subdivision on Princes Highway, under assessment by Council at the time of the submission (July 2020). It raised concern with the proposed DDO, arguing the requirements were excessive, would limit housing choice, and were inconsistent with the proposed policy at Clause 21.09. It further criticised the application of the LSIO and FO, highlighting 'significant deviation' from the modelling commissioned as part of this application and the exhibited planning scheme maps. Finally, it argued a 1.2 metres SLR was inconsistent with State Policy.

Submission 26, while supporting the NRZ, argued against the DDOs and in particular, the side setback and site coverage requirements. Similarly, it submitted the rezoning of land near Belfast Lough to RCZ to be overly restrictive and not representative of recent patterns of development.

(iii) Discussion

The Panel agrees with the intent of the submissions made about discretion in the DDOs and has addressed this in Chapter 6.3. It has recommended greater use of discretionary controls and other changes to generally provide for greater housing choice.

On the issue of the deviation of the flood mapping as part of this Amendment and more detailed flood modelling, it is an unavoidable consequence that broad, regional scale modelling cannot address flooding at the same resolution as site based modelling. Discussions with the GHCMA and Council during the planning permit process can deal with any localised, site based mapping nuances.

The Panel agrees that the RCZ is a restrictive zone and has made recommendations in relation to its use at Chapter 4.3.

(iv) Findings

The Panel finds:

- The issue raised through these submissions are generally addressed in Chapters 4 and 6.

7.9 Proposed bypass**(i) Introduction**

Figure 7 of the Structure Plan includes a future bypass alignment. The alignment is supported by Public Acquisition Overlay Schedule 1 (PAO1) in favour of VicRoads and includes approximately 28 hectares of land. The PAO1 was applied 50 years ago and has never been acted upon.

Submitter 9 questioned this alignment and provided evidence in support of his submission.

Due to the issues raised by S9, the Panel sought a response by DoT to clarify the standing of this bypass alignment. DoT then appeared at the Hearing to address issues relating to the proposed bypass.

(ii) Submissions and evidence

Submitter 9 questioned whether the bypass remained relevant. He called evidence in support of his submission from Mr Sing, the principal of Transeco. Unfortunately, Mr Sing was not able to

assist the Panel as his evidence was not directly relevant to the submission and matter at hand. He noted:

The future of the proposed bypass and its associated Public Acquisition Overlay (PAO) and final alignment needs to be confirmed; as it recognises that having a PAO and lack of consideration of options causes uncertainty, costs and lost opportunities.

At the highest level, Mr Sing provided information on the methodology to research various project, road user and qualitative costs and benefits that might be necessary to assess a bypass. He made no conclusions or findings on the existing alignment.

In its original submission, DoT confirmed the bypass alignment should be retained as indicated by PAO1. It advised the Princes Highway Corridor Strategy provided direction for this and it noted DoT was seeking funding to advance the bypass.

At the Hearing, DoT confirmed its interest and noted it supported the Amendment and the retention of the proposed bypass in the Structure Plan. Importantly, it advised it was undertaking a review of the proposed bypass and that information should be available in early 2023. From that review, DoT will decide on whether to retain the route or whether it has become redundant.

The Panel notes the extensive land holdings of the bypass in Growth Area A and notes its potential suitability for development for residential purposes to add an important supply of housing to Port Fairy in the event the bypass did not proceed.

In response to a question from the Panel, DoT advised its review would not rule out a different alignment should a bypass remain relevant to Port Fairy.

(iii) Discussion

The Panel accepts the position of DoT that the alignment remains live, and it should remain in the Structure Plan.

While the Panel notes the proposed bypass it has been in the Planning Scheme for some time through the application of PAO1, it would be poor planning to remove it from the Structure Plan at this time. It represents a long-term strategic commitment that is empowered by PAO1, and the Panel has no basis to recommend its removal.

The Panel acknowledges application of PAO1 has meant some areas of Port Fairy have been effectively sterilised for future development opportunities.

Given the DoT review will be complete by early 2023, it will be a matter for DoT and Council to take forward in due course.

(iv) Findings

- The future bypass alignment should remain in the Structure Plan.

7.10 Other matters

The Amendment proposed to introduce or extend three other overlays:

- extend the Erosion Management Overlay
- apply the Parking Overlay
- apply Environmental Significance Overlay Schedule 7.

(i) Erosion Management Overlay

The Amendment seeks to extend the EMO currently applicable in Port Fairy West to areas along the primary coastal dune in South Beach and East Beach.

DELWP (S38) submitted the proposed EMO extension to cover crown land may duplicate controls and regulatory outcomes achieved through the *Marine and Coastal Act 2018*. Council agreed to remove the crown land portion of the EMO from the Amendment on that basis¹²³. DELWP further suggested Council consider extending the area of the EMO beyond the length of the East Beach Sea wall to cover additional areas subject to erosion based on aerial photography. Council noted in its response to submissions that it expected to progress this change in a future amendment to allow appropriate consultation with affected landowners¹²⁴.

Other submitters (S48, S65, S79 and S81) raised concerns relating to the need for the EMO, the ability of landowners to respond to the overlay requirements including preparation of a coastal hazard assessment, the need for vegetation removal exemptions, and whether the overlay should be applied more broadly. Council did not propose any changes to the EMO in response to submissions, as it considered the drafting and extent of the EMO as proposed was appropriate to manage the risk of coastal erosion, along with other mitigation measures including sea walls.

Issues about the EMO were not raised in submissions as part of the Hearing.

The Panel considers the responses by Council to be appropriate and it supports the application of the EMO.

There were no submissions at the Hearing about this aspect of the Amendment and the Panel supports the extension of the EMO to areas along the primary coastal dune in South Beach and East Beach, subject to the removal of the crown land portion.

(ii) Parking Overlay

The Parking Overlay was exhibited to apply to the Port Fairy commercial town centre area.

Several submissions against this were made. At its meeting on 1 March 2022, Council resolved to abandon this aspect of the Amendment.

The Panel has not considered this aspect of the Amendment.

(iii) Environmental Significance Overlay

The exhibited Amendment proposed to apply Schedule 7 to the ESO to a 500-metre buffer around the Wannon Water – Port Fairy Water Reclamation Plant.

Some submissions against this were made. At its meeting on 1 March 2022, Council resolved to abandon this aspect of the Amendment.

The Panel has not considered this aspect of the Amendment.

¹²³ D99, p4

¹²⁴ D88, Appendix 3

Appendix A Submitters to the Amendment

| No. | Submitter |
|-----|---|
| 1 | Graham and Leanne Dix |
| 2 | National Trust of Australia (Port Fairy) |
| 3 | Judy Pollock (See also Submission 78) |
| 4 | Shirley Humphrys |
| 5 | Geoffrey and Melinda Arnold |
| 6 | Greg and Betty Hyland |
| 7 | Zandra and Paul Bereznicki |
| 8 | Colleen and Steven Quinn |
| 9 | Chris Loorham |
| 10 | James Taylor |
| 11 | John and Geraldine Hearn |
| 12 | Mark and Cynthia McLaren |
| 13 | Adrian Moloney |
| 14 | Harold Watson and Robyn Stewart |
| 15 | Fiona Castley on behalf of McCorkell Family |
| 16 | Cate Dundon and John Melville |
| 17 | Nathan and Tanya Little |
| 18 | Dustin and Sarah McCorkell |
| 19 | Sarah Roberts & Kate Emerson |
| 20 | Cameron Gray on behalf of Pendragon Pty Ltd |
| 21 | Brian and Jann Atkins |
| 22 | Fiona Castley on behalf of Ken and June Brookes |
| 23 | Christine Kock |
| 24 | Jodie Honan |
| 25 | Ken and Karen Douglas |
| 26 | Alastair Davies |
| 27 | Daniel Hunt and Melanie Allen |
| 28 | Lew and Diana Officer |
| 29 | South Beach Wetland and Landcare Group |
| 30 | Michelle Hollingsworth |
| 31 | Genevieve Grant |
| 32 | Wendy and Matthew Kelly |

| No. | Submitter |
|-----|---|
| 33 | A Krushka |
| 34 | Mark Murray |
| 35 | Felicity Little |
| 36 | Wendy Thorpe |
| 37 | Department of Transport |
| 38 | Department of Environment, Land, Water and Planning |
| 39 | Roger Wood |
| 40 | Karen Walsh |
| 41 | Fabian and Alison McLindin |
| 42 | Tania Murray |
| 43 | Rhonda and Russell Allardice |
| 44 | Wannon Water |
| 45 | Natalie Robertson and Max Dumesny |
| 46 | Margaret Sinnott |
| 47 | Mark Shelley |
| 48 | Fiona Castley |
| 49 | Fiona Castley on behalf of Ironic Pty Ltd, Cheryl Steel, and Bam Associates Pty Ltd |
| 50 | Fiona Castley on behalf of Greg and Tania Dalton |
| 51 | Peter Sheehan |
| 52 | Noel Sheehan |
| 53 | Fiona Castley on behalf of Coastal Unit Investments |
| 54 | Fiona Castley on behalf of McLaren and Hollingsworth Families |
| 55 | Fiona Castley on behalf of Damien and Sue Gleeson |
| 56 | Fiona Castley on behalf of R & D Superannuation Fund |
| 57 | Fiona Castley on behalf of SOB Nominees |
| 58 | Fiona Castley on behalf of Susan and Janice Tieman |
| 59 | Scott Gray |
| 60 | Neil and Clare Kearney |
| 61 | Steve Myers on behalf of Michael Hearn (re School) |
| 62 | Steve Myers on behalf of Michael Hearn (re Thistle Place) |
| 63 | Steve Myers on behalf of Donna Smith and Robert Burnett |
| 64 | Steve Myers on behalf of Estate of Donald Pevitt |
| 65 | Steve Myers on behalf of Craig and Kim Fraser |
| 66 | Steve Myers on behalf of Jamie Haylock and Tennille Wolff |

| No. | Submitter |
|-----|---|
| 67 | Steve Myers on behalf of Alan and Jan Vaughan |
| 68 | Victoria Drummond |
| 69 | Steve Myers on behalf of Rivers Run Estate |
| 70 | Christine Roger |
| 71 | Brooke and Stuart Green |
| 72 | Tom Taylor |
| 73 | Birgita Hansen |
| 74 | Robert & Kerry Bagshaw |
| 75 | Fiona Castley on behalf of Karen and Gary Foster |
| 76 | Glenelg Hopkins Catchment Management Authority |
| 77 | Sun Pharmaceuticals Pty Ltd |
| 78 | Judy Pollock (see also Submission 4) |
| 79 | Penny Iddon |
| 80 | Alastair Davies on behalf of 103 - 105 Princes Highway |
| 81 | Port Fairy Coastal Group and Port Fairy Surf Life Saving Club |
| 82 | Jane Ryan |
| 83 | Country Fire Authority |
| 84 | Ron and Kathie Sherriff |
| 85 | Trisha Brice |
| 86 | Alastair Davies on behalf of Ross and Carter |
| 87 | Energy Safe Victoria |
| 88 | Rose Bunnage |
| 89 | Peter Smith |
| 90 | Philip and Elizabeth Veale |
| 91 | Tara Halliday |
| 92 | Neil Dyson |
| 93 | Jan Hetherington |
| 94 | Joan Moloney |
| 95 | John and Lorna Manniche |
| 96 | Ray and Val Down |
| 97 | Rosalie Winter, John Winter and Sarah Winter |
| 98 | Samantha Stearman |
| 99 | Tim Brady |
| 100 | Jon Mirtschin |

| No. | Submitter |
|-----|--|
| 101 | Julian Lenehan |
| 102 | Harold and Lynda Herd |
| 103 | Trevor and Carolyn Beasley |
| 104 | Joy Arbuthnot |
| 105 | Matthew Brown |
| 106 | Colin May |
| 107 | Bruce and Mandy Rae |
| 108 | Vernon O'Grady |
| 109 | Alastair Davies on behalf of Starling |
| 110 | Carmel Brady |
| 111 | Catherine Rouse and Paul Brown |
| 112 | TW & JA Scriven |
| 113 | Judith Artis |
| 114 | Daniel Eykels |
| 115 | Trish and Graham Blythe |
| 116 | Valerie Phillips |
| 117 | Anthony Phillips |
| 118 | Peter Roysland |
| 119 | Michelle Sherriff |
| 120 | Mike Raetz |
| 121 | Fiona Castley on behalf of Conway |
| 122 | Fiona Castley on behalf of Burris |
| 123 | Fiona Castley and Bronwyn Mellor on behalf of Finnigen |
| 124 | Jan and Richard Patterson |
| 125 | Fiona Castley and Bronwyn Mellor on behalf of Bronwyn Mellor for S&A Wagg |
| 126 | Fiona Castley and Bronwyn Mellor on behalf of Bronwyn Mellor for M&L Vaughan |
| 127 | Paul Buchanan |
| 128 | Department of Education and Training |

