



**MORNINGTON
PENINSULA**
Shire

AGENDA

COUNCIL MEETING

TUESDAY, 11 JULY 2023

10.00AM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL**WARDS AND COUNCILLORS**

Briars	Cr Steve Holland Cr Anthony Marsh Cr Despi O'Connor
Cerberus	Cr Lisa Dixon
Nepean	Cr Susan Bissinger Cr Sarah Race
Red Hill	Cr David Gill
Seawinds	Cr Simon Brooks Cr Antonella Celi Cr Debra Mar
Watson	Cr Kate Roper

EXECUTIVE TEAM

Mr John Baker Ms Tanya Scicluna Ms Sam Stanton Mr Mike McIntosh Mr Bulent Oz	Chief Executive Officer Director – Community Strengthening Director – Corporate Strategy and Business Improvement Director – Planning and Infrastructure Chief Financial Officer
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RECORDING

Please note that this Council Meeting will be livestreamed to the Mornington Peninsula Shire's YouTube channel and a recording of the meeting will be available on the Shire's website.

Recording of persons in the public gallery is not intended but may occur incidentally. By attending this meeting you consent to being filmed at the meeting and the possible use of subsequent recordings in a live streaming or published video of the meeting.

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1 OPENING AND WELCOME

Appointed Chairperson – Mayor, Cr Steve Holland

1.1 Acknowledgement of Country

To be read by Cr Despi O'Connor

Mornington Peninsula Shire acknowledges the Bunurong people, who have been the custodians of this land for many thousands of years; and pays respect to their elders past and present. We acknowledge that the land on which we meet is the place of age-old ceremonies, celebrations, initiation and renewal; and that the Bunurong peoples' living culture continues to have a unique role in the life of this region.

2 PROCEDURAL MATTERS

2.1 Apologies

2.2 Disclosure of Conflicts of Interest Pursuant to Sections 126 – 131 of the *Local Government Act 2020*

2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Council Meeting held on 30 May 2023, be confirmed.

2.4 Councillor Briefing Sessions

Councillor Briefing Sessions – 23 May, 6 and 20 June 2023

RECOMMENDATION

That Council receives and notes the record of Councillor Briefing Sessions for 23 May, 6 and 20 June 2023.

2.5 Council Decision Register

Attachment(s)	1.	2019 Council Decision Register Summary
	2.	2020 Council Decision Register Summary
	3.	2021 Council Decision Register Summary
	4.	2022 Council Decision Register Summary
	5.	2023 Council Decision Register Summary

PURPOSE

Council has requested a Decision Register for all its Council resolutions to be maintained by Shire Team Leaders and Managers.

Attached are Summaries of the 2019-2023 Decision Registers (Attachments 1-5) as at 30 June 2023.

RECOMMENDATION

That Council receives and notes the Decision Register Summaries for 2019-2023 (Attachments 1-5) as at 30 June 2023.

2.6 Petitions and Joint Letters**530 Stumpy Gully Road, Balnarring Telecommunications Tower**

A petition with 196 signatures has been received requesting that the Mornington Peninsula Shire Council and State Government contact Telstra, Optus and TPG on behalf of the petitioners to advise them that the residents in this area have poor 4G and no 5G service at their homes. The petitioners also request that the telecommunication service providers use the existing NBN tower located at 234 Myers Road, Balnarring instead of the proposed tower at 530 Stumpy Gully Road, Balnarring.

Immediate Comment

It is recommended that the petitioners directly approach Telstra, Optus, TPG or other telecommunications providers at this time. It would be inappropriate for Council to become involved in contacting specific telecommunications service providers regarding service delivery of a specific telecommunications tower and potential upgrades. Further, it would be inappropriate at this time to take the position or form the conclusion that another proposal currently being considered by Council under planning permit P22/1433 at 530 Stumpy Gully Road, Balnarring is inappropriate.

Action Officer: David Simon, Manager – Development Services

RECOMMENDATION

That Council receives and notes the above petition.

2.7 Public Question Time

Questions from the public shall be dealt with at commencement of the meeting.

The aim of public question time is to provide an opportunity for the public to ask general questions at Council Meetings requiring routine responses. Questions with or without notice can be submitted.

Questions with notice are to be received in writing by 10.00am the Monday prior to the relevant Council Meeting and can be lodged via the Shire's website. Questions received by this time will be provided with a considered response prepared by the relevant Shire officer and read by the Chief Executive Officer (CEO) at the Council Meeting.

Questions without notice must be lodged in person no later than 15 minutes prior to the commencement of the meeting. The question will be read by the CEO and taken on notice with a written response forwarded to the person asking the question within 7 days of the Council Meeting and published on the Shire's website.

This segment does not substitute for appeal or other formal business procedures with the Council.

3 COUNCILLORS AND DELEGATES REPORTS

At each Council Meeting, all Councillors will have the opportunity to provide an overview of any meetings attended as an appointed representative of Council.

If a Councillor chooses to provide details, the name of the conference/event and the Councillor attending will be noted in the Minutes for that meeting. If a Councillor requires additional information on the conference/event to be included in the Minutes, the Councillor must submit it in writing to Governance by 12.00 noon the day following the meeting.

Association/Committee	Representative/s	Substitute Representative/s	Shire Contact
Arts and Culture Advisory Panel	Cr Gill	Cr Dixon	Rebecca Levy, Manager – Community Activation
Association of Bayside Municipalities	Cr Marsh	Cr Holland	Laura Crilly, Team Leader – Water and Coasts
Audit and Risk Committee	Cr Celi Cr Mar	Mayor	Bulent Oz, Chief Financial Officer
Australian Coastal Councils	Cr Marsh	N/A	Laura Crilly, Team Leader – Water and Coasts
Australia Day Committee	Cr Holland	Cr Celi	Steve Harris, Team Leader – Festivals and Events
Bass Park Trust	Cr Gill	N/A	Amanda Sapolu, Manager – Legal and Governance
Community Consultative Committee on Gaming	Cr O'Connor		Chris Munro, Manager – Community Partnerships
Communities That Care (CTC)	Cr Dixon	Cr Celi	Rebekah Popplewell, Communities That Care Coordinator
Department of Energy, Environment and Climate Action Wildlife Management Plan for Mornington Peninsula	Cr Marsh Cr Gill Cr Mar		
Disability Advisory Committee	Cr Bissinger	Cr Dixon	Virginia Richardson, Disability Inclusion Officer
Greater South East Melbourne	Mayor	N/A	John Baker, Chief Executive Officer
Health and Wellbeing Committee	Cr Celi	Cr O'Connor	Kate Hills, Team Leader – Community Wellbeing
Inter Council Aboriginal Consultative Committee	Cr Dixon	Cr Race	Amanda Sapolu, Manager – Legal and Governance
Interface Councils	Mayor	Deputy Mayor	Randal Mathieson, Manager – Advocacy,

