



**MORNINGTON  
PENINSULA**  
*Shire*

**MINUTES**

**PLANNING SERVICES COMMITTEE MEETING**

**MONDAY, 16 MARCH 2020**

**7.00PM**

**MUNICIPAL OFFICES  
BESGROVE STREET, ROSEBUD**

**MORNINGTON PENINSULA SHIRE COUNCIL****WARDS AND COUNCILLORS**

<b>Briars</b>	Cr Rosie Clark Cr Bev Colomb Cr Sam Hearn
<b>Cerberus</b>	Cr Kate Roper
<b>Nepean</b>	Cr Hugh Fraser Cr Bryan Payne
<b>Red Hill</b>	Cr David Gill
<b>Seawinds</b>	Cr Simon Brooks Cr Antonella Celi Cr Frank Martin
<b>Watson</b>	Cr Julie Morris

**SENIOR LEADERSHIP TEAM**

Mr John Baker Ms Jenny Van Riel Mr Mark Brady Mr Niall McDonagh Mr David Bergin	Chief Executive Officer Director – Communities Director – Corporate Services Director – Place Director – Planning and Building
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**AUDIO RECORDING**

Please note that an audio recording of this Council Meeting will be made and be available on the Shire's website within seven days of the meeting.

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## 1 PROCEDURAL MATTERS

Meeting opened at 7.00pm

Appointed Chairman – Cr Bryan Payne

### **Present**

Cr Bryan Payne  
Cr Simon Brooks  
Cr Antonella Celi  
Cr Rosie Clark  
Cr Hugh Fraser  
Cr David Gill  
Mayor, Cr Sam Hearn  
Deputy Mayor, Cr Kate Roper (Chairperson)

### **1.1 Apologies**

Cr Bev Colomb  
Cr Frank Martin  
Cr Julie Morris

### **1.2 Disclosure of Conflicts of Interest Pursuant to Section 79 of the *Local Government Act 1989***

Nil.

### **1.3 Confirmation of Minutes**

### **RECOMMENDATION**

That the Minutes of previous Planning Services Committee held on 17 February 2020, be confirmed.

### **COMMITTEE DECISION**

Moved: Cr Roper  
Seconded: Cr Hearn

That the recommendation be adopted.

**Carried**

## 2 STRATEGIC PLANNING REPORTS

### 2.1 Bushfire Protection Planning Provisions Review

Prepared By	Claire Dougall, Principal Strategic Planner
Authorised By	Director - Planning and Building
Document ID	A9611110
Attachment(s)	<ol style="list-style-type: none"> <li>1. Previous Council Resolutions</li> <li>2. Clause 52.12</li> <li>3. Land Covered by the Bushfire Management Overlay</li> <li>4. Bushfire Prone Area Mapping</li> <li>5. Bushfire Planning Provisions Review Framework</li> </ol>

#### PURPOSE

The purpose of this report is to outline and seek adoption of a set of positions and supporting actions to advocate to the Minister for Planning (the Minister) for changes to specific bushfire protection provisions within the Mornington Peninsula Planning Scheme.

#### BACKGROUND

During 2019, Council and the Planning Services Committee (the Committee) made various resolutions to investigate bushfire protection provisions within the Mornington Peninsula Planning Scheme (Attachment 1).

Council and the Committee specifically sought a review of exemptions – known as the 10/30 and 10/50 rules – that allow vegetation removal to occur without the need for a planning permit. The investigation was requested due to concern that these exemptions are having a detrimental impact on local vegetation, biodiversity and neighbourhood character on the Mornington Peninsula.

The 10/30 and 10/50 rules are planning permit exemptions specified in Clause 52.12-1: Bushfire Protection Exemptions of the Victoria Planning Provisions (Attachment 2). The rules allow landowners to remove vegetation as-of-right so residents can make their properties safer in the event of a bushfire. The rules were introduced following the 2009 ('Black Saturday') Victorian Bushfires Royal Commission and only apply to buildings used for accommodation that were constructed or approved before 10 September 2009.

The 10/30 rule allows residents to clear any vegetation within 10 metres of a residential building and any vegetation (except trees) within 30 metres of a residential building. The 10/50 rule allows landowners to clear any vegetation within 10 metres of a residential building plus any vegetation (except trees) within 50 metres. An additional exemption – the 'fence line exemption' – allows removal of any vegetation either side of a fence for a combined width of four metres.

As well as allowing landowners to remove vegetation without a planning permit, the exemptions also override any existing planning permit that otherwise requires the retention of vegetation.

The 10/50 rule is confined to land covered by the Bushfire Management Overlay (BMO), which is land identified as being significantly at risk of bushfire (Attachment 3). The 10/30 rule and fence line exemption, however, apply Mornington Peninsula Shire (Shire) wide.

## **2.1 (Cont.)**

It is important to note that the exemptions do not require land owners to remove vegetation rather, the exemptions give landowners the legal right to remove vegetation should they wish to do so.

It is also important to note that if a landowner elects to remove vegetation under the exemptions, the landowner is not required to demonstrate that they are in fact removing vegetation for the purposes of bushfire protection.

The Committee resolution of 18 March 2019, specifically sought to investigate the merits of scaling back application of the 10/30 rule from the whole Shire, to only those locations identified as Bushfire Prone Areas (BPA) be considered.

BPA are areas which have been identified within the Building System (not the planning scheme) as subject to, or likely to be subject to bushfires. Application of BPA is extensive across the Shire, however, does not apply Shire wide (Attachment 4).

The level of bushfire risk assigned to BPA locations is lower than that of BMO areas. The BPA triggers specific construction requirements via the building permit process, aimed at improving bushfire protection for residential buildings. It is important to note that the BPA does not address vegetation removal and was not intended to identify locations where as-of-right vegetation removal should occur.

The Committee resolution of 18 March 2019 also sought further investigation of the BPA mapping in the southern end of the Mornington Peninsula (specifically Portsea, Sorrento, Blairgowrie and parts of Rye) by the Department of Environment, Land, Water and Planning (DELWP) to correct any apparent anomalies. In March 2019, Council made a submission to the DELWP BPA14 and BMO-R5 Mapping Review, to give effect to this resolution.

Council engaged Bushfire Planning to investigate the exemptions (with a focus on the 10/30 rule) as well as the BPA mapping in the Southern end of the Mornington Peninsula, as per the resolutions of Council and the Committee.

The following is a discussion of the recommended advocacy position and actions for Council to pursue.

## **DISCUSSION**

Overall, it is recommended that Council adopts the following advocacy position and actions in relation to Bushfire Planning:

- Advocate to the Minister for Planning to remove the '10/30 rule' and fence line vegetation exemptions of Clause 52.12-2 from identified low- to no-risk areas on the Mornington Peninsula (such as parts of Somerville, Mornington and Safety Beach), bearing in mind that only areas where a vegetation permit trigger exists would benefit from such a change. That is, the 10/30 rule and fence line exemption only allow people to remove vegetation without the need for a planning permit where a permit trigger (such as a Vegetation Protection Overlay) exists in the first place. If there is no permit trigger, vegetation can be removed, irrespective of whether the 10/30 rule or fence line exemptions apply or not;
- Advocate to the Minister for Planning to introduce a provision to Clause 52.12 that enables a responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed. This would help mitigate against the perceived or actual misuse of the 10/30 and 10/50 rules and fence line exemption to obtain a potential development advantage;

**2.1 (Cont.)**

- Advocate to the Minister for Planning to amend Schedules 1 and 2 to the BMO to introduce tailored defendable space requirements that align to localised bushfire risk on the Mornington Peninsula. This would be a more bespoke approach to vegetation management within the BMO that accords with bushfire risk as it is on the Mornington Peninsula;
- Continue to develop and implement an active compliance regime for vegetation modification for defendable space within BMO areas aligned with bushfire risk to ensure that the amended, more locally appropriate defendable space requirements are of the BMO1 and BMO2 are being delivered; and
- Continue to advocate to DELWP to complete its review of mapping in Sorrento, Portsea, Blairgowrie and Rye as requested in Council's submission to the BPA14 and BMO-R5 Mapping Review. It is not recommended that Council undertake further research on this matter as the expense of undertaking works to verify mapping should be borne by State Government given BPA mapping is a State responsibility that is implemented according to State-set criteria.

It is recommended that Council does not seek to reduce the current Shire-wide application of the 10/30 rule to align with BPA mapping. Apart from undermining the original intent of BPA mapping (to trigger a construction requirement under the building regulations) such a change could result in an increased bushfire risk in parts of the Shire (and broader state of Victoria) given BPA mapping does not necessarily reflect bushfire risk accurately in all areas.

For the best chance of success, any proposal to amend bushfire protection measures should be:

- Premised on prioritising life-safety over all other considerations;
- Suitable for State-wide application; and
- Supported by a comprehensive and credible evidence base.

Any proposals to change bushfire planning provisions also needs to complement the operations of Council's Municipal Fire Protection unit.

The proposed Advocacy and Action Plan is outlined in Attachment 5. It sets out the corresponding scope of works and stakeholder engagement required to effectively prosecute Council's proposed advocacy position and actions.

Central to the advocacy position is an emphasis on building an evidenced-based case in close collaboration with DELWP and the Country Fire Authority (CFA). Securing endorsement from these key stakeholders is critical to achieving favorable outcomes with the Minister. It is recommended that all efforts be coordinated by the Municipal Association of Victoria (MAV) as the legislated peak body for local government in Victoria.

With respect to effecting change to the 10/30 rule and fence line exemptions, the proposed advocacy position is predicated on developing an evidence base that demonstrates the impact that the 10/30 rule and fence line exemption are having on vegetation on the Mornington Peninsula relative to other factors (such as the impact of urbanisation currently facilitated by other provisions of the planning scheme). It is anticipated that this evidence base will investigate whether:

- The 10/30 rule and fence line exemption as currently applied are being used for reasons other than bushfire protection (such as to obtain a development advantage);

## **2.1 (Cont.)**

- Misuse of the rule and/or exemption is causing significantly detrimental impacts (and what those impacts are);
- The rule and/or exemption are contributing to enhanced bushfire resilience as originally intended;
- The proposed alternative of removing the 10/30 rule and fence line exemption from areas of low-to no-risk is a credible response that will not create unacceptable bushfire risk.

Similarly, to convince the Minister to change vegetation management provisions within the BMO, the proposed Advocacy Position and Action Plan provides for the gathering of evidence and support from DELWP and the CFA to demonstrate that there are alternative measures worth pursuing that would result in enhanced bushfire management.

The alternative approach for Council is not to proceed with any of the recommended works outlined in the proposed Advocacy Position and Action Plan, and instead wait to see if the State Government will align the 10/30 rule to BPA mapping of its own accord. This is not recommended for the following reasons:

- A. There is no guarantee that the Minister will align the 10/30 rule to the BPA.
- B. Aligning the 10/30 rule with the BPA could introduce unacceptable bushfire risk to the community.
- C. Pursuing changes to the BMO, 10/30 rule and fence line exemption that effectively align vegetation modification with genuine bushfire risk is a more credible and defensible proposal that would result in better bushfire management (and therefore greater protection of life and property) on the Mornington Peninsula.

The other alternative for Council is to advocate for refinements to bushfire provisions at a political level only, without conducting the recommended supporting works. This is not recommended. Other councils that have adopted a similar approach in the past have failed to convince the Minister to amend any provisions. Failure has been attributed, not only to a lack of focus on life-safety as the priority concern, but to the absence of credible, scientific evidence and endorsement from DELWP or the CFA to corroborate proposed changes.

## **OFFICER DIRECT OR INDIRECT INTEREST**

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

## **CONCLUSION**

The Advocacy Position and Action Plan outlined in Attachment 5 to this report provides for an evidence-based approach to advocate to the Minister for Planning to make improvements to bushfire protection provisions. These improvements, if agreed to by the Minister for Planning, would enhance the Shire's overall bushfire resilience whilst minimizing unnecessary vegetation loss.

## **RECOMMENDATION**

1. That the Planning Services Committee adopts the following advocacy position in relation to bushfire planning:



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**2.1 (Cont.)**

- A. Position 1 – Advocate to the Minister for Planning to remove the ‘10/30 rule’ (Clause 52.12-1) and fence line vegetation exemptions (52.12-2) from identified low- to no-risk areas on the Mornington Peninsula.
  - B. Position 2 – Advocate to introduce a provision to Clause 52. 12 that enables a responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed.
  - C. Position 3 – Advocate to the Minister for Planning to amend Schedules 1 and 2 to the Bushfire Management Overlay to introduce tailored defensible space requirements that align to localised bushfire risk on the Mornington Peninsula.
  - D. Position 4 – Continue to develop and implement an active compliance regime for vegetation modification for defensible space within BMO areas aligned with bushfire risk to ensure that the amended, more locally appropriate defensible space requirements of the BMO1 and BMO2 are being delivered.
  - E. Position 5 – Continue to advocate to Department of Environment, Land, Water and Planning to complete its review of mapping in Sorrento, Portsea, Blairgowrie and Rye as requested in Council’s submission to the BPA14 and BMO-R5 Mapping Review.
2. That the Planning Services Committee undertakes the actions required to facilitate the above positions generally in accordance with the Advocacy Position and Action Plan (Attachment 5).

**COMMITTEE DECISION**

**Moved: Cr Brooks**  
**Seconded: Cr Celi**

**That the recommendation be adopted.**

**Carried Unanimously**

## **2.2 Camp Buxton Open Air Memorial Chapel, Shoreham - Conservation Management Plan**

Prepared By	Anne Grogan, Heritage and Strategy Planner
Authorised By	Director - Planning and Building
Document ID	A9613960
Attachment(s)	1. Cyril Young Memorial Chapel Camp Buxton, Shoreham - Conservation Management Plan.

### **PURPOSE**

The purpose of this report is to present the Cyril Young Memorial Chapel, Camp Buxton, Shoreham Conservation Management Plan (Management Plan) to the Planning Services Committee for adoption.

### **BACKGROUND**

The Camp Buxton Open Air Memorial Chapel, also known as the Cyril Young Memorial Chapel (the Chapel), is substantially located within the Buxton Reserve, Shoreham, at the rear of 41 Marine Parade and partially within the property at 39 Marine Parade. The rear property boundary of 39 Marine Parade traverses the Chapel, as shown in the photo below and on the survey plan below. Negotiations are ongoing with the property owner of 39 Marine Parade to acquire the small area of land occupied by the Chapel.





## **2.2 (Cont.)**

The CYMCA was formed in 2018 and comprises key stakeholders from:

- Shoreham Community Association;
- Shoreham Bushland and Road Reserves Working Group;
- Flinders RSL;
- YMCA;
- The Young family;
- Flinders and District Historical Society; and
- Shoreham residents.

The aim of the CYMCA as stated in its constitution is:

*The full restoration and ongoing stewardship of the Cyril Young Memorial Chapel as both a war memorial and sanctuary.*

The consultant conducted two stakeholder meetings with the CYMCA to allow for information to be presented to the consultant and to discuss key issues and process for restoration of the chapel.

## **DISCUSSION**

The completed CMP is attached (Attachment 1) and includes the following sections:

- A detailed history of Camp Buxton;
- A description of the landscape and plantings and condition of the built elements of the Chapel;
- Assessment of the cultural heritage significance of the Chapel against accepted heritage criteria;
- Key issues – statutory controls, the Chapel's condition, ownership and management responsibilities, threats to the physical condition and future use;
- A restoration plan, including materials conservation works, to reinstate the original appearance and utility of the Chapel; and
- A maintenance plan with cyclical tasks required to keep the restored Chapel in good condition, both physical and in regard to funding and decision making.