Appendix B Parties to the Panel Hearing

| Submitter | Represented by |
|---|--|
| Moynes Shire Council | Greg Tobin and Alison Tansley of Harwood Andrews Lawyers, who called expert evidence from: <ul style="list-style-type: none"> - Rob Swan of HARC in flooding and hydrology - John Glossop of Glossop Town Planning in town planning |
| Glenelg Hopkins CMA | Graeme Jeffrey and Peter Robertson, who called expert evidence from: <ul style="list-style-type: none"> - Christine Lauchlan-Arrowsmith of Streamology Pty Ltd in water and coastal engineering |
| Alistair Davies, and Submitters 80, 86 and 109 | Alistair Davies |
| Sun Pharmaceutical Industries Australia Pty Ltd | Peter O'Farrell and Carly Robertson of Counsel, instructed by Rigby Cooke Lawyers, who called expert evidence from: <ul style="list-style-type: none"> - Amanda Ring of Urban Planning Collective in town planning - Peter Ramsay of Peter J Ramsay and Associates in environment - Neola McKinley, Head of Operations - Matthew Nichol of Remplan in economics (evidence tabled but not called) |
| Rivers Run Estate Pty Ltd | Juliet Forsyth SC and Kate Lyle of Counsel, instructed by Maddocks, who called expert evidence from: <ul style="list-style-type: none"> - Stuart McGurn of Urbis in planning - Warwick Bishop of Water Technology in flooding - Nina Barich of Incitus in flooding - Iain Cowan of Tonkin + Taylor in air quality - Travis Hancock of Marshall Day Acoustics in noise |
| Pendragon Pty Ltd | Tania Cincotta and Edward Mahony of Best Hooper Lawyers, who called expert evidence from: <ul style="list-style-type: none"> - Warwick Bishop of Water Technology in hydrology - Stuart McGurn of Urbis in town planning |
| BamStone Pty Ltd | Tania Cincotta and Edward Mahony of Best Hooper Lawyers |
| Emma and Ray Conway | Darren Wong of Planology |
| National Trust Victoria | Brendan O'Toole |
| John Manniche | |
| Michael Raetz | |
| Dee Smith | |
| Alva Koort Pty Ltd | Kate Hocking |
| Chris Loorham | He called expert evidence from: |

| | |
|---|---|
| | - Ranjeet Bhatt of Transeco Pty Ltd in transport economics |
| Coast to Country Building Approvals | Fiona Castley and Bronwyn Mellor, who represented the following submitters: <ul style="list-style-type: none">- Fiona Castley- Coastal Unit Development- R&D Superannuation Fund- Stephen and Anna Wagg- SOB Nominees- Liam and Suzan Finnegan |
| Greg and Betty Highland; Brian and Jann Atkins; Susan and Janice Tieman | Jess Kaczmarek S&K Planning Lawyers |
| Drew, Lisa and Gayle Pevitt | Ian Munt of Counsel, Edward Mahoney of Best Hooper and Steve Myers of Myers Planning |

Appendix C Document list

| No. | Date | Description | Presented by |
|-----|----------|---|--------------------------------|
| 1 | 31/05/22 | Panel request letter, enclosing: <ul style="list-style-type: none"> - Exhibited C69moyn Amendment documents and supporting documents - Copies of submissions - Further consultation documentation regarding updated flood mapping - Copy of correspondence authorising Council to prepare the Amendment - Council reports and meeting minutes relating to exhibition and consideration of submissions. | Moyne Shire Council (Council) |
| 2 | 21/06/22 | Panel directions hearing letter | Planning Panels Victoria (PPV) |
| 3 | 1/08/22 | Draft site inspection itinerary | Council |
| 4 | 3/08/22 | Supplementary submission 69a on behalf of Rivers Run Estate Pty Ltd | " |
| 5 | " | Water Technology Memorandum referenced in supplementary submission 69a | " |
| 6 | 10/08/22 | Letter – Council response to direction 8 | " |
| 7 | " | Letter – Council response to direction 9 | " |
| 8 | " | Port Fairy Coastal and Structure Plan 2018, Hansen Partnership | " |
| 9 | " | Port Fairy Coastal and Structure Plan Issues and Opportunities Paper May 2017, Moyne Shire Council | " |
| 10 | " | Great South Coast Regional Growth Plan 2014, Victorian Government | " |
| 11 | " | Great Ocean Road Action Plan 2018, Department of Environment, Land, Water and Planning | " |
| 12 | " | Port Fairy Regional Flood Study 2008, Water Technology | " |
| 13 | " | Port Fairy Regional Flood Study Addendum – Sea Level Rise Modelling 2010, Water Technology | " |
| 14 | " | Port Fairy – Sea Level Rise Modelling Project 2012, Water Technology | " |
| 15 | " | Port Fairy Coastal Hazard Vulnerability Assessment 2013, Water Research Laboratory of the University of NSW | " |
| 16 | " | Translation of Port Fairy Coastal Hazard Assessment 2019, Cardno | " |
| 17 | " | Port Fairy Hydraulic Model Review 2020, Water Modelling Solutions | " |
| 18 | " | Flood Summary Report 2021, HARC | " |

| No. | Date | Description | Presented by |
|-----|------|--|--------------|
| 19 | “ | Tide Gauge Trigger Levels for Sea Level Rise Adaption Pathways 2022, Streamology | “ |
| 20 | “ | Victorian Floodplain Management Strategy 2016, Department of Environment, Land, Water and Planning (sections 1-3) | “ |
| 21 | “ | Floodplain Management in Australia: Best Practice Principles and Guidelines 2000 | “ |
| 22 | “ | Guidelines for Development in Flood Affected Areas 2019, Department of Environment, Land, Water and Planning | “ |
| 23 | “ | Ministerial Direction 13: Managing Coastal Hazards and the Coastal Impacts of Climate Change September 2021 | “ |
| 24 | “ | Planning Practice Note 12: Applying the Flood Provisions in Planning Schemes June 2015 | “ |
| 25 | “ | Planning Practice Note 53: Managing coastal hazards and the coastal impacts of climate change August 2015 | “ |
| 26 | “ | Glenelg Hopkins Regional Floodplain Management Strategy 2017, Glenelg Hopkins Catchment Management Authority | “ |
| 27 | “ | Glenelg Hopkins Regional Catchment Strategy 2021-2027, Glenelg Hopkins Catchment Management Authority available at https://glenelghopkins.rcs.vic.gov.au/ | “ |
| 28 | “ | Fencing in flood prone areas Guidelines 2021, Glenelg Hopkins Catchment Management Authority | “ |
| 29 | “ | Guidelines for Floodplain Cut and Fill within the Glenelg Hopkins CMA Region 2012, Fencing in flood prone areas Guidelines 2021, Glenelg Hopkins Catchment Management Authority | “ |
| 29a | “ | CHCMA Flood delineation for planning scheme maps standard approach 2013 | “ |
| 30 | “ | Guidelines for Coastal Catchment Management Authorities: Assessing development in relation to sea level rise June 2012, DSE | “ |
| 31 | “ | Marine and Coastal Policy 2020, Department of Environment, Land, Water and Planning | “ |
| 32 | “ | Marine and Coastal Strategy 2022, Department of Environment, Land, Water and Planning | “ |
| 33 | “ | Victorian Coastal Strategy 2014, Victorian Coastal Council | “ |
| 34 | “ | Victorian Coastal Strategy Implementation Plan 2017, Victorian Coastal Council | “ |
| 35 | “ | The Victorian Coastal Hazard Guide 2012, Department of Sustainability and Environment, 2012 | “ |
| 36 | “ | Victoria’s Climate Change Adaptation Plan 2017-2020 | “ |
| 37 | “ | Local Government Climate Change Adaptation Roles and Responsibilities 2020, Victorian Government | “ |

| No. | Date | Description | Presented by |
|-----|----------|---|-----------------------------|
| 38 | " | Australian State of the Environment 2022, available at https://soe.dcceew.gov.au/ | " |
| 39 | " | Coastal Climate Change Advisory Committee Final Report 2010 | " |
| 40 | " | IPCC report: AR6 Climate Change 2022 - Mitigation of Climate Change | " |
| 41 | " | IPCC report: AR6 Climate Change 2022 – Impacts, Adaption and Vulnerability Summary for Policy Makers (Full report available here https://www.ipcc.ch/report/ar6/wg2/) | " |
| 42 | " | IPCC report: AR6 Climate Change 2022 – The Physical Science Basis Summary for Policy Makers (Full report not yet available) | " |
| 43 | " | IPCC report: Special Report on the Ocean and Cryosphere in a Changing Climate 2019, Summary for Policy Makers and Chapter 4: Sea level rise (Full report available here https://www.ipcc.ch/srocc/) | " |
| 44 | " | IPCC report: Special Report Global Warming of 1.5°C 2018, Summary for Policy Makers (Full report available here https://www.ipcc.ch/sr15/) | " |
| 45 | " | IPCC report: AR5 Synthesis Report – Climate Change 2014 | " |
| 46 | " | IPCC report: AR4 Synthesis Report – Climate Change 2007 | " |
| 47 | " | UN Emissions Gap Report 2021 | " |
| 48 | " | Glenelg Hopkins CMA Climate Change Strategy 2016-2023 | " |
| 49 | " | Economic & Tourism Land Use Analysis 2017, Urban Enterprise | " |
| 50 | " | Port Fairy West Structure Plan September 2014 | " |
| 51 | " | Car Parking Strategy 2017 | " |
| 52 | " | Council Plan 2021-25 | " |
| 53 | " | Port Fairy Tree Management Plan November 2014 (Volumes 1, 2 and 3) | " |
| 54 | " | Port Fairy Bicycle Implementation Plan January 2022 | " |
| 55 | " | Open Space Strategy 2020-2035 | " |
| 56 | " | Railway Place, Port Fairy Precinct Masterplan 2011 | " |
| 57 | " | Letter – Procedures regarding document sharing | Council |
| 58 | " | Email - Request for in-camera submission from Sun Pharmaceuticals and Panel response | PPV |
| 59 | " | Panel directions and hearing timetable | PPV |
| 60 | 11/08/22 | Supplementary submission 4a | Shirley Humphrys |
| 61 | 12/08/22 | Email – Panel response to Council regarding direction 9 | PPV |
| 62 | 16/08/22 | Email – Confirmation that submitter 64 no longer wishes to be | Drew, Lisa and Gayle Pevitt |

| No. | Date | Description | Presented by |
|-----|----------|---|--|
| | | heard | (Pevitts) |
| 63 | “ | Evidence of Rob Swan in hydrology | Council |
| 64 | 17/08/22 | Letter – Council response to direction 25(d) | Council |
| 65 | 18/08/22 | Coversheet and evidence of Ranjeet Sing in transport economics | Chris Loorham |
| 66 | “ | Evidence of Dr Christine Lauchlan Arrowsmith in coastal flooding and sea level rise adaptation planning | Glenelg Hopkins Catchment Management Authority (GHCMA) |
| 67 | 19/08/22 | Evidence of Stuart McGurn in planning | Rivers Run Estate Pty Ltd (Rivers Run) |
| 68 | “ | Evidence of Iain Cowan in air quality | Rivers Run |
| 69 | “ | Evidence of Travis Hancock in noise | Rivers Run |
| 70 | “ | Evidence of Amanda Ring in planning | Sun Pharmaceutical Industries Pty Ltd (Sun Pharma) |
| 71 | “ | Evidence of Matthew Nichol in economics | Sun Pharma |
| 72 | “ | Evidence of Dr Neola Frances McKinley – Lay witness | Sun Pharma |
| 73 | “ | Correspondence from Panel to parties regarding late evidence | PPV |
| 74 | “ | Evidence of John Glossop in planning | Council |
| 75 | “ | Evidence of Nina Barich of Incitus in hydrology | Rivers Run |
| 76 | “ | Memorandum by Water Technology to accompany evidence of Warwick Bishop | Rivers Run |
| 77 | 22/08/22 | Evidence of Warwick Bishop in hydrology | Pendragon Pty Ltd (Pendragon) |
| 78 | “ | Evidence of Stuart McGurn in planning | Pendragon |
| 79 | “ | Email – Reasons for delayed filing of evidence | Pendragon |
| 80 | “ | Email – Reasons for delayed filing of evidence | Council |
| 81 | “ | Evidence of Peter Ramsay in buffers | Sun Pharma |
| 82 | “ | Evidence of Warwick Bishop in hydrology | Rivers Run |
| 82a | “ | Wave animation referenced in Mr Bishop’s evidence | Rivers Run |
| 83 | “ | Email – Reasons for delayed filing of evidence | Rivers Run |
| 84 | “ | Email – Reasons for delayed filing of evidence | Sun Pharma |
| 85 | “ | Letter – Additional member declaration, enclosing v2 timetable | PPV |
| 86 | 25/08/22 | 0.8 metres sea level rise mapping comprising: | Council |

