

**Our Ref: 18266P**

26 February 2025

Statutory Planning  
Moyne Shire council

Dear Planning,



**RE: 72 Griffiths Street PORT FAIRY VIC 3284**  
**Retrospective application for earthworks**

I am writing in reference to your correspondence dated 18th December 2024 and your letter regarding an unauthorised earthwork dated 13<sup>th</sup> December 2022, wherein you requested a retrospective planning application for the earthworks associated with **72 Griffiths Street PORT FAIRY**. We acknowledge that Council is not willing to proceed with a current planning application **PL24/118** (VICSMART) for the proposed shed until retrospective approval for the previously undertaken earthworks is granted by the Council.

In this application, we are seeking retrospective approval for the earthworks completed sometime between March 2022 and October 2022. This report must be read in conjunction with the following supporting documentation:

- Copy of Title
- Planning Enforcement Letter (Dated 13<sup>th</sup> December 2022)
- Survey conducted in 2021 with proposed shed location
- Feature Survey in 2024 with proposed shed location and levels differences.
- Moyne Shire Council planning permit application form

## Subject Land:



Figure 1: Subject land – 72 Griffiths Street PORT FAIRY

The subject land features a 20.10 metre frontage to Griffiths Street and abuts Transport Zone 3 (Beachfront) to east and residential development to north and south. The subject land enjoys stunning views of Port Fairy Bay and the Moyne River, contributing to its scenic appeal. The property contains an attractive three-bedroom dwelling enveloped in lush greenery. Overall, the subject land stands out as a desirable residential property with significant visual and environmental significance.

## Assessment

Below, we provide a comprehensive assessment in accordance with the planning controls that were in effect during the period the earthworks were conducted (March 2022–October 2022). The planning control that was applicable to the subject land were amended under **Amendment C69moyn** (Gazetted on 03 October 2024). The amendments relating to C69 includes,

- *Rezone all land currently in the General Residential Zone (GRZ) and the Mixed-Use Zone (MUZ) to Neighbourhood Residential Zone (NRZ1).*
- *Replace the existing 19 design and development Overlay with Seven (7) Design and Development Overlays to areas identified in the Structure Plan.*
- *Introduce a Land Subject to Inundation Overlay (LSIO4) and Flood Overlay (FO3) to the Port Fairy Township to identify areas subject to coastal inundation and a 1.2m sea level rise as per the findings of the Translation of Port Fairy Coastal Hazard Assessment (Cardno, 2019).*
- *Extend Erosion Management Overlay (EMO) currently applicable in Port Fairy West to areas along the primary coastal dunes in South Beach and East Beach.*

The planning control on the subject land that was in effect during the earthworks conducted before Amendment C69 were,



Zone:

- General Residential Zone

Overlays:

- Design and Development Overlay – Schedule 5 & 7 (DDO5) (DDO7)
- Land Subject to Inundation Overlay – Schedule 2 (LSIO2)

Proposal (Works Conducted):

The earthworks involved alterations to the landform aimed at levelling the area to the rear of the existing dwelling to improve the useability of an otherwise sloping site. Rather than a gradual sloping site, the site used a cut/fill balance to create a flat useable area to the rear of the dwelling with a steep batter. This is not indifferent to how some sloping lots utilise retaining walls. No fill was brought onto the site. The attached survey plans from 2021 and 2024 illustrate that a cut/fill balance was used. Please refer to the attached survey documents for a detailed comparison of the level changes following the completion of the earthworks.

Permit Triggers:

Use	Development and works	Subdivision	Other
N/A	<u>Clause 43.02-2 Buildings and Works</u>  A permit is required to carry out works (earthworks).	N/A	N/A

**62.02-3 Vegetation removal**

*Any requirement in this scheme relating to the construction or carrying out of works does not apply to the removal, destruction or lopping of trees and the removal of vegetation.*

*This does not apply if a permit is specifically required to remove, destroy or lop trees or to remove vegetation.*

**Response:**

Within a planning scheme, works does not include native vegetation removal.

There was no other specific requirement seeking permit for vegetation removal under any planning controls applicable to the subject land.

As the property is less than 0.4ha in size, native vegetation removal is exempt.

**43.02 Design and Development Overlay**

A planning permit is required under the Design and Development Overlays (DDO5 & DDO7) for the earthworks under the Moyne Shire Planning Scheme. A combined assessment for the works under the schedules DDO5 & DDO7 is as follows.

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify areas which are affected by specific requirements relating to the design and built form of new development.*

**43.02-1 Design objectives**

*A schedule to this overlay must contain a statement of the design objectives to be achieved for the area affected.*

Clause 1.0 Design objectives of DDO5 & DDO7

- *To deliver high quality contemporary design responses that support the integration of new development with Port Fairy's historic and coastal character.*
- *To protect the existing built form and landscape character of the precinct through the appropriate siting and design of new development.*
- *To ensure development provides for shared views of significant landscape features and does not dominate the dune backdrop and coast.*
- *To ensure development is sited to enable the retention of existing native coastal vegetation and encourage the planting of indigenous vegetation.*
- *To minimise the visual impact of car parking and outbuildings.*
- *To encourage a high standard of coastal architecture that respects the natural environment and is responsive to the coastal setting.*
- *To minimise the visual intrusion of buildings when viewed from the foreshore.*
- *To protect dune systems from excavation and visually dominant development.*

**Response:**

Most of the design objectives of DDO5 and DDO7 are not relevant to the earthworks which have been completed. The removal of vegetation was conducted in compliance with the relevant planning controls applicable to the site, which do not require planning permit. Once the vegetation was removed it showed the site was sloping site had an existing mound albeit with a more gradual steepness. This has been modified to create a levelled area. The owners chose to use batters rather than retaining walls.

The existing vegetation along Griffiths Street means the mound is not easy to see other than from passers-by. It does not impact on the built form of the site and does not impact on the dune system which would be on the ocean side of the dwelling.

Some additional planting at the base and on the batter of the mound can reduce any perceived visual impacts by providing a layer of screening.

**43.02-2 Buildings and works**Permit requirement

A permit is required to construct a building or construct or carry out works.

DDO5 & DDO7 have built form requirements. A review of these requirements has revealed that none of them apply strictly to earthworks.

**43.02-6 Decision guidelines**

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

- Whether the design responds to the building and works requirements contained within this schedule.*
- The integration of the design response with any heritage considerations.*
- Whether the design responds to the landscape and visual setting of the precinct.*
- Whether the building setbacks retain the established development pattern of the area and avoid development being perceived as a continuous wall of buildings along the beachfront.*
- Whether garages, outbuildings and parking areas have been sited and designed to minimise visibility from the street.*



- *Whether the building materials and colours minimise the visual impact of buildings and reflect the character of the area.*
- *Whether front fencing and landscaping reflect the seaside character of the area and provide opportunities for passive surveillance to the street.*

Response:

The Decision guideline in both the DDO5 & DDO7 predominantly relates to the building (development) and their potential visual impacts to the landscape and precinct settings. A mound always existed on this site hidden by vegetation that was removed. The mound has been steepened to create a flat useable area to the rear of the house.

The vegetation along Griffiths Street means the earthworks are not easily visible and so not significantly contributes to visual impacts on the landscape and coastal character of the area.

Some additional planting at the base and on the batter of the mound can reduce any perceived visual impacts by providing a layer of screening.

For the above reasons we consider this retrospective application for the earthworks undertaken is worthy of the Council's consideration and approval.

I can be contacted on [REDACTED] should you have any queries regarding the above.

Yours faithfully,