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			Communications and Engagement
Koala Conservation Group	Cr Mar	N/A	
Literacy Advisory Committee	Cr Mar	Cr Celi	Amanda Sapolu, Manager – Legal and Governance
Metropolitan Transport Forum	Cr Race	Cr Celi	Claire Davey, Traffic and Road Safety Officer
Mornington Liquor Industry Accord	Cr Marsh Cr O'Connor Cr Holland		Katherine Cooper, Acting Team Leader – Economic Development
Mornington Peninsula and Western Port Biosphere Reserve Foundation – Council Liaison Group	Cr Mar	Cr Race	James Rose, Team Leader – Natural Systems
Mornington Peninsula Cemetery Trust	Cr Celi Cr Dixon Cr Holland	N/A	Gail Mifsud, Acting Manager – Property and Commercial Services
Mornington Peninsula Shire Council Tourism Advisory Forum	Cr Gill Cr Bissinger Cr Dixon	N/A	Anne-Marie Haluszka, Team Leader – Tourism Services
Municipal Association of Victoria (MAV)	Mayor	Deputy Mayor	Amanda Sapolu, Manager – Legal and Governance
MAV Emergency Management Committee	Cr O'Connor		Brett Fletcher, Emergency Management Coordinator
Peninsula Advisory Committee for Elders	Cr Dixon	Cr Celi	Chris Munro, Manager – Community Partnerships
South East Councils Climate Change Alliance	Cr Race	Cr O'Connor	Chris Yorke, Energy and Carbon Management Officer and Nicci Tsernjavski, Climate Change Partnerships Officer
Triple A Housing Committee	Cr Gill	Cr Celi	Chris Munro, Manager – Community Partnerships
Victorian Local Governance Association (VLGA)	Cr Race	Cr Mar	Amanda Sapolu, Manager – Legal and Governance

4 MANAGEMENT REPORTS

PLANNING & INFRASTRUCTURE

4.1 P20/1937 - 35 Sherwood Avenue, Rosebud - Development of five dwellings and vegetation removal

Prepared By	Alex Harrison, Senior Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A11572088
Attachment(s)	<ol style="list-style-type: none"> 1. Locality Plan 2. Title 3. Aerial 4. Development Plans 5. Zoning Map 6. Clause 55 Assessment 7. Cultural Heritage Management Plan (CHMP) 8. CHMP approval 9. Arborist Report 10. Traffic Report 11. Expert Flood Advice 12. Watertechnology Report March 2020 13. Objections (confidential)
Application No.	P20/1937
Proposal	Development of five dwellings and associated works and vegetation removal generally in accordance with the submitted plans
Melway Reference	170H7
Zoning	General Residential Zone – Schedule 1 (GRZ1)
Applicant	Entire Design & Construction
Date of Application	20 October 2020
Item Called in?	Yes – Seawinds Councillors

EXECUTIVE SUMMARY

The purpose of this report is to seek the Council's decision regarding Planning Permit Application P20/1937 at 35 Sherwood Avenue, Rosebud (the Application). The Application seeks permission to develop three single storey dwellings and two double storey dwellings (five dwellings in total) and associated removal of vegetation.

The Application was advertised by way of letters to adjoining owners and a sign posted on the site. To date, 53 objections have been received. The main issues raised in the submissions relate to non-compliance with the Mornington Peninsula Planning Scheme, amenity, neighbourhood character, impact on the adjoining Murray Anderson Creek, flooding, vegetation loss, carparking and traffic.

The assessment against the relevant *Planning and Environment Act 1987* and planning scheme and provisions concludes that the proposal is not considered appropriate and should not be supported. The proposal is considered respectful of the existing and emerging

4.1 (Cont.)

neighbourhood character of the area and promotes a diversity of housing types where a greater need for new housing stock is needed. However, it is considered that the flood risk posed by the adjacent Murray Anderson Creek in terms of safety, flood damage and offsite impacts are not acceptable. It is further considered that they cannot be acceptably mitigated via design measures. Accordingly, it is recommended that the Application be refused subject to the grounds contained in the recommendation section of this report.

RECOMMENDATION

That the Council refuses Planning Application P20/1937 - 35 Sherwood Avenue, Rosebud on the following grounds:

- 1. The proposal fails to meet the objectives of the Mornington Peninsula Planning Scheme, in particular**
 - ☐ **Clause 11 – Settlement**
 - ☐ **Clause 11.03-5S – Distinctive areas and landscapes**
 - ☐ **Clause 12.01-1S – Protection of Biodiversity**
 - ☐ **Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands and billabongs**
 - ☐ **Clause 13.01-1S – Natural Hazards and climate change**
 - ☐ **Clause 13.03-1S – Floodplain management**
 - ☐ **Clause 14.02-1S – Catchment planning and management.**
- 2. The proposal does not meet the key principles outlined in the Department of Environment, Land, Water and Planning *Guidelines for Development in Flood Affected Areas* (2019).**
- 3. The existing flood risk has not been acceptably mitigated through design measures.**
- 4. The proposed development fails to meet the environmental objectives of Schedule 17 of the Environmental Significance Overlay. The removal of all vegetation from the riparian zone and increased run off caused by the development are likely to adversely impact on habitat, water quality and bank stability of the water course.**
- 5. The proposal fails to meet the objectives of Clause 65 the Mornington Peninsula Planning Scheme, in particular:**
 - ☐ **The flooding of the adjoining Murray Anderson Creek poses a significant risk to the subject site and health and safety of future on site residents.**
 - ☐ **The proposed development will exacerbate the existing flood risk from the Murray Anderson Creek and poses a significant risk to the health and safety of residents within the flood plain.**

4.1 (Cont.)

