

**Moyne Planning Scheme Amendment C75moyn  
Rivers Run Estate**

**Panel Report**

*Planning and Environment Act 1987*

**14 December 2023**

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### 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 may also recommend to the Minister that a permit that applies to the adopted Amendment be granted. The Minister may grant or refuse the permit subject to certain restrictions. [sections 96G and 96I of the PE Act]

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 Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders, past and present.

The Amendment under consideration is on the land of the people of the Eastern Maar. We pay our respects to their Elders, past and present.

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Moyne Planning Scheme Amendment C75moyn

Planning permit application Moyne PL20-098

Rivers Run Estate

**14 December 2023**

A blue ink signature, likely of Kathy Mitchell, written in a cursive style.

Kathy Mitchell AM, Chair

A blue ink signature, likely of Geoff Underwood, written in a cursive style.

Geoff Underwood, Member

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## Glossary and abbreviations

AHD	Australian Height Datum
the Amendment	Moyne Planning Scheme Amendment C75moyn
CFA	Country Fire Authority
Council	Moyne Shire Council
D	Document
DFP	Development Facilitation Program
DPO/DPO5	Development Plan Overlay/Development Plan Overlay Schedule 5
DTP	Department of Transport and Planning
EPA	Environment Protection Authority Victoria
EP Act	<i>Environment Protection Act 2017</i>
GED	General Environmental Duty
GHCMA	Glenelg Hopkins Catchment Management Authority
GRZ	General Residential Zone
IRAE	Industrial Residual Air Emissions
Myers Planning	Myers Planning Group Pty Ltd
NRZ	Neighbourhood Residential Zone
PE Act	<i>Planning and Environment Act 1987</i>
the permit	Planning Permit Application PL20-098
Planning Scheme	Moyne Planning Scheme
PPF	Planning Policy Framework
PPN	Planning Practice Note
the Proponent	Rivers Run Estate Pty Ltd
the Proposal	Amendment and permit
Rail Trail	Port Fairy to Warrnambool Rail Trail
Structure Plan	Port Fairy Coastal and Structure Plan
VPP	Victoria Planning Provisions

## Overview

### Amendment summary

The Amendment	Moyne Planning Scheme Amendment C75moyn
The Permit	Moyne PL20-098
Common name	Rivers Run Estate
Brief description	Combined planning scheme amendment and planning permit application for a 75 residential lot subdivision and construction of 10 dwellings at 169A and 183 Princes Highway, Port Fairy
Subject land	169A and 183 Princes Highway, Port Fairy
The Proponent	Rivers Run Estate Pty Ltd
Planning Authority	Moyne Shire Council
Authorisation	24 November 2021
Exhibition	16 December 2021 – 31 January 2022
Submissions	Number of Submissions: 89

### Panel process

The Panel	Kathy Mitchell AM, Chair; Geoff Underwood, Member
Supported by	Chris Brennan, Senior Project Officer
Directions Hearing	Hybrid – In person and by video conference from 1 Spring Street, Melbourne on 22 August 2023
Panel Hearing	Hybrid – In person and by video conference from 1 Spring Street, Melbourne on 2, 3, 5, 6, 9, 10 and 11 October 2023 (includes 6 October from Port Fairy)
Site inspections	Accompanied, 6 October 2023
Parties to the Hearing	See Appendix B
Citation	Moyne PSA C75moyn [2023] PPV
Date of this report	14 December 2023

## Executive summary

Moyne Planning Scheme Amendment C75moyn seeks to rezone 6.97 hectares of land at the eastern entrance to Port Fairy from the Farming Zone to Neighbourhood Residential Zone to provide for the residential development for approximately 63 lots in accordance with a new Development Plan Overlay Schedule 5. The Amendment was accompanied by Planning Permit Application PL20-098.

This Amendment has been in the public arena for some time as it was exhibited in 2021 but was put on hold until the outcome of Amendment C69 was resolved. That Panel report was provided in December 2022 and was adopted by Council in March 2023. Council adopted all Panel recommendations and Amendment C69 is currently awaiting gazettal. Importantly, the recommendations of that Panel were the starting point in the consideration of this matter. All parties agreed that Amendment C69 was seriously entertained, and all discussions and the outcome of this matter were premised on that basis. At the time of submission of this report, Amendment C69 remains ungazetted.

The Amendment seeks to add to the housing stock of Port Fairy by traditional lots, medium density opportunities and a component of affordable housing. It will back onto existing housing that straddles the Princes Highway and it will be defined by its boundary to the regionally significant Rail Trail, which in turn abuts the wetlands known as the Belfast Lough. Additionally, the subject land is in close proximity to the Sun Pharmaceutical Industries Australia Pty Ltd manufacturing plant (Sun Pharma).

The key issues raised in submissions included:

- diversity of housing supply
- proximity to industrial land
- impacts on Sun Pharma's operations
- development within a floodplain and stormwater management
- traffic and access.

While most impacts can be well managed, the potential impacts to Sun Pharma were front and centre of the Panel's considerations. This industry has evolved on the site over many years and is of State and national importance as it produces sensitive pharmaceutical products. It is a key employer in Port Fairy and operates around the clock. It has been progressively updating and upgrading operations on its site over many years in full knowledge of its proximity to existing residential dwellings.

The Panel was mindful of the potential impacts of introducing a new residential use adjacent to an established industrial use. It notes the policy imperatives of protecting industrial land and the economic benefits of this significant industry for Port Fairy and indeed, the benefits of its production and outputs across Australia and the world. However, the Panel places great weight on the supportive and well considered position of Council, the relevant experts and that Sun Pharma was collaborative in seeking an acceptable outcome in relation to potential odour and noise impacts.

Clause 71.02-3 of the Planning Scheme requires an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development. In this case, the

Panel is satisfied that subject to its recommendations, the proposed development can co-exist with Sun Pharma and new housing opportunities be a positive outcome.

The Panel concludes the Amendment is well founded and strategically justified and should be adopted, subject to recommended changes to the Development Plan Overlay Schedule 5 and the planning permit conditions.

### **Recommendations**

- 1. Adopt Amendment C75moyn to the Moyne Planning Scheme as exhibited, and issue Planning Permit PL20-098, subject to the following:**
  - a) Adopt Development Plan Overlay Schedule 5 in accordance with Appendix E, retaining the Concept Plan and amended to include Figure 5 (Document 96).**
  - b) Issue Planning Permit PL20-098 in accordance with the Conditions as set out in Appendix F.**



# 1 Introduction

## 1.1 The Amendment and Permit

### (i) Proposal description

Moyne Planning Scheme Amendment C75moyn (the Amendment) and planning permit application PL20-098 (the Permit) propose to facilitate use and development of the land at 169A and 183 Princes Highway, Port Fairy known as Rivers Run Estate. This report refers to the Amendment and permit collectively as the Proposal.

As exhibited, the Amendment proposed to make the following key changes to the Moyne Planning Scheme (Planning Scheme):

- rezone the subject land from Farming Zone and General Residential Zone (GRZ) and Neighbourhood Residential Zone (NRZ) Schedule 1
- insert a new Schedule 5 to Clause 43.04 Development Plan Overlay (DPO5)
- amend Planning Scheme Map numbers 34DPO and 34ZN.

As exhibited, the Permit sought approval to:

- construct and carry out earthworks (cut and fill)
- subdivide the land into 75 lots
- construct 10 dwellings on proposed Lot 20
- create access to a road in a Road Zone, Category 1 (now known as Transport Zone 2)
- create and remove easements.

The Amendment is a combined planning permit application and planning scheme amendment under section 96A of the Planning and Environment Act 1987 (the PE Act). The Permit applies to 169A and 183 Princes Highway, Port Fairy (Lots 1 and 2 PS306968, Lot 1 LP209306, and Lot 1 TP618374).

The exhibited Concept Plan from DPO5 is shown in Figure 1. Proposed Lot 20 is in the far south-west corner of the subject land and is labelled 'Potential Medium Density Site'. An area for 'Potential Social Housing' is indicated to the north of the site.

Rivers Run Estate Pty Ltd is the Proponent for the Proposal.

Figure 1 DPO Schedule 5 Concept Plan (as exhibited) <sup>1</sup>



<sup>1</sup> Exhibited Development Plan Overlay Schedule 5, Mesh Planning

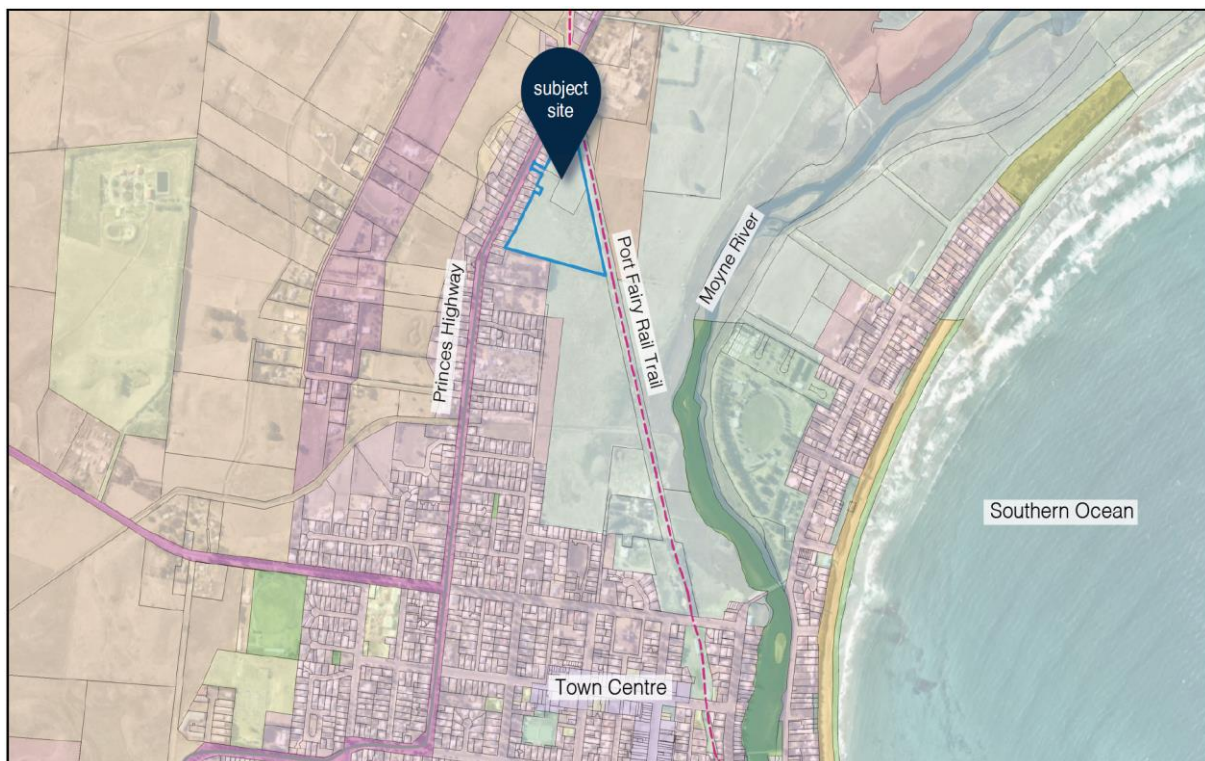
## (ii) The subject land

The subject land and its local context in Port Fairy is shown in Figure 2. The triangular site comprises four parcels of land, all in the ownership of the Proponent. The exhibited Planning Report prepared by Myers Planning & Associates (Myers Planning) provided a detailed description of the site and its interfaces. It identified the site as characterised by grazing/farmland and was largely cleared, other than fencing, a stock yard, a stock trough, and decommissioned sewerage pump station and associated structures. The site has several redundant drainage and sewerage easements.

The subject land is relatively flat with a fall of approximately 2.39 metres from the north to the south-east. The regionally significant Port Fairy to Warrnambool Rail Trail (the Rail Trail) forms the eastern boundary. The land directly north of the Rail Trail is occupied by a pharmaceutical plant operated by Sun Pharmaceutical Industries (Australia) Pty Ltd (Sun Pharma) and is zoned Industrial 1. Land east of the Rail Trail is vacant and zoned Industrial 1. A powerline easement runs along the southern boundary which extends west to the Princes Highway. Land south of the easement includes the Port Fairy Holiday Park and vacant Farming Zone land.

Gated access is provided to the Princes Highway at two frontages. The western boundary is otherwise sleeved by single storey detached dwellings in the GRZ and a Wannon Water sewerage pump station easement that extends to the Princes Highway.

**Figure 2** Subject land and local strategic context <sup>2</sup>



<sup>2</sup> Source: Exhibited Planning Report, Myers Planning

## 1.2 Background

### (i) Exhibition

The Amendment was prepared by Moyne Shire Council (Council) as Planning Authority at the request of Myers Planning on behalf of the Proponent. The Proposal was exhibited over six weeks from 16 December 2021 to 31 January 2022 and 89 submissions, including seven late submissions, were received.

The exhibition period ran concurrently with a second round of exhibition for Amendment C69moyn, which proposed to implement the Port Fairy Coastal and Structure Plan. It was Council's original intention that both amendments be considered concurrently by the same Panel, at the same time, however this did not eventuate. The Panel Hearing for Amendment C69 was held in September and October 2022, and its report to Council was provided in December 2022. At the time of this current Hearing, Amendment C69 had not been resolved by the State Government, even though Council adopted the report and the recommendations of the Panel in March 2023.

### (ii) Further information request

The Proposal was placed on hold in February 2022, pending the Proponent's response to a request for further information in response to issues raised by the Glenelg Hopkins Catchment Management Authority (GHCMA) and Environment Protection Authority Victoria (EPA). The Proponent provided further information in July 2022 and Council sought further comment from submitters on whether their concerns had been resolved. Council referred comments received from submitters at all stages of the process to the Panel.

### (iii) Development Facilitation Program

In March 2023, the Proponent applied for the Proposal to be assessed through the Victorian Government's Development Facilitation Program (DFP) for accelerated assessment and approval. The material referred to the Panel included comments received by the DFP from referral agencies. The DFP advised by letter dated 13 June 2023 that it decided not to recommend it proceed for prioritised assessment and intervention by the Minister for Planning. The letter stated:

The request to fast track the project prior to the Minister for Planning determining Moyne Shire Council's request to approve Amendment C69moyn (Port Fairy Coastal and Structure Plan Implementation) is considered premature and may risk preempting the Minister's decision on Amendment C69moyn.

In particular, I note that fundamental technical matters relating to sea level rise and flooding (including the accuracy of proposed flood mapping) remain unresolved for the project, which need to be strategically considered and determined under C69moyn.

Following the DFP's decision, the Proponent confirmed with Council to progress the Proposal, and Council resolved to refer it to a Panel at its meeting of 25 July 2023.



**(iv) Chronology of events**

Council provided a summary of the background to the Proposal in its Part A submission, including a chronology of events<sup>3</sup>. The Panel has summarised this in Table 1:

**Table 1 Chronology of events**

Date	Event
June 2020	Proponent lodged application for a combined planning scheme amendment and planning permit
June 2021	Application relodged with revised documents following discussions with Council officers
9 November 2021	Council resolved to seek authorisation for Amendment C75moyn and give notice
24 November 2021	Amendment C75moyn authorised
16 December 2021 – 31 January 2022	Formal exhibition (concurrently with Amendment C69moyn)
February 2022	Matter placed on hold with consent of Proponent pending further information in response to submissions
1 July 2022	Proponent submitted further information (folder recorded by Panel as D2)
September and October 2022	Panel hearings for Amendment C69moyn
9 December 2022	Amendment C69moyn Panel report submitted to Council
21 March 2023	Proponent requested Proposal to be considered through the DFP
28 March 2023	Council adopted Amendment C69moyn with all changes recommended by the Panel
13 June 2023	DFP decided not to recommend the Proposal proceed for prioritised assessment and intervention by the Minister for Planning
25 July 2023	Council resolved to refer the Proposal to a panel

**(v) Summary of changes to Amendment and Permit since exhibition**

The Proponent provided a 'Day 1' package of the Proposal documentation on 28 August 2023, along with a letter identifying the key changes since the matter was publicly exhibited, which it summarised as follows:

- the number of lots has been amended from 76 to 63;
- the townhouse development has been removed from Lot 20;
- Lot 2 is to be gifted for the purposes of providing land for affordable housing;
- Lots 1, 20, 44 and 45 are sized to allow for the delivery of medium density housing (for example, townhouse developments);

<sup>3</sup> D33, Para 18-33

- the Amendment documentation has been updated to clarify that as the proposed Development Plan Overlay Schedule 5 (DPO5) will guide the future built form and development of the site, the existing Design and Development Overlay Schedules 15 and 21 will be deleted;
- cut and fill levels have been amended to 2.79 AHD following Amendment C69moyn and in accordance with advice from Glenelg Hopkins CMA and Moyne Shire Council regarding the applicable flood level for the site based on an 0.8 metre sea level rise;
- the soakage basin and wetland area has been expanded;
- all lots have been moved to be substantially outside the proposed Flood Overlay area (as shown in the form of Amendment C69moyn adopted by Council on 28 March 2023 and submitted to the Minister for Planning for approval); and
- the detail of intersection works on Princes Highway have been removed which, as outlined below, will be subject to the preparation of concept design drawings to the satisfaction of the Department of Transport and Planning (DTP) <sup>4</sup>.

The Proponent's opening submission listed key documents to be relied upon by the Panel, and outlined further changes or additional documents since the Day 1 Package including <sup>5</sup>:

- revised DPO5 that accepted all changes from the Day 1 version and tracked further changes in response to the evidence (D54A)
- revised draft Planning Permit that accepted all changes from the Day 1 version and tracked further changes in response to the evidence (D54B)
- proposed plan of subdivision (D19 (10))
- Road, Drainage and Cut and Fill Plan (D19 (11))
- Landscape Plan prepared by John Patrick (replacing the Day 1 Package Landscape Plan prepared by Myers Planning) (D43)
- Intersection Concept Plan prepared by Traffix Group, 4 September 2023 (D22)
- Context Plan and Design Response (D30)
- Proponent's Response to submissions (updated 28 September 2023) (D54F).

#### **(vi) Documents relied upon**

As noted, the Amendment documents have evolved since exhibition and there were numerous iterations of documents tabled during the Panel process. The Panel has based its preferred drafting of the DPO5 on the 'Day 9' version as agreed by the Proponent and Council on 12 October 2023 with updated Concept Plan figure <sup>6</sup>. The Panel's preferred drafting of permit conditions is based on a further mark-up of the 'Day 9' version as agreed by the Proponent and Council following the Hearing.

## **1.3 Amendment C69moyn**

Amendment C69moyn relates to implementation of the Port Fairy Coastal and Structure Plan (the Structure Plan) which Council adopted in August 2018 to inform and guide sustainable and equitable growth and development in Port Fairy. The C69moyn report includes a detailed chronology of its history which is not repeated in this report. The land affected by C69moyn

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<sup>4</sup>D18

<sup>5</sup> D54

<sup>6</sup>D104

includes all of Port Fairy and its immediate surrounds as shown in Figure 3, including the subject land. C69moyn proposed to:

- rezone the Rivers Run land from Farming Zone to Rural Conservation Zone
- implement a 500-metre policy buffer in the Structure Plan around the Sun Pharma site which would cover most of the Rivers Run land
- include a notation in the Structure Plan to identify the Rivers Run land as a 'potential residential expansion area', if the development could demonstrate accordance with relevant flood controls under a 1.2 metres SLR scenario, and that the land was outside any buffer agreed by Sun Pharma and the EPA.

The C69moyn Panel did not consider the rezoning of the Rivers Run land or its inclusion in the settlement boundary on the basis these matters were to be tested through the Amendment C75moyn Panel process. That Panel refrained from making recommendations on whether the Structure Plan or the Framework Plan included in Clause 21.09 should notate the site as a potential residential development area. It did, however, recommend the policy buffer to the Sun Pharma site be reduced to 300 metres.

Overall, that Panel recommended C69moyn be adopted as exhibited, but subject to several recommendations, including revising flood overlay maps to reflect sea level rise of 0.8 metres. Council adopted all recommendations of the Panel in considering C69moyn at its meeting of 28 March 2023 and its assessment and ultimate approval by the Minister for Planning remained pending at the time of this report.

At this Hearing, all parties and the Panel considered C69moyn, while awaiting final approval, should be considered as a 'seriously entertained' planning proposal and that any assessment of this matter would proceed on that basis accordingly.

**Figure 3 Port Fairy Overall Structure Plan (annotated by Panel) <sup>7</sup>**



## 1.4 Procedural issues

### (i) C69moyn declaration

The Panel declared in its Directions Hearing notice letter to submitters that Chair Mitchell and Member Underwood were previously appointed as two of the three Panel members for C69moyn. This was further raised at the Directions Hearing <sup>8</sup>.

The Chair noted she sought an update from DTP on the status and timing of the gazettal of C69moyn given its relationship to the matter before it and that it would be beneficial to parties to have some certainty in this regard. The Department advised that C69moyn remained with the State Government pending final assessment and gazettal.

No party took issue with those declarations.

### (ii) Hearing location and site inspection

The Panel initially intended that a portion of the Hearing be conducted from Port Fairy in a hybrid format (in person and by video) to accommodate submitters based in the area. Prior to the Directions Hearing, the Panel received correspondence on behalf of Sun Pharma requesting the

<sup>7</sup> Port Fairy Structure Plan, Figure 7

<sup>8</sup> D7



Hearing be conducted wholly in Melbourne<sup>9</sup>. Sun Pharma considered that convening the Hearing in Port Fairy would be inconvenient due to constraints in the availability of its experts and counsel and would incur significant additional cost for parties. Sun Pharma noted the Panel would be familiar with the subject land and surrounds owing to the approximately two weeks spent in Port Fairy in 2022 for the C69moyn Hearing. Rivers Run submitted that there would still be benefit in the Panel reinspecting the site and that this could be coordinated with submissions from the Port Fairy based submitters.

Following discussion with all present parties at the Directions Hearing, the Panel determined to conduct a hybrid Hearing (in person and by video) predominantly from Melbourne, with one day to be held in Port Fairy to accommodate community submitters and to facilitate an accompanied inspection of the subject land. The Panel acknowledged it would represent an opportunity to reinspect the subject land in the context of the issues now before the Panel in this Amendment.

The Panel was guided by the site inspection itinerary prepared by the Proponent<sup>10</sup>. In addition to the subject land itself, the Panel agreed to requests to inspect the subject land from the rear of two properties of submitters at 163 and 169 Princes Highway. The Panel thanks those two submitters for that opportunity.

## 1.5 Summary of submissions

### (i) Summary of submissions

Council referred all 89 submissions to the Panel. The Council Officer Report of 25 July 2023 grouped key issues raised in submissions. The Panel has further summarised these as follows:

- **Housing supply:** the Amendment does not adequately address housing supply, diversity and affordability in Port Fairy
- **Proximity to Industrial land:** the potential for amenity impacts of noise, odour, light and dust from the Sun Pharma site on housing and how development may constrain future industrial operations
- **Development within a floodplain:** the site's potential for flooding and risks for future residents and adjacent sites, and implications of the flood risk scenario adopted in Amendment C69moyn
- **Traffic and access:** the single access point on the Princes Highway and impacts on traffic in the broader area
- **Stormwater Management:** the proposed drainage reserve, including capacity, safety and impacts on the environment
- **Infrastructure access and provision:** scale of development would overwhelm existing infrastructure and town services.

### (ii) Council

Council stated in its opening submission that it supported the Proposal in principle, noting there was broad strategic support, particularly acknowledging the benefit of housing supply for Port

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<sup>9</sup> D12

<sup>10</sup> D83

Fairy in the short-term<sup>11</sup>. It considered the Proposal was consistent with planning policy to deliver well-located housing that could respond to the constraints of the subject land. It considered the Amendment was strategically justified subject to the following matters being satisfactorily addressed:

- resolving the interface between the subject land and the Sun Pharma land, including how adverse amenity and reverse amenity impacts could be mitigated
- ensuring the stormwater management system design and maintenance complied with relevant standards and did not contribute to or exacerbate flood risk to the subject land and surrounds.

Council considered the permit application could achieve an acceptable planning outcome subject to resolving:

- stormwater management system design and ongoing operation
- design detail of the proposed internal roads and access/egress to Princes Highway
- the social/affordable housing offer.

### **(iii) Agencies**

The Panel summarises the key issues raised by agencies during consultation as follows:

**Country Fire Authority (CFA)** did not initially support the Proposal on the basis it considered the subject land to be outside Port Fairy's settlement boundary. The CFA considered development outside settlement boundaries significantly increased complexity of bushfire protection considerations. It had concerns around the adequacy of emergency access.

Following receipt of further information from the Proponent, the CFA revised its position to note it had no further objection on the basis additional emergency access be reflected on the subdivision plan. The CFA's referral response to the DFP recommended further consideration be given to interface treatment to the Rail Trail and Drainage Reserve, including a perimeter road along the eastern boundary and part of the southern boundary.

**DTP** (then Department of Transport) supported the Proposal. It noted the strategic importance of the Princes Highway arterial corridor given its role in freight movements for forestry, timber, beef and dairy producers. In the context of the Rail Trail, DTP noted the traffic generated by Sun Pharma to the north would interact with new traffic generated by the development. DTP noted the development would lead to higher patronage of the Route 8 Warrnambool to Port Fairy bus.

Permit conditions 48 to 51 were supported as exhibited. These relate to having a single vehicular access point on the northern most frontage to Princes Highway, shared path access to the site, provision of turning lanes and bus stops, and a works agreement for works within the Princes Highway road reserve. Issues regarding traffic and access are addressed in Chapter 3.2.

**EPA** provided advice at numerous stages of the process. It initially raised concerns regarding the subject land's proximity to the Sun Pharma facility and associated amenity impacts including noise pollution, potentially contaminated land and treatment of the industrial land interface.

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<sup>11</sup> D53

The EPA did not object in relation to odour but recommended the Proponent potentially contribute to the upgrade of a temporary waste storage tank. The Proponent prepared an updated Separation Distance Assessment, an Acoustic Assessment Report, and a Preliminary Risk Screen Assessment for possible land contamination. Council's summary of submissions report noted noise and acoustic concerns remained the only outstanding issue for the EPA.

The EPA provided further advice in a letter to the Panel dated 17 August 2023 which noted that it was unclear whether the Amendment and Permit documents were updated to respond to its recommendation for revised DPO requirements for acoustic assessments and post construction verification<sup>12</sup>. The Panel addresses issues raised by the EPA in Chapter 4.

**GHCMA** supported the Amendment and the granting of the Permit, subject to various conditions regarding garage, portico and dwelling floor levels, topography construction works and a feature survey, the finished level of roadways, and fencing. The GHCMA's referral response to the DFP dated 20 April 2023 requested a notation on the permit for proposed earthworks and subdivision as follows:

Note: Glenelg Hopkins CMA will withhold consent to the issuing of a Statement of Compliance for the plan of subdivision until it is demonstrated that constructed surface levels (including the detention basin levels) match the approved design levels, as per the requirements stipulated by condition 7 of the Glenelg Hopkins CMA permit conditions.

The GHCMA's DFP response noted its suggested permit conditions were consistent with those recommended when the Proposal was initially exhibited, and that it had consistently assessed it against currently applicable flood risk considerations which accounted for 0.8 metre mean sea level rise as per Clause 13.01-2S of the Victoria Planning Provisions (VPP). The GHCMA's DFP response noted mapping discrepancies in flood extent between the Proponent's development plan and the updated mapping was proposed by Council in C69moyn (which both depicted a 1 per cent Annual Exceedance Probability (AEP) flood extent when mean sea level had risen by 1.2 metres). The Panel addresses flooding in Chapter 4.1.

**Wannon Water's** referral response to the DFP dated 5 May 2023 advised it did not object to the Amendment, nor the issuing of a permit, subject to the inclusion of several permit conditions relating to water supply and sewerage works and easements.

**Energy Safe Victoria** raised no objection.

## 1.6 The Panel's approach

The Panel has assessed the Proposal 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 its additional site visits (including those undertaken during C69moyn), and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has been selective in referring to the more relevant or

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<sup>12</sup> D9

determinative material in the Report. All relevant submissions and materials have been considered by the Panel in reaching its findings and recommendations, regardless of whether they are specifically mentioned in the Report.

The Panel refers to documents by the prefix D with the number following, for example, D66.