The CMP recommends the following general policies for the restoration and the ongoing protection of the Chapel:

1. Place as a whole – Retain all the heritage values of the Cyril Young Memorial Chapel, both tangible and intangible.
2. Setting – Retain the heritage significance of the Chapel inherent in its bushland setting.
3. Plantings – Retain the indigenous species immediate to the Chapel and its surrounds to retain the setting and context.

## **2.2 (Cont.)**

4. Built elements – The surviving fabric of the built elements of the Chapel should be conserved and retained where possible.
5. Uses and visitors – The social significance of the Chapel should be supported by allowing continued access to those with strong attachment to it, while preserving its quiet and contemplative nature.
6. Interpretation – The tangible and intangible significance of the Chapel should be interpreted both by reinstating lost elements of its design and by providing information to visitors.
7. Management and decision-making – Long-term and day-to-day management of the Chapel should be in accordance with its significance, obligations of the Heritage Overlay, best-practice materials conservation, and the policies of this CMP.
8. Records – Record all research and interventions into the physical fabric (built and natural) of the Chapel, and ensure it is stored and available for future reference.
9. Adoption, implementation and review – The final version of this conservation management plan should be adopted and reviewed at regular intervals.

## **ISSUES**

The CMP provides a restoration plan and ongoing management plan of this unique heritage asset. The adopted CMP will provide justification for any grant applications for community works to restore the Chapel.

It is anticipated that the Shire will enter into a memorandum of understanding (MOU) to allow the community group to undertake agreed works. This may include cyclical inspection tasks and many of the non-specialist maintenance tasks, either independently (as agreed in the MOU) or as part of regular working bees.

It is acknowledged that any works on that section of the Chapel still in private ownership will not be undertaken unless Council is successful in purchasing part of 39 Marine Parade, Shoreham.

## **OFFICER DIRECT OR INDIRECT INTEREST**

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

## **CONCLUSION**

The historical assessment of the Chapel has concluded that it is of local historical, representative, aesthetic, social and associative significance to the Mornington Peninsula and of social significance to the broader community of former campers who attended the Camp during YMCA ownership.

It is recommended that the Committee adopt the CMP to guide the conservation and restoration of the Chapel.

## **RECOMMENDATION**

1. That the Planning Services Committee adopts the Cyril Young Memorial Chapel, Camp Buxton, Shoreham Conservation Management Plan (Attachment 1).

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Minutes**

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**2.2 (Cont.)**

2. That the Planning Services Committee notifies the Cyril Young Memorial Chapel Association of Planning Services Committee's decision.

**COMMITTEE DECISION**

**Moved: Cr Gill  
Seconded: Cr Clark**

1. That the Planning Services Committee adopts the Cyril Young Memorial Chapel, Camp Buxton, Shoreham Conservation Management Plan, generally in accordance with Attachment 1.
2. That the Planning Services Committee notifies the Cyril Young Memorial Chapel Association of Planning Services Committee's decision.

**Carried Unanimously**

### 3 PLANNING SCHEME AMENDMENT REPORTS

#### 3.1 Proposed Planning Scheme Amendment C232 (Environmentally Sustainable Development Local Planning Policy) - Authorisation Request

Prepared By	Claire Dougall, Principal Strategic Planner
Authorised By	Director - Planning and Building
Document ID	A9610767
Attachment(s)	<ol style="list-style-type: none"> <li>1. Project Reference Group Membership</li> <li>2. Background Report</li> <li>3. Issues and Options Paper</li> <li>4. C232 Clause 22.25</li> <li>5. Deemed-to-Satisfy Guidelines</li> <li>6. C232 Instruction Sheet</li> <li>7. C232 Clause 21.12</li> <li>8. C232 Explanatory Report</li> <li>9. C232 Strategic Assessment Guidelines Checklist</li> </ol>

#### PURPOSE

The purpose of this report is to:

- Provide the Planning Services Committee with an overview of proposed Amendment C232 (the Amendment) to the Mornington Peninsula Planning Scheme (Planning Scheme). The Amendment seeks to introduce an Environmentally Sustainable Development Local Planning Policy (ESD Policy) into the Planning Scheme, supported by Deemed-to-Satisfy Guidelines (the Guidelines); and
- Seek a resolution from Council to seek authorisation from the Minister for Planning to prepare the Amendment to the Planning Scheme and following this authorisation, to exhibit the Amendment.

#### BACKGROUND

Encouraging land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions is one of the objectives set out in Clause 15.02-1S of the Planning Scheme.

To achieve this, one of the Strategies of Clause 15.02-1S is to 'improve the energy, water and waste performance of buildings and subdivisions through environmentally sustainable development.'

Currently, the Planning Scheme does not contain a local ESD Policy. The adopted 2018 Mornington Peninsula Planning Scheme Review recommended that an ESD Policy be prepared and incorporated into the Planning Scheme as a matter of priority (Recommendation 80).

Introduction of an ESD Policy to the Planning Scheme would strengthen Council's capacity to consider principles of environmentally sustainable development through the statutory planning process. Implementation of the ESD Policy would help ensure that development on the Mornington Peninsula achieves best practice in environmental sustainability, from the design stage through to construction and building use.

### **3.1 (Cont.)**

Adopting an ESD Policy would align with, and further strengthen Mornington Peninsula Shire's (the Shire's) longstanding commitment to environmental sustainability and climate change resilience embodied in the Council Plan 2017 – 2021 (Our Place: Objectives 1 and 3; Our Place: Objective 4) and various adopted policies and strategies (including the Shire's Carbon Neutral Policy). Council's declaration of a Climate Emergency on the 13 August 2019 provides further impetus for the implementation of ESD on the Mornington Peninsula.

To date, at least seventeen other local councils have successfully introduced ESD policies into their planning scheme.

Sustainable Development Consultants (SDC) were engaged to prepare an ESD Policy on Council's behalf, with input from a Project Reference Group (PRG) comprising internal and external stakeholders (Attachment 1). With feedback from several PRG workshops held in the latter half of 2019, SDC produced a Background Report (Attachment 2) and Issues and Options Paper (Attachment 3). The key findings and recommendations of these reports are that:

- Council should take advantage of the precedent set by other councils through the Council Alliance for a Sustainable Built Environment (CASBE) in proactively preparing and implementing local ESD policies to fill an historic gap in ESD guidance at both a State and local level;
- Council should adapt its ESD Policy from existing policies of other councils given these have already been rigorously vetted and tested over many years by Planning Panels Victoria and the Victorian Civil and Administrative Tribunal (VCAT);
- The ESD Policy should contain locally appropriate and strategically justifiable objectives, thresholds and application requirements that clearly identify which developments needing planning approval should implement ESD and to what degree;
- The ESD Policy should respond to the unique development profile and planning context of the Mornington Peninsula to ensure it has a meaningful impact;
- The ESD Policy should apply to residential and non-residential development, with requirements aligned to development scale;
- The ESD Policy can and should capture single dwellings given the Peninsula is dominated by single dwelling development, and there is the opportunity to leverage the existing single dwelling permit triggers currently in the Planning Scheme;
- The ESD Policy should maximise ESD outcomes whilst ensuring fairness in regulatory burden and associated costs for both Council and the community (particularly for lower socio-economic or 'first-home' applicants within the Shire, ideally incentivising small-scale developments with a streamlined assessment pathway;
- Council should recognise that application of an ESD Policy to single dwellings represents a significant departure from standard practice elsewhere in Victoria and therefore may encounter some resistance from State Government and/or parts of the local community;
- Whilst implementing the ESD Policy will have administrative and cost implications for both Council and the community (primarily in terms of staff resourcing, assessment requirements and timeframes, and increased upfront capital costs for development), the overall benefits of ESD ultimately far out-weigh these costs;



### **3.1 (Cont.)**

- Council ought to engage with the community (applicants, developers, local consulting firms, etc) to increase understanding of ESD Policy requirements and support for ESD in general; and
- Council ought to implement proactive compliance of ESD permit conditions to maximise beneficial outcomes.

The ESD Policy and Guidelines included in the Amendment have been drafted based on the above findings and recommendations.

## **DISCUSSION**

### **Overview of Policy Guidelines and Amendment C232morn**

The proposed ESD Policy is contained at Attachment 4. It has been modelled on existing policies of other councils but tailored and strengthened to suit the local context and unique needs of the Mornington Peninsula.

The ESD Policy contains a series of objectives concerning energy performance, water resources, indoor environment quality, stormwater management, transport, waste management and urban ecology. It identifies which development types (that require a planning permit) must respond to the objectives of the Policy, including residential and non-residential development.

The ESD Policy requires applications to be accompanied by appropriate supporting information, dependant on the proposed scale of development. It also identifies corresponding assessment guidelines or tools that can be used to assess how the development complies with Policy objectives.

Application requirements include plans and supporting documents showing ESD initiatives, a Sustainable Design Assessment (SDA) (for medium-scale developments) or a Sustainability Management Plan (SMP) (for larger-scale developments).

Assessment guidelines / tools include proposed Deemed-to-Satisfy Guidelines (for small-scale development) and a mix of industry-standard tools for medium to larger-scale developments such as BESS, STORM, FirstRate, MUSIC and Green Star.

The ESD Policy lists decision guidelines and relevant reference documents, as well as specifying when the Policy comes into effect and when it expires.

Designed to streamline the assessment of small-scale developments, the Deemed-to-Satisfy Guidelines (Attachment 5) specify Council-endorsed ESD measures which – if integrated into a proposed development by a permit applicant – would negate the need for assessment of the development against the Policy during the statutory planning permit application process. That is, the development would be automatically ‘deemed-to-comply’ with the ESD Policy.

It is noted that the Guidelines are confined to ESD matters only. As such, the Guidelines do not negate the need for proposed developments to be assessed against all other pertinent provisions of the planning scheme (such as ResCode, applicable Design and Development Overlays, zone provisions and the like).

The Amendment seeks to introduce the Policy at Clause 22.25 of the Planning Policy Framework (PPF) in the Mornington Peninsula Planning Scheme (Attachment 6). It also proposes to include the Guidelines as a Reference Document at Clause 21.12 (Reference Documents) (Attachment 7). The Explanatory Report for the Amendment is appended at Attachment 8.

### **3.1 (Cont.)**

#### **ISSUES**

##### **Justification of Proposed Thresholds Application Requirements and the Deemed-to-Satisfy Guidelines**

Thresholds are an important aspect of the draft ESD Policy as they determine which developments (that need planning approval) should respond to ESD objectives. Resolving appropriate thresholds is complex as they must be strategically justified to receive support from State Government.

Consistent with policies from other councils, the thresholds within the proposed ESD Policy capture both residential and non-residential development; with application requirements (and the associated level of assessment) apportioned according to the scale of development. The crucial difference with the ESD Policy is that it captures single dwellings. This represents a significant departure from established policies elsewhere in Victoria which currently only apply to multi-unit residential developments. Whilst relatively ambitious, a single dwelling threshold is considered strategically justified and worth pursuing.

As confirmed by the research contained in the Background Report and Issues and Options Paper prepared by SDC, development on the Peninsula is dominated by single dwellings. Therefore, for the ESD Policy to have a meaningful impact, it should address single dwellings.

Relative to other local government authorities, the Shire is also uniquely placed to influence the environmental performance of single dwellings because of the prevalence of single dwelling permit triggers currently in the Planning Scheme. The ESD Policy can leverage these triggers to improve ESD outcomes for single dwellings beyond the minimum requirements of the Building Code.

The challenge for the ESD Policies development was determining whether all single dwellings should be included. The primary concern was balancing the desire to achieve best practice ESD without imposing unreasonable financial and/or regulatory burden on the community, particularly for lower socio-economic or 'first-home' applicants within the Shire. The research and advice from SDC indicated that this concern was largely unsubstantiated given:

- Many ESD interventions are cost-neutral and only require a more considered approach to building design (which would be facilitated by implementation of the ESD Policy in the planning process);
- ESD initiatives that require greater initial capital investment (such as solar panels, solar hot water systems or rainwater tanks) are cost-beneficial in the medium to long-term due to significantly reduced utility costs; and
- Many ESD assessment tools are free for the community to access, relatively easy to use and do not require the assistance of privately commissioned experts.

This position is consistent with the findings of the 2014 Environmentally Efficient Design Advisory Committee which concluded that local ESD planning policies were 'unlikely to impose an unreasonable regulatory cost burden on applicants' (Panel Report, 2014, page 65).

Therefore, single dwellings have been included in the proposed ESD Policy. However, given that small homes, by virtue, have a lesser ecological footprint, the proposed ESD Policy includes:

### **3.1 (Cont.)**

- Less onerous ESD requirements for small dwellings and small-scale extensions compared to larger homes; and
- A streamlined assessment process is employed to 'reward' and encourage small dwelling development (deemed to satisfy guidelines).

The ESD measures listed in the Deemed to Satisfy Guidelines are likely to achieve the goal of incentivising best practice ESD without unfairly overburdening small dwellings. The Guidelines call for the implementation of two out of three listed measures, which, whilst going beyond the BCA, provide flexibility in choice. Applicants that elect not to follow the guidelines, or propose an alternative ESD response, would undergo ESD assessment.

With respect to non-residential development, the proposed thresholds and requirements generally reflect development patterns on the Mornington Peninsula (and are not too dissimilar to existing policies within other planning schemes across Victoria).

Buildings that have no mechanical heating, cooling or ventilation systems or water or energy-using systems, fittings or appliances have been exempted from the ESD Policy as the opportunity for meaningful ESD intervention in these instances is minimal.

### **Potential State-wide ESD Policy**

A potential State-wide ESD Policy has been discussed for many years now. However, given the uncertainty around when such a State-wide policy may be introduced, and what such a policy will contain, it is considered appropriate to progress with a local Policy that addresses the local development conditions on the Peninsula.

### **Council Resourcing Implications**

To effectively administer the Policy once it is included in the planning scheme via the Amendment, Council would require (as a minimum):

- A dedicated staffing resource responsible for ESD assessment, referrals and compliance (equating from one to 2.7 full time equivalent);
- Licenses and subscriptions to ESD assessment tools (e.g. BESS, MUSIC, STORM, etc);
- Revised internal processes to ensure efficient and consistent ESD assessment and compliance; and
- Basic training for other relevant Council staff (planning, planning compliance, building, engineering, etc) in basic ESD assessment processes, tools and compliance.

The following additional measures were also recommended:

- Membership to CASBE for ongoing support, training and knowledge-sharing with other councils;
- Implementation of the draft Deemed-to-Satisfy Guidelines and introduction of self-reporting compliance mechanisms to reduce regulatory burden;
- Once appropriately resourced, voluntary trial and later adoption of the Sustainable Design Assessment in the Planning Process (SDAPP) framework and factsheets prior to Ministerial approval of the planning scheme amendment; and

**3.1 (Cont.)**

- Direct engagement with the community (applicants, developers, local consulting firms, etc) via a co-ordinated communications campaign to increase understanding of ESD policy requirements and support for ESD in general.