| No. | Date | Description | Presented by |
|-----|----------|--|---------------------|
| | | a) Mapped submissions 1-20 b) Mapped submissions 21-40 c) Mapped submissions 41-60 d) Mapped submissions 62-90 e) Mapped submissions 92-127 f) Overview map g) Overview map comparison | |
| 87 | " | Submitter location map (superseded) | Council |
| 88 | " | Part A submission, enclosing: <ul style="list-style-type: none"> - Appendix 1 – Planning policy framework relevant to the Amendment - Appendix 2 – Summary of strategic documents - Appendix 3 – Summary of submissions (filed 29/08/22) - Appendix 4 – Chronology of events - Appendix 5 – Authorisation letter - Appendix 6 – Day 1 Amendment documents (filed 29/08/22) | Council |
| 89 | 29/08/22 | Letter – Changes to hearing schedule, enclosing v3 timetable | PPV |
| 90 | " | Letter – Panel request for advice from Department of Transport regarding Port Fairy Bypass | PPV |
| 91 | " | Submitter location map (updated) | Council |
| 92 | " | Residential Land Supply & Demand Assessment: Shire of Moyne prepared by Spatial Economics dated May 2021 | Council |
| 93 | " | Model Lane – list of permits and permit applications | Council |
| 94 | 30/08/22 | Email – Procedural issue regarding post exhibition change | Pevitts |
| 95 | 01/09/22 | Hydrological conclave statement of agreed opinions and facts | Best Hooper Lawyers |
| 96 | " | Submitter location map (updated with all lots related to submitter 6) | Council |
| 97 | " | 0.8m sea level rise individual property map (labelled 6a) showing lots associated with submission 6 | Council |
| 98 | " | Letter from Hon Ben Carroll MP to Roma Britnell MP regarding Port Fairy Bypass | Chris Loorham |
| 99 | 02/09/22 | Part B Submission, enclosing: <ul style="list-style-type: none"> - Appendix A - Response to Panel Direction 25 - Appendix B - Summary of changes in 'Part A' DDOs - Appendix C - Zone and overlay maps based on 'Part A' Ordinance - Appendix D - Memorandum from John Glossop in | Council |

| No. | Date | Description | Presented by |
|-----|----------|---|---------------------|
| | | relation to 'Part A' Ordinance | |
| | | - Appendix E - News articles in relation to historic and recent flooding in Port Fairy | |
| | | - Appendix F - Articles in relation to impact on insurance, derivation of Victorian sea-level and 1 in 100 year floods | |
| 100 | " | Presentation of Mr Glossop | Council |
| 101 | " | Letter – From Best Hooper regarding post exhibition change | Pevitts |
| 102 | 05/09/22 | Presentation of Dr Lauchlan-Arrowsmith | GHCMA |
| 103 | " | Nick Brisbane – Ethos Urban – Port Fairy Social and Economic Assessment | Rivers Run |
| 104 | " | Nick Brisbane – Ethos Urban – Port Fairy Residential Demand and Supply Review | Rivers Run |
| 105 | " | Nina Barich – Incitus – Review of Part A LFDP | Rivers Run |
| 106 | " | Warwick Bishop – Water Technology – Review of Part A LFDP | Rivers Run |
| 107 | " | Presentation of Ms Barich | Rivers Run |
| 108 | " | Email - Response to Panel Chair's question regarding timing of evidence on behalf of Submitter 64 | Pevitts |
| 109 | 06/09/22 | a) Comparison of sections 3, 4 and 5 of the exhibited and 'Part A' FO3 and LSIO4 b) Comparison of sections 3, 4 and 5 of FO3 and LSIO4 | Council |
| 110 | " | Letter from the Department of Environment, Land, Water and Planning regarding state policy for coastal climate change | Council |
| 111 | " | Marine and Coastal Act 2018 | Rivers Run |
| 112 | " | VC171 Explanatory Report | Rivers Run |
| 113 | " | Extract from ARR referred to by Ms Forsyth during evidence in chief of Ms Barich | Rivers Run |
| 114 | " | Email – From Best Hooper regarding details of 2 Regent Street | Pevitts |
| 115 | " | Vicplan report of 2 Regent Street | Pevitts |
| 116 | 07/09/22 | Proposed site inspection itinerary v4 | Council |
| 117 | " | Comparison of FO and LSIO and FO3 and LSIO4 relied on by Ms Forsyth during cross examination | Rivers Run |
| 118 | " | Survey and Feature Plan referred to by Mr Wong during cross examination of Mr Glossop | Emma and Ray Conway |
| 119 | " | Email – From Michael Raetz regarding 2 Regent Street | Michael Raetz |
| 120 | " | UN Gap Report extract | Rivers Run |
| 121 | " | Report by Schwalm et al. | Rivers Run |
| 122 | " | Sun Pharma inspection orders | Rigby Cooke |

| No. | Date | Description | Presented by |
|-----|----------|--|-----------------|
| 123 | 08/09/22 | Hearing submission 86, enclosing: <ul style="list-style-type: none"> - Appendix A - 12 Lot Plan - Appendix B - Wannan Water Sewer Requirement - Appendix C - 22 Lot Plan (sewer connected) - Appendix D - Concept Plan (Outline Development Plan) – Growth Area Extension - Appendix E - Rivacourt Pty Ltd v Banyule CC [2009] VCAT 174 - Appendix F - Logical Inclusions (AC) [2011] PPV 115 (11 November 2011) | Alastair Davies |
| 124 | “ | Hearing submission 109 | Alastair Davies |
| 125 | 09/09/22 | Panel presentation | GHCMA |
| 126 | “ | Supplementary submission | Council |
| 127 | “ | Planning Practice Note 91 (December 2019) | Council |
| 128 | “ | Planning Advisory Note 69 (May 2018) | Council |
| 129 | “ | Reformed Residential Zones – Neighbourhood Residential Zone factsheet (March 2017) | Council |
| 130 | “ | Port Fairy Coastal Climate Change Adaption Plan (June 2018) | Council |
| 131 | “ | Davies v Moira SC [2011] VCAT 452 | Council |
| 132 | “ | Greater Shepparton CC v Goulburn Broken Catchment Management Authority [2016] VCAT 2181 | Council |
| 133 | “ | Stewart v Moyne SC [2014] VCAT 360 | Council |
| 134 | “ | Video of Port Fairy flooding 2020 | Council |
| 135 | “ | Presentation for in-camera session [CONFIDENTIAL] | Sun Pharma |
| 136 | “ | Presentation of Mr Ramsay | Sun Pharma |
| 137 | 12/09/22 | Presentation of Mr Hancock | Rivers Run |
| 138 | “ | EPA letter dated 24/2/21 referred to by Ms Forsyth during cross examination of Mr Ramsay | Rivers Run |
| 139 | “ | EPA letter dated 26/7/22 referred to by Ms Forsyth during cross examination of Mr Ramsay | Rivers Run |
| 140 | 13/09/22 | Letter – Panel ruling regarding submitters No 64 | PPV |
| 141 | “ | Submissions on behalf of Rivers Run Estate Pty Ltd | Rivers Run |
| 142 | “ | Attachment to Rivers Run submission enclosing: <ul style="list-style-type: none"> a) Revised local policy b) Examples of development undertaken by Michael Hearn c) Amendment C75moyn - Site Context Plan d) Diagrams prepared by Mr Bishop and Ms Barich | Rivers Run |

| No. | Date | Description | Presented by |
|-----|----------|---|----------------------------|
| | | <ul style="list-style-type: none"> e) Greater Geelong C394ggee (PSA) [2020] PPV 22 f) Victoria's Climate Science Report 2019 g) Moyne C54 (PSA) [2014] PPV 78 h) Moyne C60 (PSA) [2016] PPV 50 i) Gippsland Coastal Board v South Gippsland SC & Ors (No 2) (includes Summary) (Red Dot) [2008] VCAT 1545 j) 2019-12-02 CMA letter to Brad Henderson k) Ramsay Buffer Assessment 28 June 2021 l) 2017-11-15 EPA inormal letter EPA Reference 5007943 m) 2021-08-18 EPA formal response C75 | |
| 143 | " | Letter – Panel correspondence and v4 Timetable | PPV |
| 144 | 14/09/22 | Bamstone submission | BAM and Associates Pty Ltd |
| 145 | " | Pendragon submission | Pendragon |
| 146 | " | Submission – E & R Conway (Final) and attachments: <ul style="list-style-type: none"> a) Map of submitters (located within Port Fairy) (updated 01.09.22) b) Victoria Planning Provisions – 32.08 General Residential Zone c) Character Area 14 d) Map 35 – Road Closure Overlay | Emma and Ray Conway |
| 147 | " | Submissions on behalf of Sun Pharma and attachments: <ul style="list-style-type: none"> a) Fishermans Bend Planning Review Panel Reports b) Barkly St Pty Ltd v Maribyrnong CC [2020] VCAT 486 c) Australian Catholic University Limited v Yarra CC [2021] VCAT 1218 d) Greater Geelong C129 (PSA) [2008] PPV 64 e) Latrobe C105 (PSA) [2019] PPV 16 f) PPN92 Managing buffers for land use compatibility g) Velevski v Mornington Peninsula SC [2021] VCAT 1550 | Sun Pharma |
| 148 | 15/09/22 | Uren v Bald Hills Wind Farm Pty Ltd [2022] VSC 145 | Sun Pharma |
| 149 | " | Clarification on question regarding Clause 44.03-3 | Rivers Run |
| 150 | " | Supplementary submission 86 | Alastair Davies |
| 151 | " | Supplementary submission 109 | Alastair Davies |
| 152 | " | Plan showing sites owned/occupied by Bamstone | BAM and Associates Pty Ltd |
| 153 | " | Email – Advice regarding most recent subdivision undertaken by Pendragon, enclosing: <ul style="list-style-type: none"> a) Letter on behalf of Pendragon Pty Ltd from 2017 | Pendragon |

| No. | Date | Description | Presented by |
|-----|----------|---|--|
| | | b) Plan of Subdivision No. 614176P | |
| 154 | 16/09/22 | Submission of Alva Koort Pty Ltd | Alva Koort Pty Ltd |
| 155 | " | Submissions on behalf of S & B Atkins G & B Hyland and S & J Tieman dated 16 September 2022 and attachments: a) Coastal connection stewardship agreement b) Planning for Biodiversity Guidance c) PPN42-Applying the Rural Zones d) ESO amendments Moyne C21 Panel Report e) ESO Amendments C21 Explanatory Report | S & B Atkins G & B Hyland and S & J Tieman |
| 156 | " | Submission and attachments on behalf of Dee Smith and Robert Burnett, enclosing: a) Tracked changed Part A version of Port Fairy Local Floodplain Development Plan 2021 | Dee Smith and Robert Burnett |
| 157 | " | Proposed changes to Day 1 ordinance: a) Draft Port Fairy Local Floodplain Development Plan 2022 - Part A version b) Schedule 3 To Clause 44.03 (FO) - Part A version c) Schedule 4 to Clause 44.04 (LSIO) - Part A version | Rivers Run |
| 158 | " | Proposed changes to Schedule 4 to Clause 43.04 (DPO) - Part A version (Post presentation version) | Emma and Ray Conway |
| 159 | 19/09/22 | Directional Paper – Economic Appraisal of Port Fairy Road Bypass – August 2022 – Summary and Recommendations | Chris Loorham |
| 160 | " | Presentation and appendices | Michael Raetz |
| 161 | " | Photos referred to at Hearing | John Manniche |
| 162 | " | Email – Correction to answer regarding floor height of proposed dwelling, enclosing: a) Submitter 63 proposed tracked changes to Rivers Run Part A version of Port Fairy Local Floodplain Development Plan | Dee Smith and Robert Burnett |
| 163 | " | Hearing submission 48, enclosing: a) Attachment 1 - "Port Fairy – A study" prepared by Cox Tanner Pty Ltd b) Attachment 2 - au cases vic VCAT 2021 1252 c) Attachment 3 - Moyne 23.02 Operation of the Municipal Strategic Statement d) Attachment 4 - Moyne 23.03 Operation of the Local Planning Policies e) Attachment 5 – Various media articles f) Attachment 6 – Moyne Amendment C3 Panel Report g) Attachment 7 – Moyne Amendment C3 Explanatory Report | Fiona Castley |