From its review of the original submissions and the further submissions and evidence tabled at the Hearing, the Panel considers the key issues can be dealt with under the following headings:

- planning considerations:
  - strategic planning and policy context
  - planning controls
  - land supply and economics
  - consistency with Amendment C69moyn and the Port Fairy Coastal and Structure Plan
- site issues:
  - site design and layout
  - traffic and access
  - landscape, open space and views
  - housing diversity and affordability
- environment and amenity impacts:
  - flooding, stormwater and drainage
  - acoustics
  - air quality
- resolution of the Amendment and Permit.

## 2 Planning considerations

The key issues to be resolved are:

- strategic planning and policy context
- planning controls
- land supply and economics
- consistency with the Port Fairy Coastal and Structure Plan.

The Panel had regard to the planning and economic evidence noted in Table 2 as well as relevant submissions.

**Table 2** Planning and economic evidence

Party	Expert	Firm	Area of expertise
Proponent	Stuart McGurn	Urbis	Planning
	Nick Brisbane	Ethos Urban	Land supply and economics
Sun Pharma <sup>13</sup>	Mark Woodland	Echelon Planning	Planning
	William Bromhead	Ratio Consultants	Planning

### 2.1 Strategic planning and policy context

#### (i) Background

Some submissions questioned the strategic basis of the Proposal and whether it was consistent with the Planning Scheme. Much of the Hearing focused on policy imperatives for the protection of industry from encroachment of sensitive uses due to proximity to the Sun Pharma site, and how this should be balanced against other planning considerations such as housing supply.

The key issues to be resolved include whether the Proposal:

- is well founded and strategically justified
- balances competing planning objectives in favour of net community benefit and sustainable development.

The Panel has summarised relevant planning context in Table 3 with regard to the exhibited Explanatory Report and Planning Report prepared by Myers Planning & Associates and Council's Part A submission <sup>14</sup>. Appendix D highlights the key imperatives of relevant provisions and policies.

**Table 3** Planning context

Relevant references	
<b>Victorian planning objectives</b>	<ul style="list-style-type: none"> <li>- section 4 of the PE Act:</li> <li>- (a) to provide for the fair, orderly, economic and sustainable use, and development of land</li> <li>- (c) to secure a pleasant, efficient and safe working, living and</li> </ul>

<sup>13</sup> Sun Pharma recirculated the Remplan report tabled at the C69 Hearing as Appendix B to D53

<sup>14</sup> D33

	<p>recreational environment for all Victorians and visitors to Victoria</p> <ul style="list-style-type: none"><li>- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e)</li><li>- (fa) to facilitate the provision of affordable housing in Victoria</li><li>- (g) to balance the present and future interests of all Victorians</li></ul>
<b>Municipal Planning Strategy</b>	<ul style="list-style-type: none"><li>- Clause 02.02 Vision</li><li>- Clause 02.03-1 Settlement</li><li>- Clause 02.03-3 Environmental risks and amenity</li><li>- Clause 02.03-5 Built environment and heritage</li><li>- Clause 02.03-6 Housing</li><li>- Clause 02.03-7 Economic development</li><li>- Clause 02.03-8 Transport</li><li>- Clause 02.03-9 Infrastructure</li></ul>
<b>Planning Policy Framework</b>	<ul style="list-style-type: none"><li>- Clause 11 Settlement</li><li>- Clause 12 Environmental and landscape values</li><li>- Clause 13 Environmental risks and amenity</li><li>- Clause 14 Natural resource management</li><li>- Clause 15 Built environment and heritage</li><li>- Clause 16 Housing</li><li>- Clause 19 Infrastructure</li></ul>
<b>Other planning strategies and policies</b>	<ul style="list-style-type: none"><li>- Great South Coast Regional Growth Plan</li><li>- Port Fairy Coastal and Structure Plan – awaiting approval by the Minister for Planning through Moyne Planning Scheme Amendment C69moyn at the time of this report, but considered a ‘seriously entertained’ planning proposal</li></ul>
<b>Planning scheme provisions</b>	<ul style="list-style-type: none"><li>- Farming Zone</li><li>- Neighbourhood Residential Zone</li><li>- General Residential Zone</li><li>- Industrial 1 Zone</li><li>- Land Subject to Inundation Overlay</li><li>- Design and Development Overlay</li></ul>
<b>Ministerial directions</b>	<ul style="list-style-type: none"><li>- Ministerial Direction – The Form and Content of Planning Schemes</li><li>- Ministerial Direction No. 11 – Strategic Assessment of Amendments</li><li>- Ministerial Direction No. 13 – Managing coastal hazards and the coastal impacts of climate change</li><li>- Ministerial Direction No. 19 – Amendments that may result in impacts on the environment amenity and human health</li></ul>
<b>Planning practice notes</b>	<ul style="list-style-type: none"><li>- Planning Practice Note 10 – Writing schedules</li><li>- Planning Practice Note 12 – Applying the flood provisions in the planning scheme</li><li>- Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlay</li></ul>

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- Planning Practice Note 46 – Strategic assessment guidelines
  - Planning Practice Note 53 – Managing coastal hazards
  - Planning Practice Note 90 – Planning for housing
  - Planning Practice Note 91 – Using the residential zones
  - Planning practice Note 92 – Managing buffers for land use compatibility
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## **(ii) Submissions and evidence**

Council outlined in opening that the Amendment was strategically justified subject to resolution of stormwater management and flood risk issues, affordable housing, and treatment of the interface with the Sun Pharma site, namely how potential adverse and reverse amenity impacts would be resolved or mitigated.

Council identified relevant policy imperatives directing population growth to Moyne’s primary east-west growth corridor, including the District town of Port Fairy which the Municipal Planning Strategy noted has *“moderate growth capacity through infill development and some growth beyond existing urban zoned land, but within defined settlement boundaries”*.

Further, Council noted the site was in one ownership on land contiguous with existing residential land in Port Fairy. It accepted there was a warrant to support the rezoning – even if the Panel did not support the planning permit.

At the same time, Council emphasised the importance of Sun Pharma to the Port Fairy and Moyne economy in terms of its industrial presence and the employment it generates. Council indicated its strong desire to ensure the industry remains in place. This is where, Council said, the matter before the Panel is one of balance and whether the Proposal’s response was inconsistent or inappropriate with regard to the continuing existence of Sun Pharma. Council acknowledged industry undertaken by Sun Pharma would influence the appropriate design response for the subdivision of the subject land.

Council noted it was clear from the evidence there was no issue the broader land was not suitable for residential development, rather, the issue was how the design would respond to the site constraints. Council noted the subdivision layout could be revised but as it stood, the layout did not require extravagant changes or measures to achieve compatibility.

In closing, Council emphasised the Amendment enjoyed strong strategic support, even though the land was not formally identified through policy as a growth area. It pointed out the Planning Policy Framework contained broad policy support in encouraging housing supply and efficient use of infrastructure.

Mr McGurn considered the Proposal was strategically justified having regard to the Structure Plan given the high level of demand for housing in Port Fairy. He highlighted the relevant planning policy context in support of the Proposal (also addressed in Council’s Part A submission). He drew attention to the updated Municipal Planning Strategy (updated through the C69moyn Panel) which stated at Clause 02.03-6 (Housing):

There is a need to provide well-located and accessible housing in the Shire to accommodate demand and attract new residents. However, housing growth is subject to infrastructure constraints, and can compromise environmental, heritage, landscape and neighbourhood character values.

In addressing the proximity of the Sun Pharma site to the subject land, Mr McGurn referred to Clause 17.03-2S which seeks to avoid land use conflict, noting that based on the evidence that *“the proposed rezoning will not place an unreasonable impost on the facility”*.

Regarding the balance of competing policy, Sun Pharma stated in its opening submission:

The policies in the Scheme that seek to protect industrial operations from residential encroachment tip the balance with respect to net community benefit in favour of protecting Sun Pharma's operations with a 300m buffer of its site boundary within which sensitive uses cannot establish <sup>15</sup>.

Sun Pharma noted the Panel's ultimate task in assessing the Proposal was to determine whether it achieved a net community benefit having regard to the objectives of the PE Act and Clause 71.02-3 (Integrated decision making). It considered the Proposal was inconsistent with Clauses 13.05-1S and 13.06-1S and might prejudice Sun Pharma's current operations and its possible future expansion. Sun Pharma stated *“the scales are firmly tipped towards a net community disbenefit”*.

Mr Woodland's evidence addressed net community benefit, noting Clause 71.02-3 stated planning should balance conflicting objectives in favour of net community benefit and sustainable development. He indicated the objectives in this case related to increasing residential land supply, supporting existing industry, managing amenity and human health risks, and protecting the natural environment of the Belfast Lough. He considered the rezoning was not necessary to satisfy State policy for long term land supply in Moyne but acknowledged it would assist in meeting Port Fairy's short term housing demand.

Mr Woodland suggested a balance could be achieved by limiting residential development to the part of the site not expected to be impacted by odour from Sun Pharma's operations and by imposing noise conditions. He stated encroachment on the Belfast Lough might be acceptable subject to confirmation the Proposal satisfactorily addressed floodplain requirements and better management of the interface between the subdivision and Lough environs.

Mr Bromhead considered the subject land created significant challenges having regard to its proximity to the Sun Pharma land, particularly because planning policy is clear in its intent to separate incompatible land uses. He did not support the Amendment in its current form and recommended it be abandoned or modified in accordance with his recommendations. He said:

... the benefits associated with urban consolidation and the provision of increased housing in the form currently proposed do not outweigh the potential community disbenefits associated with potentially curtailing the existing Sun Pharma use by establishing a sensitive land use adjacent to a significant regional employer and industrial enterprise <sup>16</sup>.

Mr Bromhead provided a detailed analysis of what planning policy says about residential development and protection of industrial land use. While noting an absence of explicit policy support in the Planning Scheme for residential development of the site, he acknowledged *“there may be some opportunity for residential development of the Rivers Run land, but it must be balanced ...”*. Having regard to competing policies and strategies, Mr Bromhead adopted a precautionary approach to ensure the ongoing viability of Sun Pharma's operations and recommended that, should residential development occur, no sensitive uses should be located within 300 metres of the calamity tank (the main source of odour).

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<sup>15</sup> D53

<sup>16</sup> D48



Other submitters raised general concerns regarding the scale of the Proposal and that it was not compatible with existing infrastructure and services in Port Fairy. In response, Council noted population growth would act as a catalyst for local economic growth and would encourage the expansion of services and infrastructure such as schools and kindergartens. Council noted this may also increase the viability of more commercial activity in the town centre, including the supermarket (noting the adopted C69moyn controls would allow for an expansion of the central commercial area).

### **(iii) Discussion and findings**

The Panel considers there is explicit support for increasing residential supply in Port Fairy, and it notes the Proponent is keen to proceed on this site. The Panel observes there are two designated Growth Areas in Port Fairy but there is little or no movement to proceed on those two sites. The subject land is not a designated Growth Area, although the Settlement and Housing plan in the Structure Plan identifies it as a '*Potential residential expansion area*'. In response to submissions and evidence, Council observed the subject land is not and could not be identified as a growth area as it does not have the critical mass expected of a growth area. Rather, it considers the subject land to be an infill site.

At the same time, there is explicit support for ensuring Sun Pharma remains in an Industrial 1 Zone, which protects existing industry.

Council and the Proponent provided comprehensive submissions and evidence on the policy context supporting the Amendment, particularly in terms of housing and noting the current serious affordability issues being experienced in Port Fairy. The Panel agrees the site will make a modest contribution to achieving policy objectives for long term housing supply compared to the growth areas identified in the Structure Plan; but benefits to supply in the short term and efficient utilisation of existing infrastructure cannot be discounted. Mr McGurn had little concern about the location of residential development, so long as there was no detrimental impact on the operations of Sun Pharma.

Sun Pharma demonstrated through submissions and the evidence of Mr Woodland and Mr Bromhead the importance of its operations and that protection of existing industrial uses is clearly recognised in the Planning Scheme. Both planning witnesses for Sun Pharma could see that some residential development may be appropriate, but beyond the 300-metre policy buffer area. Mr Woodland took a more liberal view and said it could be appropriate, so long as it was outside the calamity tank odour area.

The Panel acknowledges the inherent challenges in developing a site neighbouring an existing industrial facility for a sensitive use and notes the general thrust of policy at Clause 17.02-3 which seeks to avoid land use conflict. On balance, planning experts all agreed the subject land could be developed for residential in some capacity, including Sun Pharma's two planning experts albeit both, particularly Mr Bromhead, adopted a precautionary approach.

There is strong policy basis in the VPP for protection of existing industrial land uses, however this should not automatically prevent development of adjacent land for residential purposes if the potential amenity impacts can be managed and/or ameliorated. From a policy perspective, there is little that precludes consideration of the subject land for rezoning to enable a residential use.

The Panel's task then turns to, as emphasised by Sun Pharma, an assessment of net community benefit to determine whether the Proposal should proceed.

Clause 71.02-3 (Integrated decision making) underscores the Panel's task in balancing conflicting objectives in favour of net community benefit and sustainable development. The Panel agrees that a precautionary approach is required to developing the subject land. At the same time, the Panel notes there is strong policy support in the VPP and the Municipal Planning Strategy for the provision of housing in this part of the Shire generally and in Port Fairy. The subject land's proximity to Port Fairy and existing infrastructure lends further strategic weight to its viability for housing, subject to managing other constraints, including flood risk.

The Panel agrees with Council's observation that a person can point to contrary policies to almost any proposal, and that strategic support does not mean there must be unanimous policy support. The Panel would not expect this Proposal to enjoy unanimous policy support given it involves the development of a sensitive use proximate to an existing industrial use with potential adverse amenity issues. As discussed later in this report, the Panel considers these conflicting objectives can be balanced, subject to the adoption of its recommendations to address the constraints of the subject land and mitigate potential amenity impacts from Sun Pharma's operations.

Regarding concerns from the community about the Proposal's impact on existing town services and infrastructure, the Panel acknowledges this would be a significant transformation of what is currently vacant farming land, particularly for residents in the immediate vicinity. However, the Panel is satisfied the number of dwellings proposed will not have an unreasonable impost on existing services and it will enhance commercial activity in the town centre.

As noted by Council, this would likely increase the viability of further retail and commercial activity and encourage the expansion of services commensurate with the increase in demand that may be generated by population growth. This is consistent with the Great South Coast Regional Growth Plan which identifies Port Fairy as a District Town capable of accommodating moderate growth. The role of other nearby towns including Portland and Warrnambool in providing additional services to residents would continue.

There is one exception to this however. The Panel considers the five lots at the entrance to the site should be quarantined from residential development as part of a staging process, until such time as the site is fully functioning and a further assessment can be made on any impacts. These are Lots 1, 2, 3, 4, and the lot north of Lot 45 (which does not appear to be numbered on D96) all of which fall within 200 metres to the Sun Pharma calamity tank area.

The Panel finds:

- There is sufficient policy support for the subject land to be considered for residential development.
- Five lots at the entrance to the site should not be developed until further assessments are undertaken once development has occurred.
- The Proposal can balance competing planning objectives in favour of net community benefit and sustainable development, subject to the adoption of the Panel's recommendations.

## **2.2 Planning controls**

### **(i) Background**

The Amendment seeks to rezone the entirety of the subject land to NRZ and include the land in a new DPO5.

The key issues to be resolved are whether:

- application of the NRZ is appropriate
- inclusion of the land in DPO5 is appropriate.

**(ii) Submissions and evidence**

Council considered the NRZ to be the most appropriate zone because it will ensure the identified predominantly single and double storey character of Port Fairy is maintained on the subject land, and it will facilitate a transition in zoning from the GRZ land along the Princes Highway to the land<sup>17</sup>. It supported this position by referring to Planning Practice Note 91 (PPN91), which states the NRZ is:

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

Council referred to PPN91 Principle 5 which provides that dwelling density alone cannot be the basis for restricting development in the NRZ, and that other factors must exist such as special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards.

In closing, Council acknowledged the evidence that either the NRZ or the GRZ can equally achieve the outcomes sought by the Amendment. It was agnostic about the choice of NRZ or GRZ, albeit noting the NRZ would provide more certainty with respect to building height in circumstances where the proposed DPO5 specifies a discretionary limit of seven metres. Council ultimately maintained its position that the Panel should recommend the entire the site be rezoned to NRZ.

The Proponent submitted it would not oppose a recommendation for the subject land to be rezoned to GRZ, but adopted the NRZ as its preferred zone in light of the subject land's proximity to the Rail Trail and Belfast Lough. Mr McGurn preferred the GRZ given the C69moyn Panel's recommendation that the majority of residential land in Port Fairy be in the GRZ and given it would be contiguous with the existing GRZ land along the Princes Highway. He noted the NRZ would be acceptable given the proposed DPO5 would restrict buildings to seven metres and two storeys.

Sun Pharma focused on the broader strategic justification for rezoning of the subject site for residential development and its potential effect on its industrial operations, rather than directly addressing the specific merits of the NRZ or the GRZ.

No submitters or experts were opposed to use of the DPO nor did anyone seek a different control to achieve the desired built form outcomes on the subject land. While there were submissions and evidence on the drafting of objectives and requirements in DPO5, the use of the tool was supported.

Council considered the DPO was appropriate to achieve desired built form outcomes, noting its application was consistent with *Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlay* dated September 2022. It submitted the proposed DPO5 and draft Development Plan would ensure future development responded to site constraints and context.

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<sup>17</sup> D33

Mr Bromhead raised concern about the DPO5 requirement enabling the grant of a permit prior to the approval of a development plan. In response, Council considered there was no legal impediment to a combined planning scheme amendment and s96A application that sought this outcome, provided the schedule was consistent with *Ministerial Direction – Form and Content of Planning Schemes*.

Council commented in closing that the level of detail in DPO5 too closely replicated the content of the permit and recommended:

The DPO5 should have less detail such that it can accommodate changes necessary to address any reasons for refusal in respect of the Permit Application, to accommodate a different design if the further stormwater work or acoustic work requires changes to the layout beyond general accordance with the Permit Application or to address a different design if the present permit is granted but not acted upon for any other reason <sup>18</sup>.

Mr McGurn agreed DPO5 could be simplified in response to questions from Council.

### **(iii) Discussion and findings**

The Panel has no issue with application of the NRZ across the subject land. While the GRZ might equally realise additional residential design and height benefit, the Proposal was exhibited as NRZ and there is no reason for the Panel to recommend otherwise.

The Panel acknowledges the C69moyn Panel's recommendation to apply the GRZ more broadly to some areas of Port Fairy in recognition of its purpose to enable housing diversity, which would facilitate sensitive development rising to three storeys in limited locations. That Panel nonetheless supported application of the NRZ in other areas that had existing constraints such as heritage.

This Panel considers the interface with the Belfast Lough environs and Rail Trail warrants the application of the NRZ. The Panel was not presented with strong evidence or submissions to the contrary. The Panel viewed the subject land from the rear balcony of two existing residential properties along the Princes Highway and there will be a change to those views. If the land was in the GRZ, that might result in significant impacts in relation to views.

As noted by Council, the NRZ would enable greater certainty by way of a mandatory maximum building height in circumstances where the proposed DPO5, as exhibited, had a discretionary limit. This is consistent with the built form outcomes sought by the Proposal.

The Panel considers the DPO is the appropriate tool to achieve desired built form outcomes, and to ensure development adequately responds to the site's constraints and context. The Panel notes the submissions and evidence on the drafting of objectives and requirements in the schedule. Its preferred version of DPO5 is shown in Appendix E.

The Panel finds:

- The Neighbourhood Residential Zone is the most appropriate zone to facilitate residential development of the subject land.
- The Development Plan Overlay is the appropriate tool to deliver the desired built form outcomes for the subject land.

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<sup>18</sup> D92

## 2.3 Land supply and economics

### (i) Background

Land supply and demand for housing was a key focus throughout the Hearing. This was a broader issue in Amendment C69moyn given the long term influence the Structure Plan would have on housing supply in Port Fairy. Submissions and evidence considered the economic contribution of Sun Pharma's operations and how this should be balanced against the benefits of developing the Rivers Run land.

The key issues to be resolved are:

- whether the Proposal is required to meet land supply demand
- whether the Proposal will result in a net positive economic impact.

### (ii) Submissions and evidence

The Panel notes the Explanatory Report states:

The amendment is required to provide necessary zoned residential land supply in response to identified housing shortages in Port Fairy, and to guide the development of the site and provision of sustainable and affordable housing to maximise benefit for present and future residents.

Prior to the Hearing, Council tabled the *Residential Land Supply Assessment (September 2023)* prepared by Spatial Economics (Spatial Economics 2023 Report) which updates the land supply figures for Port Fairy from the report dated May 2021 that was considered by the C69moyn Panel.

Council acknowledged imperatives in the Structure Plan for protecting the Sun Pharma site, noting the economic development strategy in the Structure Plan is to *"Support further intensification of Sun Pharma in its current location but do not support any further expansion in recognition of adjacent residential development"*. Council noted the Structure Plan recognises the role of industrial zoned land in facilitating jobs and seeks to ensure existing industries are protected, with specific reference to the Sun Pharma site and its employment of approximately 140 people.

From its Part C submission, Council said:

The Panel has the benefit of the Residential Land Supply Assessment (September 2023) (Spatial Economics 2023 Report). This report updates the Spatial Economics 2021 Report and supports the Amendment from a housing supply standpoint. No party has sought to challenge the conclusions of that report; indeed it has been instructive in the formulation of the evidence of each of the planners. It should be afforded suitable weight.

The Panel will recall that the Council has asked each of the planning witnesses and Mr Brisbane whether the Rivers Run development might negatively impact the realisation of the growth areas identified in C69. No witness identified such an impact. This supports the assertion in Council's Day 1 submission that the rezoning and development of the Subject Site is consistent with the proper and orderly sequencing of development in Port Fairy.

The Proponent reflected on the C69moyn Panel's commentary regarding Council's optimism on land supply and the developability of designated growth areas in the Structure Plan, and consequential concern of worsening severe housing affordability problems.

It noted that *"The Spatial Economics Report 2023 is supportive of the Proposal from an economic, land supply and affordable housing perspective."* The Spatial Economics Report 2023 found that Port Fairy has substantial broad hectare land supply, but that this cannot be relied upon to meet shorter term housing requirements and keep downward pressure on Port Fairy's housing prices.

Mr Brisbane's evidence was consistent with the findings of the updated Spatial Economics Report 2023, where he noted:

- f. On the basis of the above, approving the rezoning and permit application would provide for a combination of the following:
  - (1) A level of certainty that a residential land supply will be provided to the Port Fairy market in the near-term
  - (2) A diversity of housing choices by virtue of the residential lot mix proposed
  - (3) Additional price competition in the Port Fairy residential land market providing downward pressure on land prices
  - (4) Four dwellings gifted to an affordable housing provider.
- g. In addition to the above, the proposal would provide economic benefits during the construction phase and through the additional spending generated by residents and visitors <sup>19</sup>.

Sun Pharma presented submissions and evidence on the basis that the Proposal may prejudice current operations and possible future expansion of its facilities. It contended this would be contrary to orderly and proper planning, and focused its submissions on the economic and employment benefits derived from its operations, which it described as a *“very important business operation locally, nationally and globally”*. This was recognised by the C69moyn Panel.

Sun Pharma relied upon the economic evidence it called from Mr Nichol for the C69moyn Panel to demonstrate the economic contribution of its operations. Mr Nichol produced an economic impact analysis that found:

The operations of Sun Pharma's Port Fairy facility supports not only direct jobs and economy activity, but also delivers indirect supply chain and consumption related benefits to the Moyne Shire and Victorian economies.

The total annual direct and indirect economic impacts for Moyne Shire associated with Sun Pharma's Port Fairy operations are estimated at:

- \$41.2 million per year in revenue for local businesses and organisations
- 137 jobs
- \$21.9 million per annum in value-added.

...

When Sun Pharma's Port Fairy operations are assessed in the context of Victoria's economy, it is estimated that a total of 196 jobs are supported (direct and indirect). This reflects the greater supply chain capacity and diversity of the wider State economy.<sup>20</sup>

Council identified that housing supply and affordability was a key issue raised generally by other submitters. There was concern specifically regarding supply of affordable options in Port Fairy for local workers and families, and concern that the Proposal would not deliver suitable options to address this.

### (iii) Discussion and findings

The Panel acknowledges there is broad hectare land supply for housing in Port Fairy through Growth Areas A and B as identified in the Structure Plan, but agrees with evidence and submissions that these areas are unlikely to be developed in a timely manner to address existing supply issues. This is consistent with the findings of Council's Spatial Economics 2023 Report. The

<sup>19</sup> D40

<sup>20</sup> D53, Appendix B

Proposal will contribute to near-term supply of housing in Port Fairy – a town currently experiencing already severe and worsening affordability issues.

The Proposal provides a relatively modest, but welcome contribution of affordable housing. The Panel has tempered expectations of the impact this will have on prices in Port Fairy. In any case, the Panel still expects benefits to Port Fairy in the form of new supply in the near term, and consequential downward pressure on prices for homes as noted in Mr Brisbane's evidence.

The Panel notes the long-standing economic contribution of Sun Pharma to Port Fairy and Moyne Shire and the significance of its operations. The potential amenity impacts that may arise from residential encroachment must be carefully managed to avoid prejudicing the ongoing viability of a well-established business operating on industrial land. It may provide housing opportunities for its employees, which would be a welcomed outcome.

Sun Pharma's operations and development of the adjacent Rivers Run land for residential use are not mutually exclusive. As discussed in Chapters 3 and 4, there are site specific responses and measures on both sides of the fence that can mitigate potential amenity issues.

The Panel considers Sun Pharma's operations can co-exist with adjacent residential development on the Rivers Run land to ensure there is no material disbenefit to Sun Pharma and subsequent impacts on its economic impact and employment function.

The Panel finds:

- The Proposal will assist to meet Port Fairy's short term land supply requirements for housing.
- If the Panel's proposed measures as outlined in Chapters 3 and 4 are adopted to mitigate potential amenity issues from Sun Pharma's operations, the Proposal will result in a net positive economic impact.

## **2.4 Consistency with Port Fairy and Coastal Structure Plan**

### **(i) Background**

Submissions were made and evidence was presented on the Proposal's consistency with the Structure Plan, and on the basis that the Structure Plan would be implemented through Amendment C69moyn as adopted by Council. As discussed in Chapter 1, Amendment C69moyn remains with the Minister for Planning for approval following Council endorsement of all Panel recommendations. The Structure Plan is therefore considered a 'seriously entertained' planning proposal.

The key issue to be resolved is:

- whether the Amendment is consistent with the Port Fairy Coastal and Structure Plan.

### **(ii) Background**

Submissions were made and evidence was presented on the Proposal's consistency with the Structure Plan, and on the basis that the Structure Plan would be implemented through Amendment C69moyn as adopted by Council. As discussed in Chapter 1, Amendment C69moyn remains with the Minister for Planning for approval following Council endorsement of all Panel recommendations. The Structure Plan is therefore considered a 'seriously entertained' planning proposal.

The key issue to be resolved is:

- whether the Amendment is consistent with the Port Fairy Coastal and Structure Plan.

### **(iii) Submissions and evidence**

The Council officer report for the meeting of 9 November 2021 stated *“the proposed development is not considered to be in conflict with the intentions of the Port Fairy Coastal and Structure Plan 2018 regarding the subject site and surrounding areas”*. Council submitted the Panel should place considerable weight on the Structure Plan given its seriously entertained status. It characterised the site as a ‘logical inclusion’ in light of it being within the Port Fairy settlement boundary and its position adjacent to existing residential development, noting that this was subject to addressing relevant flood controls for sea level rise of 1.2 metres (now adopted by Council as 0.8 metres – see Chapter 4.1) and the adoption of a buffer as agreed by Sun Pharma and the EPA.

The Proponent described the site as an *“an infill opportunity which does not increase sprawl given there are already urban areas to the north, south and opposite”*<sup>21</sup>. In addressing the Structure Plan’s accommodation of expected housing demand, it noted the C69moyn Panel’s concern regarding Council’s overestimation of available land supply, underestimation of demand post COVID-19, and limitations on the developability of Growth Areas A and B. The Proponent emphasised the short term supply benefits of developing the site with reference to Council’s updated Residential Land Supply Assessment, September 2023 tabled during this process which is supportive of the Amendment in terms of economics, land supply and affordable housing<sup>22</sup>.