Part B

That Council resolves that **Attachment 13 to this report be retained as a confidential item pursuant to section 3 (1) (f) of the *Local Government Act 2020* as it contains personal information.**

COUNCIL & WELLBEING PLAN

Theme 1 – A healthy natural environment and well-planned townships:

- ☐ Strategic Objective 1.2 – A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.
- ☐ Strategic Objective 1.4 – An accessible built environment that supports diverse, current and future community needs.

DISCUSSION**Purpose**

The purpose of this report is to consider the Application and seek a Council decision.

Proposal	The Applicant is seeking approval for the development of the land for five dwellings and removal of vegetation.
Zoning and Overlays	<ul style="list-style-type: none"> <input type="checkbox"/> General Residential Zone – Schedule 1 (GRZ1) <input type="checkbox"/> Design and Development Overlay – Schedule 1 (DDO1) <input type="checkbox"/> Environmental Significance Overlay – Schedule 17 (ESO17) <input type="checkbox"/> Vegetation Protection Overlay – Schedule 1 (VPO1).
Permit Triggers	<ul style="list-style-type: none"> <input type="checkbox"/> Clause 32.08-6 (GRZ1) – construct two or more dwellings on a lot <input type="checkbox"/> Clause 43.02-2 (DDO1) – construct a building or carry out works. <input type="checkbox"/> Clause 42.01-2 (ESO17): <ul style="list-style-type: none"> ○ construct a building or carry out works ○ remove destroy or lop any vegetation <input type="checkbox"/> Clause 42.02-2 (VPO1) – remove, destroy or lop vegetation.
Advertising	<p>The Application was advertised by sending direct notice to adjoining properties and erecting a sign on site for 14 days.</p> <p>An Amendment to the Application received on 2 June 2022 was also circulated to all objecting parties and adjoining properties.</p>
Submissions	Fifty-three (53)
Consultation	A Planning Application Conference (PAC) was held on 20/12/2021 via an online platform. In attendance were Council

4.1 (Cont.)

	officers, Ward Councillors, Objectors and the Applicant. No mediated outcome was reached at this meeting.
Key Issues	<input type="checkbox"/> Flooding <input type="checkbox"/> Neighbourhood character <input type="checkbox"/> Amenity <input type="checkbox"/> Loss of flora and fauna.
Recommendation	Refusal to Grant a Permit

Background

The Application was originally lodged on 20 October 2020. Since then, the Application has been amended three times, formally advertised once and informally re-notified with the circulation of amended plans. The latest of the amended plans were lodged with Council on 2 June 2022. Those plans sought further minor amendments including the relocation of the garage for Dwelling 1 and the addition of overlooking screens to stair landings of the rear units. It is these plans that form the basis of the officer's recommendation.

Previous Permits

There are no previous planning permits pertinent to this Application.

Existing Conditions

Please refer to:

- ☐ Attachment 1 – Locality Plan
- ☐ Attachment 2 – Title.

The subject site is located on the northern side of Sherwood Avenue in the residential area of Rosebud. The subject site is irregular in shape with a frontage of approximately 33.53 metres (m) and maximum depth of approximately 51.82m, resulting in a site area of approximately 2,090 square metres (m²).

The subject site contains one dwelling with associated outbuildings and vegetation along all boundaries.

The topography of the site is relatively level and is encumbered by a 1.83m wide drainage and sewerage easement along the rear boundary.

An existing crossover located in the south-western corner of the site currently provides vehicle access from Sherwood Avenue.

Surrounding Land

Please refer to:

- ☐ Attachment 3 – Aerial.

The site is located within an existing established residential area in Rosebud. Immediately adjoining the subject site to the north and east are existing dwellings. Immediately adjoining the western boundary and across the road in Sherwood Avenue is a drainage reserve (Murray Anderson Creek) which runs from a south-east to north-west direction. To the south-east and south-west are further dwellings.

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The immediate area can be characterised by detached dwellings on lots predominantly between 700-900m² with landscaping. Dwellings are generally set back from side, front and rear boundaries. There are no formal footpaths. There are however examples of infill development in the neighbourhood 5, 26 and 51 Sherwood Avenue and 7 Plantation Drive.

More intensive development is also located to the north and north-east of the subject site (e.g. 31 Mount Arthur Avenue and units of Bella Vista Mews), although, these are not considered indicative of the Sherwood Avenue precinct.

Direction	Description
North	1 Forshaw Court – one residential dwelling with associated outbuilding 53 Mount Arthur Avenue – one residential dwelling
East	39 Sherwood Avenue – one residential dwelling with associated outbuilding
South	26A Sherwood Avenue – Sherwood Avenue Reserve – drainage reserve owned by Mornington Peninsula Shire
West	33A Sherwood Avenue – Sherwood Avenue Reserve – drainage reserve owned by Mornington Peninsula Shire

PROPOSAL

Please refer to:

- ☐ Attachment 4 – Development Plans.

The Application seeks approval for the development of five dwellings. Specifically, the proposal entails:

- ☐ Existing dwelling and outbuildings to be demolished (no planning permit required).
- ☐ Dwellings 1 and 5 are double storey and Dwellings 2, 3 and 4 are single storey.
- ☐ Traditional built form with brick ground floor, weatherboard first floor, pitched/flat Colorbond roofs.
- ☐ Existing crossover in the south-west corner to provide shared access to Dwellings 1, 2, 3 and 4. One new 3m wide crossover is proposed for Dwelling 5.
- ☐ Maximum height of 8.44m (Dwelling 5).
- ☐ New 1.8m high timber paling fencing along both sides and rear boundaries.
- ☐ Removal of all vegetation from the subject site. Tree types include Bottlebrush, Kohuhu, Privet (weed species), Cypress and Sweet Pittosporum (weed species) with a maximum height of trees measured at 7m.
- ☐ The dwellings would comprise:

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Unit No.	Maximum Building height	Secluded Private Open Space (SPOS) and POS	Ground Floor Layout	First Floor Layout
1	8.285m	SPOS: 94m ² POS: 210m ²	Master bedroom with ensuite and walk in robe Study Open plan kitchen/dining/family Laundry Separate toilet Single garage with tandem space	2 x bedrooms Bathroom Sitting area
2	6.43m	SPOS: 159m ² POS: 170m ²	Master bedroom with ensuite and walk in robe 2 x bedrooms Open plan kitchen/dining/living Laundry Separate toilet Bathroom Double garage	-
3	5.99m	SPOS: 120m ² POS: 128m ²	Master bedroom with ensuite and walk in robe 2 x bedrooms Open plan kitchen/dining/living Laundry Separate toilet Bathroom Double garage	-
4	5.60m	SPOS: 75m ² POS: 86m ²	Master bedroom with ensuite and walk in robe 1 x bedroom Open plan kitchen/dining/living Laundry Bathroom Separate toilet Single garage	-
5	8.44m	SPOS: 84m ² POS: 215m ²	Master bedroom with ensuite and walk in robe Open plan kitchen/dining/living Laundry	2 x bedrooms Separate toilet Bathroom Sitting area

4.1 (Cont.)

			Separate toilet	
			Double garage	

NOTIFICATION AND CONSULTATION**Notification**

Advertising was undertaken by way of mail to surrounding landowners and occupiers and the erection of one sign on the site, located on the Sherwood Avenue frontage. The advertising period concluded on 30 November 2021.

Objectors and adjoining properties were also informally notified (circulation of plans) of an amendment to the plans on 14 July 2022 via email. These plans sought further minor amendments including the relocation of the garage to Dwelling 1 and the addition of overlooking screens to stair landings of the rear units. As previously stated in this report it is these plans that form the basis of the officer's recommendation.

The total number of objections received to date is 53.

Submissions

The 53 objections received to date can be summarised into the following issues:

- ☐ Flooding, impact on Murray Anderson Creek and climate change
- ☐ Overdevelopment and impact of neighbourhood character
- ☐ Non-compliance with Planning Scheme provisions and Council policies
- ☐ Amenity
- ☐ Aboriginal Cultural Heritage
- ☐ Loss of vegetation
- ☐ Carparking and traffic
- ☐ Devalue properties
- ☐ Set precedent
- ☐ Incorrect information submitted.

Consultation

A Planning Application Conference (PAC) was held on 20 December 2021 via an online platform. In attendance were Council officers, Councillors, objectors and the Applicant. This meeting was to enable those who had objected an opportunity to voice their concerns in a public forum together with giving the Applicant an opportunity to respond. No mediated outcome was reached at this meeting.

4.1 (Cont.)**REFERRALS****Internal Referrals*****Vegetation***

- ☐ No objections, subject to conditions relating to tree protection and a landscape plan requiring canopy trees in the front setbacks and private open space areas of each dwelling.
- ☐ If supported, the proposed landscape plan would need to be amended to include provisions of 11 new canopy trees on site.

Development Engineering

- ☐ No objections, subject to conditions relating to drainage, parking, access and tree protection.
 - It is noted that a vehicle passing bay was requested within the driveway. However, this is not considered necessary having regard to the relevant provisions of Clause 52.06 of the planning scheme.

Traffic

- ☐ No objection and no conditions required. The additional traffic from five additional dwellings is not considered to affect the safety or function of Sherwood Avenue and the road is suitable to accommodate the additional traffic movements from the proposed development.

Natural Systems

- ☐ No objection with a condition requiring a Construction Environmental Management Plan.

Independent Flood Expert (Streamology – March 2023)

- ☐ Proposed development does not meet the key principles outlined *Guidelines for Development in Flood Areas* (2019).
- ☐ Given the existing flood risk on the property it is considered unlikely that flood risk can be acceptably mitigated through design measures.

External Referrals***Melbourne Water***

- ☐ No objections, subject to conditions relating to the height of finished floor levels to be set above the applicable flood level, requirement of a section 173 agreement with Melbourne Water to manage safe pedestrian access and egress to the property during a flood event, a restriction on imported fill, a setback of 5.1m from the western boundary for all built form and requirements that the cut off channel in front of Dwelling 5 is free from obstruction.

PLANNING SCHEME PROVISIONS

Please refer to Attachment 5 – Zoning Map.

4.1 (Cont.)

Permit Triggers

A planning permit is triggered under the following clauses:

Clause 32.08 - GRZ1

- ☐ A planning permit is required to construct two or more dwellings on a lot.

Clause 43.02 – DDO1:

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

Clause 42.01-2 – ESO17:

- ☐ A permit is required for all buildings and works and to remove, destroy or lop any vegetation.

Clause 42.02 – VPO1:

- ☐ A permit is required to remove, destroy or lop any vegetation.

Municipal Planning Strategy
Clause 02 Municipal Planning Strategy
Clause 02.02 Vision
Clause 02.03-1 Settlement
Clause 02.03-2 Environmental and landscape values
Clause 02.03-3 Environmental risks and amenity
Clause 02.03-5 Built environment and heritage
Planning Policy Framework (PPF)
Clause 11 Settlement
Clause 11.01-1R Settlement – Metropolitan Melbourne
Clause 11.03-4S Coastal Settlement
Clause 11.03-5S Distinctive areas and landscapes <i>Mornington Peninsula Localised Planning Statement (Victorian Government, 2014)</i>
Clause 12.01-1S Protection of Biodiversity
Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands, and billabongs
Clause 12.05-1S Environmentally sensitive areas
Clause 13.01-1S Natural Hazards and climate change
Clause 13.03-1S Floodplain management
Clause 14.02 – 1S Catchment planning and management
Clause 15.01-2S Building design
Clause 15.01-5S Neighbourhood character
Clause 16 Housing
Clause 16.01-1S Housing supply

4.1 (Cont.)

Zone
General Residential Zone 1 (GRZ1)
Overlay/s
Design and Development Overlay, Schedule 1 (DDO1)
Environmental Significance Overlay, Schedule 17 (ESO17)
Vegetation Protection Overlay, Schedule 1 (VPO1)
Particular Provisions
Clause 52.06 Carparking
Clause 55 Two or more dwellings on a lot
General Provisions
Clause 65 Decision Guidelines

CONSIDERATION

As noted in the summary, the key issues from this Application are:

1. Flooding
2. Neighbourhood character
3. Loss of flora and fauna
4. Amenity
5. Other concerns raised by objectors regarding non-compliance with Planning Scheme provisions and Council policies.