**OFFICER DIRECT OR INDIRECT INTEREST**

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

**CONCLUSION**

Amendment C232morn is required to introduce proposed local planning policy Clause 22.25: Environmentally Sustainable Development to the Mornington Peninsula Planning Scheme and list the proposed Deemed-to-Satisfy Guidelines as a reference document in Clause 21.12. The Amendment will help deliver on Council's commitment to foster a sustainable, healthy and resilient built environment on the Mornington Peninsula through the planning system.

**RECOMMENDATION**

1. That the Planning Services Committee seeks authorisation from the Minister for Planning under sections 8A of the *Planning and Environment Act 1987* to prepare Amendment C232morn to the Mornington Peninsula Planning Scheme generally in accordance with Attachments 4 to 9 of this report.
2. That the Planning Services Committee undertakes exhibition of proposed Amendment C232morn in accordance with section 19 of the *Planning and Environment Act 1987* following Ministerial authorisation.
3. That the Planning Services Committee authorises the Director of Planning and Building to make editorial changes to proposed Amendment C232morn documentation.

**COMMITTEE DECISION**

**Moved: Cr Brooks**  
**Seconded: Cr Roper**

**That the recommendation be adopted.**

**Carried Unanimously**

## 4 STATUTORY PLANNING REPORTS

### 4.1 Planning Application P19/1026 - 6 Napier Street, Rye - Residential Hotel

Prepared By	Graham Scott, Principal Planner
Authorised By	Director - Planning and Building
Document ID	A9665275
Attachment(s)	<ol style="list-style-type: none"> <li>1. Locality Plan</li> <li>2. Zoning Map</li> <li>3. Development Plans</li> <li>4. Traffic Report</li> <li>5. Arborist Report</li> <li>6. ESD Report</li> <li>7. Urban Context Report</li> <li>8. Design Advisory Panel (DAP) Report</li> <li>9. Extracts from Rye Township Plan</li> <li>10. Submissions (confidential)</li> </ol>
Application No.	P19/1026
Proposal	Development of a four-storey building above basement for use as a residential hotel and restaurant, removal of vegetation and reduction in car parking, generally in accordance with the submitted plans.
Melway Reference	168 F4
Zoning	Commercial 1 Zone
Applicant	SP Developments Vic Pty Ltd
Date of Application	29 May 2019

#### PURPOSE

The purpose of this report is to seek a decision from the Planning Services Committee (the Committee) regarding Planning Application P19/1026 (the Application) relating to the site at 6 Napier Street Rye. The application seeks planning permission for the development of a four-storey building above basement for use as a residential hotel and restaurant, removal of vegetation and reduction in car parking.

The Application was advertised via the display of three signs and letters to the owners/occupiers of the surrounding sites for which 19 objections have been received. The principal concerns relate to neighbourhood character, building height, car parking, amenity impacts and construction impacts.

The proposed use and development has been considered against the requirements of the Commercial 1 Zone (C1Z) and Vegetation Protection Overlay – Schedule 1 (VPO1), the relevant State and Local Planning Policies, and clause 52.06 – Car Parking of the Planning Scheme.

The assessment identifies that whilst the use of the land for a residential hotel and restaurant is largely consistent with the objectives of the Commercial 1 Zone and associated State and local policies for activity centres, the scale of the proposal is inconsistent with the existing low scale character of the area, and there will be insufficient car parking for the proposed uses. The proposed four-storey height of the building is inconsistent with the requirements of Clause 21.07-3 (Activity Centres), clause 22.02 (Activity Centres) and the Rye Township Plan. The

**4.1 (Cont.)**

proposed building is too high for the designated hierarchy of the Rye Activity Centre and the proposed restaurant and ancillary bar uses will generate an additional car parking demand which will exceed the available car parking within the area. It is therefore recommended that the Planning Services Committee resolves to issue a Notice of Refusal for Planning Application P19/1026.

<b>Proposal</b>	Development of a four-storey building above basement for use as a residential hotel and restaurant, removal of vegetation and reduction in car parking, generally in accordance with the submitted plans.
<b>Zoning and Overlays</b>	Commercial 1 Zone (C1Z) and Vegetation Protection Overlay – Schedule 1 (VPO1)
<b>Permit Triggers</b>	<ul style="list-style-type: none"> <li>• Clause 34.01-1 (C1Z) – use of the land for residential hotel as the frontage at ground level exceed 2 metres;</li> <li>• Clause 34.01-4 (C1Z) – construct a building or carry out works;</li> <li>• Clause 42.02 (VPO1) – removal of vegetation; and</li> <li>• Clause 52.06 (Car parking) – reduction in car parking.</li> </ul>
<b>Advertising</b>	Notification of the application was via the display of a notice on each of the three street frontages and letters to the surrounding property owners and occupiers.
<b>Submissions</b>	19 objections received.
<b>Consultation</b>	No, as the Application is proposed to be refused.
<b>Key Issues</b>	<ul style="list-style-type: none"> <li>• Built form and height;</li> <li>• Alignment with the Rye Township Plan; and</li> <li>• Adequacy of car parking.</li> </ul>
<b>Recommendation</b>	That a Notice of Refusal be issued.

**BACKGROUND**

**Previous Permits**

Planning permit P92/0948 relating to the use of the subject land as a funeral parlour was issued on 12 January 1993.

**Existing Conditions**

The subject site is located on the north-west corner of Nelson Street and Napier Street, in the commercial area of Rye.

The site has a frontage of 25.1 metres to Napier Street and frontage of 40.6 metres to Nelson Street and a total area of 1,023 square metres. An un-named laneway adjoins the west boundary of the site. The land is formally identified as Lot 1 on Title Plan 392124C.

#### **4.1 (Cont.)**

The land is relatively flat and there is a Swamp Paperbark tree (4 metres) in the Nelson Street nature strip are three trees onsite consisting of a Common Olive (5 metres) and two Pittosporum (4 metres), which all have low landscape significance.

The subject site currently contains a single storey weatherboard building located centrally within the site with a garage in the north-west corner. The site was previously used as a funeral home and a dwelling. Vehicle access is from two vehicle crossings, one to each road frontage.

The Napier Street frontage is currently unfenced, whilst part of the Nelson Street frontage has a 1.8-metre-high timber fence.

#### **Surrounding Land**

The subject land is within the commercial area of Rye which consists of cafes, restaurants, diverse small-scale retail outlets, community uses and car parking areas. The site is in proximity to public open spaces, retail facilities, public transport and community facilities.

The Rye commercial area is primarily a narrow strip along the south side of Point Nepean Road and for the most part extends in depth one street block back to Nelson Street. Napier Street has been closed to traffic where it intersects with Point Nepean Road.

#### ***North***

To the north at 2-4 Napier Street is a double storey building used as a residential hotel, setback approximately 4.2 metres from the shared boundary. There is a double width crossover and driveway adjacent to the common boundary which provides access to undercroft parking.

Part of the building has zero setback to Napier Street and comprises varied roof forms including pitched, gabled and bullnose verandah. Additional vehicle access is provided via a single width crossover located centrally within the frontage.

#### ***East***

Napier Street to the east provides 90-degree street parking within the centre median as well as parallel parking located at the kerb side. On the opposite side are single storey retail buildings.

#### ***South***

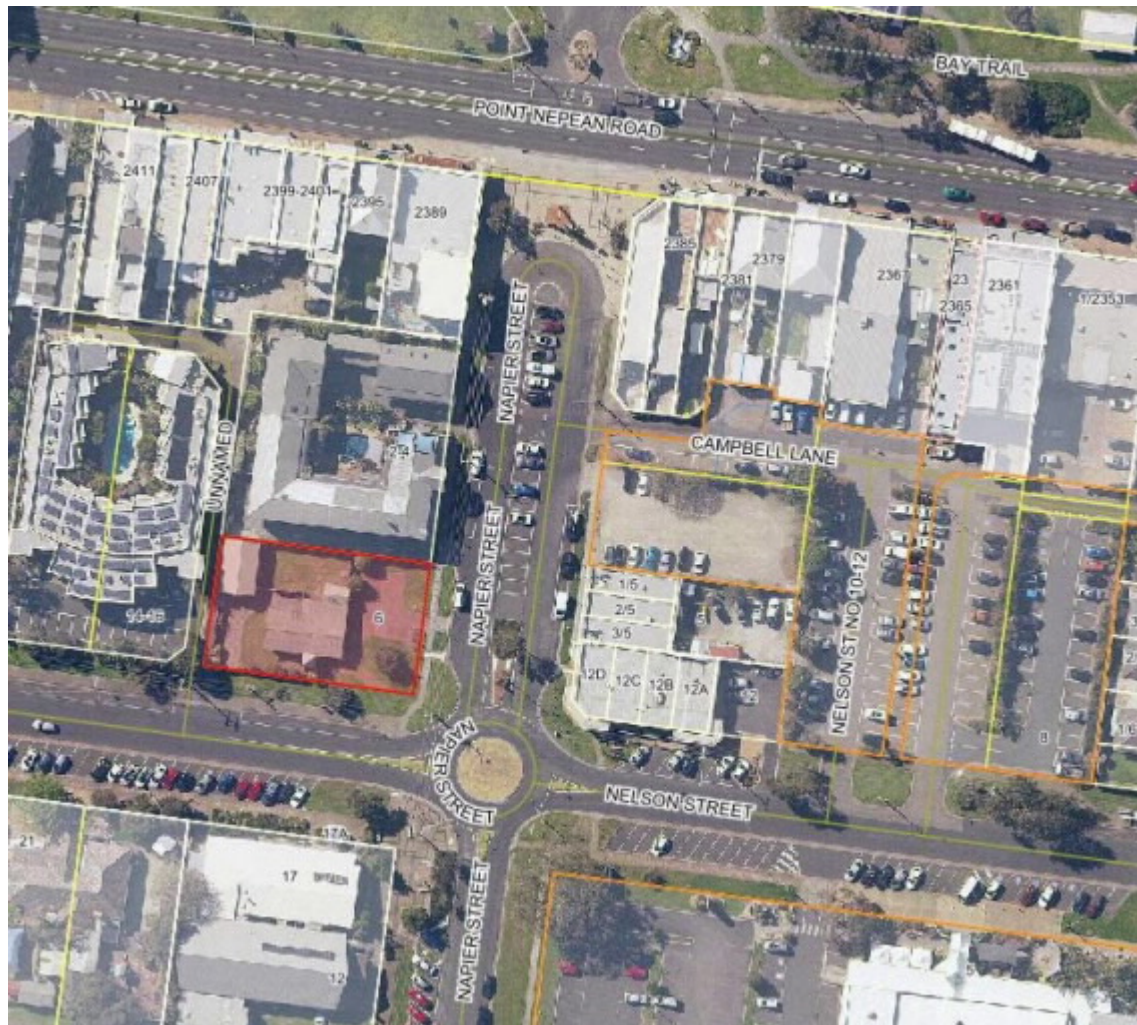
A wide nature strip and footpath separate the south boundary from Nelson Street. Parallel kerb side parking is provided along the northern side (which is used by the mobile library on Thursday mornings) and angled parking is provided along the southern side of Nelson Street. On the opposite side of the street is the Rye Civic Hall.

#### ***West***

The laneway to the west is 3.2 metres wide and provides vehicle access to the adjoining property at 14-16 Nelson Street and to several commercial tenancies fronting the Point Nepean Highway to the north.

The property at 14-16 Nelson Street contains a double-storey residential hotel setback approximately 10 metres from the Nelson Street frontage. The front setback is used for car parking and landscaping which extends into the nature strip.

## 4.1 (Cont.)

**AERIAL PHOTOGRAPH OF THE SUBJECT SITE AND SURROUNDING LAND****PROPOSAL**

The Application proposes the demolition of the existing development on the land (no permit for demolition) to facilitate the development of a four-storey building above two levels of basement for use as a residential hotel and restaurant, removal of vegetation and reduction in car parking.

The development is proposed to contain the following features:

- Residential hotel containing 42 guest rooms over four levels;
- An ancillary bar (50 square metres) with capacity for 30 seats and a restaurant (295 square metres) for 75 patrons at ground floor fronting Napier Street;
- The main pedestrian entrance to the residential hotel will be from Nelson Street;
- Two levels of basement car parking with 44 spaces and eight bicycle spaces; and
- Vehicle access via the rear laneway, accessed off Nelson Street.

Further details of the development are as follows:



#### **4.1 (Cont.)**

##### ***Basement 1***

Basement 1 comprises a total of 22 carparking spaces (inclusive of a single DDA space) which are allocated to guests of the residential hotel, a total of eight bicycle spaces, fire pumps, water metres, lifts and stairs.

##### ***Basement 2***

Basement 2 is the lower basement floor, comprising a total of 21 carparking spaces which are allocated to guests of the residential hotel, a store area, tanks, lifts and stairs.

The basement levels will occupy the entire site boundaries.

##### ***Ground Floor***

The ground floor consists of a restaurant and bar with a floor area of 295 square metres, hotel reception/lounge, bathrooms, three hotel rooms, staff area, commercial kitchen, loading bay and bin storage. The main entry to the hotel lounge is from Nelson Street, with the entrance to the restaurant and bar being from Napier Street. The courtyards of the hotel rooms open to Nelson Street with no access to the street from the rooms. One car space is provided adjoining the laneway.

##### ***First Floor and Second Floor (Levels 2 and 3)***

Each of the first and second floors comprise 15 hotel rooms which vary in size and typology, comprising two single bedrooms without balcony, 11 single bedrooms with small balcony, and two single bedrooms with large corner balcony.

At the first and second floors, the western wall is setback 4.5 metres from the western boundary; the southern and eastern walls are setback 2.8 metres from the Nelson Street and Napier Street frontages respectively. The northern wall is built to the northern boundary.

##### ***Third Floor (Level 4)***

The third floor comprises nine hotel rooms which vary in size and typology, consisting of two single bedrooms without balcony, three single bedrooms with small balconies and four single bedrooms with large corner balconies.

The southern and eastern walls are setback 4.5 metres from the Nelson Street and Napier Street frontages respectively. The northern wall is setback 4.5 metres from the northern boundary and the western wall is setback 4.5 metres from the western boundary.

##### **Built Form and Materials**

The building walls consist of a combination of precast concrete, fibre cement sheet, timber cladding, fabricated metal cladding, canvas awnings and aluminium windows and door frames. The roof is flat and constructed of metal deck.

Colours are generally of muted tones. These subtler tones are then punctuated through the introduction of feature awnings/blinds which are proposed through the central bands of the façade.

The building will have a maximum height of 14.9 metres, measured from the natural ground level to the highest part of the building.

**4.1 (Cont.)****Parking Provision**

44 onsite car parking spaces are proposed to be allocated as follows:

- Hotel guests – 38 spaces (plus the ground floor short-term space) for 42 guest rooms;
- Hotel staff – three spaces;
- Restaurant staff – two spaces; and
- No parking is provided for restaurant guests.

**Parking Loading Bay and Bin Storage Access**

Vehicular access to the basement, loading bay and bin storage area is proposed from the laneway adjoining the western boundary which connects to Nelson Street to the south-west of the site.

**Waste Collection**

Waste will be collected onsite from the loading bay by a private contractor utilising a mini rear-loading waste collection vehicle.

**Vegetation Removal**

It is proposed to remove the shrub in the Nelson Street nature-strip, and three trees from within the property.

**NOTIFICATION AND CONSULTATION****Notification**

The Application was advertised by way of mail to adjoining landowners and occupiers, as well as three enlarged signs (one located at the Napier Street front age, one at the Nelson Street site boundary and one at the laneway boundary of the site).