Mr McGurn gave evidence the rezoning and subdivision *“is strategically justified having regard to the Port Fairy Structure Plan (and associated documents) and increased demand for housing and housing diversity in Port Fairy”*<sup>23</sup>. He considered there were several key factors in support of the Proposal in light of policy and in the context of other opportunities for growth in Port Fairy. The Panel has further summarised the key factors cited by Mr McGurn as follows:

- The subject land is contiguous with land in the Settlement Boundary, is suitable to being embedded within the existing urban area, is well connected to infrastructure and does not increase urban sprawl.
- The subject land is in one ownership and investigations into its development viability have been undertaken, noting that flood inundation can be appropriately managed with cut and fill.
- The land is fragmented farming land and has not been identified as productive, and no other significant environmental constraints would deter use and development.

Sun Pharma’s submissions focused on the policy tension between the protection of industry and the development of the neighbouring subject land. It acknowledged in its opening submission *“While there is some recognition of the potential for the Amendment land to be developed for residential purposes, subject to resolving constraints, it is not identified as a principal area to accommodate residential growth”*<sup>24</sup> Sun Pharma noted the importance of its operations is

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<sup>21</sup> D54

<sup>22</sup> D38

<sup>23</sup> D41

<sup>24</sup> D53



recognised in the Structure Plan and Clause 21.09-3 as proposed and adopted by Council through Amendment C69moyn.

Sun Pharma prosecuted the consistency of the Proposal with Amendment C69moyn and the Structure Plan. It questioned Mr McGurn on the merits of the rezoning of the subject land, its role in supporting residential growth, and whether it should be included in the coastal settlement boundary in the context of Amendment C69moyn. The Proponent noted in its closing submission these were all matters deferred for consideration through the Amendment C75moyn process.

Mr Woodland acknowledged uncertainties on the timing of land release in the growth areas identified in the Structure Plan as well as infill locations, and considered resolving these uncertainties to be a high priority. He expected land within the settlement boundary would ordinarily be prioritised for rezoning above land outside the boundary, but agreed that rezoning of the subject land would make a short term contribution to Port Fairy's residential land supply <sup>25</sup>.

Mr Bromhead drew attention to the fact the Structure Plan did not include the subject land in either of the designated growth areas, and likewise considered residential growth should be designated to those areas in the first instance. Regarding the notation of the subject land in the Structure Plan as a potential residential expansion area, Mr Bromhead stated *"I am still not able to ascertain the genesis of the red asterisk and the reason for its inclusion"*<sup>26</sup>.

Both Mr Woodland and Mr Bromhead pointed to several supporting strategies in local policy and the Structure Plan relating to Sun Pharma's operations.

In closing, Council countered criticism from Sun Pharma of an over reliance on the asterisk in the Structure Plan:

The asterisk does only what it is expressed to do. It identifies the Subject Site as a potential residential expansion area but falls short of confirming that status. The PFCSP is the subject of a seriously entertained amendment which would see the PFCSP recognised as a background document. While the land was not identified in the PFCSP as land to be included in a growth area (itself unsurprising given it is commensurately small) at the time of the structure plan, there is nothing inappropriate, or unusual about identifying land to be tested for development, in this case through the C75 process <sup>27</sup>.

#### **(iv) Discussion and findings**

The Panel notes the Structure Plan identifies the subject land as a potential location for residential development as denoted by an asterisk on the Settlement and Housing Plan. This was a significant point of contention in the C69moyn Hearing and one which that Panel refrained from making comment on given the strategic merit of the Rivers Run development was to be tested separately through this Amendment. Sun Pharma made strong submissions at the 2022 Hearing that the asterisk should be removed, however the Panel did not agree. The C69moyn Panel acknowledged the notation in the Structure Plan was included with little strategic understanding, and that if Council supported development of the subject land, it should have been designated appropriately. This Panel process did not shed any more meaningful light on this.

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<sup>25</sup> D47

<sup>26</sup> D48

<sup>27</sup> D92

The Panel observes it would have been helpful to better understand how Council came to identify the land as a possible residential expansion area, however there is limited utility in prosecuting the origin of the asterisk and its inclusion in the Structure Plan. Council's summary of the function of the asterisk in its closing submission is apt – it simply identifies the subject land as a possible residential expansion area, but falls short of confirming it.

The Panel does not consider the asterisk lends the Proposal greater strategic justification by itself, and so it has focused on the spatial attributes of the subject land in relation to the rest of the township and how it may affect the outcomes sought in the Structure Plan. On this front, the Panel does not consider the Proposal to be inconsistent with the Structure Plan and it will not prevent the objectives of the Structure Plan from being achieved.

The Panel considers the site context and policy supports residential development of the subject land in some capacity. This is because the subject land:

- is contiguous with existing residential land along the Princes Highway
- has good road access from the Princess Highway
- has an active transport link to the town centre via the Rail Trail
- is within walking distance to the Port Fairy commercial area and abuts Sun Pharma, a key employer in Port Fairy
- is akin to infill development that will not contribute to sprawl on the town's fringe
- is not productive agricultural land.

Further, and for the reasons expressed in Chapters 3 and 4, constraints relating to the Sun Pharma interface, flood risk, and response to the Belfast Lough environs can be managed, and it appropriately responds to the adopted flood controls proposed through Amendment C69moyn.

Based on the assessment of a range of other factors, including site considerations, environmental and amenity impacts, the Panel considers the site can be developed for residential purposes.

The Panel finds:

- Development of the subject land is consistent with the outcomes and strategic direction of the Structure Plan.
- The Proposal will not prevent the objectives of the Structure Plan from being achieved in the long term.

## 3 Site issues

The key issues to be resolved are:

- site design and layout
- traffic and access
- landscape, open space and views
- housing diversity and affordability.

In addition to the Panel having regard to the planning and economic evidence noted in Chapter 2, it had regard to the traffic, land supply/economic and landscape evidence noted in Table 4, as well as relevant submissions<sup>28</sup>.

**Table 4** Site evidence

Party	Expert	Firm	Area of expertise
Proponent	Charmaine Dunstan	Traffix Group	Traffic
	Nick Brisbane	Ethos Urban	Land supply/economics
	John Patrick	John Patrick Landscape	Landscape and trees

### 3.1 Site design and layout

#### (i) Background

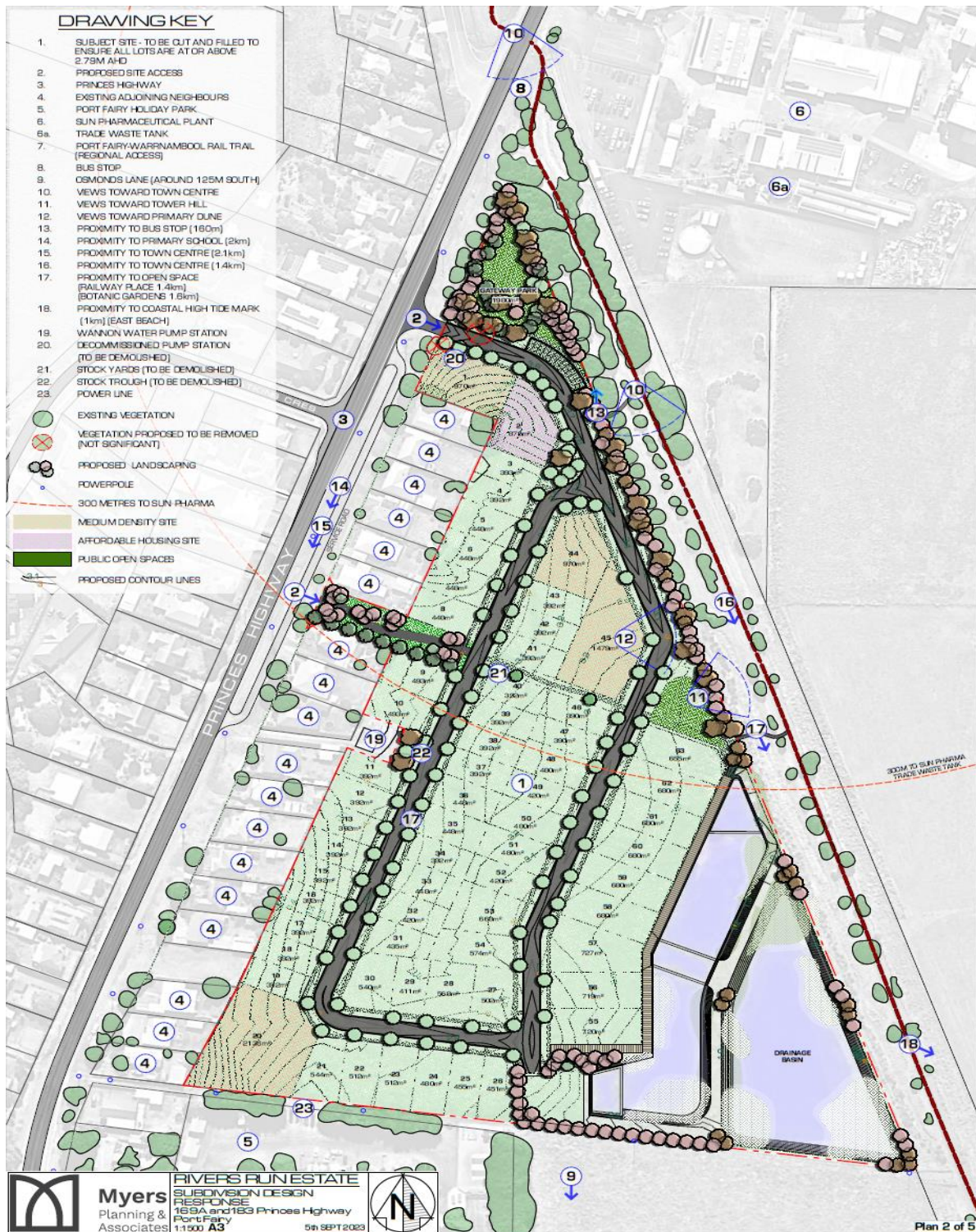
A Concept Plan was lodged with the request for the Amendment and was included in DPO5. That Plan changed as issues were addressed following further site examination or submissions and upon comments from agencies and submitters. Some of the changes are outlined in Chapter 1.2 (v)<sup>29</sup>. All changes were noted by the Proponent as improving the overall site layout and concept.

The Proponent tabled a set of plans prior to the Hearing which included an updated Subdivision Design Response depicting the 300-metre policy buffer radius to Sun Pharma's calamity tank, as shown in Figure 4.

<sup>28</sup> Report tabled but witness not called

<sup>29</sup> Summary of changes to Amendment and Permit since exhibition

**Figure 4 Subdivision Design Response depicting 300 metre buffer to Sun Pharma trade waste tank<sup>30</sup>**

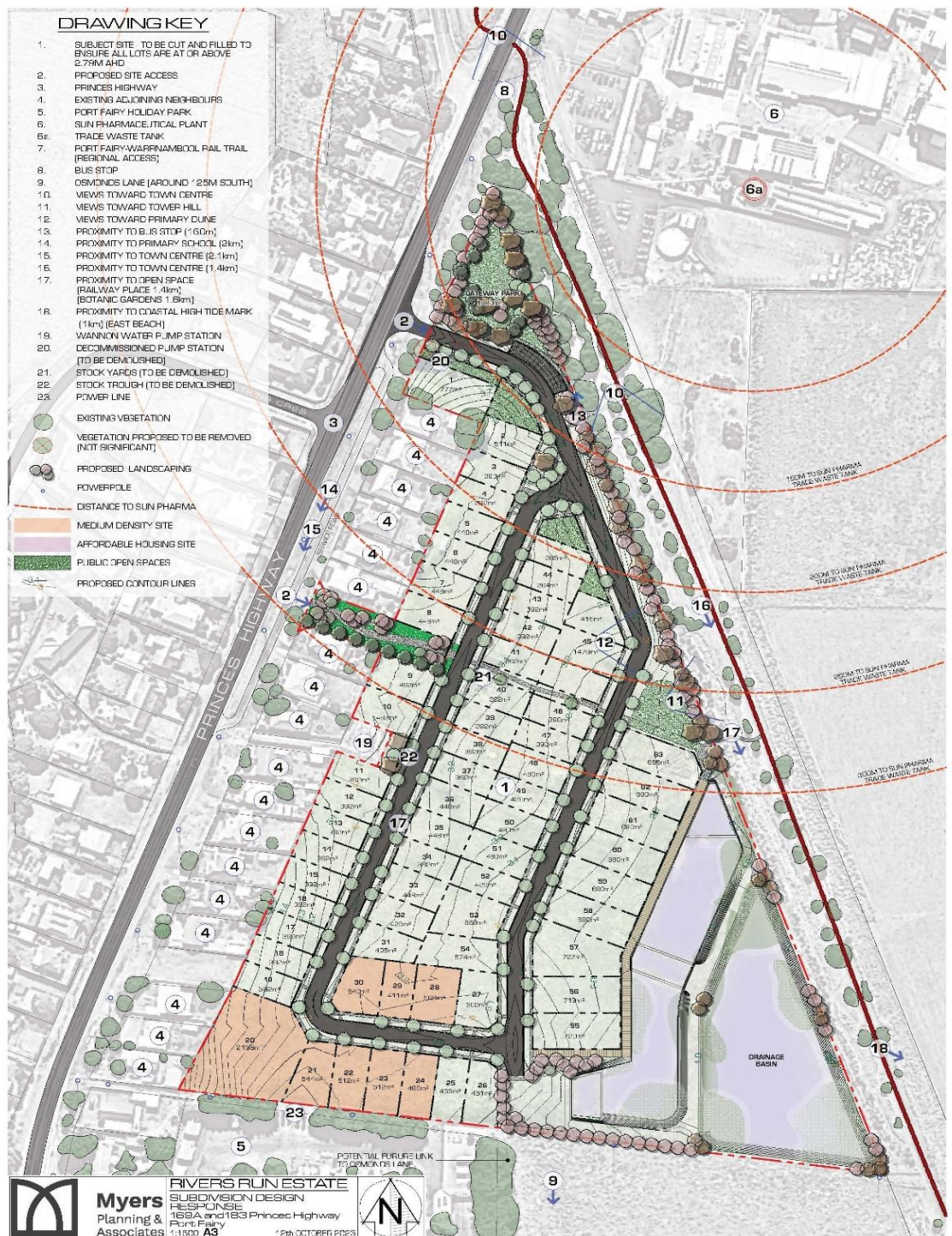


During the Hearing, the Proponent tabled the updated Concept Plan, included as Figure 5.

<sup>30</sup> D30, Myers Planning Group



Figure 5 Updated Rivers Run Estate Concept Plan, 12 October 2023<sup>31</sup>



The plan at Figure 5 changed the configuration and layout of lots in response to submissions, particularly Council's nomination of Lots 9 and 10 as its preferred location of the affordable housing site as well as the relocation of the medium density sites to the southern most part of the subject land.

<sup>31</sup> D96

The key issues to be resolved are whether:

- the Subdivision Design Response appropriately addresses site constraints
- the layout provides acceptable outcomes, including offering suitable amenity for residents.

**(ii) Submissions and evidence**

Submissions on development and site layout issues generally called for protection of the environment by controlling how the development might be constructed and the protective measures required. In response, Council and the Proponent each pointed to proposed permit conditions that would require management plans be submitted and approved prior to development. These plans cover matters such as:

- context and design response plan that address site constraints and opportunities
- public realm improvements across the estate
- functional layout plan for works within the estate
- detailed construction plans setting out engineering works including cut and fill works and other works in public spaces as well as construction outcomes
- project management
- environmentally sustainable design report
- traffic control off-site.

These types of plans and control documents are common and proven subdivision requirements.

Beyond them, the issue is whether the layout provides sufficient separation of residential lots from the industrial land and the Sun Pharma site in particular, or if as Sun Pharma submitted, *“lots more proximate to the Sun Pharma site were removed from the residential subdivision for a buffer”*<sup>32</sup>.

**(iii) Discussion and findings**

The Panel is satisfied the amended site design and layout is appropriate, and that conditions can achieve acceptable outcomes. However, the bigger issue is whether the subject land can or should be rezoned and subdivided for residential use given potential adverse amenity impacts from noise and odour. These matters are addressed in Chapter 4.

Notwithstanding, the Panel considers Figure 5, which was discussed at length at the Hearing, should be included in DPO5 to ensure greater certainty about development of the land.

The Panel finds:

- The amended Subdivision and Design Response plans as show in Figures 4 and 5 is acceptable, subject to changes.
- Figure 5 should be included in Development Plan Overlay 5 to provide further guidance on how the land should be developed.
- There are no site design and layout issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

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<sup>32</sup> D90 para 54

## 3.2 Traffic and access

### (i) Background

The key issues to be resolved are whether the:

- access arrangements achieve safe operating conditions with the Princes Highway
- internal traffic and access arrangements are appropriate.

### (ii) Submissions and evidence

DTP sought the installation of turning lanes and other improvements to the Princes Highway (the Highway) to ensure safe operating conditions. Prior to the Hearing, the Proponent's traffic expert consulted DTP about various plan changes to redesign the junction of the access/egress road with the Highway and line markings on the Highway for turning movements into and from Atkins Crescent.

The Panel was advised the Proponent and DTP came to agreement on the plans and conditions in the permit required by DTP to secure the optimal outcomes<sup>33 34</sup>. Consequently, the Panel did not hear expert evidence on this matter.

Notwithstanding, traffic issues remained a significant issue for several submitters who expressed concern about the speed of traffic on the Highway and the impact of additional traffic from new residences at the Hearing. Collectively, the submitters spoke of unsafe road conditions with only one exit from the proposed estate onto what they considered to be a busy Highway. One submitter provided video footage of several truck and car traffic movements along the Highway in the locality of the subject land.

Opinion about traffic matters internal to the estate was provided by Mr McGurn who referred to changes to the plan of subdivision to delete the originally proposed internal one-way road. He supported the revised road layout in his assessment against Clause 56 of the Planning Scheme and commented:

The path network will extend along the side and rear of selective lots, providing connectivity to areas of passive open space and the landscaped drainage reserve. The subdivision layout and street network provide opportunities for informal surveillance as lots are orientated to face the street network and overlook adjoining areas of passive open space and common property<sup>35</sup>.

The Proponent referred to traffic and access issues in its opening submission. Firstly, it endorsed the Development Plan provided among the 'Day 1' papers by the Proponent that stated:

Internally, the proposed movement network has been designed not solely for motor vehicles but also for pedestrians and cyclists. Internal roads (predominately 16 metre road reserve) are proposed to have a 7.3 metre width carriageway (measured to the line of kerb). Pedestrian and bicycle access is provided to the rail trail to encourage the use of active transport for daily needs and recreation<sup>36</sup>.

<sup>33</sup> D54, D56

<sup>34</sup> D49

<sup>35</sup> D41, para 124

<sup>36</sup> D44 section 5.1

Secondly:

Access arrangements to the Princes Highway and the internal road layout have been further resolved, with the intersection plan prepared by Traffix Group being to the satisfaction of DTP.

The midblock pedestrian link to the Princes Highway provides a secondary access point for emergency vehicles, consistent with the advice of the CMA <sup>37</sup>.

Council addressed submissions about traffic and access issues and changes on the design response, and stated:

In Council's submission, the Day 1 Proposal responds to these issues and is generally in accordance with the relevant standards subject to the matters set out in the below table.

In summary, Council:

- supported the use of Reserve 2 as a secondary emergency access/egress point provided it includes removable bollards.
- accepted DTP's position on the Intersection Concept Plan, noting if the Panel found this needed to be altered, it had no objection.
- considered the internal road network was generally in accordance with the relevant standards <sup>38</sup>.

The CFA raised the need for an access point for use by emergency vehicles, which it submitted was a safety issue for future residents and workers. The matter was resolved pre-hearing by a change to the Concept Plan to include an access point into and out of the subject land created on a vacant lot owned by the Proponent <sup>39</sup>.

### **(iii) Discussion and findings**

The Panel acknowledges the resident submissions about the speed of vehicles, especially trucks, on the Highway and what they saw as unsafe conditions as they attempted turns into the service road, side streets or their dwellings. Observations during the accompanied site inspection and during the Panel's own inspections confirmed the nature of some truck and traffic movements along the Highway and the sense of the need to improve local traffic conditions.

The Proponent acknowledged "*the genuine concerns of the existing residents with respect to the existing impacts from vehicles using the Princes Highway, particularly trucks*" but relied on the tabled expert evidence of Ms Dunstan and the agreement reached with DTP which, it submitted, addressed the issues relating to the proposed estate <sup>40</sup>.

DTP's support of the Highway's interface with the proposed estate is critical to achieving safe operating conditions with line markings, widening the highway pavement and improvements to the entrance to the service road. Council and the Proponent agreed with and accepted DTP's conditions.

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<sup>37</sup> D54, para 13

<sup>38</sup> D55, para 105

<sup>39</sup> Identified as 2 on figure 4

<sup>40</sup> D89, para 168



While not a matter for this Proposal, Council might continue to work with DTP to ensure safe traffic conditions for all users in Port Fairy, particularly given the proposed bypass no longer seems to be pursued.

The Panel finds:

- The agreed changes proposed by the Department of Transport and Planning will assist in creating safer operating conditions.
- The layout of the internal roads shown on Figure 4 and the Subdivision Design Response plan are acceptable.
- The proposed creation of the emergency access sought by the Country Fire Authority is acceptable.
- There are no traffic and access issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

### 3.3 Landscape, open space and views

#### (i) Background

Presently, the subject land is unimproved farmland with the open expanse of the Belfast Lough abutting to the east and north-east, urban uses to the north including Sun Pharma and the existing residential area to the west. The open vista allows long views across the Lough to the Port Fairy township to the south and urban uses on Griffiths Street. There are long views to the site from the opposite direction. The landscape is open but not barren. There is significant vegetation along the Rail Trail and along the boundary of the subject land.

The Rail Trail provides an excellent buffer from the estate to the Belfast Lough and is a major landscape and recreational asset.

The key issues to be resolved are:

- reconciling concerns about the interruption to the Belfast Lough landscape by development of the estate
- whether the estate can integrate into the landscape.

#### (ii) Submissions and evidence

Council's opening submission noted the adopted Structure Plan and the relationship of the subject site within the Belfast Lough environs, an area of open landscape and wetland recognised for its environmental and landscape values <sup>41</sup>.

Mr Patrick's evidence on landscaping addressed the objectives in the 'Day 1' version of Clause 21.09-3, Local Areas planning policy (advanced in Amendment C69moyn) about protection of the landscape character and ecological values of the Belfast Lough environs.

With regard to the objective *"To promote a compact settlement to avoid perceptions of urban sprawl, protect rural surrounds and retain spatial separation between localities"*, Mr Patrick commented:

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<sup>41</sup> D55, para 41

The site that is the subject of this Hearing is a discrete landscape area of relatively limited extent that is located within close proximity of the Port Fairy town centre and adjacent to the existing township boundary along Princes Highway eastwards. Furthermore, it is generally screened from broad external views notably by housing along the Princes Highway frontage and by vegetation to the greater part of its eastern and southern boundaries. This sense of enclosure and integration can be enhanced by further on-site planting and by use on indigenous plant palettes, a sense of rural character can be retained.

Further, the objective *“To improve connections between existing areas of open space to facilitate habitat corridors”*, Mr Patrick noted planting proposed throughout the site would reinforce established habitat values along the adjacent Rail Trail. He said:

To maximise benefits there should be a conscious programme of encouraging future stakeholders in properties to tap into this context by the use of indigenous vegetation as a major component of future gardens. Most importantly, the proposed landscape treatment with its significant wetland areas to the south-east corner of the site brings habitat diversity, supplementing existing habitat corridors.

On the objective *“To protect and enhance key landscape vistas on approach to Port Fairy”*, Mr Patrick observed the location of the site at a major point of entry to Port Fairy, which he said might be a component of a key landscape vista. Further:

... upon a review of the site and its context it can be seen to be screened from exposure to traffic by a combination of existing vegetation and residential development, a situation likely to be only modestly altered to accommodate site access. Because of the site’s enclosure key views are protected and proposed planting enhances the visual quality of the precinct.

Addressing the issue of view lines, Mr Patrick noted the impact of any change to the subject site to views from Gipps Street bridge (1.4 kilometres to the south) would likely be modest, especially given the infill housing. He observed the vegetation proposed along the Rail Trail interface would supplement planting already established along the alignment *“... to provide a valuable screening and softening element when the site is viewed from Port Fairy township to the south”*.

While Mr Patrick highlighted attention to the public landscape component of the site, he made recommendations about planting themes for lots abutting existing residences and for planting of canopy trees on private lots throughout the subdivision. He considered there should be some direction to future property owners about private property planting.

Mr McGurn’s consideration of landscaping in his planning evidence was consistent with Mr Patrick’s approach. For example, Mr McGurn supported urban landscapes outcomes with *“streetscape plantings and feature landscaping within the Gateway Park and other reserves”*<sup>42</sup> and because *“Indigenous species are incorporated into the landscape themes to respond to local conditions”*.<sup>43</sup>

The Proponent endorsed Mr Patrick’s landscaping plan, noting it:

... provides a considered and appropriate response. It provides additional landscaping within and on the boundaries of the wetlands and drainage basin in the south and improves the interface with the rail trail, two matters that were identified by Mr Woodland as recommended improvements based on the previous Day 1 landscape plan<sup>44</sup>.

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<sup>42</sup> D41, para 125

<sup>43</sup> D41, Appendix C Clause 56 Assessment

<sup>44</sup> D89, para 77

Mr Woodland's evidence addressed the policy focus to protect the environmental values of the Lough as well as reducing the visual intrusion of built form on approaches to Port Fairy and across key landscapes such as the Belfast Lough, including the Rail Trail. He noted:

- A residential subdivision on the Subject Site will inevitably lead to a greater visual intrusion of built form on the Belfast Lough and Rail Trail landscapes. However, the proposed form of the subdivision will go some way towards minimizing the intrusion of built form on this landscape setting.
- The following aspects of the proposed subdivision could be improved to better manage the interface between the proposed subdivision, the rail trail and Belfast Lough:
- The landscape design at the retarding basin interface could be improved.
- Further design detail is needed to demonstrate how Lots 55-63 (which back on to the Belfast Lough) could reduce the visual intrusion of built form in this location.
- Dwelling siting, design and landscaping requirements could be imposed on all residential lots facing the rail trail and Belfast Lough<sup>45</sup>.

Mr Bromhead addressed the desirability of using landscaping to integrate development with the openness of the locality and to limit detrimental amenity impacts.

Submitters were concerned at the siting of houses close to the Rail Trail and the loss and detrimental impact to their current expansive views along the Rail Trail, as well as interruptions to the quiet enjoyment of trail users. Submitters were critical of the Proposal being sited within the environs of the Lough, citing concerns at expected impacts on the Lough's environmental values from development run-off and impacts on bird life. Further concerns were raised about the loss of views to and across the Lough both from the Gipps Street bridge and other points along Griffiths Street with long views to the land, as well as from some residences abutting the subject land.

### **(iii) Discussion and findings**

The Panel had the benefit of detailed accompanied site inspections while at Port Fairy for Amendment C69moyn and for this Amendment, as well as its own visits to the location. In addition to walking on the subject land, the site inspection for this Amendment provided the added benefit of viewing the subject land from the vantage points of the back balconies of two properties off the Highway.

There is no doubt the introduction of new built form will change the vista, especially from the rear of properties along the Highway.

While the planning witnesses qualified in their evidence that they were not experts on landscaping like Mr Patrick, there was a common theme of seeking to achieve a good landscaping outcome if the Proposal was approved.

The Panel has considered whether the impact is intrusive or whether the landscaping plan proposed by Mr Patrick will assimilate the development with the current landscape. The Panel agrees it is of critical importance the landscape treatment of the subdivision is well planned and designed, including using mature trees.

There are a range of options to ameliorate the impacts of the Proposal on what is generally uninterrupted views from various perspectives. These include:

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<sup>45</sup> D47, para 25

- planting complementary landscaping along the public-facing boundary with the Rail Trail
- landscaping within reserves and open areas to assist with an integrated landscape response
- planting mature trees in prominent view locations
- ensuring there is planting of at least three canopy trees within private lots
- using locally indigenous plants.