| No. | Date | Description | Presented by |
|-----|----------|--|--|
| | | <ul style="list-style-type: none"> h) Attachment 8 – Full Set Port Fairy Urban Design Guidelines i) Attachment 9 – Tracked Changes to DDO Schedules 1-7 – Part A j) Attachment 10 – Victoria in the Future Regional Residential Report – Shire of Moyne | |
| 164 | “ | Hearing submission 53, enclosing: <ul style="list-style-type: none"> a) Attachment 1 – Port Fairy IGA titles b) Attachment 2 – S173 Agreement c) Attachment 3 – Schedule 12 to DDO d) Attachment 4 – Character Area 5 e) Attachment 5 – Schedule 1 to DDO – Part A f) Attachment 6 - Track Changes to Clause 21.09 – Local Areas – Part A g) Attachment 7 – Tracked Changes to Schedule 1 to DDO – Part A h) Attachment 8 – Port Fairy Car Parking Economic Assessment by Tim Nott | Coastal Unit Investments |
| 165 | “ | Hearing submission 56 | R and D Superannuation Fund |
| 166 | “ | Hearing submission 57 | SOB Nominees |
| 167 | “ | Hearing submission 123 | L Finnigan |
| 168 | “ | Hearing submission 125, enclosing: <ul style="list-style-type: none"> a) Attachment 1 – Letter from GHCMA dated 18/11/21 b) Attachment 2 – Letter from GHCMA dated 25/03/22 c) Attachment 3 – Letter from GHCMA dated 26/07/22 | S Wagg |
| 169 | “ | Presentation | Department of Transport |
| 170 | “ | Email – Answers to Panel questions on notice, enclosing: <ul style="list-style-type: none"> a) Map referred to during presentation | S & B Atkins G & B Hyland and S & J Tieman |
| 171 | “ | Closing submission, enclosing: <ul style="list-style-type: none"> a) C80hepb Explanatory Report b) C80hepb Panel Report c) Colac Otway C74 Explanatory Report | Council |
| 172 | 21/09/22 | Email – Further submissions, enclosing: <ul style="list-style-type: none"> a) Belfast Lough Victorian Biodiversity Atlas Species Summary List b) Biodiversity Strategic Values mapping | Michael Raetz |

| No. | Date | Description | Presented by |
|-----|----------|--|--|
| 173 | “ | Letter – Panel correspondence and v5 timetable | PPV |
| 174 | 26/09/22 | Email – Confirmation of who submission 48 was provided on behalf of | Fiona Castley |
| 175 | 30/09/22 | Council final proposed versions of ordinance (only including clauses with changes): <ul style="list-style-type: none"> a) Draft Port Fairy Local Floodplain Development Plan 2022 b) Schedule 2 to Clause 32.09 (NRZ) c) Schedule 1 to Clause 43.02 (DDO) d) Schedule 2 to Clause 43.02 (DDO) e) Schedule 3 to Clause 43.02 (DDO) f) Schedule 4 to Clause 43.02 (DDO) g) Schedule 5 to Clause 43.02 (DDO) h) Schedule 6 to Clause 43.02 (DDO) i) Schedule 7 to Clause 43.02 (DDO) j) Schedule 4 to Clause 43.04 (DPO) k) Schedule 4 to 44.04 (LSIO) | Council |
| 176 | 04/10/22 | Evidence of Warwick Bishop in hydrology | Pevitts |
| 177 | 07/10/22 | Email – Comments on Council’s preferred drafting, enclosing: <ul style="list-style-type: none"> a) Tracked changes to post panel version of Port Fairy Local Floodplain Development Plan | Donna Smith and Robert Burnett |
| 178 | “ | Email – Comments on Council’s preferred drafting | Sun Pharma |
| 179 | “ | Letter – Comments on Council’s preferred drafting, enclosing: <ul style="list-style-type: none"> a) Tracked changes to post panel version of Port Fairy Local Floodplain Development Plan b) Tracked changes to Schedule 3 to Clause 43.02 c) Tracked changes to Schedule 4 to Clause 44.04 | S & B Atkins G & B Hyland and S & J Tieman |
| 180 | “ | Email – Comments on Council’s preferred drafting, enclosing: <ul style="list-style-type: none"> a) Tracked changes to Port Fairy Local Floodplain Development Plan b) Tracked changes to Schedule 4 to Clause 44.04 | Rivers Run |
| 181 | “ | Letter – Comments on Council’s preferred drafting, enclosing: <ul style="list-style-type: none"> a) Tracked changes to Schedule 2 to Clause 32.09 b) Tracked changes to Schedule 4 to Clause 43.04 | Emma and Ray Conway |
| 182 | “ | Email – Comments on Council’s preferred drafting | Pendragon |
| 183 | “ | Email – Comments on Council’s preferred drafting, enclosing: <ul style="list-style-type: none"> a) Schedule 1 to Clause 43.02 (DDO) b) Schedule 2 to Clause 43.02 (DDO) c) Schedule 3 to Clause 43.02 (DDO) d) Schedule 4 to Clause 43.02 (DDO) | Fiona Castley |

| No. | Date | Description | Presented by |
|-----|----------|--|--------------|
| | | <ul style="list-style-type: none"> e) Schedule 5 to Clause 43.02 (DDO) f) Schedule 6 to Clause 43.02 (DDO) g) Schedule 7 to Clause 43.02 (DDO) h) Example of DDO Compliance issues 68 Princes Highway, Port Fairy | |
| 184 | 17/10/22 | Submission on behalf of Drew, Lisa and Gayle Pevitt | Pevitts |
| 185 | " | Summary of oral comments made in respect to the filing of Documents 150 and 151 filed by Mr Davies | Council |
| 186 | " | Email - Council final post panel versions of ordinance, enclosing: <ul style="list-style-type: none"> a) Schedule 1 to Clause 43.02 (DDO) b) Schedule 2 to Clause 43.02 (DDO) c) Schedule 3 to Clause 43.02 (DDO) d) Schedule 4 to Clause 43.02 (DDO) e) Schedule 5 to Clause 43.02 (DDO) f) Schedule 6 to Clause 43.02 (DDO) g) Schedule 7 to Clause 43.02 (DDO) | Council |

Appendix D Planning framework

Table 4 Planning Policy Framework: State and regional policies

| Relevant clauses |
|---|
| 11 Settlement |
| 11.01 Victoria |
| <p>11.01-1S Settlement</p> <p>To facilitate the sustainable growth and development of Victoria and deliver choice through a network of settlements</p> <p>Strategies</p> <p>Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities.</p> <p>Ensure regions and their settlements are planned in accordance with their relevant regional growth plan.</p> <p>Guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks.</p> <p>Create and reinforce settlement boundaries.</p> <p>Deliver networks of high-quality integrated settlements that have a strong identity and sense of place, are prosperous and are sustainable by:</p> <ul style="list-style-type: none"> - Developing settlements that will support resilient communities and their ability to adapt and change. - Providing for appropriately located supplies of residential, commercial, and industrial land across a region, sufficient to meet community needs in accordance with the relevant regional growth plan. - Minimising exposure to natural hazards, including increased risks due to climate change. <p>Limit urban sprawl and direct growth into existing settlements.</p> <p>Promote and capitalise on opportunities for urban renewal and infill redevelopment.</p> <p>Support metropolitan and regional climate change adaption and mitigation measures.</p> |
| <p>11.01-1R Settlement – Great South Coast</p> <p>To attract more people to the region.</p> <p>Strategies</p> <p>Support the role of Warrnambool as the key population and employment centre for the region with key links to Geelong and Melbourne.</p> <p>Facilitate the district towns of Allansford, Camperdown, Casterton, Cobden, Coleraine, Dunkeld, Heywood, Koroit, Mortlake, Port Campbell, Port Fairy, Terang and Timboon to support local communities, industry and services.</p> <p>Support and promote active and attractive towns through the provision and enhancement of open space, trails, streetscapes and gardens.</p> <p>Support growth and economic opportunities throughout the region, especially along the north-south (Henty Highway) and east-west (Princes Highway) corridors.</p> |

Relevant clauses

Clause 11.02-1S – Supply of urban land

To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses

Strategies

Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.

Ensure that sufficient land is available to meet forecast demand.

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

Planning for urban growth should consider:

- Opportunities for the consolidation, redevelopment and intensification of existing urban areas.
- Neighbourhood character and landscape considerations.
- The limits of land capability and natural hazards and environmental quality.
- Service limitations and the costs of providing infrastructure.

Monitor development trends and land supply and demand for housing and industry.

Maintain access to productive natural resources and an adequate supply of well-located land for energy generation, infrastructure and industry.

Restrict rural residential development that would compromise future development at higher densities.

Clause 11.02-2S – Structure planning

To facilitate the fair, orderly, economic and sustainable use and development of urban areas.

Clause 11.03-1S – Activity centres

To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community

Strategies

Support the role and function of each centre in the context of its classification, the policies for housing intensification, and development of the public transport network.

Undertake strategic planning for the use and development of land in and around activity centres.

Give clear direction on preferred locations for investment.

Encourage a diversity of housing types at higher densities in and around activity centres.

Clause 11.03-2S – Growth areas

To locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create sustainability benefits while protecting primary production, major sources of raw materials and valued environmental areas.

Relevant clauses

Clause 11.03-4S – Coastal settlement

To plan for sustainable coastal development

Strategies

Plan and manage coastal population growth and increased visitation so that impacts do not cause unsustainable use of coastal resources.

Support a network of diverse coastal settlements that provide for a broad range of housing types, economic opportunities and services.

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.

Minimise linear urban sprawl along the coastal edge and ribbon development in rural landscapes.

Limit development in identified coastal hazard areas, on ridgelines, primary coastal dune systems, shorelines of estuaries, wetlands and low-lying coastal areas, or where coastal processes may be detrimentally impacted.

Clause 11.03-5R – Great Ocean Road region

To manage the sustainable development of the Great Ocean Road region

Strategies

Ensure development responds to the identified landscape character of the area.

Manage the growth of towns by:

- Respecting the character of coastal towns and promoting best practice design for new development.
- Directing urban growth to strategically identified areas.

Manage the impact of development on catchments and coastal areas.

Manage the impact of development on the environmental and cultural values of the area.

Clause 11.03-6S – Regional and local places

To facilitate integrated place-based planning

Strategies

Consider the distinctive characteristics and needs of regional and local places in planning for future land use and development.

12 Environmental and Landscape Values

Clause 12.02-1S – Protection of the marine and coastal environment

To protect and enhance the marine and coastal environment

Strategies

Protect and enhance natural features, landscapes, seascapes and public visual corridors.

Relevant clauses

Clause 12.02-2S – Marine and coastal Crown land

To ensure the use and development of marine and coastal Crown land is ecologically sustainable, minimises impacts on cultural and environmental values, and improves public benefit for current and future generations

Strategies

Design, locate and maintain buildings and structures to effectively manage:

- Any increase in exposure to coastal hazard risk, including rates of sea level rise, erosion, accretion or inundation.
- Exposure to public health and safety risks.
- Any detrimental impacts (in particular increased hazard risk) on neighbouring Crown or private land.
- Adverse effects on the environment and associated uses and values.
- Impact on marine and coastal functions and processes.

Clause 12.03-1S – River corridors, waterways, lakes and wetlands

To protect and enhance river corridors, waterways, lakes and wetlands

Strategies

Protect the environmental, cultural and landscape values of all water bodies and wetlands.

Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands.

Ensure development is sensitively designed and sited to maintain and enhance environmental assets, significant views and landscapes along river corridors and waterways and adjacent to lakes and wetlands.

Facilitate growth in established settlements where water and wastewater can be managed.

Clause 12.05-2S – Landscapes

To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

Strategies

Ensure significant landscape areas such as forests, the bays and coastlines are protected.