In conjunction with considering these issues the below assessment will in effect outline Council's Planning Officer's response to the summarised objections (53) against the applicable planning policies, zone and overlays and in doing so provide a reasoning as to why the Application should be refused by Council.

1. Flooding

The subject land is identified as flood prone for the purpose of the *Building Act 1993* and Regulation 2018 and Murray Anderson Creek is located immediately south and west of the site. Melbourne Water is the flood authority for this catchment area and has also provided multiple responses that assist in understanding flood considerations for this development.

Guidelines for Development in Flood Affected Areas February 2019 (the Guidelines), prepared by the Department of Environment, Land, Water and Planning, are guidelines which provide an assessment framework and method to assist decision makers on development in flood affected areas. The key principles to consider when assessing a proposed development application within the Guidelines are Safety, Flood Damage, Off-site Impacts and Waterway and Floodplain protection. In principle, development should not intensify the harmful impacts of flooding.

The Applicant undertook a flood impact assessment and flood modelling analysis (*Flood Impact Assessment by Water Technology – March 2020*) comparing the existing conditions with that of the proposed development (including flood mitigation measures) to demonstrate that the proposal complies with the above Guidelines. Such mitigation measures included:

4.1 (Cont.)

- ☐ Channels within the property's frontage to direct overland flows back towards Murray Anderson Creek.
- ☐ A raised driveway over the cut-off channel to allow flood free access.
- ☐ Culverts beneath the raised driveway to convey the flows from the cut-off channel to the creek.
- ☐ The development set back from the western boundary.
- ☐ Raised floor levels for the dwellings.

Recent significant rainfall events, such as 14 November 2022, highlighted the severity of flood risk to the property and immediate area. Accordingly, Council sought an independent review of the available information to advise if the proposed development and associated flood mitigation measures did acceptably comply with the Guidelines. The summarised findings of this independent review (refer to Attachment 11) against the key principles in the Guidelines concluded as follows.

Safety – protect human life and health and provide safety from flood hazard.

- ☐ Flooding within the southern portion of the property would remain hazardous for developed conditions.
- ☐ Depths and flow velocities exceed the permissible levels.
- ☐ Access to the property remains hazardous.
- ☐ Modelled existing and developed flood levels are lower than in reality.
- ☐ The Guidelines also state that in relation to alternative solutions [emphasis added]:

A permit applicant may propose an alternative solution. If so, the proposal must demonstrate to the floodplain management authority's satisfaction that the relevant guiding principles and objectives can be achieved. Solutions should be feasible and not pose a burden on future occupants or impact other properties. For example, a requirement for future occupants to keep open a flow path so that a building can be located over it is not acceptable. Likewise, it would not be appropriate for a flow path to be modified if it affects other properties. (page 30)

- ☐ It is also unclear how the cut-off channel functions in relation to the development layout in the Amended Plans where the cut-of channel is not specifically identified, it is obscured by a driveway, and dwelling entrances open out onto it.
- ☐ Melbourne Water raise concerns about whether the channel will be maintained in the long term and the potential for it to pose a trip hazard which are considered valid concerns.

The assumptions presented are not supported and the modelled impacts of the proposed development do not meet the safety criteria or principles in the Guidelines.

Flood Damage – avoid or minimise flood damage to property and associated infrastructure.

- ☐ The flood impact report states that flood damage is minimised by setting the development flood levels 600 millimetres (mm) above the 1% Annual Exceedance Probability (AEP) flood level. Revised flood levels provided by Melbourne Water are

4.1 (Cont.)

higher than the original design levels and several of the units have proposed floor levels that are now between 60mm to 260mm below the required design levels.

These results mean the proposed development does not meet the flood damage criteria or principles in the Guidelines.

Even if minor amendments were made to increase the floor levels, this would not overcome the other relevant issues.

Off-site Impacts – maintain free passage and temporary storage of floodwaters.

- ☐ The Applicant's modelling assumes that due to changes in the flow distribution across the property and more flows directed along the main Murray Anderson Creek channel, flooding of adjacent properties downstream of 35 Sherwood Avenue is modelled to decrease. Velocities are also decreased for these properties.
- ☐ However, the existing state of the creek including its width and culverts cannot be conclusively relied upon to reach such a conclusion. The assumed channel capacity and conveyance along the creek is likely to be overstated in the modelling. The result of this assumption is that flows are assumed to be more efficiently transported downstream through this reach and therefore the effect of reduced flood storage is minimal.
- ☐ A more realistic representation of the channel, particularly the downstream connection to the reserve needs to occur and as such confirmation of whether the proposal meets the offsite impacts in the *Guidelines* can therefore not be confirmed.

Waterway and floodplain protection – protect and enhance the social and environmental values and benefits of floodplains and waterways.

It is also noted that the offsite impacts within the Water Technology report focus on adjoining properties. Figures 2.3 and 2.6 from the Water Technology report show that there would be a resultant increase in velocity of flood water within the Murray Anderson Creek reserve directly adjacent to the property under developed conditions compared to current conditions. Figures 2.2 and 2.5 also show that existing depths would be increased in sections along the Creek under developed conditions. These impacts on the health and long-term stability of the Creek should not be discounted as they could lead to adverse impacts on stream morphology through erosion and scour.

- ☐ Developed conditions will result in an increase of flow velocities and depth for the Murray Anderson Creek downstream from Sherwood Avenue. This will likely increase erosion.
- ☐ No detail has been provided as to how mitigation works such as the cut off channel will merge with the existing creek.
- ☐ The proposal is not adequately set back from the creek in order to protect and improve its condition and retain the natural drainage function. It is noted this is difficult to achieve in existing built-up areas.

Given the significant increase in velocities along the channel and minor increase in flood depth, the potential for increasing erosion as a result of the proposed development design is not consistent with protecting the existing waterway.

Other matters

The independent review also found that the proposal would result in an intensification of development in an area affected by flooding, which is contrary to State Planning Policy at

4.1 (Cont.)

Clause 13.02 of the planning scheme. Furthermore, the inclusion of proposed 1.8m high fencing along the western boundary would reinforce the existing scenario that obstructs flow of flood waters.