In this regard, the Panel accepts the Landscape Concept Plan prepared by Mr Patrick. While the Panel recognises there is long held opinion that there is no right to a view, it considers the proposed treatment of areas along the entire length of the northern and eastern boundaries and for approximately half the length of the southern boundary will assist to integrate the built form into the current landscape. Such landscaping will complement that of the existing vegetation of the Rail Trail and will lessen the impact of outlook from properties abutting the Highway.

The Panel finds:

- Views from adjacent properties overlooking the subject land and the Belfast Lough will be impacted by the Proposal.
- An integrated design solution based on the recommendations of Mr Patrick will assist to ameliorate impacts and will create a new landscape form.
- There are no landscape, open space and view issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

### **3.4 Housing diversity and affordability**

#### **(i) Background**

The Proposal includes an offer to allocate a lot on the estate to a registered housing or similar association to facilitate the construction of social or affordable housing to Council's satisfaction. The allocated lot is expected to enable the construction of up to five units<sup>46</sup>. The offer would be secured by permit condition and an Agreement under section 173 of the PE Act<sup>47</sup>.

State and local policy provisions in the Planning Scheme deal with housing diversity and affordability. Local policy at Clause 02.03-6 states:

A significant proportion of dwellings in the coastal towns are not permanently occupied, serving as holiday homes. This contributes to a lack of affordable worker accommodation, particularly during peak tourism periods.

Housing affordability and availability of long-term rental stock is declining in the Shire, and there is limited dwelling diversity, due to a low proportion of medium density and small dwellings in urban areas.

State policy at Clause 16.01-1S notes the following Strategy as a way of achieving more diversity:

Facilitate diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.

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<sup>46</sup> D5, folder 5

<sup>47</sup> D55 et al

Clause 16.01-2S, Housing Affordability provides Strategies to deliver more affordable housing, including:

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.

It also seeks to:

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.

The key issues to resolve are:

- the commitment to deliver affordable housing as part of the proposed development
- the most suitable location for the affordable housing product.

## **(ii) Evidence and submissions**

At the Hearing, the Panel was advised both the Proponent and Council agreed to provide the opportunity for affordable housing, not social housing as part of this commitment.

The Proponent initially addressed the provision of affordable housing in the report *Housing Diversity and Affordability June 2020*, by Myers Planning, submitted with the request for the Amendment <sup>48</sup>. Lot 1, at the main entrance to the site, was set aside for affordable housing.

Council supported the Proposal on the basis the supply of affordable housing was consistent with State and local planning policy. Council sought changes to the Proposal to make the offer more appealing to housing associations, noting:

Council submits that the lot proposed for affordable housing be removed from the Owners Corporation and the 300m buffer. This will remove the main encumbrances that would curtail the feasibility of the development for affordable housing <sup>49</sup>.

The outcome would be a reduction in the costs of development by amending construction forms as well as reducing on-going costs by the exclusion of the lot from any fees for the future Owners Corporation charged with the upkeep of facilities across the site.

Some submitters contended the Proposal would result in most purchasers using the dwellings as a 'holiday home' thus adding to the stock of holiday home accommodation, which would not ease any housing market pressures. In this regard, Mr Brisbane gave evidence that:

Given the coastal location and prominence of holiday homes, it is almost certain that a share of new dwellings will be used as home homes or holiday rentals.

...

It would be reasonable to assume the subject site, being a new development, would accommodate a higher share of permanent dwellings compared to the balance of Port Fairy.

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<sup>48</sup> D1, folder 1

<sup>49</sup> D55, para 108

On the basis of the above, it would be reasonable to assume 75% of dwellings at the subject site would be occupied as permanent residences. This equates to approximately 60-75 dwellings, with the balance of 20-25 dwellings used primarily as holiday homes or holiday rentals<sup>50</sup>.

According to Mr Brisbane and the Spatial Economics 2023 Report, there is strong demand for new housing opportunities in Port Fairy and the restricted supply of residential lots and housing will be addressed in part by the establishment of the Rivers Run Estate<sup>51</sup>.

Mr Bromhead's evidence referred to State housing strategies in his review of relevant policy<sup>52</sup>.

The affordable housing element of the development attracted criticism from submitters because the exhibited lot set aside would be too close to the Sun Pharma site and would potentially be affected by negative amenity issues such as noise and odour. Some submitters expressed concern the affordable housing component would be remote from the centre of town and distant from health and community services that they say are already overloaded.

During the Hearing, the Proponent relocated the site for the affordable housing from Lot 1 to Lots 9 and 10. These lots are adjacent to the landscaped site access and just within the margins of the 300-metre policy buffer.

In addition, Lots 20, 21, 22, 23, 24, 28, 29 and 30 are proposed to be used for medium density development.

### (iii) Discussion and findings

There is little doubt an increase in the supply of housing is likely to provide significant short-term increase and diversity to Port Fairy's housing supply.

Both the Spatial Economics 2023 Report and the evidence of Mr Brisbane confirmed the Proposal was supported by elements of these policy provisions by:

- adding stock to the constrained supply of houses in the township
- its intended donation of a site for up to five affordable housing units
- identification of a lot for multi dwellings at medium density
- offering housing choice across the estate.

Mr Brisbane's evidence did not support the concerns of submitters about many of the houses becoming holiday homes. Moreover, the evidence contended that if some holiday homes do result, the fears of submitters that occupation of the new dwellings will overtax existing strained facilities and services is unlikely.

There is no planning tool to control occupation of dwellings to avoid owners using the dwellings as holiday homes. The *Residential Tenancies Act 1997* which is the relevant legislation for regulating residential tenancy, similarly, does not enable such a restriction.

The Panel accepts Council's position there is no legal requirement in Victoria to provide affordable housing within a residential estate. Notwithstanding, the Panel finds the offer of up to five units

<sup>50</sup> D40

<sup>51</sup> Spatial Economics provided a housing report to Council, and while it was tabled and referenced, it was not considered as evidence

<sup>52</sup> D48 paras 83 and 84

on a lot in the Rivers Run estate would contribute to State policy objectives and would result in community benefit.

The Panel finds:

- The creation of the Rivers Run residential estate will add stock to the constrained supply of land in Port Fairy.
- The Proposal will increase the supply of dwellings, including affordable housing on Lots 9 and 10 and the cluster of lots on the southern boundary for medium density development.
- These initiatives are consistent with State and local housing policy.
- There are no housing diversity and affordability issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

## 4 Environment and amenity impacts

The location of the subject land in a sensitive environmental area and its proximity to the Sun Pharma industrial use that is important to Council and the local community, are significant constraints on its future use for residential purposes. The Proposal must address site development issues presented by its location including flooding and control of stormwater and drainage and it must respond to the amenity impacts from the operations of Sun Pharma.

It is important to note that Sun Pharma has co-existed with residential development for many years. This Proposal will not be the first time that environmental and amenity impacts have been raised in the context of the industrial nature of Sun Pharma. As it is already located reasonably close to residences, Sun Pharma should recognise its obligations to minimise impacts at all times. It is clear to the Panel that Sun Pharma generally does this very well. There are occasional fugitive emissions and the onus is on Sun Pharma to minimise these as much as possible, even if the proposed development was not contemplated.

The key issues to be resolved are:

- flooding, stormwater and drainage
- acoustics
- air quality.

In considering those issues, the Panel had regard to the evidence noted in Table 5, as well as relevant submissions.

**Table 5** Environment and amenity evidence

Party	Expert	Firm	Area of expertise
Council	Luke Cunningham	Rain Consulting	Drainage
Proponent	Travis Hancock	Marshall Day Acoustics	Acoustics
	Warwick Bishop	Water Technology	Flooding and drainage
	Iain Cowan	Zephyr Consulting	Air quality
Sun Pharma	Darren Tardio	Enfield	Acoustics
	Peter Ramsay	Peter J Ramsay	Air quality and odour

Submitters opposed the Proposal because of potential amenity impacts from the operations of the Sun Pharma site, where records indicate complaints about noise, odour, light spill, dust and traffic. They sought to protect Sun Pharma's presence by opposing the introduction of new residents, as a new community might give rise to more complaints, which could jeopardise the existence of Port Fairy's key employer. Sun Pharma shared those submissions.

Matters relating to dust, light spill and noise from beepers on vehicles operating within the Sun Pharma premises were not presented as matters of concern.

### 4.1 Flooding, stormwater and drainage

#### (i) Background

The key issues to be resolved are whether:

- the subdivision design concept applies the designated heights



- Council's development standards are applied
- acceptable outcomes are achieved to protect against flooding, that stormwater is controlled and that drainage flows are properly directed.

## (ii) Evidence and submissions

Council and submitters raised concerns about new development within a floodplain and the consequences of stormwater management.

Council raised issues with the way the subdivision concept dealt with stormwater and runoff. Across reports by Council officers tabled as background information, and through expert evidence and submissions, Council sought changes to Concept Plan to ensure its general standards of development were met. Council sought to achieve appropriate and satisfactory environmental outcomes by ensuring the design and maintenance of the stormwater management system complied with relevant standards and did not contribute to or exacerbate flood risk on the site and to surrounding properties<sup>53</sup>.

The GHCMA supported the Proposal provided it applied the designated site levels and building heights nominated with:

- the crest of all roadway surfaces be finished at or above 2.7m AHD (Australian Height Datum)
- garage floor levels be finished at or above 2.79m AHD
- dwelling floor levels be finished at or above 3.09m AHD
- portico floor levels be finished at or above 2.79m AHD<sup>54</sup>.

As the Proponent's closing submission noted, permit conditions would ensure compliance with the GHCMA requirements:

The Glenelg Hopkins Catchment Management Authority (GHCMA) does not object to Amendment C75 or the proposed planning permit. The proposed conditions recommended by the GHCMA in its letter of 20 April 2023, have been included in the permit conditions subject to minor corrections in wording and corrections of the relevant finished floor levels following confirmation that a NFPL of 2.79 AHD applies to the site and that this includes an allowance for freeboard.<sup>55</sup>

Experts were engaged by Council and the Proponent to assess the Proposal. Each of the expert witnesses supported development, subject to various changes to the Concept Plan.

The Panel directed the experts to meet to identify the key issues and to record the facts and opinions agreed and not agreed. Mr Cunningham and Mr Bishop produced a report that conveyed the overall points of agreement as:

The proposed rezoning of the site as per Amendment C75moyn can be achieved with an acceptable surface water management outcome.

If a permit is granted, the conditions related to flooding and stormwater management should be amended in accordance with the recommendations in this statement (paragraphs 24 to 31)<sup>56</sup>.

<sup>53</sup> D55 para 5

<sup>54</sup> D3 folder 3 records the GHCMA advised the DFP of different levels to AHD for buildings. The Panel adopts the levels included in proposed conditions 8 and 48

<sup>55</sup> D89 para 166

<sup>56</sup> D34

The experts did not agree on the timing of the grant of a permit. Mr Cunningham wanted changes to various construction standards and approaches to control water flows before a permit issued. Mr Bishop contended acceptable outcomes for flooding and stormwater management could be achieved through appropriate permit conditions and the permit could issue before those reports were completed. To that end, he recommended revised and new permit conditions.

As a result of the experts continuing to confer in the lead up to the Hearing, an agreed position was put to the Panel with a set of conditions to contain risks to the environment from stormwater and drainage. These conditions related to the stormwater management plan including a peer review, requirements about routine maintenance of stormwater assets and checking by the GHCMa of the proposed cut and fill plans.

Council's closing submission stated:

The Panel has the benefit of the agreed stormwater conditions between experts. Council accepts that if a permit is to be granted it should be subject to the agreed conditions.

The conditions establish a robust series of requirements ... <sup>57</sup>

The Proponent's closing submission committed to meet Council's development standards and to adopt the preferred layout of stormwater assets <sup>58</sup>. The submission stated:

**Agreement as to drainage and storm water conditions**

In light of the revised storm water conditions tabled on 5 October 2023, there are no flooding or drainage reasons for refusing the grant of the planning permit or the approval of the rezoning <sup>59</sup>.

Submissions opposing the Proposal for building in a flood plain dissipated when it became clear the plan was properly based on adopted policy and technical issues were resolved. The one exception was a submitter who queried the veracity of engineering tests about the capacity of the stormwater drainage reserve because of what the submitter regarded as insufficient soil testing <sup>60</sup>. The Proponent dealt with this matter by tendering information about the extent of groundwater test results over an extended period <sup>61</sup>.

### **(iii) Discussion and findings**

Whereas the Proposal was initially framed on a sea level rise of 1.2 metres as exhibited in Amendment C69moyn, the Proposal under consideration responded to policy of 0.8 metres sea level rise and adopted the respective heights stipulated by the GHCMa. The Concept Plan responded to those provisions.

With the Proponent's commitment to adopt Council's development standards for the design of infrastructure works, and with the acceptance of agreed conditions to secure the design requirements, the Panel is satisfied acceptable outcomes can be achieved to protect against issues arising from stormwater run-off and drainage flows.

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<sup>57</sup> D92, paras 44, 45

<sup>58</sup> D96

<sup>59</sup> D89 para 166

<sup>60</sup> S24

<sup>61</sup> D78 e)

The Panel finds:

- Flooding, stormwater and drainage can be adequately managed.
- There are no flooding, stormwater and drainage issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

## 4.2 Acoustics

### (i) Background

Submitters living near Sun Pharma criticised noise from existing company operations. The complaints register kept by Sun Pharma noted the criticisms although, as some submitters advised the Panel, there were occasions when noise was noticeable, but those events were not always the subject of formal complaints. Submitters opposed the Proposal to avoid exposing new residents to noise nuisance; Sun Pharma joined those submissions. The Proponent submitted good internal amenity could be achieved for new dwellings through the layout of the subdivision and the siting and design of buildings, as well as the natural separation of dwellings more distant from noise sources.

Council did not accept noise as a reason to oppose the Proposal.

The key issue to be resolved is:

- whether the extent of noise will create adverse amenity impacts on new residents.

### (ii) Submissions and evidence

The Proponent called evidence from Mr Hancock who stated the key noise issues related to:

- whether the proposed rezoning of the subject site to allow residential development and the requirements of the accompanying DPO and Planning Permit result in appropriate residential
- acoustic amenity for future residents
- whether the proposed rezoning of the subject site to allow residential development and the requirements of the accompanying DPO and Planning Permit will adversely affect the operations at Sun Pharma <sup>62</sup>.

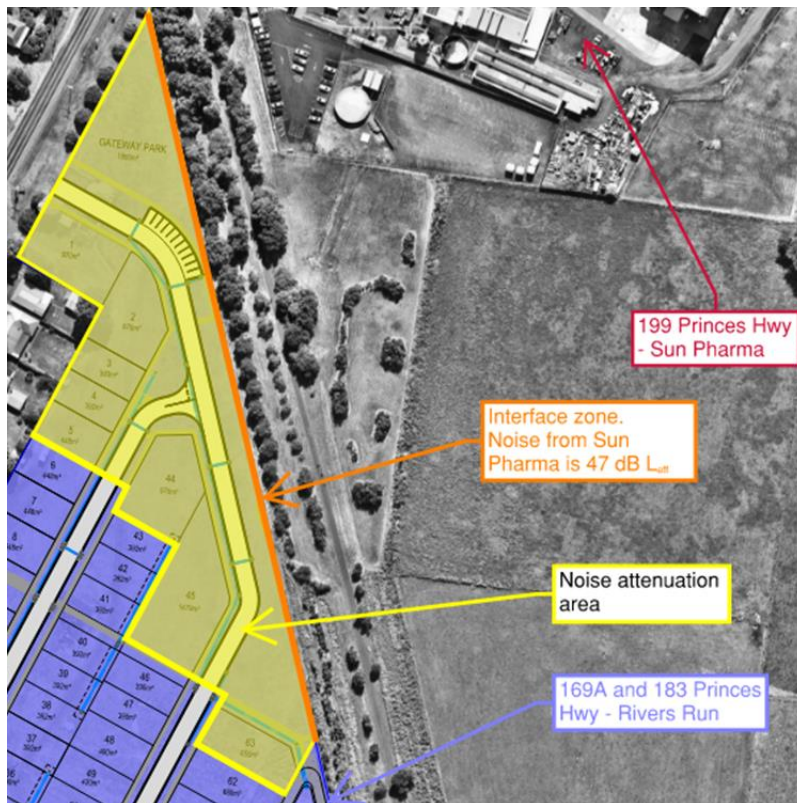
He identified eight residential lots on the northern portion of the subject site where noise from Sun Pharma may at times exceed the prescribed noise limits by up to 4dB and only at night. He advised the remaining lots were at sufficient distance from Sun Pharma to allow noise from their operations to meet the applicable external noise limits. One of these lots was Lot 1, the site originally proposed for the affordable housing build. The location of the eight lots from Mr Hancock's presentation are shown on Figure 6. <sup>63</sup>

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<sup>62</sup> D32

<sup>63</sup> D59 slide 7

**Figure 6** Lots potentially impacted by noise



Mr Hancock advised:

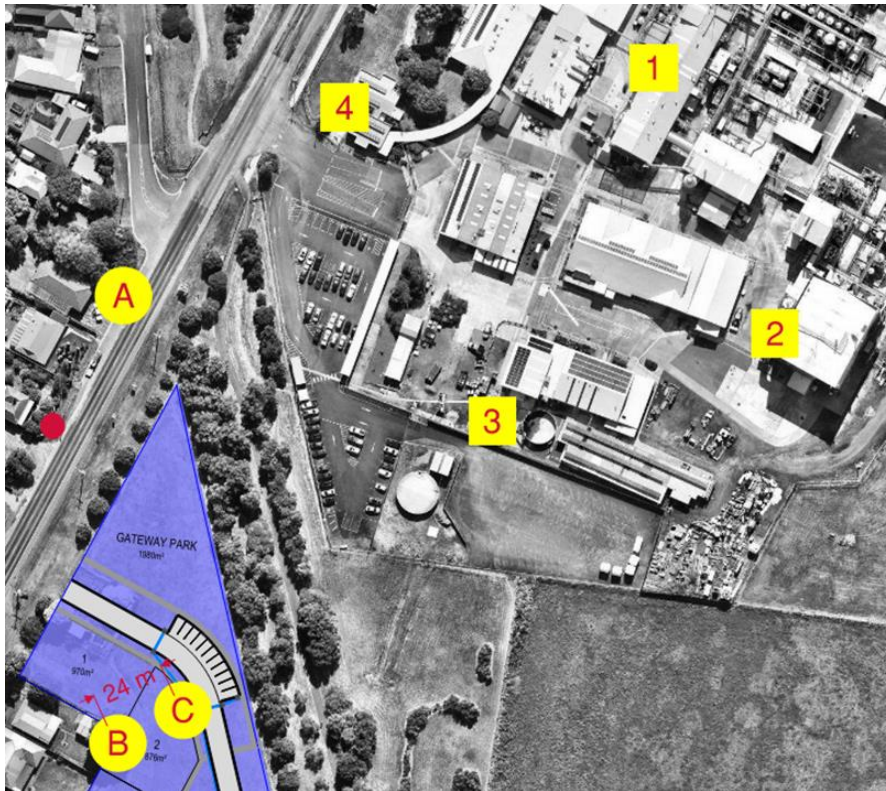
In my opinion, if noise from Sun Pharma complied with the regulatory framework pertaining to noise emissions at existing dwellings, they would be likely to also comply at all locations across the subject site.

I consider that the current operations at Sun Pharma will not be constrained by the proposed development of the subject site, as the presence of existing residential dwellings in the area already compel Sun Pharma to reduce the risk of harm from noise in accordance with the current Victorian legislative framework governing noise.

He illustrated his evidence with a plan of noise sources on the Sun Pharma site and described how attenuation measures could bring all residences into compliance with EPA standards, as shown in Figure 7<sup>64</sup>.

<sup>64</sup> D59 slide 6

**Figure 7** Annotated plan of dominant noise sources and receptors



On the plan:

- A and B represent existing dwellings
- C represents the nearest proposed dwelling on the Rivers Run Estate
- numbers 1, 2, 3 and 4 represent what Mr Hancock identified as the dominant noise sources.

His analysis was that by taking action to attenuate noise at each of the sources, it was likely no dwellings on the subject land would be affected by noise. He recommended conditions be included in the permit to reduce the impact within residences.

In his evidence statement, Mr Hancock identified four noise sources on the Sun Pharma site as follows:

- Pumps and fans associated with the chiller plant for the TH2 building
- Pumps associated with water treatment
- Pumps adjacent the security building
- Vacuum pumps associated with air handling equipment <sup>65</sup>.

They correlate with the noise sources identified by Mr Tardio in his evidence statement and shown on Figure 8<sup>66</sup>. They are:

- Chiller plant area
- Air release valve discharge above the chiller plant area

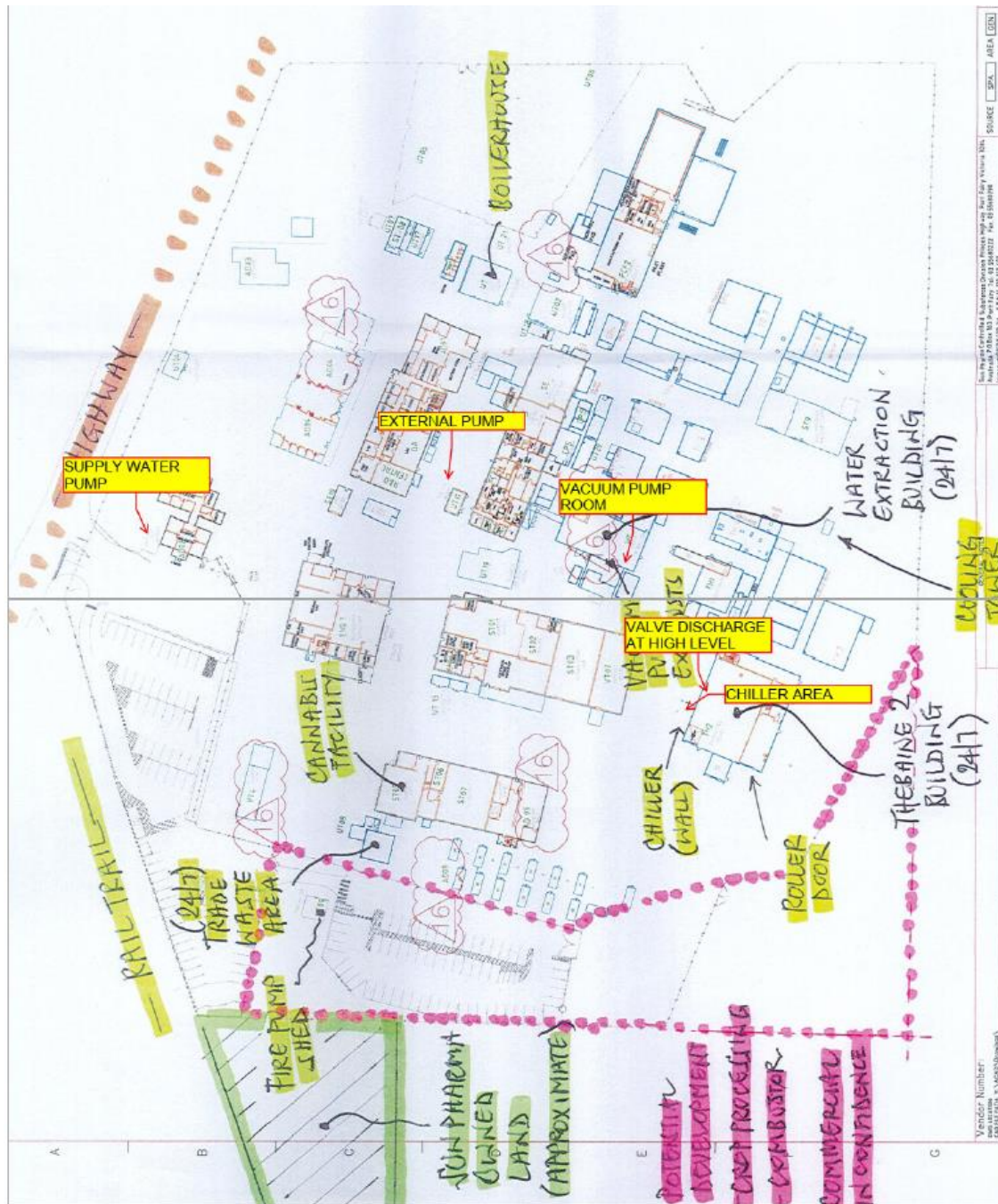
<sup>65</sup> D32 para 10.16

<sup>66</sup> D23 para 32



- A small pump outside that emitted a high frequency pitch
- Vacuum pump exhaust room<sup>67</sup>.

**Figure 8** Site map of Sun Pharma, extracted from statement of evidence of Darren Tardio



Mr Tardio carried out and presented an extensive study of noise emitted from Sun Pharma and an assessment of the impact on current residents. His conclusion was that current operations put Sun Pharma on the edge of compliance with noise standards but advised noise impacts at existing dwellings were not particularly relevant to how the Panel should make its recommendations on

<sup>67</sup> D23 para 31

Amendment C75moyn. He considered the noise conflict should instead be dealt with by appropriate controls in DPO5, particularly a design response that considers Noise Protocol compliance on the subject land.

To achieve compliance, Mr Tardio favoured:

... a design response that results in compliance with the Noise Protocol. In principle, I expect that a combination of the following would be required where proposed dwellings have direct frontages to the north boundary of the Subject Land:

- Acoustic fencing along the boundary; and
- Limitations to development height (e.g. single storey development) so that dwellings do not overlook the acoustic fencing <sup>68</sup>.

Treatments proposed by Mr Tardio included the installation of an acoustic wall along an undefined section of the boundary of the subject land and the Rail Trail and a requirement for non-openable windows in upper levels of any dwellings within the noise exposure area.

Mr Tardio considered these treatments would provide protection of residents from noise and protection for Sun Pharma from complaints by future residents as:

There is potential for reverse noise amenity impacts to arise from Sun Pharma as a result of Amendment C75 and the introduction or intensification of sensitive land uses proximate to the Submitter Land <sup>69</sup>.

Complying with a Panel direction, the experts conferred and produced a report that narrowed the issues in dispute and possible solutions that might limit the impact of noise. Key findings from the conclave report included:

- general agreement with the reported noise levels from Sun Pharma
- residential use could be developed on the Rivers Run site, with appropriate conditions
- rezoning of the land to NRZ1, and the application of DPO5 was satisfactory with appropriate conditions
- existing noise from Sun Pharma towards the subject land was only a risk for the lots nearest to the interface between the two sites
- the majority of the subdivision would have appropriate acoustic amenity and current Sun Pharma operations would not be prejudiced
- Sun Pharma currently does not comply with the statutory noise limits at some existing dwellings by relatively small margins
- Sun Pharma does not comply on the subject land by similarly small margins
- Sun Pharma is currently obliged to comply at existing dwellings, although no enforcement notice that compels Sun Pharma to rectify this has been sighted
- the experts were aware of a relatively recent (in the last six to 12 months) complaint made to EPA by a nearby resident, but were unaware of the nature of correspondence between EPA and Sun Pharma
- there are four to five key noise sources on the Sun Pharma site identified to date that are audible at existing dwellings

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<sup>68</sup> D23 para 63

<sup>69</sup> D23 para 10

- if Sun Pharma treated those key noise sources to become compliant at existing dwellings, they would likely comply at proposed dwellings at the subject land <sup>70</sup>.

Figure 9, the Concept Plan in the Day 9 version of DPO5 <sup>71</sup>, has a line that is both the spatial representation of *“roughly 100 metres from Sun Pharma”* <sup>72</sup> and the line of the noise exposure area on Figure 6 referred to by Mr Hancock in his evidence and repeated in the conclave report. The index on Figure 9 calls the line the *“extent of acoustic zone (100M from the Sun Pharma boundary)”*. In the Day 9 draft planning permit, lots within the area are called Potential Acoustic Attenuation Lots <sup>73</sup>.