Ensure development does not detract from the natural qualities of significant landscape areas.

13 Climate Change Impacts

Relevant clauses

Clause 13.01-1S – Natural hazards and climate change

To minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning.

Strategies

Respond to the risks associated with climate change in planning and management decision making processes.

Identify at risk areas using the best available data and climate change science.

Integrate strategic land use planning with emergency management decision making.

Direct population growth and development to low risk locations.

Develop adaptation response strategies for existing settlements in risk areas to accommodate change over time.

Ensure planning controls allow for risk mitigation and climate change adaptation strategies to be implemented.

Site and design development to minimise risk to life, health, property, the natural environment and community infrastructure from natural hazards.

Clause 13.01-2S – Coastal inundation and erosion

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

Strategies

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.

Respond to marine and coastal processes in the context of the coastal compartment type.

Assess the effectiveness, costs, benefits, impacts (direct, cumulative and synergistic) and path dependency of available adaptation options in the following order:

1. non-intervention
2. avoid
3. nature-based methods
4. accommodate
5. retreat
6. protect

Relevant clauses

Clause 13.03-1S – Floodplain management

To assist the protection of:

- Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.
- The natural flood 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.

Strategies

Identify land affected by flooding, including land inundated by the 1 in 100 year flood event (1 per cent Annual Exceedance Probability) or as determined by the floodplain management authority in planning schemes.

Avoid intensifying the impact of flooding through inappropriately located use and development.

Plan for the cumulative impacts of use and development on flood behaviour.

Locate emergency and community facilities (including hospitals, ambulance stations, police stations, fire stations, residential aged care facilities, communication facilities, transport facilities, community shelters, child care centres and schools) outside the 1 in 100 year (1 per cent Annual Exceedance Probability) floodplain and, where possible, at levels above the height of the probable maximum flood.

Locate use and development that involve the storage or disposal of environmentally hazardous industrial and agricultural chemicals or wastes and other dangerous goods (including intensive animal industries and sewage treatment plants) outside floodplains unless site design and management is such that potential contact between such substances and floodwaters is prevented, without affecting the flood carrying and flood storage functions of the floodplain.

Ensure land use on floodplains minimises the risk of waterway contamination occurring during floods and floodplains are able to function as temporary storage to moderate peak flows and minimise downstream impacts.

Clause 13.04-2S – Erosion and landslip

To protect areas prone to erosion, landslip or other land degradation processes.

Strategies

Identify areas subject to erosion or instability in planning schemes and when considering the use and development of land.

Prevent inappropriate development in unstable areas or areas prone to erosion.

Clause 13.04-3S – Salinity

To minimise the impact of salinity and rising water tables on land uses, buildings and infrastructure in rural and urban areas and areas of environmental significance and reduce salt load in rivers.

Strategies

Identify areas subject to salinity in the preparation of planning schemes and land use planning decisions.

15 Built Environment and Heritage

Relevant clauses

Clause 15.01-1S– Urban design

To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

Strategies

Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.

Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.

Clause 15.01-2S – Building design

To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.

Strategies

Ensure a comprehensive site analysis forms the starting point of the design process and provides the basis for the consideration of height, scale, massing and energy performance of new development.

Ensure development responds and contributes to the strategic and cultural context of its location.

Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.

Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.

Ensure development is designed to protect and enhance valued landmarks, views and vistas.

Ensure development considers and responds to transport movement networks and provides safe access and egress for pedestrians, cyclists and vehicles.

Encourage development to retain existing vegetation.

Ensure development provides landscaping that responds to its site context, enhances the built form, creates safe and attractive spaces and supports cooling and greening of urban areas.

Clause 15.01-5S – Neighbourhood character

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Strategies

Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

Ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.

Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:

- Pattern of local urban structure and subdivision.
- Underlying natural landscape character and significant vegetation.
- Neighbourhood character values and built form that reflect community identity.

16 Housing

Clause 16.01-1S– Housing supply

To facilitate well-located, integrated and diverse housing that meets community needs.

Relevant clauses

Strategies

Ensure that an appropriate quantity, quality and type of housing is provided, including aged care facilities and other housing suitable for older people, supported accommodation for people with disability, rooming houses, student accommodation and social housing.

Increase the proportion of housing in designated locations in established urban areas (including under-utilised urban land) and reduce the share of new dwellings in greenfield, fringe and dispersed development areas.

Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.

Identify opportunities for increased residential densities to help consolidate urban areas.

Plan for growth areas to provide for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres.

Clause 16.01-1R– Housing for older people - Great South Coast

Strategy

Support the provision of suitable housing for older people to cater for projected demographic change.

Clause 16.01-2S – Housing affordability

To deliver more affordable housing closer to jobs, transport and services.

Strategies

Improve housing affordability by:

- Ensuring land supply continues to be sufficient to meet demand.
- Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.
- Promoting good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.
- Encouraging a significant proportion of new development to be affordable for households on very low to moderate incomes.

Increase the supply of well-located affordable housing by:

- Facilitating a mix of private, affordable and social housing in suburbs, activity centres and urban renewal precincts.
- Ensuring the redevelopment and renewal of public housing stock better meets community needs.

Clause 16.01-3R – Rural residential development - Great South Coast

Strategies

Support rural residential development in locations that:

- Are adjacent to towns with limited growth demand to sustain population levels and communities.
- Are not strategically identified for standard density urban growth.

17 Economic Development

Clause 17.01-1S– Diversified economy

To strengthen and diversify the economy.

Strategies

Protect and strengthen existing and planned employment areas and plan for new employment areas.

Relevant clauses

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.

Improve access to jobs closer to where people live. Support rural economies to grow and diversify.

Clause 17.02-1S– Business

To encourage development that meets the community’s needs for retail, entertainment, office and other commercial services.

Strategies

Plan for an adequate supply of commercial land in appropriate locations.

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Locate commercial facilities in existing or planned activity centres.

Clause 17.03-1S – Industrial land supply

To ensure availability of land for industry.

Strategies

Provide an adequate supply of industrial land in appropriate locations including sufficient stocks of large sites for strategic investment.

Identify land for industrial development in urban growth areas where:

- Good access for employees, freight and road transport is available.
- Appropriate buffer areas can be provided between the proposed industrial land and nearby sensitive land uses.

Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development.

Clause 17.04-1S – Facilitating tourism

To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

Clause 17.04-2S – Coastal and maritime tourism and recreation

To encourage a diverse range of strategically located and well-designed coastal and maritime tourism and recreational opportunities that strengthen people's connection with the marine and coastal environment.

Table 5 Planning Policy Framework: Local policies

Relevant clauses

21 Municipal Strategic Statement

21.02 Municipal overview

Provides an overview of Moyne Shire, its geographic features and regional landscape character. It notes that the Shire has a coastline of over 90 kilometres which provides an important recreation, leisure and tourism asset as well as providing significant environmental, conservation and social values and experiences.

The Vision for the Shire is:

Moyne Shire will be a vibrant and prosperous community characterised by strong social, economic and environmental leadership

Relevant clauses

21.03 Factors Influencing Future Planning and Development

Sets out the key factors of importance to the Shire's future land use and development, some of which include:

- Heavy reliance on agriculture and tourism
- Demand for housing and potential for this to affect productive agricultural land and sensitive locations including coastlines
- High quality historic built environment
- The importance of protecting landscape and township character and containing township development within defined boundaries
- The need for clear direction regarding the future use and development of the coast
- Ageing population

21.05 Settlement and Housing

Relevant objectives include:

- To define a sustainable urban/non urban edge to the main townships and settlements within the Moyne Shire.
- To maintain compact urban forms that will allow for the ease of service delivery and minimal infrastructure costs. Unplanned developments that have potential to adversely affect the landscape and environmental qualities of the municipality, will not be supported.
- 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 manage development on the fringes of townships so that it enhances the character of the town's landscape setting.
- To avoid ribbon development along the coastal edge and along main roads such as the Great Ocean Road and Princes Highway and key tourist routes.
- To recognize that views form an important part of the amenity of a property and to provide for a reasonable sharing of views of significant landscape features, including views of the ocean, coastal shoreline, estuaries, wetlands and notable cultural features.

These objectives are supported by a number of strategies to guide their implementation.

Relevant clauses

21.06 Environment

Relevant objectives include:

- To protect significant natural environments and where appropriate form effective open space an/or habitat corridors, along river and coastal areas
- To maintain the integrity of the existing urban floodways and to identify new floodway areas outside the urban areas.
- To integrate the effects on flood hazard from both a 100 year ARI flood event and storm tide with a 0.8 metre rise in sea levels projected to the year 2100 in assessing development of greenfield sites in Port Fairy.
- For urban infill development in Port Fairy, a projected sea level rise of 0.2 metres over current 1 in 100 year flood levels by 2040 will be used to assess development.
- To implement the requirements of the Port Fairy Local Floodplain Development Plan 2013 Incorporated Document.
- To ensure that the preferred character for significant coastal landscapes are protected and supported by appropriate development.
- To retain the open and rural character of views and outlooks, particularly from main road corridors.
- To ensure that appropriate risk assessment is undertaken to consider the impact and hazards of sea level rise and climate change impacts.

These objectives are supported by a number of strategies to guide their implementation.

21.09-3 Local Areas – Port Fairy

Sets out the vision for Port Fairy as:

- 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.

Sets out a range of objectives in relation to urban character, housing, commercial and industrial development opportunities, infrastructure, tourism and accessibility. It also includes objectives for managing the environmental features of Port Fairy including the coastline, Moyne River, the Lough and open space areas. The policy addresses a number of objectives in relation to flood risk in Port Fairy, and in particular that future structure planning should consider risks to the township from flooding of the Moyne River.

Appendix E Schedule 1 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 1 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO1**.

PORT FAIRY COMMERCIAL CORE PRECINCT

1.0

Design objectives

--/--/----

To retain a commercial core that reflects the rhythm, scale and massing of the traditional commercial development of Port Fairy.

Proposed
C69moyn

To ~~ensure~~ sensitively [integrate](#) ~~integrated~~ new development with the precinct's heritage qualities.

To support sensitive integration of residential development ~~where appropriate~~.

2.0

Buildings and works

--/--/----

[A permit is required to construct a fence.](#)

Proposed
C69moyn

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Building Height

Building height ~~must~~ [should](#) not exceed 9 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Massing

Buildings should be articulated at the frontage so that the overall bulk and mass of the building does not compromise the characteristic scale and massing of the precinct.

Building Setbacks

Buildings ~~should~~**must** have a zero metre setback from front ~~and side~~ boundaries.

Buildings should have a zero metre setback from side boundaries at the main street frontage unless a design provides for pedestrian or vehicle access.

Frontage Presentation

Buildings ~~should~~**must** provide an attractive and active edge to the street and enable passive surveillance of the street.

Ground floor windows should reflect any established shopfront pattern in the streetscape.

Design Detailing

Building materials and colours should respect the character of the area.

Outbuildings and Car Parking

Any off-street car parking, garages or outbuildings should not be visible from the main street frontage of the property (not including a laneway).

~~Where garages are provided, the garage must be located to the rear of the building and its width should not exceed 6.5 metres.~~

Landscaping and Fencing

Fencing ~~should~~**must** not be provided at street frontages or in front of the building facade. Corner lots should ensure that side fencing provides for visual permeability through height or style of fencing.

Fencing and landscaping should be consistent with the commercial character of the area.

Service boxes and storage areas ~~should~~**must** be located where they are not visible from the street or visually screened using quality materials or landscaping.

3.0

--/--/----

Proposed
C69moyn

Subdivision

None specified

4.0

--/--/----

Proposed
C69moyn

Signs

None specified.

5.0

--/--/----

Proposed
C69moyn

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.

6.0

Decision guidelines

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**Proposed
C69moyn**

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~The quality of the response~~ Whether the design responds to the building and works requirements contained within this schedule.
- The integration of the design responses with any heritage considerations.
- Whether residential development would compromise the commercial character of the precinct.

Buildings and works:

- ~~Whether~~ How the building height, bulk and mass complement ~~are detrimental to~~ the area's characteristic scale.
- Whether building materials and colours respect the characteristic scale and pattern of the area.
- Whether parking areas and other structures ~~or other~~ are visually compatible with the character of the area.
- ~~Whether fencing and/or landscaping is consistent with the commercial character of the area.~~
- Whether fencing and/or landscaping provides for appropriate passive surveillance.

Appendix F Schedule 2 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 2 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO2**.