**Submissions**

Nineteen objections have been received in relation to the proposal. The issues raised in the objections can be summarised as:

- Contrary to the intentions of the Rye Township Plan (2017);
- Neighbourhood character;
- Building height;
- Setbacks;
- Intrusion into proposed Napier Street Plaza;
- Unappealing design detail;
- Maintenance concern;
- Insufficient car parking;

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**4.1 (Cont.)**

- Impacts to the laneway;
- Impact on views;
- Noise and overlooking impacts;
- Groundwater impacts;
- Does not promote sustainability;
- Will set a precedent;
- Additional hotel is not required;
- Restaurant is too small for proposed patron numbers;
- Room sizes are too small;
- Impact on property values;
- Impacts to power lines;
- Impacts to the mobile library;
- Asbestos removal; and
- Construction impacts.

The objector concerns will be addressed in this report.

**Consultation**

There was no consultation meeting relating to the Application.

**REFERRALS**

**External Referrals**

No referral to any external referral authority is required by the Mornington Planning Scheme relating to this Application.

***Design Advisory Panel***

The Design Advisory Panel (DAP) was generally supportive of the proposal and commended the overall layout of the site. The panel advised that the development will make a positive contribution to Rye and will become a catalyst for the future renewal of existing commercial buildings throughout the town.

The panel did however express the following concerns:

- Landscaping:
  - Limited landscaping within the public/private realm;
  - No allowance has been made for deep soil planting; and
  - Proposed rooftop landscape on the first floor (north side) is unlikely to be viable.

**4.1 (Cont.)**

- The onsite outdoor dining area is constrained and requires greater activation and interaction with the proposed public plaza;
- The north facing blank wall is inappropriate;
- The plant room reads as a fifth storey;
- Materials:
  - While the DAP appreciated the sense of ‘fun’ that the awnings provide, the use of canvas awnings is difficult in a harsh coastal environment. There is a risk that the colours will fade quickly and the material will deteriorate in this environment; and
  - Greater differentiation is required between the street level awnings and the blinds on the two middle floors.

**Internal Referrals**

***Urban Designer***

The Mornington Peninsula Shire’s (the Shire’s) Urban Designer does not support the proposal.

The Urban Designer advised that whilst the use provides a good opportunity for activation of Napier Street Plaza and to provide a safe and vibrant space, the following concerns make the proposal inappropriate:

- The scale of the building is inconsistent with the existing or preferred character for the area of Rye. The fourth level is at odds with the draft Rye Urban Design Guidelines (RUDG), which is based on a detailed built form analysis that has identified that the precinct (along Napier Street), should be no higher than three storeys;
- Whilst there are two specific sites nominated in the RUDG for four-storey development in Rye, these are large sites that allow for significant setbacks to the upper floor, effectively ‘hiding’ it from view. The subject site is too small to allow the fourth floor to be appropriately setback so as to reduce its visibility and dominance on the surrounding context;
- The large northern boundary wall should be broken up to reduce its bulk, and the upper floors setback further from this boundary to allow for greater articulation;
- The ‘framing’ of the building in steel is inconsistent with the preferred materials palette for commercial development in Rye. Ideally the balustrades and cladding should utilise natural materials and a softer/muted materials palette;
- While the use of canvas on the elevations will effectively deal with sun shading, the material is likely to fade and deteriorate quickly given the strong coastal winds and sun that affects this site; and
- The landscape treatment fails to demonstrate adequate interfaces with the public realm. There is a lack of detail on what is proposed outside the title boundaries and more opportunities should be provided for opening the ground floor glazing up to the Napier Street Plaza.

#### **4.1 (Cont.)**

##### ***Traffic***

Provided comments in relation to the following:

- The use of the lane and vehicle access to the basement, loading bay and bin collection areas are satisfactory;
- The basement layout is acceptable subject to minor modifications; and
- The parking studies collected on Friday, 7 December 2018 and Saturday, 8 December 2018 demonstrate that on those days, on-street parking in the immediate vicinity of the site was heavily utilised. While the off-street public car parks to the north-east of the Napier Street and Nelson Street intersection was able to accommodate the demand on the Friday evening, on the Saturday evening patron parking may be pushed further afield, including into residential areas.

##### ***Development Engineering***

No objection, subject to specified conditions on any approval to be issued.

##### ***Health***

No objection, subject to specified conditions on any approval to be issued.

#### **PLANNING SCHEME PROVISIONS**

##### **Permit Triggers**

Clause 34.01-1 (C1Z)

- Use of the land for Residential Hotel (nested under Residential Building) as the proposed residential hotel will have a ground floor level frontage that exceeds two metres. No planning permit is required for the use of the land for a Restaurant.

Clause 34.01-4 (C1Z)

- Buildings and works.

Clause 42.02 (VPO1)

- Vegetation removal.

Clause 52.06-5 (Car parking)

- Reduction in car parking

<b>State Planning Policy Framework</b>
Clause 11.02-1 Supply of urban land
Clause 11.02-2S Structure planning
Clause 11.03-1S Activity centres
Clause 11.03-5S Distinctive areas and landscapes

**4.1 (Cont.)**

Clause 12.02-1S Protection of coastal areas
Clause 12.02-3S Bays
Clause 15.01-1S Urban design
Clause 15.01-2S Building design
Clause 15.01-5S Neighbourhood character
Clause 15.02 Sustainable Development
Clause 15.03-2S Aboriginal Cultural Heritage
Clause 17.02-1S Business
Clause 18.02-4S Car parking
<b>Local Planning Policy Framework</b>
Clause 21.03 Mornington Peninsula – Regional Role and Local Vision
Clause 21.04 Mornington Peninsula Strategic Framework Plan
Clause 21.06 Strategic Framework and the Peninsula’s Settlement Pattern
Clause 21.07 Guiding Future Township Development
Clause 21.08 Foreshores and Coastal Areas
Clause 22.02 Activity Centres
Clause 22.05 Aboriginal Cultural Heritage
Clause 22.11 Mornington Peninsula Fire protection Policy
Clause 22.13 Township Environment

**Others**

- Clause 52.06 Car Parking;
- Clause 52.34 Bicycle Facilities;
- Clause 53.18 Stormwater Management in Urban Development; and
- Clause 65.01 Approval of an application or plan.

**Adopted Strategies**

- Mornington Peninsula Activity Centres Strategy – 2005;
- Rye Township Plan – November 2017; and
- Mornington Peninsula Activity Centres Strategy – May 2018.

#### **4.1 (Cont.)**

##### **Other Matters**

- Clause 52.05 Signs – No signage is proposed as a part of this application. A permit is not required for up to 8 square metres of business identification signage to the premises; and
- Clause 52.27 Licensed Premises – The application does not seek approval to use the land to sell or consume liquor. Separate planning approval would be required for this use before the premises may obtain a licence under the Liquor Control Reform Act 1998.

### **CONSIDERATION**

#### **State and Local Planning Policy**

Policies in the Planning Policy Framework (PPF) no longer classify activity centres into hierarchies. In this regard, the classification of activity centres into hierarchies has been left to the policies in the LPPF.

Clauses 21.07-3 (Activity Centres) and 22.02 (Activity Centres) provide clear direction as to the current or future roles of activity centres in the Shire, including the Rye Town Centre. The hierarchies of activity centres in the Shire are: Major Activity Centres, Large Town Activity Centres, Small Town Activity Centres, Local Activity Centres and Convenient Centres. clause 21.07-3 designates the Rye Activity Centre as a Large Town Activity Centre. Major Activity Centres with the Shire are limited to Mornington, Rosebud and Hastings.

When assessing the Application against the policies in the Planning Policy Framework, there is clear support for the development of the land for a mixed use commercial development pursuant to clauses 11.02-1S (Supply of urban land), 11.03-1S (Activity centres), and 21.07-3 and 22.02 (Activity centres) of the Scheme, as the site is located within the Rye Town Centre and is serviced by infrastructure and community services including public transport by way of buses, with a bus stop location approximately 100 metres from the subject site on bus routes 786, 787 and 788. This ensures efficient use of infrastructure and supports Council's preference that established activity centres are able to accommodate a broad range of land uses to give the community access to a wide range of goods and services and increase local employment opportunities.

The subject site is commercially zoned land that is well located within the Rye Town Centre and is currently considered to be underutilised and thus well suitable for redevelopment. The Commercial 1 zone encourages mixed use functions as proposed, and as such, the proposal partly supports the objectives of ensuring a sufficient supply of land for residential, commercial and retail uses. However, urban consolidation and activity centre redevelopment to create more vibrant centres are not the only relevant planning considerations; good design, neighbourhood character and amenity considerations are equally as important, and must also be considered to ensure any new development responds to its built form and policy context.

Applications are encouraged to give effect to any structure plan, urban design framework or streetscape guidelines for individual activity centres that are included as a Reference Document in clause 21.12 and elsewhere in the Planning Scheme. It should also be ensured that the use and development of land in activity centres contribute to the character, scale and urban design quality of the centres, enhances the public realm and respects heritage values.

It is noted that whilst there is currently no structure plan for the Rye Activity Centre that has been formally incorporated into the Planning Scheme, the Rye Township Plan has been adopted by Council (in December 2017), and the draft Rye Urban Design Guidelines, which are currently being developed by Council, have been prepared in draft form as an implementation tool of the Rye Township Plan (which will be discussed below in relation to

#### **4.1 (Cont.)**

clause 22.02). In accordance with section 60 (1A) (g) of the *Planning and Environment Act 1987* (the Planning Act), before deciding on an application, the Responsible Authority may consider any strategic plan, policy statement, code or guideline which has been adopted by a municipal council. The adopted Rye Township Plan can therefore be afforded some weight under this part of the Planning Act, despite it not being incorporated in the Planning Scheme as a reference document.

The proposal consists of a ground floor restaurant of 295 square metres for 75 patrons (although the plans show a combined restaurant and bar with a total seating capacity of 100) and a residential hotel of 42 single bedroom units across 4 levels, including the provision of 44 car spaces on two basement levels.

The proposed four-storey built form of the building will not be respectful of the existing built form character of the centre, which comprises mainly single and double storey buildings. This is the strong view held by the objectors and is supported by Shire officers. As will be discussed in detail later in the report, the proposal is inconsistent with the preferred neighbourhood character for the area. It fails to comply with the building design strategies at clause 15.01-2S of the Scheme which seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm. In this regard, the proposed built form does not respond positively or contribute to the strategic and cultural context of its location and does not provide landscaping that responds to its site context or enhances the built form. The intensity of the proposed development is not consistent with the designated hierarchy of this activity centre, and the strategic direction set out in the adopted Township Plan insofar as it relates to building height within the activity centre.

Clause 15.01-1S requires development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate. It requires consideration be given to the *Urban Design Guidelines for Victoria* (Department of Environment, Land, Water and Planning, 2017). These guidelines aim to create neighbourhoods that foster community interaction and make it easy for people of all ages and abilities to live healthy lifestyles and engage in regular physical activity.

Section 5.1 (Buildings in activity centres) contains a number of objectives which recognise that the physical form and character of buildings shape the public spaces of a place.

- Objective 5.1.1 - To ensure the building scale and form supports the context and preferred future character of the activity centre, includes advice to shape the building scale and form to support the existing character or the preferred future character of the area.

In this instance the proposed scale and form of the development at four storeys is inconsistent with both the existing and preferred future character of the area.

- Objective 5.1.7 - To ensure the building facade detail supports the context or preferred future character of the activity centre, recognises that larger buildings are more visible from the street and from a distance, and that their facades can contribute to the character of the area and reinforce place identity. It provided advice that where a building has a solid external wall facing a street or public place, detail the walls to provide an interesting appearance.

In this instance the Application proposes a blank wall in the north elevation which will be highly visible from Napier Street, and will have a significant negative impact on the character of the area.

- Objective 5.1.8 - To achieve sustainable buildings in activity centres, includes advice to use durable, sustainable and attractive materials that will minimise maintenance and



**4.1 (Cont.)**

contribute to the character of the area. It also requires development to collect and use stormwater and recycled water for landscape irrigation, toilet flushing and cleaning.

In this instance both the Design Advisory Panel and the Shire's Urban Design officer raised concerns with the durability and maintenance of the awnings, which form a key element of the architectural features of the building. This issue was also raised by a number of the objectors.

The recycling of water is consistent with the objectives of clause 15.02 - Sustainable Development, which also requires development to improve the energy, water and waste performance of buildings and subdivisions through environmentally sustainable development. The Application includes a Sustainability Management Plan which seeks to ensure that the proposal meets best practice environmental outcomes, including water conservation.

***Municipal Strategic Statement***

Clause 21.04 Mornington Peninsula Strategic Framework Plan

The Strategic Framework Plan identifies locations where specific land use outcomes will be supported and promoted as well as areas where some forms of use and development will be excluded. The aim is to define a positive role for each area of the Peninsula having regard to the particular characteristics of each area and the full range of the community's needs and values.

A relevant major strategic direction identified in the Strategic Framework Plan is supporting and strengthening the hierarchy of towns and villages on the Peninsula, having regard to their individual character and functions; their relationships to each other and to adjacent rural, coastal and port development areas.

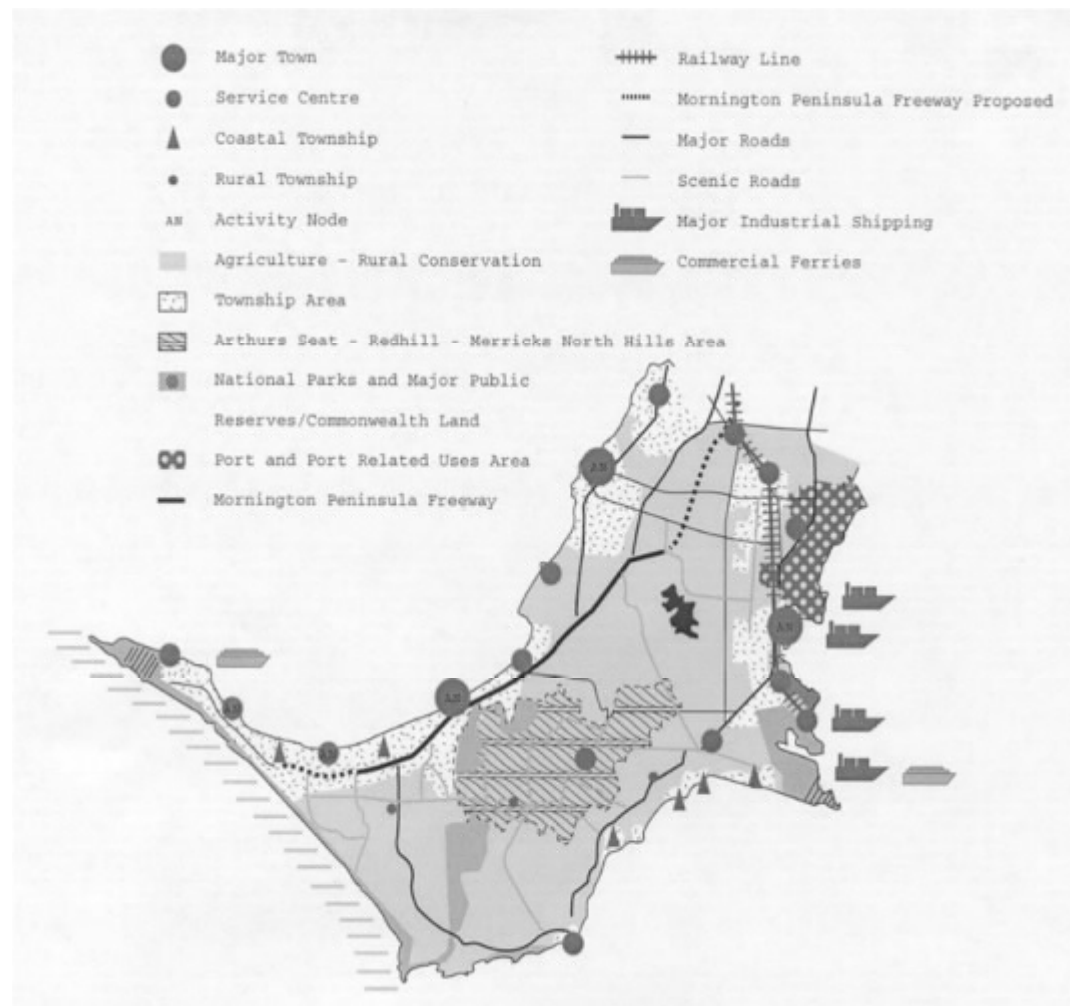
The Plan identified the towns of the Mornington Peninsula as:

- Major Town;
- Service Centre;
- Coastal Township;
- Rural Township; and
- Activity Nodes (as described in the Victorian Coastal Strategy 2014).