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<sup>70</sup> D35

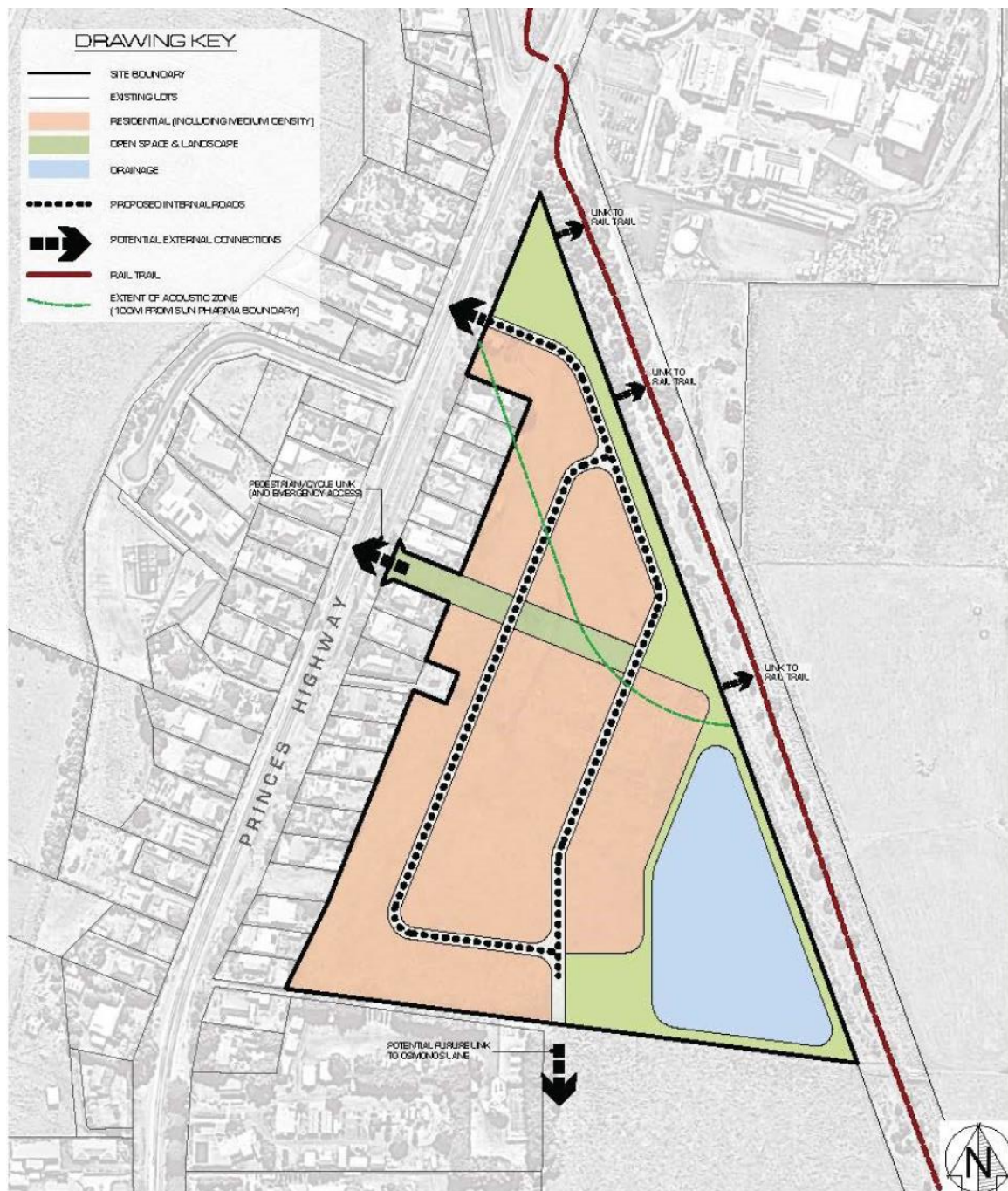
<sup>71</sup> D104

<sup>72</sup> D35, item 4 distance agreed in the Acoustic conclave report

<sup>73</sup> D102



**Figure 9** Concept Plan from Day 9 version of DPO5 with green line depicting extent of acoustic zone



Mr Woodland referred to findings of the noise experts and noted both Mr Tardio and Mr Hancock concurred residential uses could occur on the subject land, subject to appropriate conditions, noting the experts had different opinions about what those conditions should be. He put the onus for action to protect against noise impacts on the Proponent as the agent-of-change. His evidence noted the requirements and conditions proposed by the experts should be imposed on the

Proponent “to ensure the risk of harm associated with noise from the Sun Pharma operations is minimized”<sup>74</sup>.

Mr Bromhead referred to on-site activities with the potential to cause nuisance, including staff movement and general operations. He observed the reputation of Sun Pharma is that it is a well-run and meticulously organised industrial operation<sup>75</sup>.

Mr McGurn deferred to the opinions of relevant experts before noting he was “satisfied that the proposal is appropriate with respect to the adjoining industrial use”.<sup>76</sup>

Council stated in opening that noise was not a basis upon which the Proposal should be refused. It noted it was the ongoing responsibility of Sun Pharma to consider and address the emissions it produced as part of its General Environmental Duty (GED). Council stated:

... potential adverse acoustic impacts on future residents must be acceptably eliminated or mitigated. Council submits that this must occur whether this is achieved via measures on the Sun Pharma Site and/or via siting and design of dwellings and mitigation measures on the Subject Site. To this end, Council supports the conditions agreed by the acoustic experts and contained in the conclave statement<sup>77</sup>.

The EPA was advised of the Amendment and invited to submit preliminary comments on the Proposal. Through correspondence over time and after consideration of the development concept and its intersect with Sun Pharma, EPA did not object to the Amendment and the grant of a permit, subject to the inclusions of conditions to limit noise impacts<sup>78</sup>.

While the EPA did not participate in the Hearing, the experts deferred to the EPA advice about conditioning the development. Four conditions were proposed in the draft permit:

- proposed Condition 3xiv requiring endorsed plans for the identification of lots which fall within the ‘Extent of Acoustic Zone (100 metres from Sun Pharma Boundary)’ on the Concept Plan within DPO5 (Potential Acoustic Attenuation Lots)
- proposed Condition 6 requiring the permit holder to enter into a section 173 Agreement requiring assessment of the design of dwellings on the Potential Acoustic Attenuation Lots to protect dwellings or other noise sensitive uses
- proposed Condition 26 requiring the preparation of an Acoustic Report to address measures that might impose requirements that limit the operations of Sun Pharma
- proposed Condition 27 about design and certification of any physical acoustic infrastructure recommended in the Acoustic Report required under condition 26.

At the Hearing, some resident submitters continued their opposition to siting dwellings in an area affected by noise from the operations of Sun Pharma. The expert evidence for the Proponent and Sun Pharma assisted the Panel to understand the context for resident complaints with their analysis of operations and identification of noise sources.

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<sup>74</sup> D47 para 31

<sup>75</sup> D48 paras 122 123

<sup>76</sup> D41 para 92

<sup>77</sup> D55 para 57

<sup>78</sup> D54 g)

### **(iii) Discussion and findings**

In considering the key issue of whether the extent of noise will create adverse amenity impacts on new residents on the Rivers Run Estate, the Panel accepts the acknowledged positions:

- Sun Pharma has a General Environmental Duty (GED) to address the current level of noise emissions which breach EPA standards, albeit marginally
- the Proponent must ensure there is a similar GED to protect new residents from noise impacts from the operations of Sun Pharma
- the acoustic experts agree appropriate design treatments and the use of selected building materials on dwellings within 100 metres of the Sun Pharma site could minimise the impact of noise internal to dwellings on the estate.

It is clear to the Panel that both Sun Pharma and the Proponent have individual obligations to limit the emission of noise. Sun Pharma has a GED to do what is reasonably required to limit the noise. The Proponent has a GED to protect future residents from the impact of noise from Sun Pharma, as well as any other source. The Panel sees these obligations as requiring the parties to be good neighbours. That is, Sun Pharma should do something to protect itself while the Proponent should protect its residents.

The Panel accepts the orientation of buildings and the use of building materials to attenuate noise will achieve acceptable internal noise levels. On the evidence, the more likely situation is that acceptable outcomes will be achieved to allow new residents to avoid the level of exposure complained about by some existing residents. If the level of exposure is minimal, then the fear of complaints from new residents should not materialise.

However, the Panel does not support the adoption of any design feature in dwellings that would have non-openable windows for noise protection, especially where such a window would otherwise be the sole source of ventilation in that room.

Neither does the Panel support the installation of a noise wall as advocated by Mr Tardio along the site boundary/Rail Trail. There are too many uncertainties about a successful outcome with a wall removed from the actual source, as well as its visual impact.

The Panel accepts the benefit of a noise wall comes when it is close to the noise source. It was for that reason the Panel asked about the prospect of a noise wall within or on the edge of the Sun Pharma site. The Panel asked about the benefit of an acoustic wall, in a location close to the southern-most noise source on a suitable alignment and to a design to restrict noise emissions. The Panel considers this might be considered by both Sun Pharma and the Proponent as a shared cost beyond siting and building works to reduce noise impacts.

Draft conditions 3d xiii, 20e iii, 26a and 27 leave open the prospect of an acoustic wall or fence subject to outcomes of the Acoustic Report required by conditions.

For these and other amenity impact reasons, the Panel considers that development of Lots 1, 2, 3 and 4 and the unnumbered lot to the north of Lot 44 be excluded from residential use as part of the early stage of development until acoustic issues are fully resolved. Acknowledging Council's position, there is no noise related reason why the Proposal should not proceed after applying appropriate measures.

The Panel finds:

- The acoustic issues can be satisfactorily managed.

- The Proponent and Sun Pharma should work together to provide appropriate acoustic fencing at the source, that is along the southern alignment of the Sun Pharma property boundary.
- Lots 1, 2, 3, and 4 and the unnumbered lot to the north of Lot 44 be excluded from residential use as part of the early stages of development.
- There are no acoustic issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

## 4.3 Air quality

### (i) Background

Amendment C69moyn as adopted by Council proposed a policy buffer of 300 metres around the Sun Pharma site in recognition of complaints about odour emanating from the plant, particularly the calamity tank <sup>79</sup>.

As the Panel was advised, the effect of a policy buffer is not to prohibit development within the area but to assess any development proposal against the likely impact of odour.

The key issues to be resolved are whether:

- the subject site should be approved for residential use in known circumstances where odour emissions can result in offensive odour
- the current conditions represent an acceptable level of odour amenity
- the residential use of land within 300 metres of the Sun Pharma site will cause an inappropriate impost on Sun Pharma.

### (ii) Submissions and evidence

In its opening submission, Council took the position that *“potential odour impacts must be satisfactorily resolved to ensure that future residents do not suffer adverse odour impacts and Sun Pharma’s operations are not curtailed”* <sup>80</sup>.

In closing, Council stated:

Council accepts that the submissions of the community and the evidence confirm that there is a real risk of odour impacts on the Rivers Run development, albeit that this risk is at any given time low.

The Panel should proceed on the basis that there may occasionally be odours experienced by future residents in the northern part of Rivers Run just as these are presently experienced by the existing community. The plumes suggest that this experience will be no worse than the existing conditions that presently give rise to an average of one complaint per year.

Council is not satisfied that the odour evidence justifies a setback of 300 metres as proposed by Sun Pharma and nor is there any evidentiary rationale for a lesser setback distance based on odour <sup>81</sup>.

The EPA provided correspondence about odour to the Proponent and Council during preparation of the Amendment. In a letter to the Proponent in February 2021, the EPA noted complaints

<sup>79</sup> through this report, reference to the calamity tank is synonymous with reference to the trade waste tank

<sup>80</sup> D55 para 81

<sup>81</sup> D92

about odour from the operation of a biofilter, but none since 2016. The letter referred to consideration of the infrequent use of the calamity tank and the prevailing wind direction in the area to convey EPA's opinion "*the risk of odour from the site (Sun Pharma) appears to be low*"<sup>82</sup>.

Submissions for Sun Pharma and the evidence of Mr Ramsay sought to exclude residential use from within the 300-metre buffer to minimise the risk of odour impacts on future residents.

Mr Ramsay's evidence provided a comprehensive statement based on his involvement with the Sun Pharma site since about 2012<sup>83</sup>. He noted:

Complaints have been made by existing residents within 300m of the Facility due to unintended industrial residual air emissions. A separation distance is required to protect the amenity of air quality from the impact of unintended odorous IRAEs from the Facility from impacting on future residential receptors. Failure to maintain an adequate separation distance is likely to lead to conflict between incompatible land uses.

The introduction of more residents within a 300 m separation distance from the Facility such as the Rivers Run Estate proposal is likely to increase complaints due to IRAEs from Sun Pharma<sup>84</sup>.

Mr Ramsay recommended:

A 300 metre separation distance from the calamity tank should be maintained to avoid unacceptable odour impacts. Land within the separation distance, including the northern portion of the Rivers Run Estate land should not be used for sensitive use, including residential dwellings (Refer to Figure F2)<sup>85</sup>.

Figure F2 is provided as Figure 10.<sup>86</sup>

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<sup>82</sup> D54 attachment G

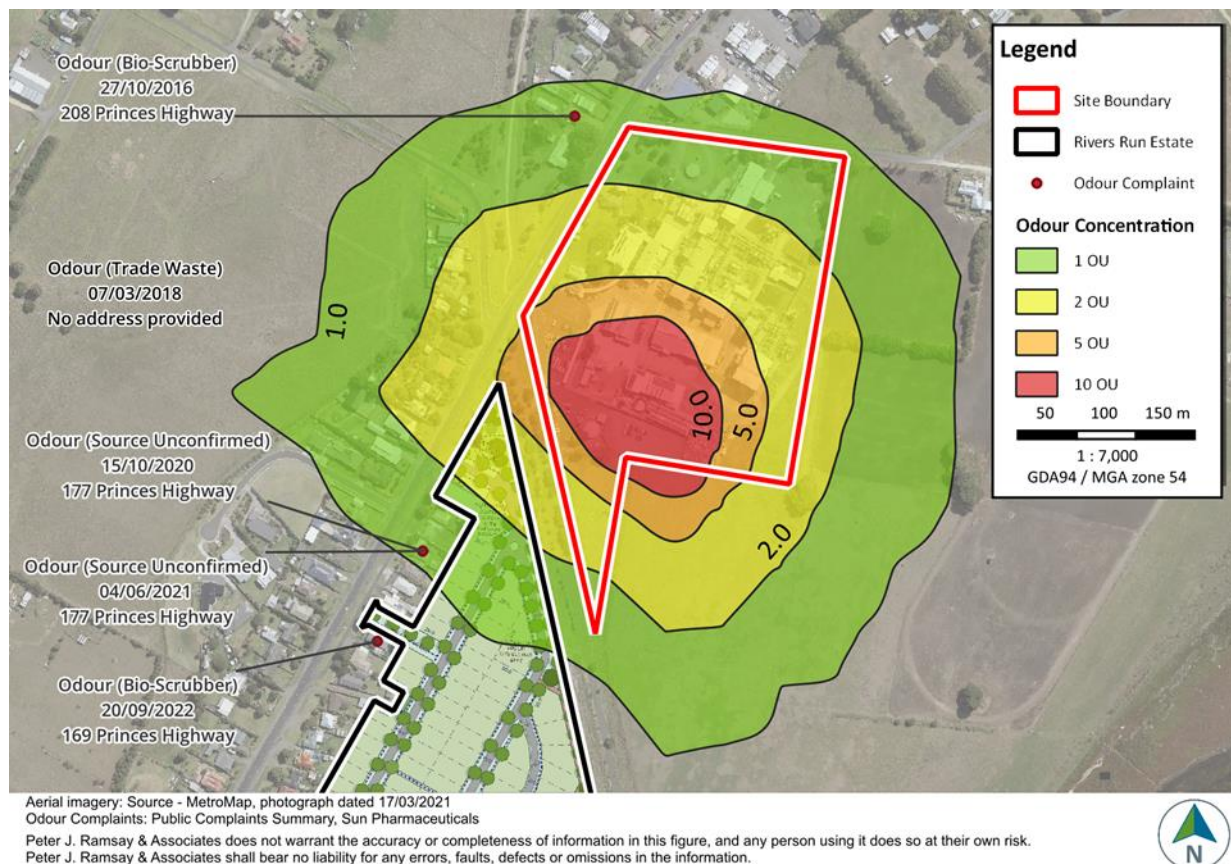
<sup>83</sup> D24. Previous reports about emissions from the operations of the Sun Pharma site were also tabled. They included the Ramsay evidence statement on C69moyne as well as reports to Sun Pharma from 2013, 2021 and 2022

<sup>84</sup> D24 line 749

<sup>85</sup> D24 line 757

<sup>86</sup> D87 slide 7



**Figure 10** Odour contours from the calamity tank

Sun Pharma tabled D57b which outlined actions taken by the company to meet its GED and implications on operations. The calamity tank was identified as the main source of odour. Sun Pharma noted *“Use of the Calamity Tank cannot be eliminated”* and that *“Odour from Calamity Tank operations has no potential to cause long term harm or short term harm”*<sup>87</sup>.

The Proponent and the evidence of Dr Cowan sought to persuade the Panel the risk of odour was acceptable.

In opening, the Proponent submitted the risk of impact from odour on future residents was very low given the infrequent use of the calamity tank, the limited percentage of time the wind blows in the direction of the subject land to cause nuisance, as well as the unlikelihood of the level of odour being sufficient to cause an adverse reaction to people<sup>88</sup>.

Dr Cowan’s evidence indicated modelled level of odour units would not be detectable to most residents, and advised:

1 OU is the concentration that 50% of the population can detect the sensation of an odour in a laboratory environment. It is generally accepted that odour becomes detectable and recognisable in the ambient environment between 5 and 10 OU. Thus the modelling indicates that under upset conditions odour is unlikely to be detectable beyond the site boundary and that impacts to the proposed Rivers Run Estate would be unlikely to occur<sup>89</sup>.

<sup>87</sup> D57b) item 1

<sup>88</sup> D54 para 77

<sup>89</sup> D27 paras 86 and 87

Dr Cowan's summary stated:

Modelling indicates that concentrations over Amendment C75moyn will be between 1 odour unit (OU) and 2 OU and Detection of odour in the ambient environment does not typically occur until 5 OU to 10 OU <sup>90</sup>.

The Proponent submitted:

For an amenity impact to be experienced by the future residents, the wind would need to be blowing towards the Rivers Run. If the conditions were too calm, the odour would not reach the dwellings. If the wind was too strong then the odour concentration would be diluted. The odour would need to reach 5-10 odour units before it would be likely to generate complaints or, to use the expression adopted in the Grandview Poultry case discussed below, before it would be "detectable and recognisable in the general environment."

In contrast to the conclusion of the PJR assessment, therefore, analysis of the data contained within the document indicates that for odour a separation distance is not required beyond the site boundary.<sup>91</sup>.

In its closing submission, the Proponent indicated the key proposition on odour was that no additional separation distance was required between Sun Pharma and the proposed residential development based on risk due to <sup>92</sup>:

- a low risk from Industrial Residential Air Emissions
- no separation distance applies pursuant to EPA Publication 1518 or draft EPA Publication 1949
- low risks of odour to the Rivers Run land primarily related to the calamity tank, which on average was used less than monthly and for short periods of time
- little evidence the calamity tank has created unreasonable offsite odour in the past five years
- potential for odour from the calamity tank to become problematic in the community, including for existing residents, was a management issue for Sun Pharma
- proposed separation between Sun Pharma and proposed dwellings is sufficient to resolve any potential incompatibility between the two uses <sup>93</sup>.

Each of the planning witnesses considered odour impacts. Mr Woodland stated:

I agree with Mr Ramsay's conclusion that a site-specific separation distance needs to be established given the very unique nature of the pharmaceutical manufacturing operations that occur at the Sun Pharma site <sup>94</sup>.

He went on to state:

Sun Pharma and the proponent of the residential rezoning have a role to play in satisfying the air quality policies contained within the planning scheme, and each also has a general environmental duty under the EP Act to minimize (so far as reasonably practicable) the risk of harm associated with air quality from the Sun Pharma operations.

Mr Woodland identified the Proponent as the agent-of-change and stated it:

... has a particular obligation to ensure that establishment of new sensitive uses on the Subject Site will not impact on human health of future residents from odour associated with the Sun Pharma operations.

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<sup>90</sup> D88 slide 15

<sup>91</sup> D54 para 136.

<sup>92</sup> D89 para 102

<sup>93</sup> D89 para 89

<sup>94</sup> D47 para 167



That opinion led to Mr Woodland recommending a land use separation distance between Sun Pharma and any sensitive use on the Rivers Run Estate:

... it is my view that a land use separation distance should be applied that does not allow new sensitive uses on the subject site within at least the modelled 1-5 odour unit isopleths, which Mr Ramsay says is an area likely to experience a level of odour impacts consistent with historical complaints data <sup>95</sup>.

Mr Bromhead deferred to the opinion of the experts but said no new residents should be permitted within the 300 metre buffer distance proposed by Mr Ramsay. Mr Bromhead urged the application of the precautionary principle to deny use of the subject land for sensitive uses.

The Panel was assisted by the conclave report from Mr Ramsay and Dr Cowan. The Panel identifies the following Items of note from the conclave report <sup>96</sup>.

- Item 3:  
Odour from IRAEs from Sun Pharma can occur due to process outages, fugitive emissions and loss of containment. These include:
  - Spillages
  - Equipment failure
  - Laboratory fume cabinets
  - Breakdown of control systems (eg biofilter)
  - The Calamity Tank
  - Trade waste tank system
- Item 4:  
IRAEs cause complaints relating to odour in the community, with the experts agreeing on the issue but not the significance
- Item 9: The sources of odour identified in the complaint record are:
  - Water extraction
  - Bio-scrubber (solvents)
  - Lime dust
  - Trade waste (including calamity tank)
  - Noscapine; and
  - Odour not confirmed
- Item 10:  
The level of complaint concerning odour is on average one complaint per year for the past five years.

Although the experts agreed on the statement, they disagreed on the relevance:

- Dr Cowan's opinion was that the frequency of residual odour emissions (IRAEs) is likely to remain the same and the likelihood of increased odour complaints is low.
- Mr Ramsay's opinion is the introduction of new sensitive receptors, such as residents is expected to lead to an increase in the frequency of odour complaints. He adds, the complaints over the last couple of years show complaints at residences in close proximity to the proposed Rivers Run Estate and up to 300 metres from Sun Pharma.

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<sup>95</sup> D47 para 189

<sup>96</sup> D35

- Item 11:
  - The appropriate approach to consider the risk of odour impact is through the use of EPA Publication 1883 – Guidance for assessing odour.

On Item 15, the experts disagreed about the risk of odour impact on the subject land. Dr Cowan concluded *“Overall the risk of odour impact on Amendment C75moyn is considered to be low”*. Mr Ramsay concluded *“there is a high potential for residents of the northern area of the Rivers Run Estate to experience odour impacts due to IRAEs”*.

Resident submissions opposed the Proposal on present conditions where odour was discernible more frequently than recorded on the register of complaints.

### **(iii) Discussion and findings**

All parties agreed current operations at Sun Pharma can and do cause some nuisance to existing residents around the site. The threshold issue is whether Rivers Run should be approved for residential use when it is known some of the site will be exposed to odour emissions that can be offensive.

In addressing the issue, the Panel has considered numerous submissions and evidence statements. Some of the material presented to the Panel sets up conflicting situations. For example, although odours are emitted:

- the number of complaints has lessened in the past five years, suggesting fewer problem events for Sun Pharma and fewer occasions when residents are affected
- the occasions when odour is emitted are accidental and cannot be avoided
- Mr Ramsay advised in response to a question from the Panel that the 300-metre buffer distance is conservative given the spread of odour as shown in his modelling does not extend that far from the calamity tank
- Dr Cowan advised most people cannot detect odour until it reaches a level of 5-10 odour units and therefore, because Mr Ramsay’s modelling shows a small area of the estate affected by plumes, the Proposal should be supported
- the EPA recognised the source of odour within Sun Pharma, but stated the risk of odour impact was low and it did not require action to preclude further emissions.

The material in submissions and evidence presents conflicting situations on planning policy and amenity outcomes. The planning witnesses took differing positions:

- Mr McGurn agreed with Dr Cowan in supporting the Proposal on the basis of limited odour impact
- Mr Bromhead urged application of the precautionary principle to deny the use of the subject land for sensitive uses
- Mr Woodland said a balance could be achieved by limiting residential development to the part of the site not expected to be impacted by odour from Sun Pharma’s operations as shown on Mr Ramsay’s model. He suggested the buffer area should be a separation distance and should apply to *not allow new sensitive uses on the subject site within at least the modelled 1-5 odour unit isopleths*<sup>97</sup>.

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<sup>97</sup> D47 para 12

The Panel does not treat the buffer as a separation distance. This is consistent with the report on Amendment C69moyn, where the Panel supported a 300-metre policy buffer distance within which any development proposal be tested to determine the risk of odour impacts. The important consideration is the risk of odour and its impact, not a distance measure.

The Panel is mindful of the consequence of quarantining part of the estate from residential use.

Resident submissions about odour were relevant as they conveyed a lived experience. Mr Ramsay's evidence followed that experience. Dr Cowan's evidence pointed to the area of greatest impact from odour being internal to the Sun Pharma site.

The Panel accepts that part of the subject land within the 1 OU isopleth may suffer odour impacts that can be offensive, even on a limited number of days when the wind blows in the direction of the estate. The Panel finds that part of the subject land should not be used for sensitive use, including residential use until such time as odour impacts can be definitively addressed.

The Panel accepts that while all the subject land can be zoned NRZ to reflect the adjoining and underlying land use, a small part should be excluded from residential use unless and until the odour impacts from Sun Pharma are negligible.

The Panel is mindful that some change to the Proposal may jeopardise its viability. However, without any calculation of the impact in response to its question of whether the project is put on an all-or-nothing basis, the Panel cannot form any judgment about viability. The Panel must form its conclusion on the material before it.

From its assessment of versions of the Concept Plan tabled as the Day 1 plan (D19) and the Day 9 plan (D96), it appears to the Panel a small number of lots will likely be lost from residential development by excluding residential use within the 1-5 odour isopleth. For these reasons, the Panel consider Lots 1, 2, 3 and 4 and the unnumbered lot to the north of Lot 44 be excluded from residential development until odour issues can be satisfactorily resolved.

The Panel finds:

- There may be some odour issues from time to time emanating from the Sun Pharma site that provide short term amenity impacts on some dwellings in the northern part of the subject land.
- Lots 1, 2, 3 and 4 and the unnumbered lot to the north of Lot 44 should be excluded from residential use as part of the early stages of development, until odour issues can be satisfactorily resolved.
- There are no air quality issues that preclude approval of Development Plan Overlay Schedule 5 and granting Permit PL20-098, subject to conditions.

## 5 Resolution of the amendment and permit

### 5.1 Overall findings

Based on the information before it, the Panel supports approval of Amendment C75moyn, subject to variations. It considers residential development on the subject land to be appropriate, however, it should be pulled back to exclude Lots 1, 2, 3 and 4 and the unnumbered lot to the north of Lot 44 (as shown on Figure 5, the updated Subdivision Design Response, 12 October 2023) until such time as further environmental and mitigation initiatives are undertaken <sup>98</sup>.

A key issue for the Panel is that there is already substantial development within the 300-metre policy buffer which has resulted in very few formal complaints to the EPA and/or Council about the operations of Sun Pharma. Document 96 provided 50-metre contour lines from the calamity tank which is the main source of odour complaint. The Panel was advised there have been no complaints within the past 12 months. Several dwellings along both sides of the Princes Highway are located within the buffer, as are many dwellings located further to the west side of the Highway. The Panel notes Sun Pharma has generally co-existed well with the adjacent residential community and there have been no serious issues related to toxicity and/or health issues in recent years.

The Panel considers the subdivision layout to be well considered with two key traffic access points and an excellent link through the Rail Trail to central Port Fairy:

- The Proponent will provide two well landscaped entry points, one of which will have the benefit of line marking for turning vehicles.
- The Rail Trail is a key asset that is well vegetated that will provide a natural screen to the Sun Pharma site.

The Proposal includes provision of Lots 9 and 10 for affordable housing, Lots 20, 21, 22, 23, 24, 28, 29 and 30 for medium density development, and Lots 45 and 55 to 63 as larger lots capable of re-subdivision or multi dwellings. The Proposal provides a high degree of lot diversity and housing options, potentially including for staff from Sun Pharma.