PORT FAIRY TOWN CENTRE SURROUNDS PRECINCT

1.0

Design objectives

--/--/----

[To recognise and acknowledge Port Fairy's historic character.](#)

Proposed
C69moyn

To deliver high quality and contemporary design responses that support the integration of new development with Port Fairy's historic character.

To encourage small building footprints that respond to heritage and infrastructure constraints and provide for housing diversity.

To retain the landscape qualities of the precinct and minimise the detrimental visual impact of car parking and outbuildings.

2.0

Buildings and works

--/--/----

A permit is required to construct a fence unless:

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable.
- The fence is behind the front facade of the building and does not exceed 2 metres in height.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

The combined site coverage of buildings and impermeable surfaces should respect the pattern of building and open space characteristic of the area.

Building Massing

Buildings ~~should~~**must** be articulated so that the overall bulk and mass of the building does not compromise the characteristic scale and streetscape rhythm of the precinct.

Building Height

Building height should not be detrimental to the character of the precinct.

For buildings in this precinct, other than in Wishart Street, building height ~~must~~ should not exceed 7 metres

~~For buildings~~ In Wishart Street, building heights ~~must~~ should not exceed 5 metres and ~~Fa~~çade heights ~~of a building in Wishart Street~~ should~~must~~ not exceed 3 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Setbacks

The setbacks of new buildings should retain the established development pattern and respect characteristic setbacks.

First floor extensions should be setback as far as possible from the street to minimise visual intrusion in the rhythm of the streetscape.

Any part of a new building or extension ~~should~~must:

- Be set back at least 2 metres from any side boundary.
- Combined side setbacks equal a minimum setback 6 metres combined, within 10 metres of the building frontage.

Frontage Presentation

Buildings should provide an attractive edge to the street and support passive surveillance of the street.

Design Detailing

Building materials, form, ~~and~~ colours and roof pitch should~~must~~ respect the character of the precinct.

When constructing new buildings or extensions or carrying out works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided.
- Reflective materials should be avoided.
- Non-reflective ~~metal~~ materials should be~~are~~ used for roofs.
- Silver aluminium windows or doors should be avoided.

Outbuildings and Car Parking

Garages, outbuildings and areas allocated for parking vehicles should be sited to minimise visibility from the street and be designed to be consistent with the character of the precinct.

Garages structures ~~should~~must have a maximum external width of 6.5 metres.

Garages should be set back at least 1 metre behind the main building façade (excluding porticos and projecting windows).

If a garage is set back more than 10 metres from the building frontage, siting on a side boundary is acceptable provided other requirements are met.

Where double garages are provided, these ~~should~~**must** be accessed by a single width crossover.

Landscaping and Fencing

Landscaping should utilise predominantly indigenous species.

Fences forward of, or parallel to, the front façade ~~should~~**must** be at least 50 per cent visually permeable.

Service boxes and storage areas ~~should~~**must** be located where they are not visible from the street or are visually screened using quality materials or landscaping.

3.0

Subdivision

--/--/----

Subdivision should minimise the creation of additional crossovers.

Proposed
C69moyn

The frontage width of lots should be consistent with the typical frontage (or lot) widths.

Side-by-side subdivisions should be avoided unless they can demonstrate that they will result in development that can meet side setback requirements.

~~None specified.~~

4.0

Signs

None specified.

--/--/----

Proposed
C69moyn

5.0

Application requirements

--/--/----

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

Proposed
C69moyn

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.
- A landscape plan prepared by a suitably qualified person.

6.0

Decision guidelines

--/--/----

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

Proposed
C69moyn

- ~~The quality of the response~~Whether the design responds to the building and works requirements contained within this schedule.
- The integration of the design response with any heritage considerations.
- The contribution the proposed development makes to housing diversity in Port Fairy.

Buildings and works

- Whether the development reinforces traditional streetscape patterns.
- Whether building footprint and/or and building height are detrimental to the existing patterns and character of the area.
- The availability of areas of open space and landscaping.

Subdivision

~~In considering an application for subdivision of land, the responsible authority must consider:~~

- ~~▪ Whether the width of lots at the street frontage responds appropriately to the widths of existing lots.~~
- ~~▪ Whether the application has avoided the creation of additional crossovers.~~
- ~~▪ Whether the side building setback requirements can be met where a side-by-side subdivision is proposed.~~
- Whether there is adequate opportunity to provide landscaping along driveways.

Appendix G Schedule 3 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 3 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO3**.

PORT FAIRY SETTLEMENT APPROACHES

1.0

Design objectives

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To enhance the settlement approaches as attractive edges to Port Fairy through the integration of landscaping with built form.

Proposed
C69moyn

To establish a notable distinction between lower density and rural properties and urban parts of Port Fairy.

~~To ensure low scale and recessive built form on approach to Port Fairy.~~

The maintain the open rural character and views of the Belfast Lough and western hills.

2.0

Buildings and works

--/--/----

A permit is required to construct a fence unless:

Proposed
C69moyn

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable.
- The fence is behind the front facade of the building and does not exceed 2 metres in height, unless adjoining Belfast Lough.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

The combined site coverage of buildings and impermeable surfaces should be consistent with the natural and open character of Belfast Lough and the hillsides.

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

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

Building Massing

Buildings ~~should~~**must** be articulated so that the overall bulk and mass of the building does not dominate views of the Belfast Lough or hills to the west of the township.

Any part of a new building or extension ~~should~~**must**:

- Provide a change in the building plane at least every 15 metres for facades visible from streets or from the Belfast Lough.
- Have a maximum total building width at the street frontage of 30 metres.

Building Height

A building height ~~must~~ should not exceed 7 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Setbacks

The setback of new buildings and extensions should provide a balance between buildings and landscape.

Any part of a new building or extension should ~~must~~ be set back a minimum of:

- 20 metres from a street boundary.
- 10 metres from a side boundary.

Outbuildings and Car Parking

Driveways should be constructed with a permeable surface.

Garages should ~~must~~ have a maximum external width of 6.5 metres.

Garages should ~~must~~ be sited at least 1 metre behind the main building façade (excluding porticos and projecting windows).

Where double garages are provided these should ~~must~~ be accessed by a single width crossover.

Design Detailing

When constructing new buildings or extensions or carrying out works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided.
- Reflective materials should ~~must~~ be avoided.
- Non-reflective ~~metal~~ materials should ~~must~~ be used for roofs.

Landscaping and Fencing

Front fencing and landscaping should reflect the 'buildings in landscape' character of the area.

Landscaping should ~~must~~ provide a greenvegetated foreground that matures to a height greater than the fence and provides a landscape screen to the building.

Fences forward of the front façade or parallel to the street frontage should ~~must~~ be at least 50 per cent visually permeable.

High solid fences should ~~must~~ not be constructed adjoining areas of environmental

significance such as wetlands or the Belfast Lough.

Service boxes and storage areas ~~should be~~are located where they are not visible from the street or visually screened using quality materials or landscaping.

3.0

--/--/----

Proposed
C69moyn

Subdivision

~~A permit to subdivide land should meet the following requirements:~~

- ~~▪ The frontage width of lots should be consistent with the typical frontage (or lot) widths in lower density areas.~~
- Subdivision ~~must avoid~~ should minimise the creation of additional crossovers.
- Accessways ~~must~~ should be combined where possible to reduce the number of crossovers along key approaches, particularly the Princes Highway.
- The frontage width of lots should be consistent with the typical width of existing lots in the street.

4.0

--/--/----

Proposed
C69moyn

Signs

None specified.

5.0

--/--/----

Proposed
C69moyn

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation that demonstrates how the application responds to the objectives and requirements of this schedule.
- A landscape plan prepared by a suitably qualified person.

6.0

--/--/----

Proposed
C69moyn

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~The quality of the response~~Whether the design responds to the building and works requirements contained within this schedule.
- ~~The quality of the response~~Whether the design responds to the landscape and visual setting of this precinct and measures taken to reduce visual dominance.
- ~~The integration of appropriate design responses to flood risk.~~The design response of any flood mitigation works.

Appendix H Schedule 4 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

--/--/----

SCHEDULE 4 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO4**.

PORT FAIRY ESTABLISHED RESIDENTIAL AREAS

1.0

Design objectives

--/--/----

Proposed
C69moyn

To support development that respects the historic scale and pattern of Port Fairy's residential areas.

To encourage residential development that responds to the traditional character of buildings within a garden setting with minimal or low, transparent front fencing.

To minimise the visual impact of car parking and outbuildings.

To minimise impacts of buildings on the prominence of dunes or ridgelines.

2.0

Buildings and works

--/--/----

Proposed
C69moyn

A permit is required to construct a fence unless:

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable.
- The fence is behind the front facade of the building and does not exceed 2 metres in height.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

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

The site area covered by permeable surfaces should be at least 50 per cent.

Building Massing

Buildings ~~should~~~~must~~ be articulated ~~to respect~~~~so that the bulk and mass of the building does not compromise~~ the character and rhythm of the surrounding area~~scale and streetscape rhythm~~.

Building Height and Siting

Buildings on ridgelines or dune areas should be sited so that the bulk and mass of the buildings ~~does~~ not dominate the skyline.

~~Building height must not exceed 9 metres.~~

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Setbacks

Any part of a new building or extension should be set back~~must~~:

- ~~Be set back~~At least 6 metres from the front boundary.
- ~~Be set back~~From the side boundaries to a combined distance of at least 3 metres within 10 metres of the front boundary.

Frontage Presentation

Buildings should provide an active edge to the street and enable passive surveillance.

Outbuildings and Car Parking

Garage structures should~~must~~ have a maximum external width of 6.5 metres.

Garages should~~must~~ be sited at least 1 metre behind the front wall of a building (excluding porticos and projecting windows).

Driveways should be constructed with a permeable surface where practicable.

Where double garages are provided these should~~must~~ be accessed by a single width crossover.

Design Detailing

When constructing new buildings or extensions or carrying out works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided to a street facing facade.
- Reflective materials should be avoided.
- Non-reflective ~~metal~~ materials should~~must~~ be used for roofs.

Landscaping and Fencing

Front fencing and landscaping should create a garden setting.

Fences forward of the front façade ~~or parallel to the street frontage~~ should be at least 50 per cent visually permeable.

Service boxes and storage should~~must~~ be located where they are not visible from the

street or are visually screened using quality materials or landscaping.

3.0

Subdivision

--/--/----

Proposed
C69moyn

~~A permit to subdivide land should meet the following requirements:~~

- [Subdivision should minimise the creation of additional crossovers.](#)
- [Accessways should be combined where possible to reduce the number of crossovers along key approaches, particularly the Princes Highway.](#)
- The frontage width of lots should be consistent with the typical frontage widths of existing lots in the street.
- ~~Subdivision should avoid the creation of additional crossovers where practical.~~
- Side-by-side subdivisions should be avoided unless they can demonstrate that they will result in development that can meet side setback requirements.
- ~~Battle axe subdivisions should ensure sufficient space is available to accommodate landscaping.~~

4.0

Signs

--/--/----

Proposed
C69moyn

None specified.

5.0

Application requirements

--/--/----

Proposed
C69moyn

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.
- A landscape plan prepared by a suitably qualified person.

6.0

Decision guidelines

--/--/----

Proposed
C69moyn

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~The quality of the response~~ [Whether the design responds](#) to the building and works requirements contained within this schedule.
- Whether the design and siting of buildings retains the established development pattern of the area.
- Whether adequate space is available between buildings to avoid boundary to boundary development and to maintain a landscaped garden setting.
- Whether the building is articulated to minimise the scale and bulk of the building.
- Whether the building materials and colours respect the character of surrounding dwellings.
- Whether garages, outbuildings and parking areas have been sited to minimise visibility from the street.
- Whether driveways are constructed of a permeable material.

- [Whether battle axe subdivisions provide sufficient space along driveways to accommodate landscaping.](#)

Appendix I Schedule 5 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 5 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

**Proposed
C69moyn**

Shown on the planning scheme map as **DDO5**.

PORT FAIRY EAST BEACH PRECINCT

1.0

Design objectives

--/--/----

To deliver high quality contemporary design responses that support the integration of new development with Port Fairy's historic and coastal character.

**Proposed
C69moyn**

To protect the existing built form and landscape character of the precinct through the appropriate siting and design of new development.

To ensure that new development provides for shared views of significant landscape features and does not dominate the dune backdrop and coast.

To ensure that new development is sited to enable the retention of existing native coastal vegetation and encourage the planting of indigenous vegetation.

To minimise the visual impact of car parking and outbuildings.