Rye is identified as both a Service Centre and an Activity Node, which is lower in the hierarchy than Hastings, Mornington and Rosebud, which are identified as both Major Towns and Activity Nodes.

## 4.1 (Cont.)

## Mornington Peninsula Strategic Framework Plan



Having mixed-use commercial developments within the commercial precinct in Rye is consistent with the Strategic Framework Plan for the Shire, and the designation of Rye as an Activity Node (which is noted as an area within settlements that are adjacent to the activity centres and provides for community recreation facilities and tourism activities). However, the proposed extent of built form is inconsistent with Rye being a Service Centre and not a Major Town, as it will not be respectful of the existing character of the activity centre or to the proposed future character of the area as indicated in the adopted Rye Township Plan.

**Clause 21.07 – Guiding Future Township Development**

Clause 21.07 – Guiding Future Township Development, particularly clause 21.07-3 Activity Centres provides the overarching strategic direction for the growth and development of the municipality's activity centres. Table 1 within the clause classifies the centres within the shire against a range of criteria that include the population catchment, the total Leasable Floor Area and the mix of retail, office-based and other activity.

The hierarchy of activity centres within Table 1 are:

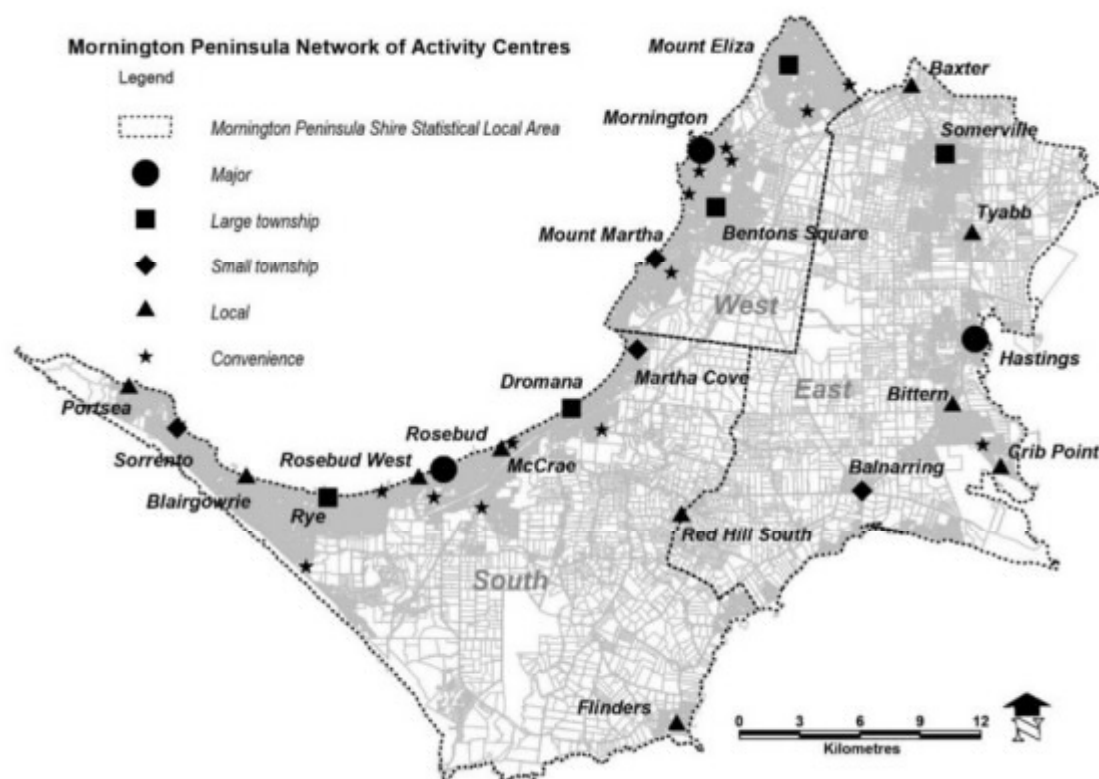
- Major;
- Township Large;

#### 4.1 (Cont.)

- Township Small;
- Local; and
- Convenience.

Rye is classified as Township Large, having a lower classification than the designated Major Activity Centres of Mornington, Rosebud and Hastings.

**Map to Clause 21.07-3 - Hierarchy of activity centres on the Mornington Peninsula**



Providing a mixed-use commercial development on the subject site is consistent with the objective of concentrating a broad range of activities in Major and Large Township Activity Centres, as this generates multiplier effects and contributes to the 'critical-mass' for business and employment opportunities. It provides certainty needed for investment decisions for commercial development and will also protect the smaller centres from inappropriate levels of commercial development. However, development within Large Township centres such as Rye are required to complement the role of the Peninsula's major townships in a way that is cognisant of local character.

Clause 21.07-3 recognises that the character of activity centres plays an important role in the sense of place and identity of individual townships and communities. New development should contribute to the character of centres and be attractive and functional. It should enhance the urban design of centres, which is a key factor in improving the attractiveness of activity centres for residents and visitors. Consideration must be given to the impact of new commercial developments on the character, scale, sense of place, transport, parking issues and infrastructure of existing centres. This is vital for the economic performance of these centres.

The clause recognises that structure plans are appropriate tools to manage growth in activity centres, and that they are required to outline where growth can be accommodated, to show how to broaden the mix of uses, to improve the quality of urban design and to integrate

**4.1 (Cont.)**

transport options in a way that suits individual activity centres. They guide the use and development of land to ensure that new development in activity centres contributes to the existing character and scale of activity centres.

The proposed development will be inconsistent with the requirements of clause 21.07-3 – Activity centres. Whilst the proposal is appropriately located in an activity centre of a large township, the design of the mixed-use building will not contribute positively to the character of the centre. This is because the proposed four-storey height of the building has not responded positively to the preferred neighbourhood character as described in the adopted Rye Township Plan, which recommends a maximum building height of three storeys (provided the third floor is visually recessive and set back) in the Rye Town Centre.

Furthermore, the proposal also fails to respond appropriately to the hierarchy of activity centres within the Shire by proposing a building with a Large Township which is higher than the buildings typically allowed in the Major centres of Rosebud, Mornington and Hastings, which all have locals policies for building heights:

- Clause 22.18 (Mornington Activity Centre Policy) directs development within Mornington to be consistent with the *Mornington Activity Centre Structure Plan – A plan for a coastal town (MPSC July 2007)*, which is a reference document at clause 21.12, and has 2-3 storey height controls (except for three sites upon which 4 storeys can be considered).
- Clause 22.23 (Rosebud Activity Centre Policy) directs development within Rosebud to be consistent with the *Rosebud Activity Centre Structure Plan - October 2017*, which has a mix of 3-storey and 4-storey height controls.
- Clause 22.24 (Hastings Activity Centre Policy) directs development within Hastings to be consistent with the *Hastings Town Centre Structure Plan – October 2017*, which has height controls up to 3 storeys.

**Clause 22.02 – Activity Centres**

Clause 22.02 applies to all commercially zoned land within the municipality and provides local guidance that builds upon the strategic intent of clause 21.07. The objectives of the clause seek to achieve urban design excellence in all centres, as well as the express support for 'shop-top' residential accommodation uses within the Peninsula's activity centre network. The clause also provides overarching design standards for all new development across the municipality, a retention of the existing building line to the street, and a setback of 5 metres from any residentially-zoned boundary.

The table to clause 22.02-3 contains recommended design standards for activity centres within the Shire, apart from land within the Commercial 1 Zone and Mixed-Use Zone that are located within the Major Activity Centres of Mornington, Hastings and Rosebud. As the subject site is within the Rye Activity Centre, the requirements of the clause are applicable to this proposal. The maximum building height specified in the table is 8 metres, or as specified in an adopted local centre plan. The adopted local centre plan for the Rye Activity Centre is the Rye Township Plan, which in Section 4.5 nominates the commercial area as having a 3-storey maximum height limit with the third storey to be highly recessed. This is supported by the draft Rye Urban Design Guidelines, which recommends a maximum height of three storeys and 11.5 metres for the subject site. This is lower than the four storeys and 14.9 metres proposed by this Application.

The site is appropriately located in an activity centre that is convenient to a range of services and public transport, and as such there is clear policy directions to support the intensive redevelopment of the site for a mixed-use development. Further, the proposal will facilitate the provision of additional retail premises and increase employment opportunities within the

#### **4.1 (Cont.)**

activity centre as required by the clause. However, the visual prominence of the fourth level of the building and its visual bulk to the adjoining streets is inconsistent with the local identity and the sense-of-place of the activity centre. The maximum building height of 14.9 metres is inconsistent with the maximum height requirements of the adopted local centre plan for the area.

Clause 21.08 (Foreshores and Coastal Areas) contains a strategy to identify coastal areas at risk of natural process impacts including potential hazards associated with coastal erosion, flooding, sea level rise and storm surge, including from the impacts of climate change.

Clause 12.02-1S (Protection of Coastal Areas) seeks to recognise the value of coastal areas to the community, conserve and enhance coastal areas and ensure sustainable use of natural coastal resources. It contains a strategy to avoid disturbance of coastal acid sulfate soils.

The area of Rye has been identified as potentially containing coastal acid sulfate soils (CASS), which occur naturally along many parts of Victoria's coastal zone which, if left undisturbed, are largely benign. However, if disturbed (such as for the creation of a basement), they can react with oxygen and produce sulfuric acid. This can be detrimental to the environment with impacts that include acidification of water and soil, de-oxygenation of water, poor water quality, dissolution of soil, rock and concrete, and corrosion of metals.

Clause 12.02-3S (Bays) requires Council to consider the *Victorian Coastal Strategy 2014* when assessing applications.

Section 2.2 Coastal Settlements and Communities states that:

- It is policy to identify and avoid development in areas susceptible to current and future flooding, landslip, erosion, bushfire or geotechnical risk and avoid disturbing CASS.

It further states in policy for decision making that:

8. Decision-making regarding coastal acid sulfate soils (CASS) must follow the principles in the Victorian Coastal Acid Sulfate Soils Strategy 2009 (DSE, 2009) and use the CASS risk identification and assessment process detailed in the Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulfate Soils 2010 (DSE (b) 2010).

The Victorian Coastal Acid Sulfate Soils Strategy 2009 states that its aim is to protect the environment, humans and infrastructure from the potentially harmful effects of disturbing coastal acid sulfate soils. It proposes a series of ongoing actions to help land managers and other authorities address these issues. Avoiding disturbing acid sulfate soils in our coastal and estuarine areas is a major focus of this strategy. The strategy notes that:

The risks and impacts of disturbing CASS may vary between sites and affect the environment well beyond a disturbed site. The onus is on the potential disturber of a site to prove that CASS are not present or will not be activated. This will require detailed site investigations.

Section 9 (Decision-making principles for managing CASS) of the strategy contains number of principles including to:

**Avoid** disturbing CASS; and,

**Discourage** the intensification of use and / or development in areas with potential to contain CASS.

#### **4.1 (Cont.)**

The Guidelines detail a 4-step process for assessing and managing CASS. The process requires that a Preliminary CASS Hazard Assessment be undertaken to determine the presence of CASS. Depending on the outcomes of the process, a CASS Management Plan in accordance with the guidelines, or an Environmental Management Plan to the satisfaction of the EPA, may be required.

A condition of any approval should require all necessary reports in accordance with the 4-step process within the Guidelines.

#### **Cultural Heritage**

Clause 22.05 (Aboriginal Cultural Heritage) has an objective to protect sites and features of aboriginal cultural heritage and archaeological significance.

The land is identified as being within an area of cultural heritage sensitivity and the construction of a mixed-use development, consisting of a residential hotel and restaurant on a lot is a high impact activity under the *Aboriginal Heritage Regulations*, 2018.

The Applicant submitted a letter dated 4 September 2019 from Bunurong Land Council Aboriginal Corporation which is the Registered Aboriginal Party (the RAP) for the area indicating that the submitted Cultural Heritage Management Plan (CHMP) 16469 for a Residential Hotel Development at the subject site has been evaluated and approved under Section 63(1)(a)(i) of the *Aboriginal Heritage Act*.

A condition of any approval granted should require that the requirements of the CHMP be followed at all times.

#### **Other documents**

##### ***The Mornington Peninsula Shire Activity Centres Strategy (2005)***

The Mornington Peninsula Shire Activity Centres Strategy (2005) is a reference document at clause 21.12, being linked to the Shire's Planning Scheme in clause 21.07-3 *Activity Centres*. The Strategy was prepared to provide a comprehensive framework for the planning and management of activity centres in the Shire over the period 2004- 2031. The Strategy recognises that there is opportunity for activity centre development, to accommodate additional growth, improve the level of services and facilities provided and to support the local economy and jobs growth. The Policy, among other things, makes reference to the hierarchy of Activity Centres in *Melbourne 2030: Planning for Sustainable Growth (Department of Infrastructure, 2002)*, which identified the Major Activity Centres within the Shire as Mornington, Rosebud and Hastings, with Rye being identified as a Neighbourhood Activity Centre, which are termed 'township' centres in the context of the study.

The Rye town centre is classified to be a Township Town Centre which is required to perform neighbourhood activity centre roles. The township centres fulfil a wide range of important retail, service, social and community functions and enhance the prosperity and lifestyle of the Shire. The policy noted that in 2005 the Rye township centre featured 104 retail and commercial tenants and was the sixth largest commercial centre overall on the Peninsula.

##### ***The Mornington Peninsula Activity Centres Strategy (2018)***

The Mornington Peninsula Activity Centres Strategy (2018) is a review of, and update on, The Mornington Peninsula Shire Activity Centres Strategy (2005). A key element of the previous Strategy is the identification of an activity centres hierarchy where centres of different hierarchical levels perform different but complementary roles. The hierarchy identifies the activity centres in Mornington, Rosebud and Hastings as having a major role in meeting the expenditure needs of residents in the western, southern and eastern regions of the Peninsula

#### **4.1 (Cont.)**

respectively. This is complemented by lower-tiered activity centres that primarily service residents within the township or surrounding neighbourhoods.