Clause 71.02-3 of the Planning Scheme requires a responsible authority to take an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development. In this regard, the Panel considers that despite the siting of this Proposal near an established industrial facility, any environmental impacts relating to acoustics, odour and traffic can be acceptably managed. On balance, the Panel considers there will be a net benefit to the existing and future community of Port Fairy if it is ultimately approved.

### 5.2 Neighbourhood Residential Zone

The Panel supports the application of the NRZ to the whole of the site.

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<sup>98</sup> D96

### 5.3 Development Plan Overlay Schedule 5

The Panel supports the introduction of DPO5 to the whole of the site, based on D104, subject to its changes as outlined in Appendix E.

### 5.4 Planning permit conditions

The Panel supports the grant of a permit for the site, based on D103, subject to the changes proposed by Sun Pharma and other editorial changes, as outlined in Appendix F.

### 5.5 Recommendations

The Panel recommends:

1. **Adopt Amendment C75moyn to the Moyne Planning Scheme as exhibited, and issue Planning Permit PL20-098, subject to the following:**
  - a) **Adopt Development Plan Overlay Schedule 5 in accordance with Appendix E, retaining the Concept Plan and amended to include Figure 5 (Document 96).**
  - b) **Issue Planning Permit PL20-098 in accordance with the Conditions as set out in Appendix F.**

## Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Energy Safe Victoria	32	Don and Goldie Rowe
2	Lisa Petrie	33	Jodie Honan
3	Rose Bunnage	34	South Beach Wetlands Landcare Group
4	Russell Allardice	35	Tim Brady
5	Judith Gapes	36	Dr Melinda Kemp
6	Kae and Ron Dew	37	Joy Arbuthnot
7	Woody Bucci	38	Leonie Needham
8	Genevieve Grant	39	Sian and Paul Burman
9	Tricia Smith	40	Anne Wilson
10	Lisa & Nicholas Ryan	41	EPA Victoria
11	Clare Atkins	42	Jo and Kathy Tucker
12	Emily Wilson	43	Hamish Jones
13	Wendy Smyrk	44	Heather and Ian Wood
14	Daniel Miles	45	Tharaka Tennekoon and Anishka Gooneratne
15	Glenys Murray	46	Helena Woolums
16	Doug Nolte	47	Fiona and Mark Phillips
17	Harold and Lynda Herd	48	Jean Fitzgibbon
18	Damon Jarrett	49	Karen Walsh
19	Jennifer Lewis	50	Vernon O'Grady
20	Jennifer Philip	51	Bruce and Mandy Rae
21	Virginia Peterson	52	Jane Ryan
22	Cate Dundon	53	Heather Urquhart
23	Sally Coffey	54	Michelle Sherriff
24	Tim Doeg and Carolyn Crowe	55	TW and JA Scriven
25	Graham and Shelagh Dawson	56	John and Freda Forbes
26	Ross Knudsen	57	Carmel Brady
27	Carol Wilson	58	Anna and Jason Daye
28	Robyn Jeans	59	Peter Ryan
29	Jacinta Coffey	60	Ron Sherriff
30	John and Lorna Manniche	61	Frances Lynch
31	Ian Bodycoat	62	Port Fairy Holiday Park

63	Rosemary Simons	77	Allison Stekelenburg
64	Sun Pharmaceutical Industries (Australia) Pty Ltd	78	Jan and Richard Patterson
65	KN and EC Atkins	79	Denise and David Leembrugen and Sally Clark
66	John and Joan Young	80	Marion Hill
67	Judith Artis	81	V Naida Johnson
68	Trish and Graham Blythe	82	Sandra Love
69	Vern and Rhonda Hockley	83	Paul Buchanan
70	Valerie Phillips	84	Mandy King
71	Carol McDonald	85	Glenelg Hopkins Catchment Management Authority
72	Anthony Phillips	86	Department of Transport
73	Barbara Roysland	87	Brendan O'Toole
74	Peter Roysland	88	Country Fire Authority
75	Penny Iddon	89	Ross Manniche
76	Sophie Welton		



## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Moyne Shire Council	Greg Tobin of Harwood Andrews Lawyers, who called the following evidence: - Luke Cunningham of Rain Consulting on drainage
Rivers Run Estate Pty Ltd	Juliet Forsyth SC and Serena Armstrong of Counsel, instructed by Maddocks Lawyers, who called the following evidence: - Stuart McGurn of Urbis in planning - Travis Hancock of Marshal Day Acoustics in acoustics - Iain Cowan of Zephyr Consulting in air quality - Nick Brisbane of Ethos Urban on land supply and economics - John Patrick of John Patrick Landscape Architects in landscape - Charmaine Dunstan of Traffix Group in traffic (note: evidence tabled but not called)
Sun Pharmaceutical Industries (Australia) Pty Ltd	Emily Porter SC and Jennifer Trewella of Counsel, instructed by Rigby Cooke Lawyers, who called the following evidence: - Darren Tardio of Enfield in acoustics - Peter Ramsay of Peter J Ramsay in air quality and odour - Mark Woodland of Echelon Planning in planning - William Bromhead of Ratio Consultants in planning
Jane Ryan (S52)	
Robyn Jeans (S28)	
Ron Sherriff (S60)	
Tharaka Tennakoon and Anishka Gooneratne (S45)	

## Appendix C Document list

No	Date	Description	Presented by
1	27 Jul 2023	Referred Folder 1 – Exhibited documents, comprising: <ul style="list-style-type: none"> <li>- Explanatory report</li> <li>- Instruction sheet</li> <li>- Ordinance</li> <li>- Map sheets</li> <li>- Draft planning permit</li> <li>- Various supporting documents</li> </ul>	Moyne Shire Council (Council)
2	27 Jul	Referred Folder 2 – Documents in response to Council further information request, comprising: <ul style="list-style-type: none"> <li>- Letter from Proponent to Council</li> <li>- Table of Proponent’s responses to submissions</li> <li>- Various updated supporting documents</li> <li>- Updated referral agency comments</li> </ul>	Council
3	27 Jul	Referred Folder 3 – Documents related to Development Facilitation Program application, comprising: <ul style="list-style-type: none"> <li>- Correspondence exchanges between Development Facilitation Program, Council and Myers Planning Group for the Proponent</li> <li>- Updated referral agency comments</li> </ul>	Council
4	27 Jul	Referred Folder 4 – Further supporting documents for application, comprising: <ul style="list-style-type: none"> <li>- Various further background and supporting documents</li> <li>- Correspondence from EPA and Glenelg Hopkins Catchment Management Authority</li> </ul>	Council
5	27 Jul	Referred Folder 5, comprising: <ul style="list-style-type: none"> <li>- Council officer report, 9 Nov 2021</li> <li>- Letter of authorisation, 24 Nov 2021</li> <li>- Council officer report, 25 Jul 2023</li> <li>- Council resolution to refer to Panel (unconfirmed minutes), 25 Jul 2023</li> <li>- Submissions 1-89</li> </ul>	Council
6	27 Jul	Request to appoint a Panel	Council
7	3 Aug	Directions Hearing notice letter	Planning Panels Victoria (PPV)
8	15 Aug	Email enclosing proposed draft directions	Council
9	17 Aug	Letter to Panel outlining previous position on acoustic requirements	EPA Victoria

No	Date	Description	Presented by
10	18 Aug	Further addendum to submission	Submitter 26
11	18 Aug	Courtesy copy of letter to Council dated 3 Aug 2023	Submitter 26
12	18 Aug	Email on behalf of Sun Pharmaceutical Industries (Australia) Pty Ltd (Sun Pharma) regarding hearing location	Sun Pharma
13	22 Aug	Email enclosing further addendum to submission	Timothy Doeg
14	24 Aug	Panel Directions and Hearing Timetable	PPV
15	25 Aug	Email regarding dates for circulation of evidence	Rivers Run Estate Pty Ltd (Rivers Run)
16	25 Aug	Amended Panel Directions	PPV
17	28 Aug	Submitter location map (confidential)	Council
18	28 Aug	Letter filing 'Day 1' documentation including index of documents to be relied upon	Rivers Run
19	28 Aug	'Day 1' documentation including: <ul style="list-style-type: none"> <li>- Amendment documentation (<i>labelled 1-6</i>)</li> <li>- Permit application form and plans (<i>labelled 7-12</i>)</li> <li>- Supporting reports (<i>labelled 13-31</i>)</li> </ul>	Rivers Run
20	29 Aug	Email requesting to withdraw from hearing	Timothy Doeg
21	4 Sep	Letter regarding Intersection Concept Plan	Rivers Run
22	4 Sep	Intersection Concept Plan, Traffic Group dated 4 Sep 2023	Rivers Run
23	11 Sep	Evidence statement of Darren Tardio in acoustics	Sun Pharma
24	11 Sep	Evidence statement of Peter J Ramsay in odour	Sun Pharma
25	11 Sep	Evidence statement of Luke Cunningham in drainage	Council
26	11 Sep	Letter regarding evidence, Context Plan and Design Response, timetable	Rivers Run
27	11 Sep	Evidence statement of Iain Cowan in air quality	Rivers Run
28	11 Sep	Evidence statement of Warwick Bishop in flooding and drainage	Rivers Run
29	11 Sep	Evidence statement of Charmaine Dunstan in traffic	Rivers Run
30	11 Sep	Context Plan and Design Response prepared by Myers Planning	Rivers Run
31	11 Sep	Email clarification regarding letter	Rivers Run
32	11 Sep	Evidence statement of Travis Hancock in acoustics	Rivers Run
33	18 Sep	Part A submission, enclosing supporting documents: <ul style="list-style-type: none"> <li>a) Great South Coast Regional Growth Plan 2014</li> <li>b) Guidelines for Coastal CMAs Assessing Development in Relation to SLR June 2012</li> <li>c) Guidelines for Development in Flood Affected Areas (February 2019)</li> </ul>	Council

No	Date	Description	Presented by
		d) Port Fairy Coastal and Structure Planning Project Economic & Tourism Land Use Analysis 2017	
		e) Port Fairy Coastal and Structure Plan 2018	
		f) Residential Land Supply & Demand Assessment Shire of Moyne (May 2021)	
		g) Victorian Floodplain Management Strategy 2016 Introduction section 1	
		h) Victorian Floodplain Management Strategy 2016 Introduction section 2	
		i) Victorian Floodplain Management Strategy 2016 parts 1 to 5	
34	18 Sep	Statement of agreed opinions and facts – Surface water, signed by Luke Cunningham and Warwick Bishop	Rivers Run
35	19 Sep	Statement of agreed opinions and facts – Noise, signed by Darren Tardio and Travis Hancock	Rivers Run
36	20 Sep	Statement of agreed opinions and facts – Air quality, signed by Peter Ramsay and Iain Cowan	Rivers Run
37	22 Sep	Further hearing submission	Submitter 89
38	22 Sep	Residential Land Supply Assessment September 2023, Spatial Economics	Council
39	25 Sep	Letter filing evidence, revised Day 1 draft Development Plan, and updated Neighbourhood Residential Zone	Rivers Run
40	25 Sep	Evidence statement of Nick Brisbane in economics	Rivers Run
41	25 Sep	Evidence statement of Stuart McGurn in planning	Rivers Run
42	25 Sep	Evidence statement of John Patrick in landscaping	Rivers Run
43	25 Sep	Presentation of John Patrick in landscaping	Rivers Run
44	25 Sep	Revised Day 1 draft Development Plan	Rivers Run
45	25 Sep	Updated Neighbourhood Residential Zone as amended by VC243	Rivers Run
46	26 Sep	Amendment C69moyn documentation as adopted by Council	Rivers Run
47	26 Sep	Evidence statement of Mark Woodland in planning	Sun Pharma
48	26 Sep	Evidence statement of William Bromhead in planning	Sun Pharma
49	26 Sep	Response to revised Intersection Concept Plan, and Alternate Intersection Concept Plan in evidence of Charmaine Dunstan	Department of Transport and Planning (Transport)
50	27 Sep	Version 2 Hearing Timetable	PPV
51	27 Sep	Letter regarding documents referred to in Mr Ramsay's evidence statement, enclosing: a) Relevant correspondence between Rivers Run and Sun	Rivers Run

No	Date	Description	Presented by
Pharma's representatives			
52	27 Sep	Direction regarding production of documents referred to in Mr Ramsay's evidence statement	PPV
53	28 Sep	Opening Submission	Sun Pharma
54	28 Sep	Opening submission enclosing attachments: a) revised DPO Schedule 5 in response to evidence b) revised draft Planning Permit in response to evidence c) examples of completed projects within Port Fairy and surrounding area d) agency response Table e) calamity Tank diversion Summary f) table of responses to submissions g) EPA letters dated 24 February 2021 and 26 July 2022	Rivers Run
55	28 Sep	Part B opening submission enclosing attachments: a) agenda from Council Ordinary Meeting 26 September 2023 b) minutes from Council Ordinary Meeting 26 September 2023	Council
56	28 Sep	Letter, enclosing: a) Email response from Charmaine Dunstan to DTP response regarding revised Intersection Concept Plan	Rivers Run
57	28 Sep	Email to Panel, Rivers Run and Council only, enclosing: a) Public complaints summary b) Odour risk assessment c) AERMOD ready meteorological data files for Port Fairy d) Evidence statement of Peter J Ramsay on buffers for Amendment C69moyn e) Buffer assessment report, 12 August 2022 f) Buffer assessment report, 28 June 2021 g) Calamity tank diversions summary h) Links for legislation and files	Sun Pharma
58	2 Oct	Emails between Maddocks and Sun Pharma's representatives	Rivers Run
59	2 Oct	Presentation of Travis Hancock	Rivers Run
60	2 Oct	Letter of instruction to William Bromhead	Sun Pharma
61	2 Oct	Letter of instruction to Mark Woodland	Sun Pharma
62	2 Oct	Letter of instruction to John Patrick	Rivers Run
63	2 Oct	Letter of instruction to Stuart McGurn	Rivers Run
64	2 Oct	Letter of instruction to Travis Hancock	Rivers Run

No	Date	Description	Presented by
65	2 Oct	Letter of instruction to Charmaine Dunstan	Rivers Run
66	2 Oct	Letter of instruction to Iain Cowan	Rivers Run
67	2 Oct	Letter of instruction to Nick Brisbane	Rivers Run
68	2 Oct	Letter of instruction to Warwick Bishop	Rivers Run
69	3 Oct	Letter of instruction to Luke Cunningham	Council
70	3 Oct	Email to Luke Cunningham	Council
71	3 Oct	Letter from Luke Cunningham, enclosing addendum to evidence	Council
72	3 Oct	Letter of instruction to Darren Tardio	Sun Pharma
73	4 Oct	Version 3 Hearing Timetable	PPV
74	4 Oct	PowerPoint Presentation – Amendment C75moyn (6 slides)	Sun Pharma
75	4 Oct	PowerPoint Presentation – Amendment C69moyn (2 slides)	Sun Pharma
76	4 Oct	Series of aerial photos of Sun Pharma site	Sun Pharma
77	4 Oct	Aerial photo of Sun Pharma site	Sun Pharma
78	5 Oct	Letter, enclosing: a) Noise Risk Assessment prepared by Sun Pharma b) Proposed site inspection itinerary c) Plan prepared by Myers Planning & Associates with commentary showing existing dwellings within 300 metres of the trade waste tank d) Plan prepared by Myers Planning & Associates showing 300 metres from the trade waste tank in 50 metre increments e) Table - depth to groundwater results 2019 to 2023	Rivers Run
79	5 Oct	Letter, enclosing: a) stormwater conditions agreed between Council and Rivers Run	Rivers Run
80	5 Oct	Traffic counts completed close to the Rivers Run entrance site on Princes Highway, Port Fairy	Jane Ryan
81	5 Oct	Video of truck traffic on Princes Highway (in 6 parts), to be shown during submission	Jane Ryan
82	5 Oct	Submission notes	Jane Ryan
83	5 Oct	Updated proposed site inspection itinerary with tracked changes	Rivers Run
84	9 Oct	Without prejudice permit conditions – Day 7 (re-issued)	Council
85	9 Oct	Without prejudice DDO5 drafting – Day 7	Council
86	9 Oct	Table outlining Council's changes to DPO5 and draft permit conditions	Council

No	Date	Description	Presented by
87	9 Oct	Presentation of Peter J Ramsay	Sun Pharma
88	9 Oct	Presentation of Iain Cowan	Rivers Run
89	10 Oct	Closing submission enclosing attachments: a) Appendix A – photographs and aerials of existing vegetation long the rail trail b) Appendix B – Newspaper article by Ben Silvester in the Standard c) Appendix C – EPA publication 1518 d) Appendix D – Draft EPA publication 1949 e) Appendix E – EPA publication 1883 f) Appendix F – Grandview Poultry Pty Ltd V Central Goldfields SC (corrected) VCAT g) Appendix G – Priority Projects Standing Advisory Committee Referral 9 report 571-589 Melbourne Road, Spotswood h) Appendix H – survey plan of offsite drain	Rivers Run
90	10 Oct	Closing submission enclosing attachments: a) PPN92 – Managing buffers for land use compatibility	Sun Pharma
91	11 Oct	Documents relating to examples of Permit Condition 2 from Mr Tardio: a) Level 2 floor plan, 31-69 McLister Street, Spotswood b) Planning Permit No: PA1945411-1 - 571-589 Melbourne Road, Spotswood c) Vega One Pty Ltd v Hobsons Bay CC [2022] VCAT 1109 d) Moreland C27 C28 C33 & C35 (PSA) [2004] PPV 27 (1 March 2004) e) Design and Development Overlay Schedule 9, Yarra Planning Scheme	Sun Pharma
92	12 Oct	Part C submission	Council
93	12 Oct	DPO Schedule 5 – Day 9 with changes from Day 7 tracked, as agreed between Council and Rivers Run	Council
94	12 Oct	Draft planning permit – Day 9 with changes from Day 7 tracked, as agreed between Council and Rivers Run	Council
95	12 Oct	Plan of Rivers Run Estate showing distances to Sun Pharma	Rivers Run
96	12 Oct	Updated Concept Plan of Rivers Run Estate dated 12 October 2023	Rivers Run
97	12 Oct	Word version of DPO Schedule 5 – Day 9	Council
98	12 Oct	Word version of draft planning permit – Day 9	Council
99	12 Oct	Annotated Nearmap image of Sun Pharma site	Sun Pharma
100	13 Oct	Email - Further Panel directions	PPV



No	Date	Description	Presented by
101	23 Oct	Letter responding to further Panel directions	Rivers Run
102	23 Oct	Draft planning permit - Day 9, with further mark ups including optional Clause 3(d)(xv)	Rivers Run
103	23 Oct	Draft planning permit - Day 9, with further mark ups including optional Clause 3(d)(xv) – Clean Word version	Rivers Run
104	23 Oct	DPO Schedule 5 – Day 9, with updated Figure 1: Concept Plan	Rivers Run
105	1 Nov	Comments on Day 9 version of DPO Schedule 5 and permit conditions	Sun Pharma

## Appendix D Planning context

### D:1 Planning Policy Framework (State and regional policies)

#### 11 Settlement

##### 11.01 Victoria

###### 11.01-1S Settlement

Seeks to facilitate the sustainable growth and development of Victoria and deliver choice through a network of settlements

###### Relevant strategies

- Provide for growth in population and development of facilities and services across a regional or sub-regional network.
- Deliver networks of high-quality integrated settlements... by:
  - 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.
- Limit urban sprawl and direct growth into existing settlements.

###### 11.01-1R Settlement – Great South Coast

Identifies Port Fairy as a 'District town' that is located within the east-west 'Primary growth corridor'.

Seeks to attract more people to the region.

###### Relevant strategies

- Plan for a network of settlements based around Warrnambool, Hamilton, Portland and district towns drawing on proximity to services, affordable living and a variety of lifestyle opportunities.
- Facilitate the district towns of ... Port Fairy... to support local communities, industry and services.
- Support growth and economic opportunities throughout the region, especially along the north-south (Henty Highway) and east-west (Princes Highway) corridors.
- Support higher economic and population growth along the east-west primary growth corridor by capitalising and building on existing connections, strengths and infrastructure.

###### 11.01-1L-01 Settlement – Moyne

###### Relevant strategies

- Encourage major development to locate close to high priority road routes.
- Maintain the rural character and natural landscape beyond townships and settlements.

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**Clause 11.02-1S – Supply of urban land**

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

**Relevant strategies**

- 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.
- 

**Clause 11.03-4S – Coastal settlement**

Seeks to plan for sustainable coastal development

**Relevant 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.
  - 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.
  - Ensure a sustainable water supply, stormwater management and sewerage treatment for all development.
  - Minimise the quantity and enhance the quality of stormwater discharge from new development into the ocean, bays and estuaries.
-

## 12 Environmental and Landscape Values

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

Seeks to protect and enhance waterway systems including river and riparian corridors, waterways, lakes, wetlands and billabongs.

#### Relevant strategies

- Protect the environmental, cultural, landscape values of all waterway systems as significant economic, environmental and cultural assets.
- Conserve waterway systems and the landscapes and environmental values surrounding them by protecting ecological values, indigenous vegetation, terrestrial and aquatic habitats and encouraging biodiversity.
- Sensitively design and site development to maintain and enhance the waterway system and the surrounding landscape setting, environmental assets, and ecological and hydrological systems.
- Address the impacts of use and development on drought and flooding events at a catchment and site scale to protect the health and natural function of waterway systems and their surrounding landscape and environment.
- Protect geomorphology, bank stability and flood management capacity to strengthen the environmental value and health of waterway systems by:
  - Retaining, enhancing and re-establishing indigenous riparian vegetation along waterway systems, ensuring it responds to the bushfire risk of a location.
  - Enhancing and re-establishing both terrestrial and aquatic habitats and their linkages along and surrounding waterway systems.
  - Limiting earthworks in proximity to waterway systems to minimise alterations to geomorphology, natural drainage, natural flows and water quality.
- Design and site development to maintain and enhance the natural environment of waterway systems by:
  - Ensuring development adjacent to waterways adopts high quality materials and respectful design and siting.
  - Avoiding impeding the natural flow of waterways and future flood events.
  - Directing growth to established settlements where water and wastewater can be managed.

## 13 Environmental risks and amenity

### Clause 13.01-1S – Natural hazards and climate change

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

#### Relevant 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

Seeks to plan for and manage coastal hazard risk and climate change impacts

#### Relevant 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.

### Clause 13.02-1S – Bushfire planning

Applies due to site being within a 'Bushfire Prone Area'.

Seeks to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

#### Relevant strategies

- Give priority to the protection of human life by:
  - Prioritising the protection of human life over all other policy considerations.
  - Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
  - Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.

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**Clause 13.03-1S – Floodplain management**

Seeks 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.

**Relevant 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.
  - 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 13.03-1L Floodplain management – Moyne**

Applies for portion of site within the Land Subject to Inundation Overlay

**Relevant strategies**

- Discourage the use of fill in areas prone to flooding.
  - Ensure safe access to habitable buildings in areas prone to flooding.
- 

**Clause 13.05-1S Noise management**

Seeks to assist the management of noise effects on sensitive land uses

**Relevant strategies**

- Ensure that development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions.
  - Minimise the impact on human health from noise exposure to occupants of sensitive land uses (residential use, child care centre, school, education centre, residential aged care centre or hospital) near the transport system and other noise emission sources through suitable building siting and design (including orientation and internal layout), urban design and land use separation techniques as appropriate to the land use functions and character of the area.
- 

**Clause 13.06-1S Air quality**

Seeks to assist the protection and improvement of air quality.

**Relevant strategies**

- Ensure, wherever possible, that there is suitable separation between land uses that pose a human health risk or reduce amenity due to air pollutants, and sensitive land uses (residential use, child care centre, school, education centre, residential aged care centre or hospital).
-

### **Clause 13.07-1S Land use compatibility and Clause 13.07-1L Residential amenity interface**

Seeks to protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.

#### **Relevant strategies**

- Ensure that use or development of land is compatible with adjoining and nearby land uses.
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protect commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.
- Ensure buffers are provided between industrial and residential areas in the form of public open space, roads, substantially landscaped areas of private land, or similar means, to limit detrimental amenity impacts.

## **14 Natural Resource Management**

### **Clause 14.02-1S Catchment planning and management**

Seeks to assist the protection and restoration of catchments, waterways, estuaries, bays, water bodies, groundwater, and the marine environment.

#### **Relevant strategies**

- Undertake measures to minimise the quantity and retard the flow of stormwater from developed areas.
- Require appropriate measures to filter sediment and wastes from stormwater prior to its discharge into waterways, including the preservation of floodplain or other land for wetlands and retention basins.

## **15 Built Environment and Heritage**

### **Clause 15.01-1S– Urban design**

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

#### **Relevant 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.
- Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport.
- Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.
- Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.



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#### **Clause 15.01-3S – Subdivision design**

Seeks to ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods.

##### **Relevant strategies**

- ... subdivision should be designed to create liveable and sustainable communities by:
  - Creating urban places with a strong sense of place that are functional, safe and attractive.
  - Providing a range of lot sizes to suit a variety of dwelling and household types to meet the needs and aspirations of different groups of people.
  - Creating landscaped streets and a network of open spaces to meet a variety of needs with links to regional parks where possible.
  - Creating an urban structure that:
    - Responds to climate related hazards.
    - Incorporates integrated water management, including sustainable irrigation of open space.
    - Supports energy efficiency and solar energy generation through urban layout and lot orientation.

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#### **Clause 15.01-4S Healthy neighbourhoods**

Seeks to achieve neighbourhoods that foster healthy and active living and community wellbeing

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#### **Clause 15.01-5S – Neighbourhood character**

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

##### **Relevant strategies**

- Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
  - 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 and Clause 16.01-1R Housing for older people – Great South Coast**

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

#### **Relevant 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.
- Identify opportunities for increased residential densities to help consolidate urban areas.
- Facilitate diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.
- Encourage the development of well-designed housing that:
  - Provides a high level of internal and external amenity.
  - Incorporates universal design and adaptable internal dwelling design.
- Support opportunities for a range of income groups to choose housing in well-served locations.
- 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.
- Support the provision of suitable housing for older people to cater for projected demographic change.

### **Clause 16.01-2S – Housing affordability**

Seeks to deliver more affordable housing closer to jobs, transport and services.

#### **Relevant 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.

## 19 Infrastructure

### **Clause 19.03-2S Infrastructure design and provision and Clause 19.03-2L Infrastructure – planning, design and construction**

Seeks to provide timely, efficient and cost-effective development infrastructure that meets the needs of the community.

#### **Relevant strategies**

- Provide an integrated approach to the planning and engineering design of new subdivision and development.
- Integrate developments with infrastructure and services, whether they are in existing suburbs, growth areas or regional towns.
- Encourage a consistent approach to the design and construction of infrastructure across the municipality.

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**Clause 19.03-3S Integrated water management**

Seeks to sustainably manage water supply and demand, water resources, wastewater, drainage and stormwater through an integrated water management approach.

**Relevant strategies**

- Plan and coordinate integrated water management, bringing together stormwater, wastewater, drainage, water supply, water treatment and re-use, to:
    - Take into account the catchment context.
    - Protect downstream environments, waterways and bays.
    - Minimise drainage, water or wastewater infrastructure and operational costs.
    - Minimise flood risks.
    - Provide urban environments that are more resilient to the effects of climate change.
  - Ensure that development protects and improves the health of water bodies including creeks, rivers, wetlands, estuaries and bays by:
    - Minimising stormwater quality and quantity related impacts.
    - Filtering sediment and waste from stormwater prior to discharge from a site.
    - Managing industrial and commercial toxicants in an appropriate way.
    - Requiring appropriate measures to mitigate litter, sediment and other discharges from construction sites.
    - Ensure that development protects and improves the health of water bodies including creeks, rivers, wetlands, estuaries and bays by:
      - Minimising stormwater quality and quantity related impacts.
      - Filtering sediment and waste from stormwater prior to discharge from a site.
      - Requiring appropriate measures to mitigate litter, sediment and other discharges from construction sites.
  - Ensure land is set aside for water management infrastructure at the subdivision design stage.
  - Minimise the potential impacts of water, sewerage and drainage assets on the environment.
  - Ensure that the use and development of land identifies and appropriately responds to potential environmental risks, and contributes to maintaining or improving the environmental quality of water and groundwater.
-

## D:2 Municipal Planning Strategy

### Relevant clauses

#### 02.02 Vision

**The Vision states:** The people of Moyne embrace the region's extraordinary cultural and ecological country. Our fertile volcanic plains and pristine coast are the pride of Victoria's southwest. From coast to country, our connected and vibrant communities are active stewards, working meaningfully towards the protection and advancement of environment, history, social and economic vitality for present and future generations.