2.0

Buildings and works

--/--/----

A permit is required to construct a fence unless:

**Proposed
C69moyn**

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable.
- The fence is behind the front facade of the building and does not exceed 2 metres in height.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

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

The site area covered by permeable surfaces should be at least 50 per cent.

Building Massing

Buildings ~~must~~should be articulated so that the overall bulk and mass of the building does not dominate views to and from the beachfront.

Buildings on ridgelines or dune areas should be sited so that the bulk and mass of the buildings does not dominate the skyline when viewed from the public realm.

Building height and massing ~~must~~should allow for equitable view sharing of East Beach with nearby properties.

Building Height

Building height ~~must~~should not exceed 79 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

The dune system must not be excavated or filled to accommodate additional building height.

Building Setbacks

~~Buildings and extensions must be set back from front, rear and side boundaries so that buildings present as detached structures.~~

~~The setbacks of new buildings and extensions should retain the established development pattern that provides a balance between buildings and landscape.~~

~~Side setbacks within 10 metres of any beach frontage must be at least 6 metres when combined with the setback of the adjacent property.~~

~~The first floor of a building must be set back behind the ground floor façade by a minimum of 3 metres to a street and / or East Beach to reduce visual bulk.~~

Any part of a new building or extension should be set back:

- At least 6 metres from the front boundary
- At least 2 metres from any side boundary
- A distance of at least 6m between buildings on adjacent properties within 10m of any beach and street frontage.

The first floor of a building should be set back behind the ground floor façade by a minimum of 2 metres to a street or East Beach frontage to reduce visual bulk.

Frontage Presentation

Buildings should provide an attractive and active edge to East Beach.

Ground floor and first floor habitable room windows should be orientated towards the beach to provide passive surveillance.

Car Parking

Driveways should be constructed of a permeable material.

Garage structures ~~should~~must have a maximum external width of 6.5 metres.

Garages, outbuildings and areas allocated for parking vehicles should:

- ~~Must~~ be sited to minimise visibility from the street, and be at least 1 metre behind the front wall of a building (excluding porticos and projecting windows);
- ~~Should~~ be designed to respect the character of the area.

Where double garages are provided, these ~~should~~~~must~~ be accessed by a single width crossover.

Design Detailing

When constructing new buildings, extensions or carrying out works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided.
- Reflective materials should be avoided.
- Non-reflective ~~metal~~ materials ~~should~~~~must~~ be used for roofs.

Landscaping and Fencing

Fences forward of the front façade or parallel to the street frontage ~~should~~~~must~~ be at least 50 per cent visually permeable.

Generous landscaping using indigenous species should be provided between dwellings and within the street frontages to soften built form.

Service boxes and storage areas ~~should~~~~must~~ be located where they are not visible from the street or visually screened using quality materials or landscaping

3.0

--/--/----

Proposed
C69moyn

Subdivision

~~A permit to subdivide land must meet the following requirements:~~

- The frontage width of lots should be consistent with the typical frontage widths of existing lots in the street.
- Subdivision should ~~minimise~~~~avoid~~ the creation of additional crossovers ~~where practicable~~.
- Side-by-side subdivisions should be avoided unless they can demonstrate that they will result in development that can meet the side setback requirements.
- Battle-axe configurations should ensure that sufficient width is provided to accommodate landscaping along any driveway.

4.0

--/--/----

Proposed
C69moyn

Signs

None specified

5.0

--/--/----

Proposed
C69moyn

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.

- A landscape plan prepared by a suitably qualified person.
- A view impact analysis when there is likely to be an impact on views to significant landscape features by the proposed development. The analysis should demonstrate how the development achieves an equitable sharing of views.

6.0

--/--/----

Proposed C69moyn

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The integration of the design response with any heritage considerations.
- ~~The quality of the response~~ Whether the design responds to the landscape and visual setting of this precinct. ~~and measures taken to reduce visual dominance of the development.~~
- Whether the building setbacks retain the established development pattern of the area and avoid development being perceived as a continuous wall of buildings along the beachfront.
- Whether garages, outbuildings and parking areas have been sited and designed to minimise visibility from the street.
- Whether the building materials and colours minimise the visual impact of buildings and reflect the character of the area.
- Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to the street.
- Whether driveways are constructed of a permeable material.
- ~~Whether battle axe subdivisions provide sufficient space along driveways to accommodate landscaping.~~

Appendix J Schedule 6 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 6 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO6**.

PORT FAIRY GRIFFITHS STREET AND WHARF PRECINCT

1.0

Design objectives

--/--/----

To deliver high quality contemporary design responses that support the integration of new development with Port Fairy's historic and coastal character.

Proposed
C69moyn

To protect the existing built character and scale of the river and dune landscapes through the appropriate siting and design of new development.

To ensure that new development provides for shared views of the Moyne River estuary and does not dominate the visual setting.

To ensure that new development is sited to enable the retention of existing native coastal vegetation ~~that~~ and respects the identified landscape character ~~(including the dominance of Norfolk Pines) of the area, and to encourage the planting of additional vegetation.~~

To minimise the ~~detrimental~~ visual impact of car parking and outbuildings.

2.0

Buildings and works

--/--/----

A permit is required to construct a fence, except where:

Proposed
C69moyn

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable.
- The fence is behind the front facade of the building and does not exceed 2 metres in height, excluding any fence within 5 metres of any Moyne River frontage.
- The fence is within 5 metres of any Moyne River frontage and is less than 1 metre in height.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

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

The site area covered by permeable surfaces should be at least 50 per cent.

Building Massing

Buildings ~~should~~**must** be articulated along the frontage so that the overall bulk and mass of the building does not compromise the characteristic scale and streetscape rhythm of the precinct.

Building height and massing ~~should~~**must** allow for equitable view sharing of the Moyne River estuary with nearby properties.

Building Height

Building height ~~should~~**must** not exceed ~~8.7~~ metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Setbacks

Any part of a new building ~~should be set back~~**must**:

- ~~a~~**A**t least 2 metres from any side boundary.
- ~~a~~**A**t least 4.5 metres from the street boundary unless the rear boundary of the property is adjacent to the Moyne River Reserve.

If the rear boundary of the property is adjacent to the Moyne River Reserve, the building ~~should be set back~~**must**:

- ~~Be setback f~~**F**rom the property frontage at least the average of the front setbacks of the buildings on the two immediately adjoining properties;
- ~~Be setback f~~**F**rom the rear boundary 4.5 ~~metres~~**m** or the average of the rear setbacks of the buildings on adjoining properties, whichever is greater.

The first floor of a building ~~should~~**must** be set back by a minimum of 3 metres behind the ground floor façade to a street and / or the Moyne River to reduce visual bulk.

Frontage Presentation

Buildings ~~should~~**must** provide an active frontage and support passive surveillance to the Moyne River.

~~Where relevant, g~~**G**round floor and first floor habitable room windows ~~should~~**must** be orientated towards Griffith Street or Gipps Street.

Design Detailing

When constructing new buildings or extensions or carrying our works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided.

- Reflective materials should be avoided.
- Non-reflective ~~metal~~ materials ~~should~~~~must not~~ be used for roofs.

Outbuildings and Car Parking

Driveways should be constructed of a permeable material.

Garages structures ~~must~~~~should~~ have an external maximum width of 6.5 metres.

Garages, outbuildings and areas allocated for parking vehicles ~~should be~~:

- ~~Must be~~ sited to minimise visibility from the street
- ~~, and be~~ at least 1 metre behind the front wall of a building (excluding porticos and projecting windows);
- ~~Should be~~ designed to respect the character of the area.

Where double garages are provided these ~~should~~~~must~~ be accessed by a single width crossover.

Landscaping and Fencing

- Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to the street.

A fence forward of the front facade of the building and/or within 5 metres of any Moyne River frontage ~~should~~:

- ~~must~~not exceed 1.2 metres in height ~~and~~
- be least 50 per cent permeable.

Landscaping should be provided between dwellings and ~~the within~~ street frontages and along any driveway associated with a 'battle-axe' subdivision to soften built form/hard surfacing.

Landscaping should utilise indigenous species wherever possible.

Service boxes and storage areas ~~should~~~~must~~ be located where they are not visible from the street or visually screened using quality materials or landscaping.

3.0

--/--/----

Proposed C69moyn

Subdivision

~~A permit to subdivide land should meet the following requirements:~~

- The frontage width of lots should be consistent with the typical frontage widths of existing lots in the street.
- Subdivision should ~~minimise~~~~avoid~~ the creation of additional crossovers. ~~wherever possible.~~
- Side-by-side subdivisions should be avoided unless they can demonstrate that they will result in development that can meet the side setback requirements.
- ~~— Battle-axe configurations should ensure that sufficient width is provided to accommodate landscaping along any driveway.~~

~~The subdivision should not result in any perceived intensification of development on the skyline when viewed from the Moyne River or Griffiths Street.~~

4.0

Signs

None Specified

5.0

--/--/----

Proposed C69moyn

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.
- A landscape plan prepared by a suitably qualified person.
- A view impact analysis when there is likely to be an impact on views to significant landscape features by the proposed development. The analysis should demonstrate how the development achieves an equitable sharing of views.

6.0

--/--/----

Proposed C69moyn

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~The quality of the response~~Whether the design responds to the building and works requirements contained within this schedule.
- The integration of the design response with any heritage considerations.
- ~~The quality of the response~~Whether the design responds to the landscape and visual setting of this precinct.~~and measures taken to reduce the visual dominance of the development.~~
- Whether the building setbacks provide a balance between buildings and landscape.
- Whether garages, outbuildings and areas allocated for parking vehicles have been sited and designed to minimise visibility from the street.
- Whether the building materials and colours minimise the visual impact of buildings and respect the character of the area.
- ~~Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to the street.~~
- Whether driveways are constructed of a permeable material.
- Whether battle axe subdivisions provide sufficient space along driveways to accommodate landscaping.

Appendix K Schedule 7 to Clause 43.02 DDO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 7 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Proposed
C69moyn

Shown on the planning scheme map as **DDO7**.

PORT FAIRY SOUTH COAST PRECINCT

1.0

Design objectives

--/--/----

To encourage a high standard of coastal architecture that respects the natural environment and is responsive to the coastal setting.

Proposed
C69moyn

To minimise the visual intrusion of buildings when viewed from the foreshore.

To protect dune systems from excavation and visually dominant development. ~~and deliver appropriate design responses to identified coastal hazards.~~

2.0

Buildings and works

--/--/----

A permit is required to construct a fence unless:

Proposed
C69moyn

- The fence is forward of the front facade of the building and does not exceed 1.2 metres in height and is at least 50 per cent permeable, provided this fence is not fronting the beach.
- The fence is behind the front facade of the building and does not exceed 2 metres in height.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works.

A permit cannot be granted to construct a building or construct or carry out works which are not in accordance with any built form requirements expressed with the term 'must'.

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

Site Coverage and Permeability

The site area covered by buildings should not exceed 40 per cent in a residential zone or 35 per cent in a rural zone.

The site area covered by permeable surfaces should be at least 50 per cent in a residential zone or 60 per cent in a rural zone.

Building Massing

Buildings ~~must~~ should be articulated so that the bulk and mass of the buildings does not dominate the beachfront or dune setting.

Buildings should ~~must~~ be sited so that the bulk and mass of the buildings does not dominate

the skyline when viewed from South Beach, Ocean Drive or the Princes Highway.

Building height and siting ~~should~~~~must~~ allow an equitable sharing of ocean and/or beachfront views with adjacent properties.

~~The first floor of a building must be set back by a minimum of 3 metres behind the ground floor façade to a street and / or beachfront to reduce visual bulk.~~

Building Height

The dune system must not be excavated or filled to accommodate additional building height.

~~Excavation of sand dunes to increase heights must be avoided.~~

Building height ~~in a rural zone must~~~~should~~ not exceed 7 metres.

~~Building height in a residential zone must not exceed 7 metres~~

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Building height if land is subject to inundation

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

Building Setbacks

Any part of a new building ~~or extension should~~~~must~~ be ~~set back a minimum of:~~

- set back 4.5 metres from a street boundary.
- set back 2 metres from a side boundary in a residential zone or 5 metres in a rural zone.

Outbuildings and Car Parking

Driveways should be constructed of a permeable material.

Garages ~~and outbuildings should~~ ~~must~~ have ~~an maximum~~ external width of 6.5 metres.

Garages ~~must~~ ~~should~~ be sited at least 1 metre behind the front wall of a building (excluding porticos and projecting windows).