This independent review concluded that overall, the proposed development at 35 Sherwood Avenue, Rosebud (including proposed mitigation measures) did not meet the key principles outlined in the Guidelines. It further concluded that given the existing flood risk on the property it is considered unlikely that flood risk can be acceptably mitigated through design measures.

Given the issues outlined above the proposal does not comply with the following Planning Policies which place a strong emphasis on the protection and conservation of waterways and the protection of life and property against flooding.

- ☐ Clause 11 – Settlement
- ☐ Clause 11.03-4S – Coastal Settlement
- ☐ Clause 11.03-5S – Distinctive areas and landscapes
- ☐ Clause 12.01-1S – Protection of Biodiversity
- ☐ Clause 12.03-1S – River and riparian corridors, waterways, lakes, wetlands and billabongs
- ☐ Clause 13.01-1S – Natural Hazards and climate change
- ☐ Clause 13.03-1S - Floodplain management
- ☐ Clause 14.02-1S - Catchment planning and management
- ☐ Clause 15.01-1S – Urban Design
- ☐ Clause 15.01-2S – Building Design.

The site is also encumbered by an Environmentally Significant Overlay – Schedule 17 (ESO17) where the following environmental objectives are to be achieved with regard to development:

- ☐ *To maintain environmental flows and the quality of water within streams and watercourses.*
- ☐ *To maintain the capacity of streams and watercourses to carry natural flows.*
- ☐ *To prevent erosion of banks, stream beds and adjoining land and the siltation of watercourses, drains and other features.*
- ☐ *To protect and conserve flora and fauna habitats (including those of fish and invertebrates) within and along streams and watercourses.*
- ☐ *To ensure that development does not occur on land liable to flooding.*

Given the findings of the independent assessment against the Guidelines previously outlined in this report Council officers deem that the environmental objectives of the ESO17 cannot be adequately met. The proposal will result in an increase of flow velocities for the Murray Anderson Creek downstream from Sherwood Avenue and will result in further erosion to the

4.1 (Cont.)

creek's banks and further affecting the flora and fauna. Adequate infrastructure to maintain the capacity of such flows cannot be currently relied upon.

2. Neighbourhood character

Concerns were raised regarding the density, built form, proposed subdivision pattern, character and lack of infrastructure with regard to the appropriateness of the proposal within the immediate neighbourhood.

The site is located in a General Residential Zone – Schedule 1 (GRZ1) where the applicable purposes of the zone (to this Application) are:

- ☐ *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- ☐ *To encourage development that respects the neighbourhood character of the area.*
- ☐ *To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*

The proposed development in itself respects the existing and emerging neighbourhood character of the area and promotes a diversity of housing types and housing. It further provides for housing opportunities in an established urban area that takes advantage of existing services and infrastructure which will aid in housing an increased population on the Peninsula.

The subject site is approximately 2.5 times larger than that of other lots within the Sherwood Avenue and the immediate area. The subject site is approximately 2,100m² in total size where the majority of other lots within Sherwood Avenue are approximately 800m² in total size. There are currently examples of two dwellings on a standard lot within the area. The Application in effect proposes five dwellings on a lot that is greater in size than that of a double sized lot. Whilst the proposal is not considered a significant deviation from that of the existing subdivision pattern and 'density character' within Sherwood Avenue, it is accepted that it is of greater density than the majority of the precinct.

If the density of the proposed dwellings were further decreased in order to address the flooding concerns, the proposal would be more in accordance with the density of surrounding existing lots.

The proposed built form generally respects that of the existing and emerging built form within Sherwood Avenue and the immediate area as follows:

- ☐ Dwellings 1 and 5 have been setback from the Sherwood Avenue frontage 12.6m and 8.4m respectively providing more than ample room for landscaping to soften the development to the public realm.
- ☐ The upper floors of Dwellings 1 and 5 which front Sherwood Avenue have been adequately setback from their respective ground floor walls in order to reduce the visual bulk of the upper stories and provide a satisfactory degree of articulation. Dwellings 2, 3 and 4 are all single storeys.
- ☐ Given the proposed front setback and the upper floor setbacks these dwellings will not dominate the street.
- ☐ The proposed dwellings are of a traditional, hipped roof design with eaves and clad in face brick and weatherboard finishes similar to that of existing dwellings in the immediate area.

4.1 (Cont.)

- ☐ The separation of Dwellings 1 and 5 as they present to Sherwood Avenue will in effect present as two dwellings each on their own lot which respects the existing side setback pattern and separation of dwellings as they face the public realm in Sherwood Avenue.
- ☐ These proposed setbacks (front and side) and the separation of dwellings provides for an appropriate balance between vegetation and building form that respects the built form and landscape character of the area.
- ☐ An increase of in effect five new dwellings to an existing urban area will not place undue pressure on the existing infrastructure within the area.
- ☐ Under the zoning a lot above 650m² must also provide 35% of the lot to be set aside as garden area. The development proposes approximately 42% garden area, meeting this requirement.
- ☐ The site is located in an area encumbered by a DDO1 (Township Design). The design objectives of this overlay are there to ensure that proposals respect the character of the area and have proper regard for the established streetscape and development pattern in terms of building height, scale and siting. The design aspects conveyed above reinforce the proposal's suitability within the DDO1 area. The proposed built form is respectful and measured within the context of the area.

3. Loss of flora and fauna

Please refer to Attachment 9 – Arborist Report.

The site is located in VPO1 and ESO17 where a permit is required to remove vegetation.

The site is also located in a Bushfire Prone Area (BPA) and exemptions pursuant to Clause 52.12: Bushfire protection apply in proximity to dwellings on the subject site and adjoining land and boundary fencing, where the dwelling or fence was constructed prior to 10 September 2009. A considerable proportion of the vegetation proposed to be removed does not require planning permission due to the State-wide bushfire exemptions.

An Arborist's report was submitted with the Application which assessed all of the vegetation on the subject site as being insignificant in regard to their size and species and as having a low retention value. The concerned species includes Bottlebrush, Kohuhu, Privet (weed species), Cypress and Sweet Pittosporum (weed species).

The vegetation does however form part of the riparian zone of the Murray Anderson Creek. Whilst it is not a pristine patch of native vegetation – it still provides habitat and environmental services to fauna. The outright removal of vegetation from the riparian zone is considered a poor response to these underlying values and the objectives of ESO17.