**Relevant policy aspirations:**

- Live in well-planned and connected neighbourhoods that protect our way of life and cultural heritage.
- Have access to housing that suits our budget, the size of our family and lifestyle needs.
- Move around Moyne easily.
- Have access to affordable transportation services regardless of our age or where we live.
- Be supported to live off the grid and have access to renewable energy benefits through local partnerships and an increased uptake of sustainable practices locally.
- Actively reduce our carbon emissions and support the regeneration of land.
- Support the growth of our local industries through digital innovations and encouraging local expertise.

#### 02.03 Strategic directions

##### Clause 02.03-1 Settlement

Identifies Port Fairy as a 'district town' to which growth is to be directed.

**Relevant strategic directions:**

- Promote Port Fairy as the retailing, service and cultural centre for the municipality.

##### Clause 02.03-3 Environmental risks and amenity

Identifies climate change impacts, bushfire, protection of floodplains, soil degradation and managing potential amenity impacts where sensitive uses are located near industry as key issues.

**Relevant strategic directions:**

- Avoid development in coastal locations that may be affected by climate change impacts.
- Ensure land use and development responds to fire risk.
- Protect the function of existing flood ways.
- Minimise the potential for damage and risks to public safety and property from flooding.
- Protect the amenity of residential areas adjacent to uses with potential adverse off-site impacts.

##### Clause 02.03-5 Built environment and heritage

Recognises the potential for adverse impact of inappropriate development on landscape character, and recognises Port Fairy's Aboriginal cultural heritage and post European contact heritage.

**Relevant strategic directions:**

- Contain township development within defined boundaries and manage development on the fringes of townships to enhance the landscape setting.
- Provide for the reasonable sharing of views of significant landscape features, including views of the ocean, coastal shoreline, estuaries, wetlands and notable cultural features.
- Protect and enhance landscaping, including street trees, on all major approach routes, access roads and local streets.

## Relevant clauses

### Clause 02.03-6 Housing

Recognises a growing and ageing population and reducing household sizes, the share of dwellings used as holiday homes and lack of affordable worker accommodation, and limited housing diversity.

#### Relevant strategic directions:

- Encourage population growth within all areas of the Shire.
- Encourage a range of accommodation opportunities in settlements, including medium density housing, to suit the needs of the Shire's residents.
- Support residential development densities that protect the heritage value and neighbourhood character of settlements.

### Clause 02.03-7 Economic development

Recognises Moyne's primary industries including agriculture, manufacturing, tourism and commerce; Port Fairy's important commercial, community and administrative functions; and manufacturing based on processing primary products and specialised products.

#### Relevant strategic directions:

- Ensure that the use and development of land is not prejudicial to agricultural industries or to the productive capacity of the land.
- Encourage industries servicing local communities and primary producers to locate in existing settlements.
- Encourage industrial uses on existing industrially-zoned land.

### Clause 02.03-8 Transport

Recognises Princes Highway's role linking Moyne with Melbourne, Geelong, Warrnambool, Portland and Adelaide.

#### Relevant strategic directions:

- Support the provision of an effective and efficient transport network.
- Ensure that use and development does not prejudice the levels of service, safety and amenity of the transport network.

### Clause 02.03-9 Infrastructure

Identifies available community facilities and states a 'need to provide suitable accommodation and community services that reflect the population profile'. Recognises the importance of design, management and delivery of infrastructure and notes Council's adoption of the Infrastructure Design Manual (IDM) to guide the design of development infrastructure.

#### Relevant strategic directions:

- Provide infrastructure and services to meet the needs of the community.
- Provide clear and consistent guidelines for the planning, design and construction of infrastructure.
- Provide timely, efficient, cost-effective and sustainable development infrastructure that meets the needs of the community.

## Appendix E Panel preferred version of Development Plan Overlay Schedule 5 (based on D104)

### SCHEDULE 5 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO5.

#### RIVERS RUN ESTATE - 169A AND 183 PRINCES HIGHWAY, PORT FAIRY

##### 1.0 OBJECTIVES

- To deliver high-quality, well-designed, energy efficient residential development that responds well to the surrounding neighbourhood character and landscape and environmental characteristics.
- To provide for a range of lot densities and housing choices that respond to housing needs of future residents across their lifetime.
- To ensure the use and development of land is responsive to the risk of flooding.
- To provide an appropriate interface between existing land within the industrial zone and the site.

##### 2.0 REQUIREMENT BEFORE A PERMIT IS GRANTED

A permit may be granted before a development plan has been approved if the permit is for:

- multi-lot residential subdivision, earthworks, creation of access to a Transport Zone 2 and subdivide land adjacent to a road in a Transport Zone 2, and creation and variation of easements generally in accordance with the draft planning permit PL20-098 dated DDMMYY.
- Construct a building or construct or carry out works associated with the use of the land for agriculture.
- 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.

##### 3.0 CONDITIONS AND REQUIREMENTS FOR PERMITS

###### 3.1 Conditions to give effect to Development Plan

Except for a permit granted in accordance with section 2.0 of this schedule, a permit must contain conditions or requirements that give effect to the provisions and requirements of the approved development plan.

###### 3.2 Construction Environment Management Plan

A permit granted to subdivide the land must include a condition that requires a Construction Environment Management Plan to be submitted to and approved by the Responsible Authority. This requirement does not apply to the re-subdivision of land that has been developed with more than one dwelling.

###### 3.3 Acoustic Conditions

A permit granted to subdivide land or to construct dwellings on the land must, as appropriate, include conditions that implement any requirements (including design requirements/mitigations) of the Acoustic Assessment Report at Clause 4.11.

###### 3.4 Section 173 Agreement – Affordable housing, public infrastructure and public access

Before a Statement of Compliance is issued under the Subdivision Act 1988, for the first stage of the residential subdivision of the land, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987 that requires:

- Provision of affordable housing as defined at Section 3AA of the Planning and Environment Act 1987 and in accordance with the Housing Diversity and Affordability Report by:

- Entering into an arrangement with a Registered Agency under the Housing Act 1983 for the provision of the affordable housing to a Registered Agency; and/or
- Making other arrangements for the provision of affordable housing in conjunction with a Not for Profit organisation (registered with the Australian Charities and Not-for-profits Commission) to the satisfaction of the responsible authority; and/or
- Making other arrangements for the provision of affordable housing, to the satisfaction of the responsible authority.
- Provision of public infrastructure projects in accordance with the development plan.

#### 4.0 REQUIREMENTS FOR DEVELOPMENT PLAN

The development plan must be approved for the whole site, however the land may be developed in stages.

[The development plan may be amended to the satisfaction of the Responsible Authority.](#)

The development plan must include details of staging of infrastructure and open space.

The development plan must be generally in accordance with the Concept Plan as shown in Figure 1, and include the following requirements:

##### 4.1 Context analysis and design response

A Context Analysis and Design Response that includes:

- Surrounding context and existing conditions showing topography, land uses, buildings, noise sources, access points, adjoining roads, cycling, pedestrian and public transport networks.
- Views to be protected and enhanced, including views along the rail trail.
- Proposed built form edge and interface treatments to adjacent residential properties, proposed open spaces, and the rail trail.
- Details of staging of infrastructure and open space.
- [Any acoustic mitigation measures recommended in the Acoustic Assessment Report for improvements to be constructed on land that will not be in private lots once the land is subdivided.](#)
- Design guidelines (to be implemented via a Memorandum of Common Provisions (MCP) or similar provision) that include provisions for:
  - Minimum 7.0 star energy efficiency.
  - Minimum 2.5kW solar power system per dwelling.
  - Building envelopes. Envelopes should be positioned to maximise north facing orientation.
  - A maximum building height of 7.3 metres.
  - Siting and design of dwellings, garages / car ports, driveways, sheds and outbuildings, and energy efficient construction requirements.
  - Indicative contemporary materials and colours which reflect Port Fairy's coastal character.
  - Garden Design Guidelines that encourage consistency of presentation and character including the use of indigenous vegetation.

##### 4.2 Planning

A Planning Report that demonstrates how the development plan meets the requirements of the planning scheme.

##### 4.3 Housing Diversity

A Housing Diversity and Affordability Report that includes:

- A demographic analysis of the types of households whose housing needs are expected to be met by the development based on the proposed dwelling design and bedroom mix.
- The model to provide a percentage of housing stock as affordable housing (as defined at section 3AA of the ~~Act~~ [Planning and Environment Act 1987](#)).



- How the development plan responds to the particular housing needs of future residents across their lifetime.

#### 4.4 Environmentally sustainable design

Environmentally Sustainable Design details that specify how future development may achieve:

- Environmentally Sustainable Design (ESD) principles, including integrated water management, energy efficiency, waste minimisation, and improvements to urban ecology.
- Energy efficient public infrastructure, such as solar street lighting, solar power electric barbeque, and vehicle charging station/s.

#### 4.5 Services and infrastructure

A Services and Infrastructure Plan that includes:

- An assessment of existing engineering infrastructure servicing the site and its capacity to service the proposed development.
- A description of the proposed provision of all appropriate utility services to development parcels.

#### 4.6 Flooding

A Flood Assessment that details measures to address flood risk and demonstrates how development can occur without adverse impacts on the floodplain.

#### 4.7 Stormwater

A Stormwater Drainage Master Plan that:

- Includes the location of on-site drainage retention facilities and ancillary areas such as dry out zones.
- Includes the location and conceptual design of the connection from the proposed outlet of the site to Reedy Creek and incorporates Water Sensitive Urban Design (WSUD) objectives and requirements pursuant to the planning scheme.
- Addresses potential seasonal variation in groundwater levels and any potential sea level rise impacts on long term groundwater levels.
- Addresses public safety.
- Provides that any accessible parts of the wetlands and all connections through the site to the rail trail to be made available for public access.

#### 4.8 Public realm

Public realm details that include:

- How the development will contribute towards improving the public realm adjacent to the site.
- Principles for how future development will contribute to improving the public realm and promote inviting bicycle and pedestrian-friendly public spaces, including:
  - Identify improvements to allow safe crossing of the Princes Highway at the alignment of the rail trail.
  - Installation of wayfinding signage along the rail trail, within the vicinity of the site.
  - Provision of a bicycle repair station (and ancillary facilities such as water refill station) along the rail trail or within the proposed local park.
  - Contribution towards infrastructure upgrades associated with Pedestrian Priority Routes, such as the potential extension of the Pedestrian Priority Route along Osmonds Lane to the southern boundary of the site.

#### 4.9 Open space and landscape

An Open Space and Landscape Masterplan that includes:

- The landscape concept for the site incorporating landscaped buffers at residential interfaces and adjacent to the rail trail, consisting of canopy trees with understorey plantings and communal open space areas that are well designed.
- Indigenous species selection throughout road reserves, along the interface with the rail trail and within open spaces, car parking areas and stormwater detention basin.
- Typical carriageway and laneway cross sections.
- Permeable fencing adjacent to public areas for passive surveillance.

#### 4.10 Transport

A Traffic Impact Assessment that identifies:

- Roads, pedestrian, cyclist and vehicle access locations, and public car parking areas internal to the site.
- The likely impacts of the proposed development on the arterial and local roads and any mitigating works required such as offsite traffic management treatments.
- Pedestrian and cycling linkages to key destinations outside the land.
- Emergency access to the Princes Highway.
- The preservation of a potential future road connection of the site to Osbornes Lane to the south.

#### 4.11 Acoustic

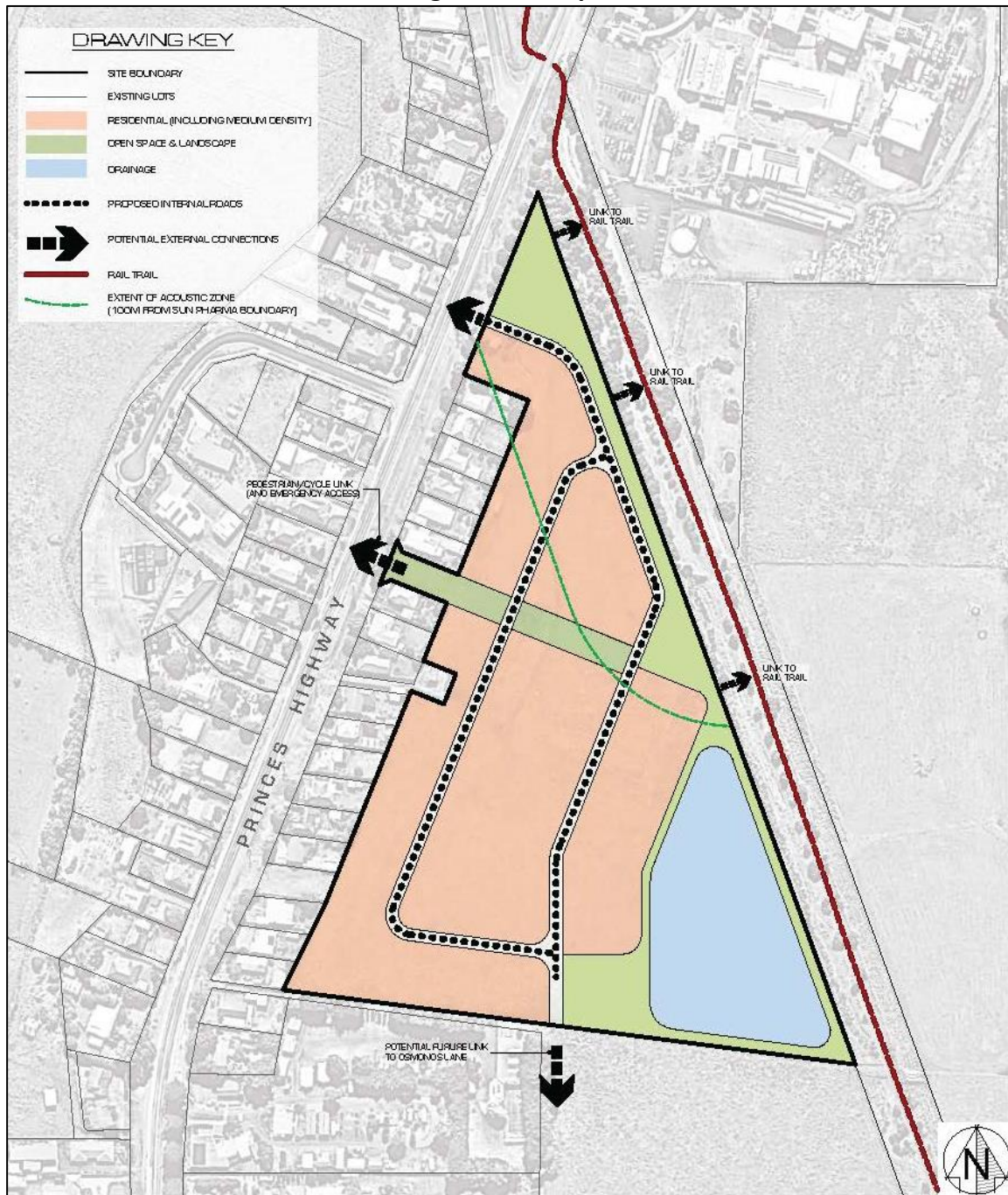
An Acoustic Assessment Report, prepared by a suitably qualified acoustic engineer or other suitably qualified person to the satisfaction of the responsible authority, which identifies whether any measures (such as separation, building siting, envelopes, orientation, location of private open space or restrictions on openable windows) are required such that the development of residential dwellings within ‘[Extent of Acoustic Zone \(100 metres from Sun Pharma boundary\)](#)’ as shown in Figure 1 does ~~100m of the title boundary of the land at 199 Princes Highway do~~ not impose additional requirements on the existing industrial use at 195 and 199 Princes Highway Port Fairy with regard to compliance with the night period noise limit under the measurement and assessment protocols of Environment Protection Regulations 2021 and EPA Publication 1826.

For the purposes of such an assessment, an agreed external noise level representative of existing noise from 195 and 199 Princes Highway Port Fairy is required. This level should be selected at the discretion of a suitably qualified person, to be either:

- the level measured at the relevant lot at the time of development, during the night at a time when 195 and 199 Princes Highway Port Fairy is operating under typical worst-case conditions; or
- ~~assumed to be 47 dB(A) e<sub>ft</sub> along the north-east site boundary between lot 63 and the Princes Highway.~~
- [assumed to be 47 dB\(A\) <sub>L<sub>eff</sub></sub> along the north-east site boundary between lot 63 \(as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023\) and the Princes Highway Port Fairy at the date of the conclave \(being 19 September 2023\).](#)

[A copy of the Acoustic Assessment Report must be provided to the existing industrial use operator at 195 and 199 Princes Highway Port Fairy.](#)

Figure 1: Concept Plan



## Appendix F      Panel preferred version of permit conditions (based on D103)

### Preamble to be added

#### **THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

##### **Compliance with documents approved under this permit**

1. At all times what the permit allows must be carried out in accordance with the requirements of any document approved under this permit to the satisfaction of the responsible authority.

##### **Commencement of Permit**

2. This permit will operate from the issued date of this permit.

##### **Amended Plans**

3. Before the plan of subdivision is certified under the *Subdivision Act 1988*, plans must be approved and endorsed by the responsible authority. The plans must:
  - a) be prepared to the satisfaction of the responsible authority;
  - b) be drawn to scale with dimensions;
  - c) submitted in electronic form;
  - d) be generally in accordance with the plans Roads and Drainage Plan Drawing C02 and Cut and Fill plan Drawing C05 both prepared by Greening Structural and Civil, dated 28 August 2023 and the Plan of Subdivision PS842672B Sheets 1 to 9 inclusive prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023 but modified to incorporate where required:
    - i. Any recommendations of the Traffic Management Plan (TMP) required by Condition 11.
    - ii. Any recommendations of the Stormwater Management Plan (SWMP) required by Condition 14.
    - iii. Any recommendations of the Context Analysis and Design Response Report required by Condition 23.
    - iv. Any recommendations of the Public Realm Improvements Report required by Condition 24.
    - v. Any recommendations of the Environmentally Sustainable Design Report required by Condition 25.
    - vi. Identification of all land containing assets or infrastructure under the management of the Owners Corporation as common property.
    - vii. Consolidation of the affordable housing lots.
    - viii. The identification of the affordable housing lot as a potential multi dwelling site.
    - ix. The inclusion of reserve number 4 in common property (unless the Council consents in writing to that land being vested in the Council).
    - x. Areas identified for public recreation.
    - xi. Amendment of the plan of subdivision to exclude the lots identified to be gifted for affordable housing from membership of the Owners Corporation.
    - xii. Any changes to reflect the Intersection Concept Plans prepared by Traffix Group titled Concept Plan G33911-01-01 and Swept Paths G33911-01-02 both dated 4 September 2023.
    - xiii. Changes required pursuant to the acoustic report prepared under Condition 26.

- xiv. The identification of lots which fall within the 'Extent of Acoustic Zone (100 metres from Sun Pharma Boundary)' on the [Concept Plan \(Figure 1\)](#) within Development Plan Overlay Schedule 5 to the Moyne Planning Scheme (**Potential Acoustic Attenuation Lots**)
- xv. Relocation of the lots identified for medium density housing outside of the area identified as the 'Extent of Acoustic Zone (100 metres from Sun Pharma Boundary)' on the [Concept Plan](#) within Development Plan Overlay Schedule 5 to the Moyne Planning Scheme.
- xvi. Renumbering of lot numbers ~~to~~ [that](#) reflect amended lot layout.

#### **Agreement under Section 173 (Public Realm Contributions and Public Access)**

4. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*. The agreement must provide for the following:
  - a) The developer/permit holder will contribute (either in cash contributions or works in kind) toward the cost of delivery of public realm improvements in accordance with the approved and endorsed Public Realm Improvements Report required by Condition 24 of Planning Permit PL20-098.
  - b) At the written request of the responsible authority, all land clearly identified as public land in the subdivision plan approved and endorsed under Planning Permit PL20-098 will be transferred to the responsible authority, at no cost to the responsible authority.
  - c) The boardwalk, any accessible parts of the wetlands, any areas identified for public recreation and all connections through the site to the rail trail are to be made available for public access.
  - d) Upon the development of the land to the south of the site (currently comprising Lot 1 on LP2159 which is also known as Osmonds Lane) for urban purposes, the land comprising that part of the subject site required for the connection to the land to the south must at the request of Council and without cost be vested in Council unless otherwise agreed in writing by Council.

The owner of the land must pay all of the responsible authority's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

#### **Agreement under Section 173 (Affordable Housing)**

5. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*. The agreement must provide for the following:
  - a) the provision of affordable housing, as defined in section 3AA of the *Planning and Environment Act 1987* as provided for in (b)-(c) below.
  - b) proposed Lots 9 and 10 (as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023) (or alternative lots with the written consent of the responsible authority) must be used for the provision of affordable housing by:
    - i. a Registered Agency under the *Housing Act 1983*; or
    - ii. a Not-for-Profit Organisation (registered with the Australian Charities and Not-for-profits Commission) established for the purposes of providing affordable housing to the satisfaction of the responsible authority.
  - c) the gifting of proposed Lots 9 and 10 (as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023) or alternative lots with the written consent of the responsible authority) for the provision of the affordable housing to:
    - i. a Registered Agency under the *Housing Act 1983*; or



- ii. a Not-for-Profit Organisation (registered with the Australian Charities and Not-for-profits Commission) established for the purposes of providing affordable housing to the satisfaction of the responsible authority.

The owner of the land must pay all of the responsible authority's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

#### **Agreement under Section 173 (Acoustic attenuation measures)**

6. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*. The Agreement must provide for the following:
  - a) An acoustic assessment report prepared by a suitably qualified acoustic engineer (or other suitably qualified person to the satisfaction of the responsible authority) must be submitted to and approved and endorsed by the responsible authority prior to the development of each of the Potential Acoustic Attenuation Lots for the purposes of dwellings or another noise sensitive use. Unless otherwise agreed in writing by the responsible authority, the report/s for each lot must identify any acoustic measures (including design requirements such as building siting, envelopes, orientation, location of private open space or restrictions on openable window) necessary to ensure that the development of each of those lots for dwellings do not impose additional requirements on the existing industrial use at 195 and 199 Princes Highway Port Fairy with regard to compliance with the night period noise limit under the measurement and assessment protocols of *Environment Protection Regulations 2021* and EPA Publication 1826.
  - b) Any acoustic measures identified in the report/s must be incorporated into the dwelling design and be constructed and thereafter maintained to the satisfaction of the responsible authority.

The owner of the land must pay all of the responsible authority's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

#### **Agreement under Section 173 (Stormwater, landscape and infrastructure)**

7. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*. The agreement must provide for the following:
  - a) The ongoing implementation of the maintenance plan for the stormwater assets that will be the responsibility of the owners of lots through the Owners Corporation approved and endorsed by the responsible authority under condition 15 to the satisfaction of Council.
  - b) The ongoing maintenance of landscaping shown on the approved and endorsed Detailed Landscape Plan that is not to be vested in Council will be the responsibility of the owners of lots through the Owners Corporation and must be maintained to the satisfaction of the responsible authority. Any dead, diseased or damaged plants or landscaped areas must be repaired or replaced to the satisfaction of the responsible authority.
  - c) The ongoing maintenance of any infrastructure shown on the plan approved and endorsed under condition 27 will be the responsibility of the owners of lots through the Owners Corporation and must be maintained to the satisfaction of the responsible authority.

The owner of the land must pay all of the responsible authority's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

#### **Other Restrictions on Title**

8. Before the plan of subdivision is certified under the *Subdivision Act 1988*, any restrictions on the plan of subdivision including relevant "Design Guidelines" and / or Memorandum of Common Provisions must

be approved and endorsed by the responsible authority. The restrictions / Design Guidelines / Memorandum of Common Provisions must provide for the following (unless otherwise agreed to by the responsible authority):

- a) Design Guidelines in the approved and endorsed Context Analysis and Design Response Report;
- b) A requirement that each vacant lot created less than 400 square metres contains at least 25 percent as garden area; and
- c) The following levels must be met for all new dwellings constructed on the land:
  - i. Garage floor levels shall be finished at or above 2.79 m AHD.
  - ii. Dwelling floor levels shall be finished at or above 3.09 m AHD.
  - iii. Portico floor levels shall be finished at or above 2.79 m AHD.

#### **Layout not altered**

9. The layout of the subdivision must not be altered from the layout on the approved and endorsed plans without the written consent of the responsible authority.

#### **Stages**

10. The subdivision must proceed in a single stage as shown on the approved and endorsed plans. The responsible authority may consent in writing to vary this requirement.

#### **Traffic Management Plan**

11. Before the plan of subdivision is certified under the *Subdivision Act 1988*, or the commencement of any works (including any preliminary site preparation and establishment works, demolition or material removal), a Traffic Management Plan (TMP) must be ~~must be~~ approved and endorsed by the responsible authority. The TMP must be prepared by a suitably qualified traffic engineer and be generally in accordance with the Infrastructure Design Manual (IDM) and the Traffic Impact Assessment (ESR Transport Planning, 28 August 2023) to the satisfaction of the responsible authority. The TMP must include the type, location, and management of bollards for emergency access through Reserve No. 2.

#### **Functional Layout Plan**

12. Before the plan of subdivision is certified under the *Subdivision Act 1988* or the commencement of any works (including any preliminary site preparation and establishment works, demolition or material removal), a Functional Layout Plan (FLP) for works internal to the site which are to be vested in Council must be ~~must be~~ approved and endorsed by the responsible authority. The FLP must be prepared by a suitably qualified civil engineer and be in accordance with the Infrastructure Design Manual and the approved and endorsed Traffic Management Plan and Stormwater Management Plan.

#### **Detailed Construction Plans**

13. Before the plan of subdivision is certified under the *Subdivision Act 1988* or the commencement of any works (including any preliminary site preparation and establishment works, demolition or material removal), detailed Construction Plans must be approved and endorsed by the responsible authority. The construction plans must be generally in accordance with the approved and endorsed TMP, SWMP and FLP. The plans must be drawn to scale with dimensions and level contours and be in accordance with the Infrastructure Design Manual (IDM). The plans must provide for the following:
  - a) Engineering plans and specifications of the proposed works that are to become public assets such as roads, intersections, drains, and the like.
  - b) Fully sealed pavements with appropriate drainage for all internal roads.
  - c) Drainage infrastructure in accordance with the approved and endorsed SWMP.
  - d) Concrete footpaths on both sides of roads and through reserves as appropriate.



- e) Permanent survey marks generally in accordance with the Surveying Regulations, 2015, or its successor document, levelled to the Australian Height Datum (AHD) and coordinated to the Australian Map Grid (MGA Zone 54 GDA20).
- f) Underground service conduits.
- g) Linemarking and signage.
- h) Details of any cut and fill, including:
  - Details in relation to all filling on the site which must be compacted to specifications approved by the responsible authority;
  - The location of any earthworks (cut or fill) or service provision in a location outside any tree protection zone shown on the approved and endorsed Detailed Landscape Plan; and
  - Any provision for the utilisation of any surplus topsoil.
- i) Traffic management measures in accordance with the approved and endorsed TMP and FLP.
- j) Turnaround areas. Where these turning areas are to be provided on private property, agreements to the satisfaction of Council for ongoing access are to be provided before a Statement of Compliance is issued.
- k) Vehicle crossing layout and specifications in accordance with the IDM.