The 2018 Strategy continues to adopt the hierarchy approach towards guiding activity centre development on the Mornington Peninsula. It envisions that the centres will continue to be the focus for new retail development and key locations for businesses, community activity and social interaction, and that future development will respect and be appropriate to the character, role and function of each centre. The Strategy classifies Mornington, Rosebud and Hastings as Major Activity Centres and Rye as a Large Township Activity Centre.

The key objectives of the 2018 Strategy include the following:

- Continue to support the activity centres hierarchy;
- Provide an effective and efficient activity centres hierarchy that provides high levels of service to residents, visitors and tourists;
- Consolidate a diverse range of activities in activity centres;
- Confirm the primacy of Mornington Peninsula's Major Activity Centres; and
- Support the growth of existing centres to meet increased demand.

The Strategy recommended that Structure Plans be prepared for each of the major activity centres and for each of the township activity centres, to establish clearly defined physical frameworks for the future planning, conservation and development of the centres, within the context of vision statements that reflect community values and aspirations. It was further recommended that the undertaking of structure plans be prioritised to reflect the role and significance of particular activity centres, and the need for structure planning due to development pressures or proposed developments.

The Strategy acknowledged that Council was at that time committed to the preparation of a Rye Town Centre Plan, which it said should enable more detailed consideration of the design aspects of the centre and opportunities for improvement.

#### ***Rye Township Plan (2017)***

The Rye Township Plan is a strategic policy prepared by Council to set the vision and direction for the improvements of the foreshore, streetscape and town centre of Rye. The Rye Township Plan was adopted by the Shire on 12 December 2017.

The Plan reviews and amalgamates a number of previous strategies, including the *Rye Urban Design Framework Plan (2002)* and the *Draft Rye Movement and Place Plan (2016)*. The Plan had been through a thorough community consultation process prior to adoption. This included two interactive design-based community workshops, two online surveys as well as multiple meetings with key stakeholder groups. The feedback from this consultation (as well as a review of previous literature) has informed the Plan.

The Rye Township Plan comprises a series of key projects and places to reflect a new character of Rye. One of the recommendations in the Rye Township Plan that is relevant to the proposal is a recommendation for a Planning Scheme Amendment that rezones part of the town centre to the Mixed Use zoning, as well as a Design and Development Overlay (DDO) to control built form outcomes (heights, materials, setbacks etc.).

#### **4.1 (Cont.)**

There are a number of elements within the Rye Township Plan which are relevant to the current Application. These are:

- The 3-storey height limit, with the third storey to be highly recessive in the area proposed for a DDO, which would include the subject site.
- The potential creation of the Napier Street Plaza which will result in the loss of seven on-street car parking spaces near the subject site, at the northern end of Napier Street.
- The potential activation and landscaping of Campbell Laneway to the north-east of the subject site, which would result in the loss of five on-street car parking spaces and restrict access to ten properties which currently utilise the lane for vehicle access.
- The potential creation of the Town Square to the south of Campbell Lane on land which is currently informally used for car parking for up to 28 cars, and extending into the existing Nelson Street car park, resulting in the additional loss of up to 36 parking spaces (combined potential loss of 64 parking spaces).

The proposed four-storey height of the building exceeds the preferred maximum of three storeys as described in the Rye Township Plan; the Township Plan proposes this be implemented by the introduction of a DDO.

Other works proposed by the Plan, such as the creation of the Napier Street Plaza, the Town Square and the landscaping of Campbell Lane (if enacted) will all combine to reduce car parking within the vicinity of the application site, and should be taken into consideration when assessing whether the car parking demand generated by the proposal has been adequately addressed.

#### **Design and Built Form**

In assessing design and built form, consideration needs to be given to the relevant built form requirements in the Planning Policy Frameworks, the existing neighbourhood character and the requirements of the Rye Township Plan. Other relevant clauses are clause 21.07 – Guiding Future Township Development and clause 22.02 – Activity centres.

The design of the proposal is contemporary; the material palette consists of precast concrete, fibre cement sheet, timber cladding, fabricated metal cladding, canvas awnings and aluminium windows and door frames. The building has been designed with active frontages to the street boundaries, where large clear glazed windows and balconies are provided to provide for surveillance of the public realm.

The proposed building is however inconsistent with the existing or preferred character of the Town Centre of Rye for the following reasons:

- The proposed built form of the new development will not reinforce the existing character of the Rye town centre and will not retain the distinctive features associated with the town centre because of the excessive height and scale of the building;
- The height of the building, with a maximum height of 14.9 metres, will be the highest in the activity centre. It will have a dominating appearance and will not be in keeping with the character, scale and appearance of adjacent buildings and the adjoining streets;
- The size, scale, height and bulk of the proposed development is not respectful of the existing or preferred neighbourhood character of the area or the development of the town;



**4.1 (Cont.)**

- The scale of the proposed building and extent of built form will be incompatible with the period, style, form, proportion, and scale of the buildings in the surrounding area. The proposed four-storey development would permanently change the streetscape and will be detrimental to the existing neighbourhood character in the Rye activity centre;
- The proposed building will have a maximum height of four storeys (14.9 metres) from the natural ground level to the roof deck. This height substantially exceeds the preferred maximum height of three storeys as recommended by clause 22.02 through the Rye Township Plan and will not be respectful of the prevailing building height in the Rye town centre;
- The existing commercial built form in the surrounding area is predominantly single and double storey which represents a small-scale town centre development with fine grain architecture. The four-storey outlook of the building to the two site frontages will present a visually obtrusive built form that will not be respectful of the existing or preferred neighbourhood character;
- Whilst the fourth level of the building has been recessed to reduce the visual appearance of the building, the proposed building height will still be prominently visible from the two street boundaries of the site;
- The requirements of the Rye Township Plan expect that there will not be a significant departure from the existing character. For a development to comfortably fit into an existing area, it should maintain and enhance the existing and preferred character. Hence, with this benchmark in mind, it is considered that the development as proposed does not respect the existing character and does not enhance the preferred neighbourhood character;
- It is considered that the proposed building has not been suitably derived from its site context and is not responsive to its setting within the township. It is also contended that the form of the building fails to appropriately consider the objectives of the preferred neighbourhood character;
- It is further considered that the effect of the proposal will be an overbearing presence that is unsympathetic to the low to medium scale character of the town centre and the existing streetscape and will unreasonably dominate the wider streetscape;
- The clerestory windows and plant room almost reads as a fifth storey. Ideally, this plant room should sit on the floor level of the fourth storey, rather than on the roof. It is critical that the plant equipment is hidden and integrated into the design (particularly when viewed from longer distances or oblique angles). The plant room appears to form an additional floor that will increase the visual prominence of the proposed development; and
- The landscape to the Nelson Street verge provides a strong landscape anchor opportunity to deliver a coastal landscape theme for the development. No allowance has been made for deep soil planting or for any significant trees to be established on the site. The corner of the laneway and Nelson Street, and the Nelson Street verge becomes an important landscape opportunity for deep soil planting which is absent in the proposed development. It is noted that the basement floors of the building will have 100% site coverage.

The overall scale of the proposed development is inconsistent with the low scale character of the surrounding area. The height of the building is also inconsistent with the Rye Township Plan and its proposed implementation tool the draft Rye Urban Design Guidelines (the site is located within the 'Civic Precinct', which specifies a three storey maximum height limit). Whilst

#### **4.1 (Cont.)**

there are two specific sites nominated for four storey development in the draft Rye Urban Design Guidelines, these are large sites that allow for significant setbacks to the upper floor, effectively 'hiding' it from view. This particular site is not large enough to allow the fourth floor to be appropriately setback so as to reduce its visibility and dominance on the surrounding context.

The 'framing' of the building in steel is inconsistent with the preferred materials palette for commercial development in Rye. Ideally the balustrades and cladding should utilise natural materials and a softer/muted materials palette.

Both the Design Advisory Panel and Council's Urban Design officer also raised concerns with the durability and maintenance of the awnings, which are a key element of the architectural features of the building. This issue was also raised by a number of the objectors, including concerns that the building would look '*cheap*', and that the subject site was particularly vulnerable to *the strong winter winds that roar through the Napier Street area* and that *'the noise of rattling blinds/awnings will intrude on the amenity of other hospitality businesses and residential neighbours*.

The large northern boundary wall of the building should be broken up to reduce its bulk. Ideally the upper floors should be further setback from this boundary, to allow for greater articulation. The walls on boundary should be patterned or use varying textures to break up their mass.

Ultimately, whilst the use of the building is appropriate for the site - the scale of the building is inconsistent with the existing and preferred character for this area of Rye. The fourth level is at odds with the Rye Township Plan, which is the adopted local centre plan for Rye, and advocates for a maximum of three storeys, with the third storey to be highly recessive. Should diminished weight be given to the Rye Township Plan, then the relevant consideration is the maximum 8 metre building height as set out in the Table to clause 22.02-3.

Overall, it is considered the proposed built form and design features are not responsive to the neighbourhood character and will not make a positive contribution to the area.

#### **Clause 34.01 Commercial 1 Zone**

A main consideration in the assessment of the proposal is the decision guidelines of the Commercial 1 Zone (C1Z), as a permit is required under the zone provisions for the use of the land for a residential hotel if the frontage at ground level exceeds 2 metres and for buildings and works. The use of the land for a restaurant is as of right in the zone.

One of the Decision Guidelines of the zone is the consideration of the Municipal Planning Strategy and the Planning Policy Framework (PPF). The proposal is partly consistent with the relevant policies in the PPF as earlier discussed. The PPF encourages the creation of vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses in activity centres. The proposed use as a residential hotel is consistent with the use of many sites in the surrounding area that are used for hotel and tourist accommodation of various types.

In terms of consideration of the interface with adjoining zones, especially the relationship with residential areas, the proposal will not have any unreasonable detrimental impact on the amenity of any residential area, as the site is surrounded by sites within the C1Z to the north, east and west, is opposite sites within the Public Use Zone to the south and south-west, and the nearest residential zoned property to the south-east is occupied by the car park of the RSL. It is however noted that the adjoining sites to the north and west are currently developed and used as residential hotels or a form of tourist accommodation, and therefore potential amenity impacts on these properties should be considered.

#### **4.1 (Cont.)**

The provision of car parking is required to be considered as part of the Decision Guidelines of the C1Z. Issues relating to car parking will be discussed in detail in the car parking section of the report. The proposed car parking provision is assessed to be inadequate for the proposed development.

The Decision Guidelines of the zone require consideration of the streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings, and the landscaping of land adjoining a road. As previously discussed in this report, the proposed built form does not respect the existing or the preferred neighbourhood character for the area because of its excessive building height.

The Decision Guidelines of the C1Z requires consideration be given to the relevant objectives and standards of clause 55 (Rescode) of the Scheme. This particular provision comprises 49 design objectives and standards to guide the assessment of new residential development, including a residential building for which a residential hotel is a part. Some of the standards will be relevant to the proposal. Furthermore, given the site's location within a Commercial 1 Zone, strict application of the standard is not always appropriate; whether the proposal meets the objective is the relevant test.

The proposal has been assessed against the relevant standards and objectives of clause 55. It is relevant that particular consideration be given to the following standards:

- Standard B4 (Infrastructure) – The land is already connected to the required services and it will not be difficult to connect the proposed development to the required services on completion;
- Standard B13 (Landscaping) – The DAP raised a number of concerns in respect to landscaping, including the limited landscaping within the public/private realm, that no allowance has been made for deep soil planting, and that the proposed rooftop landscape on the first floor (north side) is unlikely to be viable;
- They advised that the corner of the laneway and Nelson St and the Nelson St verge becomes an important landscape opportunity for deep soil planting. Coastal and indigenous vegetation should be used to wrap around the edges of the site and hold the corner with Nelson Street to tie into the Napier Street upgrade. The excessive width and format of ground plane shown leading to the foyer entry requires further work, currently shown as a very wide plane leading into the foyer. Copses of Banksia's around the edge of the building wherever possible will tie in with the coastal character of the area, and also the planting selections proposed for Napier Street Plaza;
- Standard B22 (Overlooking) – Concerns with overlooking were raised by objectors. Consideration must be given to potential overlooking of the habitable room windows of the residential hotel to the west and the motel to the north. The motel to the north has highlight windows setback 4.9m from the common boundary which need to be protected from overlooking within 9 metres from the upper floors. Overlooking within 9 metres will occur from the Level 4 terraces. There are no concerns with overlooking of the balconies to the west as these are currently subject to overlooking from the public realm; and
- Standard B31 (Design Detail) – As discussed previously, there is concern that the proposed blinds will not be adequately durable and will quickly deteriorate and cause maintenance issues.

The following clause 55 requirements are applicable because the residential hotel will include apartment style accommodation:

#### **4.1 (Cont.)**

- Standard B35 (Energy Efficiency) – While the application includes a Sustainability Management Plan (SMP), it has not demonstrated that it satisfies the specified the maximum NatHERS annual cooling load of 21 MJ/M2 per annum. Conditions of any approval should demonstrate compliance with this requirement and commit to achieving the ESD Initiatives in the SMP;
- Standard B38 (Deep soil areas and canopy trees) – Land between 1001 – 1500 square metres should have a deep soil area with minimum dimension of three metres equal to a minimum of 7.5%, which for the subject site is 77 square metres, to enable the planting of one medium tree (8-12 metres). The lack of a deep soil planting area was raised as a concern by the DAP and has not been addressed as part of the final design response;
- Standard B39 (Integrated water and stormwater management) – This standard includes a statement that buildings should be designed to collect rainwater for non-drinking purposes such as flushing toilets, laundry appliances and garden use. While there are fire tanks within basement 2, there is no indication in any of the plans (including the SMP) that these collect rainwater. It is normal for apartment style buildings of this scale to include rainwater tanks;
- Standard B41 (Accessibility) – The objective of this standard is to ensure the design of dwellings meets the needs of people with limited mobility and provides requirements for door and path widths, and ‘adaptable bathrooms’. The Application has not demonstrated compliance with this standard. Whilst normal apartment buildings are required to have 50% of dwellings complying with this standard, in this instance it is considered that any approval should require a demonstration that at least the three ground floor apartments meet the standard. Furthermore, the upper floor hotel rooms are accessible by lifts from the ground floor and with the corridors having adequate widths that can accommodate wheelchairs; and
- Standard B46 (Functional layout) – Some of the objections raised concerns that the size of the hotel apartments are inadequate. The sizes of the rooms exceed the minimum bedroom size within this standard and are acceptable.

Each room in the residential hotel will have direct access to natural light and natural ventilation and no room will rely on borrowed light.

#### **Clause 42.02 Vegetation Protection Overlay – Schedule 1**

As discussed earlier in the submission, it is proposed to remove the shrub in the Nelson Street nature strip and the three trees onsite to facilitate the proposed development.

An Arborist report was submitted with the Application that indicated that all of the vegetation to be removed is of low environmental and landscape significance. The removal of this vegetation would not impact upon the character in this locality.

#### **Traffic, Access, Car Parking, Loading Bay and Bicycle Facilities**

##### ***Clause 52.06 Car Parking***

##### Access

Vehicular access to the proposed development will be provided via the laneway which runs along the western boundary of the site. The laneway connects to Nelson Street to the south-west of the subject site.