Where double garages are provided these ~~must~~ ~~should~~ be accessed by a single width crossover.

Design Detailing

When constructing new buildings or extensions or carrying out works:

- Natural materials such as timber or stone should be used.
- Unrendered brickwork or blockwork should be avoided.
- Reflective materials should be avoided.
- Non-reflective ~~metal~~ materials ~~must~~ ~~should~~ be used for roofs.

Landscaping and Fencing

- Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to Ocean Drive and the beach.

Fencing ~~must~~ should not be provided forward of the front façade along the beachfront.

Fences forward of the front façade or parallel to the street frontage must be at least 50 per cent visually permeable.

Landscaping must be provided between dwellings and within the street frontages to soften built form.

Landscaping ~~must~~ should utilise predominantly indigenous species wherever possible.

Service boxes and storage areas ~~must~~ should be located where they are not visible from the street or visually screened using quality materials or landscaping

3.0

--/--/----

Proposed
C69moyn

Subdivision

~~A permit to subdivide land should meet the following requirements:~~

- The frontage width of lots must be consistent with the typical frontage width of existing lots in the street.
- Subdivision ~~must~~ should avoid the creation of additional crossovers wherever practicable.
- Side-by-side subdivisions ~~must~~ should be avoided unless they can demonstrate that they will result in development that can meet the side setback requirements.
- Battle-axe configurations ~~must~~ should ensure that sufficient width is provided to accommodate landscaping along any driveway.

4.0

--/--/----

Proposed
C69moyn

Signs

None specified.

5.0

--/--/----

Proposed
C69moyn

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- Documentation demonstrating how the application responds to the objectives and requirements of this schedule.
- A landscape plan prepared by a suitably qualified person.
- A view impact analysis when there is likely to be an impact on views to significant landscape features by the proposed development. The analysis should demonstrate how the development achieves an equitable sharing of views.

6.0

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~The quality of the response~~ Whether the design responds to the buildings and works

requirements contained within this schedule.

- ~~The quality of the response~~ Whether the design responds to the landscape and visual setting of this precinct and whether measures have been taken to reduce visual dominance.
- Whether garages, outbuildings and parking areas have been sited and designed to minimise visibility from the street.
- Whether the building materials and colours minimise the visual impact of buildings and reflect the character of the area.
- ~~Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to Ocean Drive and the beach.~~
- Whether driveways are constructed of a permeable material.

Appendix L Schedule 4 to Clause 43.04 DPO

[Tracked Added](#)

~~Tracked Deleted~~

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SCHEDULE 4 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

**Proposed
C69moyn**

Shown on the planning scheme map as **DPO4**.

PORT FAIRY GROWTH AREAS

1.0

Objectives

--/--/----

To guide the development of land located within Growth Areas A and ~~part of Growth Area B~~ as identified within the *Port Fairy Coastal and Structure Plan, 2018*.

**Proposed
C69moyn**

To encourage a diverse range of housing opportunities within Port Fairy.

To deliver subdivisions that are responsive to the character and visual amenity of Port Fairy through high quality urban design and respecting the coastal and heritage character of Port Fairy.

To support the delivery of a new linear reserve for residents and visitors to Port Fairy along the Reedy Creek corridor.

To deliver development that is responsive to the environmental constraints of the area such as flooding and to protect and enhance ~~the~~ Companion Lagoon and its habitat values.

2.0

Requirement before a permit is granted

--/--/----

A permit may be granted to construct a building or construct or carry out works before a Development Plan has been prepared to the satisfaction of the responsible authority for:

**Proposed
C69moyn**

- Buildings and works associated with the use of the land for agricultural purposes.
- One dwelling on an existing lot, including outbuildings, provided it is the only dwelling on the lot.
- Minor extensions, additions or modifications to an existing dwelling.

The land may be developed in stages.

A Development Plan for any one stage of the development may be approved and a permit for that stage may be issued prior to the approval of a development plan for any other stage of the development.

3.0

Conditions and requirements for permits

--/--/----

The following conditions and/or requirements apply to permits:

**Proposed
C69moyn**

- Except for a permit issued as provided for under Clause 2.0, a permit must contain conditions which give effect to the provisions and requirements of the approved Development Plan.
- An application to construct or carry out works (before a Development Plan has been approved) must be accompanied by a report demonstrating that the proposal will not prejudice the Development Plan requirements specified in this schedule.

4.0

--/--/----

**Proposed
C69moyn**

Requirements for development plan

A Development Plan for land within Growth Areas A and ~~the southern portion of Growth Area B (or a part of it)~~ must be generally in accordance with the Precinct Plan that forms part of this schedule.

The Development Plan must show or include, as appropriate, the following matters to the satisfaction of the responsible authority:

- A diverse range of residential lots in keeping with the broader settlement objectives.
- Incorporation of Environmentally Sustainable Design (ESD) principles into the design of subdivisions including lot orientation to maximise solar efficiency.
- The protection restoration and appropriate integration of Companion Lagoon with new development, including appropriate interfaces.
- Integration of Water Sensitive Urban Design (WSUD) principles in all public spaces.
- The achievement of an appropriate interface between residential areas and the future Port Fairy Bypass.
- The delivery of physical infrastructure such as roads and services.
- The proposed form and extent of urban development and any associated bulk earthworks, and an assessment of how the extent of development:
 - Is consistent with the management of identified flood risks.
 - Can be delivered in a manner that manages the key environmental attributes of the land including the hydrological regime in Companion Lagoon and ~~the~~ Latham’s Snipe.

The Development Plan must ~~also~~ be accompanied by the following:

- A Movement Plan prepared by a qualified traffic engineer, to the satisfaction of the Responsible Authority and in collaboration with Department of Transport. The Movement Plan must include:
 - A logical and efficient vehicular network that avoids cul-de-sacs, that provides appropriate intersection treatments to connect to Lagoon Road, the Hamilton-Port Fairy Road or the Princes Highway, and which includes a road frontage to the Companion Lagoon. ~~(where practical).~~
 - Pedestrian paths including identification of safe crossing points and connections to the town’s commercial core.
 - ~~Details how the subdivision will support the future delivery of a pedestrian connection to Bank Street.~~ Details how the subdivision will support the future delivery of a pedestrian connection to Bank Street.
 - Short and long-term road reserves and proposed interface treatments to the Bypass.
 - ~~The Movement Plan must show~~ A network which will be compatible with the proposed Bypass.
- A Landscape and Open Space Plan prepared by a suitably qualified professional demonstrating:
 - Recognition of the environmental values and role of Companion Lagoon in the

natural ecosystem and man-made drainage network including how the lagoon functions as an ephemeral wetland and is subject to seasonal inundation and flooding.

- Appropriate design responses to support the habitat values of the Companion Lagoon, which include feeding and roosting areas for species known to visit the area such as the Latham's Snipe.
- Details of how the subdivision will ~~not prejudice~~ enhance the naturalisation of the Reedy Creek waterway and its integration with ~~the~~ Companion Lagoon.
- Details of how the subdivision will ~~not prejudice~~ enhance the delivery of a linear trail (pedestrian and cycle) along the Reedy Creek corridor connecting Belfast Lough to ~~the~~ Companion Lagoon.
- For land in Growth Area B, an appropriate design response to address the 'choke point' for the flow of floodwater at the intersection of Reedy Creek and the Hamilton-Port Fairy Road, as necessary.
- Consideration of impacts of climate change on water quality and the selection of appropriate plant species.
- Identification of any key design parameters that should be used to guide development on adjoining lots to deliver high quality interfaces to Companion Lagoon, including passive surveillance.
- Appropriate provision of a new local neighbourhood park, ~~This~~ could be integrated with the Reedy Creek Linear Open Space ~~if preferred~~.
- Identification of a clear and direct network of pedestrian and cycle paths, including cycling routes and wayfinding to key destinations and walking paths or boardwalks as required to support ~~the~~ Companion Lagoon as an integrated part of the growth area.
- Proposed WSUD treatments.
- Proposed street tree species, ~~which should be~~ consistent with Council's Street Tree Management Plan.
- Proposed landscape treatment at the new 'gateway' to Port Fairy, to complement the proposed extension of avenue tree planting along the Hamilton-Port Fairy Road.

Note: Work on the Reedy Creek linear corridor may be undertaken by Council in advance of the delivery of the growth area and if so, then the Development Plan must reflect that work.

- A Servicing Plan prepared with input from Wannon Water, confirming the appropriate location of the required sewer pump stations and proposed staging for development of the land within the proposed development plan. This should include:
 - ~~The~~ Location of major drainage lines, water features, proposed retarding basins and floodways, and the means by which they will be managed in accordance with the principles of water sensitive urban design and will ensure the protection of retained wetland and habitat values in Companion Lagoon.
 - ~~The~~ Location of major infrastructure easements or installations.
 - ~~The~~ Stages, if any, by which the land is to be subdivided and developed.
 - ~~The~~ Provision and timing of physical and social infrastructure including open space and recreational facilities (where required); clearly demonstrating the ability to provide any reticulated service or infrastructure item required by the proposed development.
- An Interface Plan, including:
 - design responses for development adjoining the Bypass or Reedy Creek corridors.

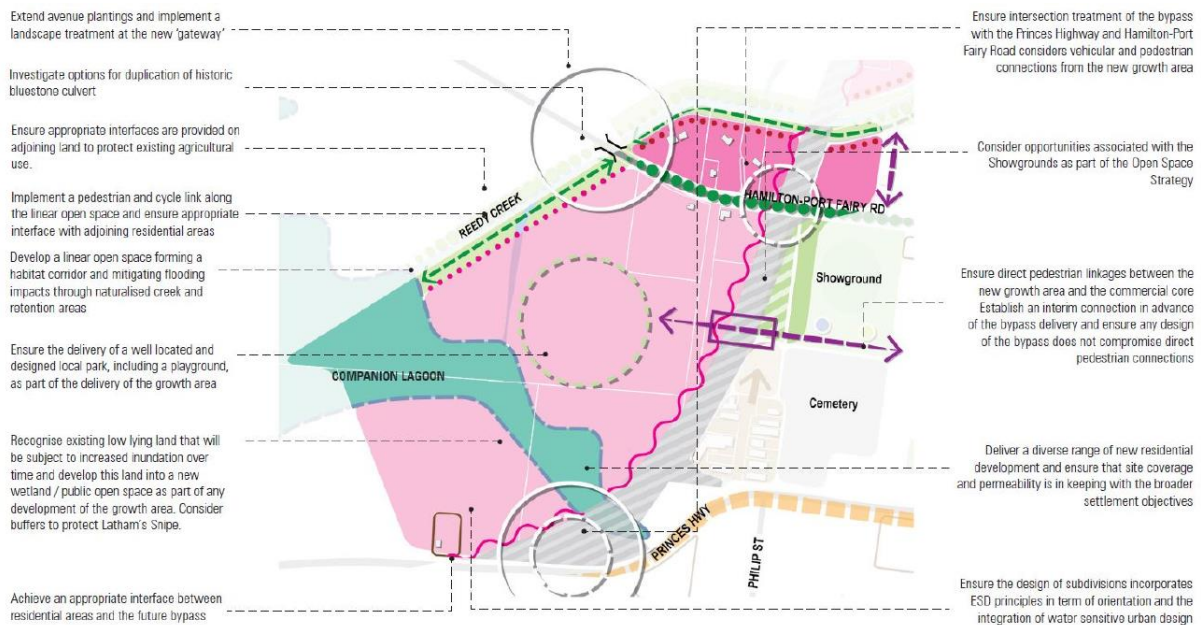
- design responses for fire protection from adjacent grassland areas.
- An environmental plan that:
 - assesses the likely impacts of the development on Companion Lagoon.
 - assesses the adequacy of the other plans to ensure the habitat values of Companion Lagoon are not compromised.

In addition, unless agreed in writing by the responsible authority, the Development Plan must include the following information to the satisfaction of the responsible authority:

- A flora and fauna assessment.
- An ecological assessment of the impacts of stormwater runoff on the Companion’s Lagoon wetland, undertaken by or with the participation of a suitably qualified and experienced aquatic ecologist.
- An Aboriginal Cultural Heritage Management Plan.

GROWTH AREA A PRECINCT PLAN

INCLUDE GROWTH AREA B PRECINCT PLAN



Update Growth Area A Precinct Plan to show an arrow to the west and north west as ‘future urban expansion’ to be consistent with the Structure Plan, and add a legend to explain colours and symbols.