### Stormwater Management Plan

14. Groundwater level monitoring in the south-east corner of the site must be undertaken over a minimum continuous 12-month period to establish whether there are any seasonable variations in the groundwater level. The monitoring must be undertaken or overseen by a suitably qualified hydrogeologist (or alternative to the satisfaction of the responsible authority).
15. Before the plan of subdivision is certified under the *Subdivision Act 1988* or the commencement of any works (including any preliminary site preparation and establishment works, demolition or material removal), a stormwater management plan must be approved and endorsed by the responsible authority. The stormwater management plan must provide for the following:
  - a) be prepared to the satisfaction of the responsible authority;
  - b) be submitted in electronic form;
  - c) the stormwater works that will be transferred to Council must be designed in accordance with the IDM;
  - d) the stormwater works that will not be transferred to Council must be designed in general accordance with the IDM and must meet all planning scheme and safety requirements;
  - e) be generally in accordance with the joint conclave report of water experts for C75moyn dated 15 September 2023 and the approved and endorsed FLP and include (unless otherwise agreed by the Responsible Authority):
    - i. any existing drainage on the site;
    - ii. details of how the works on the land are to be drained and/or retarded;
    - iii. survey, inspection and capacity calculations to be undertaken and documented in the SWMP to demonstrate the drain from the proposed outlet of the site to Reedy Creek can provide a free drainage outfall for the development and/or any works necessary to provide a free-draining outfall in current and future climate conditions;
    - iv. computations to demonstrate, relative to existing conditions, that there will be no detrimental impact from any change to the flow rate, volume or frequency of surface flows into the Rail Trail drain;
    - v. an impermeable liner in any sediment basins and constructed wetland cells to prevent interaction with groundwater;

- vi. the reduction in size or relocation of the dry-out zone to ensure the possible future connection to land to the south and to provide an adequate setback to residential lots;
  - vii. the redesign of and maintenance schedule for the treatment elements to ensure the efficiency of the treatment elements, including an appropriate clean out cycle of sediment pond(s);
  - viii. details of how the plan takes into account and responds to public safety, including the provision safe batter slopes or appropriate safety fencing;
  - ix. details of how the plan takes into account risks of climate change to 2100, assuming a SLR of 0.8m, including groundwater level impacts, if any;
  - x. any changes to the area required for stormwater infrastructure or the area available for the development of lots required to address:
    - any seasonal variation in groundwater levels based on the findings of the monitoring undertaken in accordance with condition 14; and
    - the stormwater treatment facilities;
  - xi. details of how the stormwater discharge from the development will be limited such that post-development flows for the 1% AEP do not exceed pre-development flows;
  - xii. details and measures to enhance stormwater discharge quality from the site and protect downstream waterways in accordance with Clause 56.07-4 of the Moyne Planning Scheme;
  - xiii. a proposed Legal Point of Discharge for each allotment;
  - xiv. an underground drainage system to convey minor flows (as defined by the IDM) to the drainage outfall for the development;
  - xv. details of how stormwater runoff resulting from a 1% AEP storm event is able to pass safely through the development via reserves (including road reserves) and/or easements, or be retained within development;
  - xvi. details and computations of how the full extent of the catchment to the north-west of the site is incorporated into the 1% AEP flood event;
  - xvii. computations in support of the proposed drainage elements;
  - xviii. where drainage is required to be conveyed across privately owned land, easements to be created or agreements to be made for ongoing consent of the landholder;
  - xix. maintenance schedules for treatment elements;
  - xx. detailed construction cost estimates for all drainage elements; and
  - xxi. where interim or temporary works are proposed, details to show how these interim or temporary works will integrate with the ultimate drainage systems.
- f) a maintenance plan to satisfaction of the responsible authority that will provide for an appropriate level of ongoing treatment performance of the assets, including any measures to respond to inundation of the stormwater reserve area under an extreme Moyne estuary flood (catchment and/or coastal driven) and any measures to maintain the drain from the proposed outlet of the site to Reedy Creek.

16. The SWMP must be accompanied by:

- a) a peer review by a suitably qualified and experienced stormwater management consultant (specifically addressing the issues identified in the joint conclave report of water experts for C75moyn dated 15 September 2023). The selection of the peer review consultant must be to the satisfaction of the responsible authority;

- b) a statement by a suitably qualified hydrogeologist (or alternative to the satisfaction of the responsible authority) that addresses the risk of climate change impacting groundwater levels at 2100, assuming a SLR of 0.8m.

### **Drainage Easements**

17. All existing and proposed easements and sites for existing and required utility drainage must be set aside in favour of the Council on the plan of subdivision submitted for certification under the *Subdivision Act 1988*.

### **Public Lighting Plan**

18. Before the plan of subdivision is certified under the *Subdivision Act 1988* or the commencement of any works, a Public Lighting Plan must be approved and endorsed by the responsible authority. The Public Lighting Plan must provide for:
  - a) Lighting of roads and pedestrian paths designed in accordance with Australian Standard 1158.1;
  - b) Consistency with the approved and endorsed Environmentally Sustainable Design Report.

### **Project Management Plan**

19. Before the plan of subdivision is certified under the *Subdivision Act 1988* or the commencement of any works (including any preliminary site preparation and establishment works, demolition or material removal), a Project Management Plan must be approved and endorsed by the responsible authority. The Project Management Plan must:
  - a) Be prepared to the satisfaction of the responsible authority.
  - b) Include the following:
    - i. Environmental Management Plan (EMP) generally in accordance with the Environment Protection Authority publication 1834 Civil Construction, Building and Demolition Guide including:
      - Construction work hours.
      - Noise and Vibration Controls, including measures to reduce the impact of construction noise and vibration created during the construction process.
    - ii. Air and Dust Management, including measures to reduce the impact of dust and other airborne emissions created during the construction process:
      - Stormwater and Sediment Control, including:
        - methods to detain dirt and mud within the site, and the method and frequency of clean up procedures;
        - measures to ensure that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system or watercourses during the construction period.
    - iii. Waste and Materials Reuse Management, including:
      - measures to ensure that materials will not be deposited on public roads by vehicles associated with the development of the site;
      - locations of any cut and fill stockpiles; and
      - the measures for prevention of the unintended movement of building waste and hazardous materials and other pollutants on or off the site, whether by air, water or other means.
    - iv. Vehicle and Machinery Management, including:
      - measures to ensure all machinery brought on the site is weed and pathogen free;
      - delivery and unloading points and expected frequency;

- measures to minimise impact of construction vehicles arriving at and departing from the site;
  - an outline of requests to occupy public footpaths or roads, and anticipated disruptions to local services;
  - haul routes used for fill carting shown on a separate plan which considers the scale of development and works, the construction access and any on-site haul road location, and the surrounding road network;
  - methodology detailing how service vehicles will be catered for during all stages of construction, including the removal of temporary turn around areas.
- v. Amenity Considerations., including:
- parking facilities for construction workers;
  - on-site facility washing;
  - maps of a site office and facilities.
- vi. Protection Zones (Flora, Fauna, Weeds, Pests and Cultural Heritage), including:
- the protection measures for site features to be retained such as vegetation, retaining walls, buildings, other structures and pathways etc.;
  - the establishment and fencing of No Go Zones as required by Environmental or Cultural heritage management plans which are clearly designated on site.
- vii. A requirement that all contractors working on the site must be inducted into an environmental management program for construction works.
- viii. Handling, tracking and testing details of all imported fill.
- ix. A liaison personnel for contact by residents and the responsible authority in the event of relevant queries or problems experienced.
- c) Construction Management Plan, including:
- i. Company Structure / Site Contacts
  - ii. Company Policies (if applicable)
  - iii. Responsible authority approvals
  - iv. Insurances
  - v. Asset Condition Report
  - vi. Quality Management
  - vii. Construction Program.
- d) Traffic Management Plan, including:
- i. Traffic Guidance Schemes
  - ii. Site Compound Map
  - iii. Road Reserve Works Permit
  - iv. Regional Roads Memorandum of Agreement (if applicable).

The Project Management Plan must be implemented to the satisfaction of the responsible authority for the duration of the works.

### Detailed Landscape Plan

20. Before the commencement of works, a Detailed Landscape Plan prepared by a person suitably qualified or experienced in landscape design must be approved and endorsed by the responsible authority. The Detailed Landscape Plan must:

- a) be prepared to the satisfaction of the responsible authority.
- b) be prepared by a suitably qualified person.

- c) be drawn to scale with dimensions.
- d) be submitted to the responsible authority in electronic form.
- e) be generally in accordance with the Landscape Concept by John Patrick dated September 2023 but modified to show:
  - i. The communal vegetable garden removed from any vested public open space;
  - ii. Facilities to be included in the open space areas adjacent to Lot 63 (as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023)
  - iii. The location of any adjacent physical acoustic infrastructure ~~acoustic fence~~ in accordance with the recommendation of the acoustic report required by condition 26;
  - iv. Any changes required for consistency with the approved and endorsed Stormwater Management Plan;
  - v. A requirement that any imported soils are locally sourced and suitable to support the selected plant species;
  - vi. All land to be developed for the purposes of Public Open Space Reserves, Conservation Reserves, Road Reserves and Drainage Reserves or public recreation;
  - vii. Tree protection zones for all trees to be retained on adjoining land that are likely to be at risk from the proposed subdivision construction works;
  - viii. Nominated entry/egress points to all open space areas including any drainage reserve;
  - ix. The layout of proposed new planting in all road reserves and traffic management devices;
  - x. Details of all other infrastructure within the road reserve (e.g. underground services, street lights, stormwater pits, fire plugs etc);
  - xi. Street planting of 1 tree per allotment and additional 2 trees per secondary frontage;
  - xii. A detailed planting schedule of all proposed trees and plants including botanical names, common names, pot sizes, sizes at maturity and quantities for each species;
  - xiii. The maintenance schedule for all proposed planting;
  - xiv. Plan indicating mature tree sizes, shown to scale to illustrate the extent of canopy coverage;
  - xv. Cross sections for all roads within the site;
  - xvi. Detailed planting and construction drawings including site contours and any proposed changes to existing levels including any structural elements such as retaining walls;
  - xvii. Detailed planting and construction drawings of any drainage and WSUD infrastructure within public reserves;
  - xviii. Suitable vehicle barrier fencing including lockable swing gates & crossovers for reserves;
  - xix. Tree planting & landscaping works within reserves.

#### **Landscape Maintenance on land to be vested in Council**

21. At all times the landscaping shown land vested in Council on the approved and endorsed Detailed Landscape Plan must be maintained (including the replacement of any dead, diseased or damaged plants) to the satisfaction of the responsible authority. The landscaping must be maintained (including the replacement of any dead, diseased or damaged plants) to the satisfaction of the responsible authority for a period of 24 months from the practical completion of the landscaping works. Any replacement or repair must not be deferred until the completion of the maintenance period.

Maintenance of any interim landscaping will remain the responsibility of the developer until such time as ultimate works are complete or an agreement is made.

22. Upon completion of the maintenance period, the following must be provided to the responsible authority:

- a) Streetscape/Landscaping maintenance plan
- b) Schedule of Quantities showing the financial value of all hard assets
- c) As-built landscaping plans in PDF and GIS-ready AutoCAD (DXF) format.

### **Context Analysis and Design Response Report**

23. A Context Analysis and Design Response Report must be approved and endorsed by the responsible authority. The Context Analysis and Design Response Report must include the following matters:

- a) Surrounding context and existing conditions showing topography, land uses, buildings, noise sources, access points, adjoining roads, cycling, pedestrian and public transport networks.
- b) Views to be protected and enhanced, including views along the rail trail.
- c) Proposed built form edge and interface treatments to adjacent residential properties, proposed open spaces, and the rail trail.
- d) Design guidelines that include provisions for:
  - i. Minimum 7.0 star energy efficiency.
  - ii. Minimum 2.5kW solar power system per dwelling.
  - iii. Building envelopes (except for any designated medium density housing lots including the affordable housing lot). Envelopes should be positioned to:
    - on the Potential Acoustic Attenuation Lots, to minimise the risk of adverse noise emissions from the industrially zoned land known as 195-199 Princes Highway Port Fairy, including by reference to the orientation and location of private open space; and
    - on all other lots, maximise north facing orientation.
  - iv. An overall building height of 7.3 metres.
  - v. Siting and design of dwellings, maximum building height, garages / car ports, fencing, landscaping, driveways, sheds and outbuildings, and energy efficient construction requirements.
  - vi. Fencing generally in accordance with the Fencing Plan, Appendix B to the draft Rivers Run Development Plan dated September 2023.
  - vii. The provision of at least three canopy trees in each lot.
  - viii. Minimum four metre front setbacks.
  - ix. A minimum setback of 5 metres from the rear of dwellings along Princes Highway (incorporating the 3 metre wide drainage easement).
  - x. A minimum setback of 5 metres from the walkway adjacent to the drainage basin and wetland area.
  - xi. Garden Design Guidelines that encourage consistency of presentation and character including the use of indigenous vegetation.

### **Public Realm Improvements Report**

24. A Public Realm Improvements Report must be approved and endorsed by the responsible authority. The Public Realm Improvements Report must include the following:

- a) How the development will contribute towards improving the public realm adjacent to the site.
- b) Principles for how future development will contribute to improving the public realm and promote inviting bicycle and pedestrian-friendly public spaces, including:
  - i. Identify improvements to allow safe crossing of the Princes Highway at the alignment of the rail trail.
  - ii. Installation of wayfinding signage along the rail trail, within the vicinity of the site.

- iii. Provision of a bicycle repair station (and ancillary facilities such as water refill station) along the rail trail or within the proposed local park.
- iv. Contribution towards infrastructure upgrades associated with Pedestrian Priority Routes.

### Environmentally Sustainable Design Report

25. An Environmentally Sustainable Design Report to the satisfaction of the responsible authority must be approved and endorsed by the responsible authority. The Environmentally Sustainable Design Report must include the following:
- a) Environmentally Sustainable Design (ESD) principles, including integrated water management, energy efficiency, waste minimisation and improvements to urban ecology.
  - b) Energy efficient public infrastructure, such as solar street lighting, and vehicle charging station/s.

### Acoustic Report

26. An Acoustic Report to the satisfaction of the responsible authority must be approved and endorsed by the responsible authority. The Acoustic Report must provide for the following:
- a) Identify whether any measures (such as physical, spatial, layout or restrictions on the plan of subdivision) are required at subdivision such that the development of residential dwellings on the Potential Acoustic Attenuation Lots do not impose additional requirements on the existing industrial use at 195 and 199 Princes Highway Port Fairy with regard to compliance with the night period noise limit under the measurement and assessment protocols of Environment Protection Regulations 2021 and EPA Publication 1826.
  - b) For the purposes of such an assessment, an agreed external noise level representative of existing noise from 195 and 199 Princes Highway Port Fairy is required. This level should be selected at the discretion of a suitably qualified person, to be either:
    - the level measured at the relevant lot at the time of development, during the night at a time when 195 and 199 Princes Highway Port Fairy is operating under typical worst-case conditions; or
    - assumed to be 47 dB(A)  $L_{\text{eff}}$  along the north-east site boundary between lot 63 (as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023) and the Princes Highway. This level represents the typical worst case noise levels from 195 and 199 Princes Highway Port Fairy at the date of the conclave being 19 September 2023. ~~the time of preparing this condition.~~
  - c) A copy of the Acoustic Assessment report must be provided to the existing industrial use operator at 195 and 199 Princes Highway Port Fairy.

### Acoustic attenuation measures

27. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, detailed plans, elevations and sectional drawings of any physical acoustic infrastructure recommended in the Acoustic Report approved under condition 26 must be approved and endorsed by the responsible authority. The detailed plans, elevations and sectional drawings must:
- a) Be prepared to the satisfaction of the responsible authority.
  - b) Locate acoustic infrastructure on common property.

At the request of and at no cost to the responsible authority, an independent peer review of the detailed plans for any physical acoustic infrastructure ~~acoustic wall~~ must be provided to the responsible authority concurrent with the detailed plans, elevations and sectional drawings.

### **Works on or to the land**

28. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the following works must be provided on or to the land to the satisfaction of the responsible authority:
- a) all road and drainage works shown on approved and endorsed Detailed Construction Plans;
  - b) stormwater management system in accordance with the approved and endorsed Stormwater Management Plan;
  - c) landscaping (including street trees) in accordance with the approved and endorsed Detailed Landscape Plan;
  - d) street lighting in accordance with the approved and endorsed Public Lighting Plan;
  - e) fencing on the boundaries of any Council reserve; and
  - f) any physical acoustic infrastructure shown on the plan approved and endorsed under condition 27.

The responsible authority may consent in writing to vary these requirements.

### **Design Checking and Supervision Fee**

29. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the developer must make payment of a fee for design checking and construction supervision of works in Road Reserves, Council easements, other Council reserves or Council managed land. The fee will be based on the endorsed total estimated construction cost of the works in the reserve / easement / Council managed land as shown on the approved and endorsed Construction/ Detailed Landscape / Stormwater Management / Public Lighting Plans. The construction cost estimate must include, but not be limited to, road and drainage infrastructure, landscaping, public lighting and compliance testing. The fee will be 3.25 % of the endorsed construction cost.

### **Defects Liability Period (DLP) and Bond**

30. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, a Defects Liability Bond must be lodged with Council. The bond is to be for a monetary value of 5% of the endorsed total estimated construction cost of works in road reserves, other public reserves, Council easements or Council managed land as shown on the approved and endorsed Construction / Detailed Landscape / Stormwater Management / Public Lighting Plans. This bond will be released following a satisfactory inspection:

- a) 12 months after practical completion of road infrastructure;
- b) 12 months after practical completion of underground drainage;
- c) 24 months after practical completion of open drainage; and
- d) 24 months after practical completion of landscaping.

DLP Bond funds associated with interim works will be held until such time as ultimate works are completed. CCTV footage of underground drainage in accordance with the IDM is to be provided before the commencement of the DLP.

### **As Constructed Plans**

31. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the applicant must submit validated as Constructed Plans in accordance with A-spec to the satisfaction of the responsible authority.

### **Telecommunications**

32. The owner of the land must enter into an agreement with:
- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the approved and endorsed plans in accordance with the provider's requirements and relevant legislation at the time; and



- b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plans in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
33. Before a Statement of Compliance is issued for under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

### Powercor Conditions

34. The plan of subdivision submitted for certification under the *Subdivision Act 1988* shall be referred to the Distributor in accordance with Section 8 of that Act.
35. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with the Distributor's requirements and standards.

**Notes:** Extension, augmentation or rearrangement of the Distributor's electrical assets may be required to make such supplies available, with the cost of such works generally borne by the applicant.

36. The applicant shall ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

**Notes:** Where electrical works are required to achieve VSIR compliance, a registered electrical contractor must be engaged to undertake such works.

37. The applicant shall, when required by the Distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations.

**Notes:** Areas set aside for substations will be formalised to the Distributor's requirements under one of the following arrangements:

- RESERVES established by the applicant in favour of the Distributor.
- SUBSTATION LEASE at nominal rental for a period of 30 years with rights to extend the lease for a further 30 years. The Distributor will register such leases on title by way of a caveat before the registration of the plan of subdivision.

38. The applicant shall establish easements on the plan of subdivision, for all existing Distributor electric lines where easements have not been otherwise provided on the land and for any new powerlines to service the lots or adjust the positioning existing easements.

**Notes:**

- Existing easements may need to be amended to meet the Distributor's requirements.
- Easements required by the Distributor shall be specified on the subdivision and show the Purpose, Origin and the In Favour of party as follows:

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited / In Favour Of

	Power Line		Section 88 - <i>Electricity Industry</i> <i>Act 2000</i>	Powercor Australia Ltd
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### Wannon Water Conditions

39. The developer must provide, at the developers cost, the required water supply works necessary to serve each of the lots created by the plan of subdivision.

The works are to be constructed and acceptance tested under the supervision of a consulting engineer in accordance with the plans and specifications approved by Wannon Water.

40. The developer must provide, at the developers cost, the required sewerage works necessary to serve each of the lots created by the plan of subdivision.

The works are to be constructed and acceptance tested under the supervision of a consulting engineer in accordance with the plans and specifications approved by Wannon Water.

Note: The works may also include the provision of a temporary sewer pump station and rising sewer main if survey and design determine.

41. The developer must provide, at the developers cost, any internal water supply works necessary to eliminate water supply pipework from crossing any adjoining lot boundary created by the plan of subdivision.
42. The developer is to enter into an agreement with Wannon Water for payment of the new customer contributions and subdivision fees applicable to the lots created.
43. Easements and/or other notations are to be shown on the approved and endorsed plan to the satisfaction of Wannon Water for the provision of both existing and proposed water and/or sewerage services.
44. The plan of subdivision submitted for certification must be referred to Wannon Water in accordance with Section 8 of the *Subdivision Act 1988*.
45. Unless otherwise approved in writing by Wannon Water, the disused 225mm AC Rising Sewer Main which is located on Lots 1 & 2, PS 306968 (169a and 183 Princes Highway Port Fairy) is required to either have a 3.0m minimum sewer easement placed centrally over it or be excavated and removed from the site.

### Country Fire Authority (CFA) Conditions

#### Hydrants

46. Before the issue of a Statement of Compliance under the *Subdivision Act 1988*, the following requirements must be met to the satisfaction of the CFA:
- Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
  - The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the CFA.

**Notes:** CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site ([www.cfa.vic.gov.au](http://www.cfa.vic.gov.au)).

## Roads

47. Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
  - a) The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 ~~metres~~ meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
  - b) Curves must have a minimum inner radius of 9 metres.
  - c) Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
  - d) Roads more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided). T or Y heads of dimensions specified by the CFA may be used as alternatives.

## Glenelg Hopkins Catchment Management Authority Conditions

48. Unless otherwise approved in writing by Glenelg Hopkins CMA, the following requirements must be met:
  - a) Garage floor levels shall be finished at or above 2.79 m AHD.
  - b) Dwelling floor levels shall be finished at or above 3.09 m AHD.
  - c) Portico floor levels shall be finished at or above 2.79 m AHD.
  - d) The topography within the proposed development area shall be constructed in accordance with the approved and endorsed plans.
  - e) All roadway surfaces shall be finished at or above 2.7m AHD.
  - f) Any new fencing must comply with the Glenelg Hopkins CMA floodplain fencing guidelines.
49. Feature survey of the constructed topography shall be submitted to Glenelg Hopkins CMA upon completion of the cut and fill earth works and detention basins. This feature survey must meet the following specifications:
  - a) Completed by a licensed surveyor.
  - b) Minimum point density of 2m by 2m.
  - c) Levels expressed on Australian Height Datum (AHD).
  - d) All point coordinate data to be collected in MGA2020 Zone 54 Eastings and Northings. Projection to be confirmed with Glenelg Hopkins CMA before data collection.
  - e) Data to be provided to Glenelg Hopkins CMA in ~~DXF~~ and preferably GIS format (Mapinfo.tab or esri shapefile).
50. Any deviation in the constructed topography surfaces from the approved design surfaces must be rectified to the satisfaction of Glenelg Hopkins CMA.

Flood Information Summary for proposed development accounting for 1% AEP flood risk with 0.8m higher sea level.

Item	
Applicable 1% AEP flood level	2.79 m AHD
Minimum depth of flooding on site	0 m
Maximum depth of flooding on site	0 m
1% AEP Property Hazard category	Low
Maximum depth of flooding on access – 1% AEP	0 m

Access Hazard category – 1% AEP	Low
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Note: Glenelg Hopkins CMA will withhold consent to issue of a Statement of Compliance until it is demonstrated that constructed surface levels match approved design levels.

#### Department of Transport [and Planning](#) conditions

51. Vehicular access from the Princes Highway into the development shall only be constructed at the northern end of the residential development, between Lot 1 and the “Gateway Park”.
52. Access from the Princes Highway to the development service lane between Lots 8 and 9 and to the Warrnambool-Port Fairy Rail Trail behind Lot 63 (as described on Plan of Subdivision PS842672B prepared by Joseph Land Surveying Pty Ltd dated 23 August 2023) shall be created as a shared path (pedestrians, cyclists and emergency vehicles) only.
53. Unless otherwise agreed in writing by the Head, Transport for Victoria, before commencement of construction works on the site, a Functional Layout Plan to the satisfaction of the Head, Transport for Victoria must be submitted and approved by the Head, Transport for Victoria. The plans must be generally in accordance with the Intersection Concept Design prepared by Traffix Group titled Concept Plan G33911-01-01 and Swept Paths G33911-01-02 both dated 4 September 2023.
54. Before commencement of construction works on the site (or at another time with the written consent of Head, Transport for Victoria), and unless otherwise approved in writing by the Department of Transport, the following works on the Princes Highway must be completed at no cost to and to the satisfaction of the Head, Transport for Victoria:
  - a) The provision of new bus stops at/near 169A Princes Hwy to provide sufficient coverage as outlined in the Public Transport Guidelines for Land Use and Development to achieve an optimal 400 metre walk to a town bus stop, including pedestrian connections from these stops to the broader footpath network including but not limited to the linear park at 169A Princes Highway. The relevant DoT infrastructure requirements for new bus stops should be in accordance with standard drawings STD S0062, STD S0063 for pole footing details and STD S0064 for hardstand grade, Tactile Ground Surface Indicators (TGSIs) and concreting. It is our preference that the hardstand be constructed beyond the shoulder of the road. The drawings for the new bus stops should be submitted to bus.stop.relocations@transport.vic.gov.au for approval.
  - b) The Intersection Works at the site entrance on the Princes Highway in accordance with the approved and endorsed Functional Layout Plan.
55. Before the works within the Princes Highway road reserve commence, the applicant must enter into a works agreement with the Head, Transport for Victoria, confirming design plans and works approvals processes, including the determination of fees and the level of the Head, Transport for Victoria service obligations. Contact: southwestworks@roads.vic.gov.au.

#### Cut and fill

##### Filling/Bulk Earthworks – Geotechnical

56. Before the commencement of works, or any material brought to site, a Geotechnical Inspection and testing authority (GITA) must be engaged to provide Level 1 Inspection and Testing as per AS 3798-2007. All Earthworks shall be under Level 1 supervision. A testing regime submitted and approved with consideration for future land use.
57. Land to be filled must be filled and compacted in accordance with AS 3798- 2007 to comply with fill density tests in order to support residential area roads and foundations. The results of the tests must be to the satisfaction of the responsible authority.
58. Before any proposed materials are brought onto site;

- a) All areas to be filled shall be stripped of vegetation and any top soil shall be removed and stockpiled for reuse over the filled areas.
- b) The GITA must take samples and have satisfactory testing results that proposed fill is not contaminated and is fit for purpose.
- c) Details of the source of the filling.
- d) Details of proposed traffic routes to be traversed to be included in a Traffic Management Plan.
- e) Soil testing results and reports in regard to the presence of contaminants in the filling.
- f) The suitability of filling to be placed on site and construction methodology.
- g) Only fill tested and approved shall be placed on the site.
- h) Excavated material, including topsoil, shall not be carted off the site unless with the written approval of the GITA.

All works must be in accordance with the recommendations of any relevant geotechnical advice for the site. All records must be made available to Council representatives upon request.

- 59. At the completion of the earthworks, dust must be suppressed so as to not cause an unreasonable impact on the amenity of nearby uses, and measures must be implemented to minimise erosion, to the satisfaction of the responsible authority.
- 60. Before the issue of a Statement of Compliance under the *Subdivision Act 1988*, all disturbed surfaces on the land authorised by this permit except those areas set aside for roadways and footpaths must be dressed with topsoil and, where appropriate, re-vegetated and stabilised to the satisfaction of the responsible authority to prevent any erosion or siltation either on or adjacent to the land.

#### Geotechnical Investigation & Pavement Design

- 61. Before the plan of subdivision is certified under the *Subdivision Act 1988*, detailed geotechnical report and plan must be submitted to approved by the responsible authority and accompany the detailed construction plans. The detailed geotechnical report and plans must be prepared by a suitably qualified engineer and be in electronic form. The detailed geotechnical report and plans must be to the satisfaction of the responsible authority. The detailed geotechnical report and plans must include but not limited to the following:
  - a) Designs that are in accordance with AS 3798-2007;
  - b) Road pavement designs in accordance with RC500.22 and VicRoads Technical Bulletin No 32 'Drainage of Subsurface Water from Roads'
  - c) Any subgrade improvements required, including treatment of expansive material;
  - d) Compaction requirements;
  - e) Subsoil drainage;
  - f) A Groundwater assessment;
  - g) Review of any clay lining for any wetlands/basins;
  - h) Use of site won material for fill;
  - i) CBR & Swell testing.

#### **Land not approved for residential use**

- 62. Except with the further permission of the responsible authority, Lots 1, 2, 3 and 4 and the unnumbered lot north of Lot 44 identified on the Subdivision Design Response (Document 96) included in Development Plan Overlay Schedule 5 must not be used for the purposes of a sensitive use, including residential use.

### **Permit Expiry**

63. This permit as it relates to development (subdivision) will expire if one of the following circumstances applies:

- a) The plan of subdivision has not been certified under the *Subdivision Act 1988* within 2 years of the issued date of this permit.
- b) A statement of compliance is not issued within 5 years of the date of certification.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.