Strategic replanting would form part of any conditional approval of this development. Any landscape plan would need to contain at least 50% species to be indigenous to the local Ecological Vegetation Class (Gully Woodland)) and would require at least 11 new canopy trees to be planted.

It is noted concerns were raised regarding the illegal removal of vegetation prior to any such approval. This concern is a matter of possible enforcement action via Council's Planning Compliance Unit and is not dealt with under the auspices of this assessment.

4. Amenity

These concerns are further addressed within the assessment of Clause 55 of the Planning Scheme (refer attachment 6).

4.1 (Cont.)

The proposal does not significantly overshadow any adjoining property and complies with standard B21 of Clause 55.04-4 (Overshadowing). Shadow diagrams submitted with the Application confirm this.

The site is located within a GRZ1 where a reasonable level of noise from inhabitants is to be expected and which would not be uncommon within such a residential area.

The proposal does not significantly overlook any adjoining property. The proposal complies with standard B22 of Clause 55.04-6 (Overlooking). The use of highlight windows for the east and north facing ground floor windows together with obscure glazing, on boundary fence heights of 1.8m and screening of stairs, ensures the potential for overlooking on adjoining properties is mitigated to comply with the standards. It is noted there are no habitable room windows on the east facing first floor façade of Dwelling 5.

The proposal is considered satisfactory having regard to amenity concerns for adjoining properties and the immediate area and achieves compliance with Clause 55.

5. Other concerns raised by objectors regarding non-compliance with Planning Scheme provisions and Council policies

The proposal has been assessed against the applicable overlays being ESO17, VPO1 and DDO1.

It is noted that the site is not located in a Bushfire Management Overlay (BMO). The site is located in a Bushfire Prone Area. The construction of the dwellings with regard to a site located in a Bushfire Prone Area relates to the Building Permit process and not the planning assessment of this Application. Exemptions relating to vegetation removal in a Bushfire Prone Area are discussed earlier in this report.

Clause 52.17 of the Planning Scheme (Native Vegetation) is not a relevant consideration. Clause 52.17 does not apply to removal of native vegetation on a site that is less than 0.4 hectares (exemption). The site is 0.2 hectares in total size.

Council's 2019 Biodiversity Conservation Plan (the plan) has been developed to assist Mornington Peninsula Shire with its ongoing commitment to managing biodiversity within the municipality, providing guidance and direction on biodiversity management and allocation of resources by Council. The plan recognises greater protection of remnant native vegetation is required on private land to help maintain biodiversity, and preserve the character of the Mornington Peninsula, that is valued by residents and visitors. As per the comments above, the outright removal of vegetation from the riparian zone is considered a poor response to habitat values along the streamline.

Concerns were raised with regard to the lack of compliance with the planning controls proposed under Planning Scheme Amendment C219. At the time of writing this report, this amendment is not at a stage that can be considered a 'seriously entertained planning scheme amendment'. Accordingly, Council cannot place any significant weight on the proposed provisions of C219 at this time.

Concerns regarding the construction of the proposal including the disruption to residents and the impacts of heavy vehicles is not a planning consideration albeit construction works are limited to hours of operation with all vehicles to comply with Council parking restrictions. It is the responsibility of the developer to manage the environmental impacts from construction and notify affected residents of the impending work. Any conditional approval would require a Construction Environmental Management Plan.

The site is located within an area of Aboriginal Cultural Heritage Sensitivity. The Applicant has submitted a Cultural Heritage Management Plan (CHMP) which has been approved

4.1 (Cont.)

(refer to Attachment 7 – Cultural Heritage Management Plan (CHMP) and Attachment 8 – CHMP approval).

Concerns were expressed that the proposal did not adequately respond to Council's Climate Emergency Plan – *Ensuring Our Future: Our Climate Emergency Response* (August 2020). Whilst adopted by Council, the Plan has not been incorporated in the Mornington Peninsula Planning Scheme so cannot be given significant weight by Planning officers in contrast to the planning policies of current planning scheme-

Concerns were raised regarding the design of the on-site parking (lack of on-site visitor parking, manoeuvrability) inability of the current road network to accommodate the proposal (traffic congestion, narrow street, impinge on nearby green space), poor sightlines and safety concerns. The proposal is considered satisfactory having regard to the relevant matters in Clause 52.06 (Car parking) of the Planning Scheme. The onsite parking requirements for a dwelling with two or more bedrooms have been met with all dwellings provided with two car spaces in the form of double garages or in the case of Dwelling 1, one garage with a tandem space. One visitor space has also been provided in accordance with Clause 52.06 where one space is required for visitors to every five dwellings for developments of five or more dwellings. It is noted that the plans indicate the presence of pedestrian visibility splays (in accordance with Clause 52.05-9). These areas (with at least 50 per cent clear of visual obstructions) will extend at least 2m along Sherwood Avenue either side of each driveway (where it intersects with the southern title boundary) and then 2.5m deep into each driveway. This will provide a clear view of pedestrians on the nature strip as vehicles traverse from the driveways onto Sherwood Avenue.

Concerns relating to the intention of the developer, the devaluing of properties, increase in rubbish, more pets, more rates and a lack of public spaces are not relevant planning considerations that can be addressed via the assessment of this Application.

Concerns were raised that the proposal is inconsistent with Mornington Peninsula Shire Disability Inclusion plan 2018-2022. The Mornington Peninsula Shire Disability Inclusion Plan 2018-2022 is not contained within the Mornington Planning Scheme and therefore carries little statutory weight with regard to the assessment of this Application.

Concerns were raised regarding purported anomalies within the submitted Application and a further lack of information such as first floor levels, overlooking diagrams, materials and finishes and proposed vegetation. The information provided coupled with a site visit, viewing of aerial mapping, internal liaising with various Council departments including Engineering, Vegetation, Traffic, Natural Systems and external authorities (Melbourne Water) has enabled Council's Planning Officer to make an informed decision in relation to the relevant planning policies including the zone and overlays. Any anomalies relating to the information received was in itself, not fatal regarding the Council's officer's ability to reach a recommendation regarding the proposal.