**4.1 (Cont.)**

The laneway owned by Council, is currently sealed, has a width of 3.2 metres and extends north from Nelson Street for approximately 65 metres, where it changes direction and extends west for approximately 35 metres.

The redundant vehicle crossover connecting to/from Napier Street will be removed with kerb, channel, nature strip and footpath reinstated to the satisfaction of the Responsible Authority.

**Car Parking Provision**

The car parking requirement and provision of the proposed development is as follows:

<b>Use</b>	<b>Planning Scheme rate</b>	<b>Planning scheme requirement</b>	<b>Provision</b>	<b>Shortfall</b>
Residential hotel with 42 rooms and ancillary bar with 30 patrons	No rate specified, car parking to be to the satisfaction of the responsible authority	Car parking to be to the satisfaction of the responsible authority	42 (consisting of 38 car spaces for hotel guests, one short term drop-off car space and 3 car spaces for hotel staff)	N/A
Restaurant with 75 patrons	0.4 per each patron permitted	30	2	28
<b>Total</b>			<b>44</b>	<b>28</b>

The Application seeks a car parking reduction of 28 car spaces for the use of the land for a restaurant with 75 patrons. A Restaurant is to provide 0.4 carparking spaces to each patron permitted. The Application proposes 75 patrons and therefore requires 30 carparking spaces for the restaurant use, which is allocated two car spaces. In this regard a permit is required to reduce the number of car parking spaces for the proposed restaurant.

The car parking requirement for a Residential Hotel is not specifically indicated at clause 52.06-5 of the Scheme. In this regard, car parking provision must be to the satisfaction of the Responsible Authority.

A total of 44 car spaces are to be provided on the site, including one short term drop off/ pick up space. Forty-two of the car spaces will be in the basement in the two levels of basement within the development. In this regard, the Application seeks a reduction of 28 car spaces in association with the use.

**4.1 (Cont.)**

Whilst the use for a residential hotel is not listed in clause 52.06, the clause does contain a car parking rate for use as a Motel, which is a type of residential hotel and is considered a practical measure for assessing car parking demand for the subject proposal. The car parking requirements when the rates for a Motel are used are as follows:

Use	Planning Scheme rate	Planning scheme requirement	Provision	Shortfall
Motel with 42 units	1 to each unit, and one to each manager dwelling, plus 50 per cent of the relevant requirement of any ancillary use	42 plus one for each 'manager dwelling'	42	1
Ancillary restaurant with 75 patrons	0.2 per each patron permitted	15	2	13
Ancillary bar with 30 patrons	0.2 per each patron permitted	6		6
Total			44	20

A traffic assessment report by Ratio Consultants was submitted with the application. The report among things undertook detailed surveys of the parking supply and demand of the surrounding on and off-street car parking in the surrounding area on Friday 7 December 2018 and Saturday 8 December 2018. The parking inventory revealed that the supply of parking in the precinct is subject to a mixture of short-term and unrestricted parking. The report considers the car parking demand of the accommodation and the restaurant, but not of the ancillary bar.

As discussed earlier, The Rye Township Plan proposes works in a number of locations which will reduce car parking in the vicinity of the application site as follows:

- The Napier Street Plaza at the north end of Napier Street for which funding has already been committed and works are expected to commence soon which will result in the loss of seven on-street car parking spaces near the subject site;
- The potential creation of the Town Square to the south of Campbell Lane. While the land is currently informally used for car parking for up to 28 cars, there is no legal right to park on this land. The proposed Town Square is also shown in the Plan as extending into the existing Nelson Street car park, resulting in the additional loss of up to 36 parking spaces (combined potential loss of 64 parking spaces); and
- The potential activation and landscaping of Campbell Laneway to the north-east of the subject site, which would result in the loss of five on-street car parking spaces and restrict access to ten properties which currently utilise the lane for vehicle access.

The Application was referred to Council's Traffic team. It is noted that the comments did not consider the pending and potential loss of parking in the area, and instead provided a response based on the car parking demand that was shown to be available on Friday, 7 December 2018 and Saturday, 8 December 2018.

Notwithstanding that the area is expected to receive a loss of available parking due to civil works, the referral response noted that the parking studies demonstrate that on those days, on-street parking in the immediate vicinity of the site was heavily utilised. Whilst the off-street public car parks to the north-east of the Napier Street and Nelson Street intersection were able

#### **4.1 (Cont.)**

to accommodate the demand on the Friday evening, on the Saturday evening patron parking may be pushed further afield, including into residential areas.

It is considered that the provision of parking is inappropriate for the proposed development for the following reasons:

- There is insufficient car parking for staff. The three dedicated car parking spaces for staff take up spaces which will be needed for hotel guests and the short-term space adjacent to the laneway will also be required for guest parking, which means that there will be no available onsite parking for staff.
- It is acknowledged that a significant proportion of the trade associated with restaurant and bar is anticipated to be by guests of the residential hotel already parking on the site. However, it is also anticipated that the uses will generate a car parking demand for off-site parking of between 20 and 28 spaces. Furthermore, the parking surveys, (which did not account for the anticipated loss of current on and off-street parking) indicated that at times, there will be insufficient capacity in the area to meet the demands of the proposed uses without impacting on surrounding residential areas. This would be further compounded by the loss of any existing parking from the centre.

In respect to the use of the laneway, the Shire's Traffic team were satisfied that the traffic generated by the proposal is anticipated to be in the order of 13 vehicle movements during the AM and PM peak hour periods, and at this low volume is not expected to create adverse operational or safety impacts along the ROW, Nelson Street, or the surrounding road network.

#### Loading/Unloading

The proposal includes a loading bay on ground floor accessed via the laneway, which comprises dimensions of 4 metres wide by 9 metres long.

The loading bay is expected to be used for the delivery of goods associated with the residential hotel, bar and restaurant facilities. The loading bay has been designed to accommodate commercial vehicles up to the 6.4-metre-long Small Rigid Vehicle (SRV as defined by AS2890.2:2002).

The swept path assessment of the SRV truck demonstrated the ability for this vehicle to access the loading bay in a suitable manner.

#### Bicycle Facilities

Clause 52.34 (Bicycle provision) requires the provision of 2 employee bicycle spaces and two visitor bicycle spaces for the restaurant. No bicycle provision is required for the residential hotel.

The proposed bicycle spaces within the basement do not meet the requirements of employee spaces, which must be either in a bicycle locker or at a bicycle rail in a lockable compound. The spaces are also unsatisfactory for the restaurant/bar, as they are inconveniently located for visitors who are not staying on the premises.

A condition of any approval will need to require lockable bicycle spaces for staff and a conveniently located bicycle space for the visitors to the restaurant.

#### **Waste Management**

A refuse and recycling storage area is provided on the ground-floor level to accommodate waste management. This area is accessible from the right of way and is collected by a private contractor utilising a mini rear-loading waste collection vehicle.

#### **4.1 (Cont.)**

A swept path assessment is attached in Appendix B of the enclosed Traffic Report by Ratio Consultants. This should be read in conjunction with the Waste Management Plan prepared by Leigh Design.

The templates provided in the enclosed Traffic Report demonstrates that the nominated waste collection vehicle can readily and safely access the loading bay in an appropriate manner.

#### **Objector Concerns not Already Addressed**

As discussed above, 19 objections were received against the proposal. Many of the objector concerns have already been discussed. Outstanding issues are as follows:

- Intrusion into proposed Napier Street Plaza – The Rye Township plan encourages the integration outdoor dining with the public realm to add vitality to the commercial centre provided that they do not conflict with pedestrian movements;
- Impact on views - There is no specific control that protects residents' rights to any view in the surrounding area;
- Noise impacts - It is noted that the use of the land for a restaurant is as of right in a C1Z. Noise level for the use will be subject to the standard Environment Protection Authority (EPA) requirements. Any noise from the residential hotel will not be excessive and will not have any unreasonable impact on the amenity of the surrounding sites that are occupied by similar uses and other commercial uses;
- Ground water impacts - The construction of the basement will be subject to detailed engineering design which cannot be assessed as part of the planning application. Any possible impact of the basement on the water table or from the water table on the basement will be assessed at the building permit stage. Any approval will need to respond to disturbing any underlying coastal acid sulfate soils;
- Will set a precedent - Each application submitted to Council will be assessed on its merits, based on the planning controls and Council policies at the time of determination;
- Additional hotel is not required in Rye - Issues relating to whether an additional hotel is required in Rye cannot be taken into consideration in the assessment of the application. This is not a planning-related concern;
- Restaurant is too small for proposed patron numbers – If this is correct then the impacts would be less seating, resulting in less car parking demand, which would be a positive outcome;
- Impact on property values - The Victorian Civil and Administrative Tribunal (VCAT) and its predecessors have generally found subjective claims that a proposal will reduce property values are difficult, if not impossible to gauge, and are of no assistance to the determination of a planning permit application. It is considered the impacts of a proposal are best assessed through an assessment of the amenity implications rather than any impacts upon property values. This report provides a detailed assessment of the amenity impact of this proposal;
- Impacts to power lines – there are no powerlines traversing the property. Consideration of nearby powerlines is the responsibility of the builder and if necessary, the building surveyor;



#### **4.1 (Cont.)**

- Impacts to the mobile library – the subject site would be separated from the public realm during construction by hoarding which is required during the building permit process. There is no anticipated impact on the mobile library from either the construction or the proposed use of subject site;
- Asbestos removal – Asbestos removal is not a planning consideration and would be dealt with as a part of the building permit process; and
- Construction impacts - Some noise and other off-site impacts are inevitable when any construction occurs. The developer will be required to meet relevant Local Law and EPA regulations regarding construction practices to ensure these impacts are mitigated. However, in addition to these requirements in the event of Council support for the proposal, a CMP will be required as a condition of any approval.

#### **OFFICER DIRECT OR INDIRECT INTEREST**

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

#### **CONCLUSION**

- The site is appropriately located to accommodate a mixed-use development, given its location within a C1Z in the Rye town centre, which is an activity centre of a designated Large Town in the Shire;
- The construction of a mixed-use development of a residential hotel and restaurant on this site will contribute towards the achievement of the municipality's employment and tourism targets, and as noted by the DAP, can be seen as a potential catalyst for future renewal of existing commercial buildings throughout the town. Such outcomes need to be carefully balanced against the strategic direction of the Rye township insofar as built form expectations are concerned;
- Whilst a multi-level building may be appropriate for this site, the intensity of the proposed built form and massing, including the building height would not be respectful of the existing or the preferred neighbourhood character, and would be inconsistent with the intent of the Rye Township Plan, which details the preferred neighbourhood character for the area;
- On balance, the proposed built form outcome is not acceptable in the context of the character and identity of the Rye township, because the proposed maximum building height of 14.9 metres is substantially higher than the recommended maximum building height of 8 metres as stipulated at clause 22.02 (Activity centres), or a maximum height of three storeys recommended by the Rye Township Plan. The proposed built form will have a detrimental impact on the existing neighbourhood character; and
- The proposed intensity of the built form is contrary to the designated hierarchy of the Rye Activity Centre as a Large Township, with the proposed building being higher than what is supported in the Major Activity Centres within the Shire.

#### **RECOMMENDATION**

That the Planning Services Committee, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987* hereby resolves that Planning Permit Application P19/1026 for the for the development of a four-storey building above basement for use as a residential

**4.1 (Cont.)**

hotel and restaurant, removal of vegetation and reduction in car parking and associated works in accordance with the endorsed plans, at 6 Napier Street, Rye, be refused on the following grounds:

1. The proposal has failed to demonstrate that sufficient consideration has been given to environmental impacts in accordance with clause 12.02-1S (Protection of Coastal Areas), clause 12.02-3S (Bays) and clause 21.08 (Foreshores and Coastal Areas).
2. The size, scale, height and bulk of the proposed development is not consistent with the strategic direction for the Rye Activity Centre and would be contrary to clause 15.01-1S (Urban Design), clause 15.01-2S (Building Design), clause 21.07-3 (Activity Centres) and clause 22.02 (Activity Centres) of the Mornington Planning Scheme.
3. The four-storey height of the building is not respectful of the existing low scale character of the surrounding area and inconsistent with the requirements of clause 21.07-3 (Activity Centres), clause 22.02 (Activity Centres) and the Rye Township Plan.
4. The proposed intensity of the proposal in terms of building height and number of storeys is inconsistent with the adopted Rye Township Plan and the designated hierarchy as a Large Township, with the proposed building being higher than what is supported in the Major Activity Centres within the Shire.
5. The roof plant area is poorly designed and would read as a fifth storey from the surrounding area.
6. The proposal fails to provide sufficient car parking.
7. The sheer north facing blank wall fails to respond to the context of the site and will have a detrimental impact on the character of the area.
8. The proposal fails to respond to the strategic objectives of the Mornington Peninsula Localised Planning Statement, as identified at clause 11.03-5S (Distinctive areas and landscapes).
9. The proposal fails to satisfy the relevant objectives and standards under clause 55 of the Mornington Peninsula Shire Planning Scheme, in particular:
  - 55.03-8 Landscaping
  - 55.04-6 Overlooking
  - 55.06-1 Design Detail
  - 55.07-4 Deep soil areas and canopy trees
  - 55.07-5 Integrated water and stormwater management

That the Committee resolves that Attachment 10 to this report be retained as a confidential item pursuant to section 77(2)(a) and (b) of the *Local Government Act 1989* as it contains personal submitter details

**Deputations**

- Mr Peter Houghton

That a two minute extension be granted to Mr Houghton.

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4.1 (Cont.)

Moved: Cr Celi  
Seconded: Cr Roper

- Ms Mechelle Cheers
- Mr Brad Caden

That a two minute extension be granted to Mr Caden.

Moved: Cr Roper  
Seconded: Cr Gill

- Ms Kim Mulcahy (on behalf on Applicant)

That a two minute extension be granted to Ms Mulcahy.

Moved: Cr Roper  
Seconded: Cr Brooks

**MOTION**

Moved: Cr Fraser  
Seconded: Cr Gill

That the Planning Services Committee, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987* hereby resolves that Planning Permit Application P19/1026 for the for the development of a four-storey building above basement for use as a residential hotel and restaurant and reduction in car parking and associated works in accordance with the endorsed plans, at 6 Napier Street, Rye, be supported and that a Notice of Decision to Grant a Planning Permit be issued subject to the following conditions:

**Amended Plans**

1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the submitted plans modified to show:
  - A. The removal of the fourth level of the building with the third floor level to be sufficiently recessed.
  - B. Demonstrated that the level 3 terraces on the northern elevation have been designed to meet standard B22 (overlooking).
  - C. Articulation and detailing to the north facing blank wall.
  - D. Differentiation of awnings between the ground and upper floors;
  - E. Increased application of bi-fold doors to Nelson Street frontage of ground floor restaurant;

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4.1 (Cont.)

- F. Plant screening to be muted and low reflective material and colour and integrated within the roof line of the building;
- G. Detailed schedule of colours and materials;
- H. Deletion of the clerestory windows.
- I. Demonstration that all three ground floor hotel apartments meet the requirements of Standard B41 (Accessibility).
- J. The columns adjacent to car spaces 3 and 25 relocated to comply with Diagram 1 Clearance to car parking spaces of Clause 52.06.
- K. A wheel stop for car space 22 to stop any encroachment into car space 21.
- L. The location of the proposed stormwater storage system; the stormwater quality system and the stormwater pump pit.
- M. A detailed landscape plan that incorporates the following details:
  - i. Details of surface finishes of pathways and driveways;
  - ii. Any works or plantings proposed in Napier Street or Nelson Street, including removal of the existing vehicle crossings and laybacks.
  - iii. Deep soil planting in the corner of the laneway and Nelson Street.
  - iv. Balcony/rooftop plantings;
  - v. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant;
  - vi. Vegetation marked for retention to be marked with protection barriers.
  - vii. Species selection to be indigenous to this locality (EVC 858 – Coastal Alkaline Scrub).
- N. Access to any ground floor tenancy, common property or common entry location from Napier and Nelson Streets being in accordance with current Australian Standards for accessibility with all entry locations matching the existing footpath levels at those entry locations.
- O. The Sustainability Management Plan amended to require a maximum NatHERS annual cooling load of 21 MJ/M2 per annum.
- P. Development plans to reflect all initiatives indicated in the Sustainability Management Plan. Where features cannot be visually shown, include a notes table providing details of the requirements (i.e. energy and water efficiency ratings for heating/cooling systems and plumbing fittings and fixtures, etc.). The plans must include:
  - i. Fly screens.
- Q. Double glazing.

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4.1 (Cont.)

ii. Openable windows.

- R. The provision of a minimum of 2 bicycle spaces for employees provided either in a bicycle locker or at a bicycle rail in a lockable compound designed in accordance with Clause 52.34-6 (Design of bicycle spaces).
- S. The provision of two bicycle spaces within the frontage conveniently located for visitor use.
- T. The Waste Management Plan amended in accordance with Condition 18.

**Approved Development not Altered**

- 2. The layout of buildings and works as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

**Colours/Materials**

- 3. The materials and colours of the exterior finish of the development must be in accordance with the endorsed plans unless with the further written consent of the Responsible Authority.

**Finishes**

- 4. Prior to the initial occupation of the development, external finishes must be completed to a professional standard to the satisfaction of the Responsible Authority.
- 5. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

**Building Services**

- 6. All building plant and equipment on the roofs, balcony areas, common areas, public thoroughfares is to be concealed to the satisfaction of the Responsible Authority. Noise emitting plant equipment such as air conditioners, must be shielded with acoustic screening to prevent the transmission of noise having detrimental amenity impacts. The construction of any additional plant, machinery or other equipment, including but not limited to all service structures, down pipes, aerials, satellite dishes, air-conditioners, equipment, ducts, flues, all exhausts including car parking and communication equipment must include appropriate screening measures to the satisfaction of the Responsible Authority.
- 7. All mechanical exhaust systems for the car park hereby approved must be located and sound attenuated to prevent noise and general nuisance to the occupants of the surrounding properties, to the satisfaction of the Responsible Authority.

**Environmentally Sustainable Development**

- 8. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority, and the approved uses and building must operate in accordance with this Plan, to the satisfaction of the Responsible Authority. No alterations to the SMP may occur without the written consent of the Responsible Authority.

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4.1 (Cont.)**Amenity**

9. The amenity of the area must not be detrimentally affected by the use or development, through the:
  - A. Transport of materials, goods or commodities to and from the land
  - B. Appearance of any buildings, works or materials
  - C. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil

**Health Conditions**

10. All sewage and sullage must be discharged to the reticulated sewerage system to the satisfaction of the Responsible Authority.
11. Prior to the use of the development, the owner or occupier of the land must enter into a Commercial Trade Waste Agreement with South East Water. Any trade waste infrastructure on the land must be located to the satisfaction of the Responsible Authority.
12. Any external areas used for the cleaning of waste receptacles, equipment or vehicles must be connected to the reticulated sewer system to the satisfaction of the Responsible Authority.
13. Exhaust ventilation systems must comply with Australian Standard 1668:4 - The use of ventilation and air conditioning in buildings.
14. Noise from refuse collection and deliveries to the site must comply with Environment Protection Authority 1254 – Noise Control Guidelines.
15. Noise levels emanating from the land must not exceed those set out in State Environment Protection Policies N-1 (Control of Noise from Commerce, Industry and Trade), and N-2 (Control of Music Noise from Public Premises).
16. Air conditioning and other fixed plant or equipment must be designed and installed to comply with relevant State Environment Protection Policies and prevent any noise nuisance beyond the boundaries of the land.

**Acid Sulfate Soils**

17. Prior to the commencement of any buildings and works associated with the development, the applicant must engage a suitably qualified soil scientist to undertake a preliminary Coastal Acid Sulfate Soil (CASS) Hazard Assessment and any subsequent stage outlined in the CASS risk identification process of *Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulfate Soils* (DSE, 2010). The assessment must be independently peer reviewed and submitted to the Responsible Authority for approval.

Any recommended measures of the CASS assessment must be implemented to the satisfaction of the Responsible Authority.

**Engineering Conditions**

18. Prior to the endorsement of plans, an amended Waste Management Plan (WMP) must be submitted to and approved by the Responsible Authority. When

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4.1 (Cont.)

approved, and endorsed accordingly, the WMP will form part of this permit. The WMP must be generally in accordance with the Waste Management Plan by Leigh Design Pty Ltd dated 3 December 2018, but modified to show:

- A. The Owner or Owners Corporation arranging for private collection of waste, recyclables, and green waste bins from within the property including:
  - I. Location of bin storage areas.
  - II. Location of bin collection areas.
  - III. Swept paths and turning movements of vehicle to be used for the collection of bins from the designated bin collection areas.
  - IV. Estimated volumes of waste and recyclables generated from the site, number, and size of bins to be used and the associated storage area for the bins.
  - V. Names of contractors able to provide the required service.

This plan must be submitted to and be to the satisfaction of the Responsible Authority and when approved the plan will become the endorsed waste management plan under this permit.

- 19. After the endorsement of Condition 1 plans and before any works associated with the development starts, engineering plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and may be emailed to [devengadmin@mornpen.vic.gov.au](mailto:devengadmin@mornpen.vic.gov.au) in pdf format.

The plans must show:

- A. All areas of the development being drained by means of an underground drainage system to retain a post development 1 in 10 year storm event for the critical storm duration on the property and discharged via a pumping system to limit the discharge to an equivalent pre-developed flow based on a 1 in 2 year storm event for the critical storm. Discharge from the pumping system is to be directed to the existing underground drainage system within Napier Street. The pumping system shall be designed and installed in accordance with AS/NZS 3500.3:2015, Section 8 Pumped Systems.
- B. A drainage system on the site being designed to ensure storm water runoff exiting the site meets the current best practice performance objectives for stormwater quality, as contained in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).
- C. Any works required to satisfy a Report and Consent to Build on Flood Prone Land for the development.
- D. Details, including levels of the driveway and car park within the site.
- E. The space off the Laneway being reinforced concrete and designed for heavy vehicle traffic loading.

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4.1 (Cont.)

- F. The design of all vehicle movements entering and exiting the basement of the property being in a forward direction.
  - G. All redundant vehicle crossings and vehicle laybacks being removed and replaced with kerb and channel, including reinstatement of the footpath and nature strip fronting the site.
  - H. Sight distance for vehicles and pedestrians not being unduly restricted at the exit from site by fencing or landscaping works.
  - I. Access to any ground floor tenancy or common property from any adjoining street is to be in accordance with current Australian Standards for accessibility and match the surrounding footpath levels at the property boundaries.
  - J. Tree Protection Zones (TPZs) impacted by the works, or as shown on any other development plans and documents.
  - K. Drainage works designed to avoid TPZs where possible.
  - L. Proposed methodologies for complying with AS4970-2009 (Protection of trees on development sites) for any works that are required within TPZs.
20. Before the approval of engineering plans, drainage computations and documentation are required for:
- A. The proposed drainage system.
  - B. The consideration of any drainage catchment external to the development that may drain to the proposed drainage system.
  - C. The MUSIC Report, including an electronic version of the MUSIC Summary Report (.mrt) file.
21. Prior to the commencement of any works the applicant must demonstrate to the Responsible Authority that water quality features will be implemented in accordance with clause 53.18 of the planning scheme.
22. At least fourteen days prior to the commencement of any works for this development, a project specific Construction Management Plan (CMP) using the standard Construction Management Plan (CMP) template found on the Mornington Peninsula Shire's website must be submitted to and approved by the Responsible Authority. The CMP shall include, but not be limited to:
- A. Hours during which construction activity will take place which must not occur outside of the following hours (unless with the further consent of the Responsible Authority):
    - i. Monday to Friday: 7:00 a.m. and 5:00 p.m.
    - ii. Saturday: 8:00 a.m. and 1:00 p.m.
  - B. The location of any temporary cabins and sheds.
  - C. The location and storage of machinery on the site.



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4.1 (Cont.)

- D. Management of noise such as from pumps and any other machinery operating outside of normal working hours.
- E. Location of parking for worker's vehicles.
- F. Notation in the Traffic Management Plan section that if external traffic management is required, approval shall be obtained from Mornington Peninsula Shire.
- G. Discharge of groundwater to Council's drainage system is not allowed.
- H. Waste management in accordance with the Sustainability Management Plan by LP – Low Impact Development Consulting.
- I. Any specified measures recommended by CASS assessment of Condition 17 of this permit.

When approved the plans will be endorsed and will then form part of the permit. The approved CMP must be implemented to the satisfaction of the Responsible Authority prior to and during construction of the works.

- 23. Before the initial occupation of the development drainage works within the development must be constructed in accordance with approved engineering plans, and to the satisfaction of the Responsible Authority.
- 24. Before the initial occupation of the development, vehicle crossings, areas set aside for the parking of vehicles and driveways as shown on the endorsed plans must be constructed in accordance with approved engineering plans, surfaced with reinforced concrete and drained to the satisfaction of the Responsible Authority.  
  
Car spaces, access lanes and driveways must always be kept available for these purposes.
- 25. Before the initial occupation of the development, any agreed streetscape works within Napier Street and Nelson Street, adjacent to the development site as shown on the endorsed plans must be constructed in accordance with approved landscaping plans to the satisfaction of the Responsible Authority.
- 26. Prior to the commencement of any works on site a relevant permit to erect a hoarding or overhead protective awning shall be obtained from the Responsible Authority.
- 27. Prior to the commencement of any works the owner of the land must enter into an agreement with the Responsible Authority, pursuant to Section 173 of the *Planning and Environment Act 1987*. This agreement must be registered by the Responsible Authority pursuant to Section 181 of the *Planning and Environment Act 1987* on the title of the subject land prior to the commencement of any works.

This agreement must provide for:

- A. The liability associated with the waste, recyclables and green waste management for the development being vested with the Owner or Owners Corporation, and for the Owner or Owners Corporation to undertake the management of private collections for the development in accordance with an endorsed Waste Management Plan.

## 4.1 (Cont.)

- B. A pumping system for the capture and discharge of storm water from the site being designed and installed in accordance with approved plans and AS/NZS 3500.3:2015, Section 8 Pumped Systems prior to the initial occupancy of the development.
- C. A pumping system being maintained and operating to discharge storm water from the site to the existing underground drainage system within Napier Street.
- D. The applicant to design, construct and maintain any agreed streetscape works within the road reserve next to the site in Napier Street and Nelson Street. All planting of vegetation, paving and drainage works are to compliment the development, and are subject to detailed construction drawings. These works must be completed prior to the occupation of the development.

The agreement is to remain extant for the life of the development at this property.

The agreement must be executed prior to the commencement of any works for the development and all costs relating to the preparation of the agreement are to be borne by the Applicant.

## Cultural Heritage

28. The requirements of the CHMP 16469 must be followed at all times in accordance with the *Aboriginal Heritage Act* to the satisfaction of the responsible authority.

## Expiry

29. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
- A. The development is not completed within four years of the issue date of this permit.
  - B. The use is not commenced within four years of the issue date of this permit.

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.

**Motion Lost**

## COMMITTEE DECISION

Moved: Cr Celi  
Seconded: Cr Gill

That the Planning Services Committee, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987* hereby resolves that Planning Permit Application P19/1026 for the for the development of a four-storey building above basement for use as a residential hotel and restaurant, removal of vegetation and reduction in car parking and associated works in accordance with the endorsed plans, at 6 Napier Street, Rye, be refused on the following grounds:

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4.1 (Cont.)

1. The proposal has failed to demonstrate that sufficient consideration has been given to environmental impacts in accordance with clause 12.02-1S (Protection of Coastal Areas), clause 12.02-3S (Bays) and clause 21.08 (Foreshores and Coastal Areas).
2. The size, scale, height and bulk of the proposed development is not consistent with the strategic direction for the Rye Activity Centre and would be contrary to clause 15.01-1S (Urban Design), clause 15.01-2S (Building Design), clause 21.07-3 (Activity Centres) and clause 22.02 (Activity Centres) of the Mornington Planning Scheme.
3. The four-storey height of the building is not respectful of the existing low scale character of the surrounding area and inconsistent with the requirements of clause 21.07-3 (Activity Centres), clause 22.02 (Activity Centres) and the Rye Township Plan.
4. The proposed intensity of the proposal in terms of building height and number of storeys is inconsistent with the adopted Rye Township Plan and the designated hierarchy as a Large Township, with the proposed building being higher than what is supported in the Major Activity Centres within the Shire.
5. The roof plant area is poorly designed and would read as a fifth storey from the surrounding area.
6. The proposal fails to provide sufficient car parking.
7. The sheer north facing blank wall fails to respond to the context of the site and will have a detrimental impact on the character of the area.
8. The proposal fails to respond to the strategic objectives of the Mornington Peninsula Localised Planning Statement, as identified at clause 11.03-5S (Distinctive areas and landscapes).
9. The proposal fails to satisfy the relevant objectives and standards under clause 55 of the Mornington Peninsula Shire Planning Scheme, in particular:
  - A. 55.03-8 Landscaping.
  - B. 55.04-6 Overlooking.
  - C. 55.06-1 Design Detail.
  - D. 55.07-4 Deep soil areas and canopy trees.
  - E. 55.07-5 Integrated water and stormwater management.

**Part B**

That the Committee resolves that Attachment 10 to this report be retained as a confidential item pursuant to section 77(2)(a) and (b) of the *Local Government Act 1989* as it contains personal submitter details.

Carried Unanimously

## **5 NOTICES OF MOTION**

Notices of Motion must be received five clear business days prior to a meeting.

Nil.

## **6 URGENT BUSINESS**

Under Council's Meeting Procedure and Common Seal Local Law, no business may be admitted as urgent business unless it:

1. Relates to a matter which has arisen since distribution of the Agenda.
2. Cannot because of its urgency, be reasonably listed in the Agenda of the next Council Meeting.
3. Councillors by a majority vote, vote in favour of a matter being dealt with as urgent business.

### **6.1 Urgent Business (Cr Gill)**

**Cr Gill sought leave to introduce an item of Urgent Business.**

The Chair disallowed the item to be considered as Urgent Business on the basis that it was not appropriate for consideration by the Planning Services Committee in accordance with its Terms of Reference.

## **7      CONFIDENTIAL ITEMS**

Nil.

## **8 MEETING CLOSE**

As there was no further business, the meeting closed at 8.25pm

Confirmed this 21<sup>st</sup> day of April 2020

.....  
Cr Bryan Payne, Chairman - Planning Services Committee