CONFLICTS OF INTEREST

No person involved in the preparation of this report has a conflict of interest in the subject matter of this report.

CONCLUSION

The relevant local and State Planning provisions and policies, together with the provisions of the zone and applicable overlays have been carefully considered. Consideration has also been given to the submissions received, the impact of flooding, the effect the proposal will have on the adjoining creek and immediate area (and vice versa), the amenity of adjoining properties and the neighbourhood character.

4.1 (Cont.)

The proposed development is considered to be appropriate in terms of its design with respect to the surrounding neighbourhood character and satisfactorily limits its impact on the amenity of adjoining properties.

However, it is considered that due to the adverse risk of flooding from the adjoining Murray Anderson Creek, the potential impacts to life and property and the inadequate mitigation measures to satisfactorily address the effects of flooding the Application be refused and that a refusal to grant a permit be issued.

4.2 Combined Planning Scheme Amendment C247morn and Planning Permits P21/3339 and P22/0291 - Woodbyne Crescent and Albany Way, Mornington – Authorisation report

Prepared By	Anne Grogan, Principal Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12122612
Briefing Note Number	BN1730 – 23 May 2023
Attachment(s)	<ol style="list-style-type: none"> 1. Woodbyne Precinct Master Plan 2. Explanatory report 3. Instruction sheet 4. Schedule X to NRZ 5. Schedule 25 to DPO 6. Map NRZX 7. Map DPO25 8. Map remove DDO6 9. Draft Planning Permit P21/3339 10. Tango subdivision layout 11. Draft Planning Permit P22/0291 12. BFF subdivision layout 13. Woodbyne Precinct Development Plan report 14. Sustainable Subdivision Management Plan 15. Officer's assessment report

EXECUTIVE SUMMARY

A request has been lodged by A Different City (ADC), planning consultants on behalf of Tango Development No. 6 Pty Ltd (Tango), to consider a combined Planning Scheme Amendment C247morn and Planning Permits P21/3339 and P22/0291. The proposal is to rezone land in Woodbyne Crescent and Albany Way in Mornington from the existing Low Density Residential Zone (LDRZ) to the Neighbourhood Residential Zone (NRZ) and concurrently approve two permits for subdivision.

The amendment also proposes to apply the Schedule 25 to the Development Plan Overlay (DPO25) to the land to ensure consistency of future built form outcomes with the wider Mornington North area as per Council's adopted Housing and Settlement Strategy: Refresh 2020-2036 (Mornington Peninsula Shire, 2020) (HSS).

Overall, officers find that the proposed combined amendment, development plan and permit applications are strategically justified and technically sound. The proposal will enable the development of new housing in accordance with the objectives of the *Planning and Environment Act 1987*, Ministerial Directions and Planning Policy Framework of the Mornington Peninsula Planning Scheme. Further, the Development Plan report accompanying the proposal is consistent with the requirements of the draft Schedule to the DPO25.

Officers therefore recommend that Council resolves to seek authorisation from the Minister for Planning (the Minister) to prepare the combined amendment to the Mornington Peninsula Planning Scheme and concurrent permit applications, and following authorisation, to publicly exhibit the amendment, development plan and permits for community comment.

4.2 (Cont.)

RECOMMENDATION**That Council:**

1. **Seeks authorisation from the Minister for Planning, pursuant to section 8A of the *Planning and Environment Act 1987* (the Act), to prepare combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and Planning Permits P21/3339 and P22/0291 under section 96A of the Act generally in accordance with the documentation in Attachments 1 to 15 to this report.**
2. **Undertakes exhibition of combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and Planning Permits P21/3339 and P22/0291 and the Development Plan in accordance with section 96C of the Act following receipt of authorisation from the Minister for Planning.**
3. **Authorises the Director of Planning and Infrastructure to make any editorial or administrative changes to Attachments 1 to 15, if required, prior to lodging the authorisation request with the Minister for Planning.**

COUNCIL & WELLBEING PLAN

Theme 1 – A healthy natural environment and well-planned townships.

- ☐ Strategic Objective 1.3: A sustainable built environment that respects the natural environment and protects the community from the impacts of the climate emergency.
- ☐ Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

RELEVANT COUNCIL DECISIONS AND POLICIES

- ☐ Housing and Settlement Strategy: Refresh 2020-2036 (Mornington Peninsula Shire, 2020) (HSS)
- ☐ Neighbourhood Character Study & Guidelines (Ethos Urban, 2019) (NCS&G).

DISCUSSION**Purpose**

The purpose of this report is to present a request by A Different City (ADC), planning consultants on behalf of Tango Development No. 6 Pty Ltd (Tango), for combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and concurrent Planning Permits P21/3339 and P22/0291 to subdivide land for infill housing in Woodbyne Crescent and Albany Way in Mornington. Officers recommend that Council resolves to seek Ministerial authorisation to prepare the combined amendment to the Mornington Peninsula Planning Scheme and concurrent permit applications, and following authorisation, to publicly exhibit the amendment, development plan and permits for community comment.

Background

Planning Scheme Amendment C247morn and Planning Permit applications P21/3339 and P22/0291 ('the proposal') affect land at 2, 4, 5, 6, 7, 8 and 10 Woodbyne Crescent and 1-4 Albany Way, Mornington ('the Woodbyne Precinct'). As a combined amendment request with

4.2 (Cont.)

two concurrent subdivision permit applications, the request is made under section 96A of the *Planning and Environment Act 1987*.

The proposal seeks to:

- ☐ rezone the land from Low Density Residential Zone (LDRZ) to Neighbourhood Residential Zone – Schedule X (NRZX),
- ☐ apply a new Schedule 25 to the Development Plan Overlay (DPO25) to the precinct,
- ☐ remove Design and Development Overlay (DDO6) from the land and translate relevant design provisions into proposed NRZX,
- ☐ remove the Public Park and Recreation Zone (PPRZ) from the Council owned Watt Road plantation reserve to facilitate a land swap, and
- ☐ approve two planning permit applications:
 - Planning Permit application P21/3339 – 54 residential lots plus three medium density sites, and
 - Planning Permit application P22/0291 – 56 residential lots plus three medium density sites.

The proposal documentation and associated Mornington Peninsula Shire (Shire) officer's assessment reports are included in the following attachments:

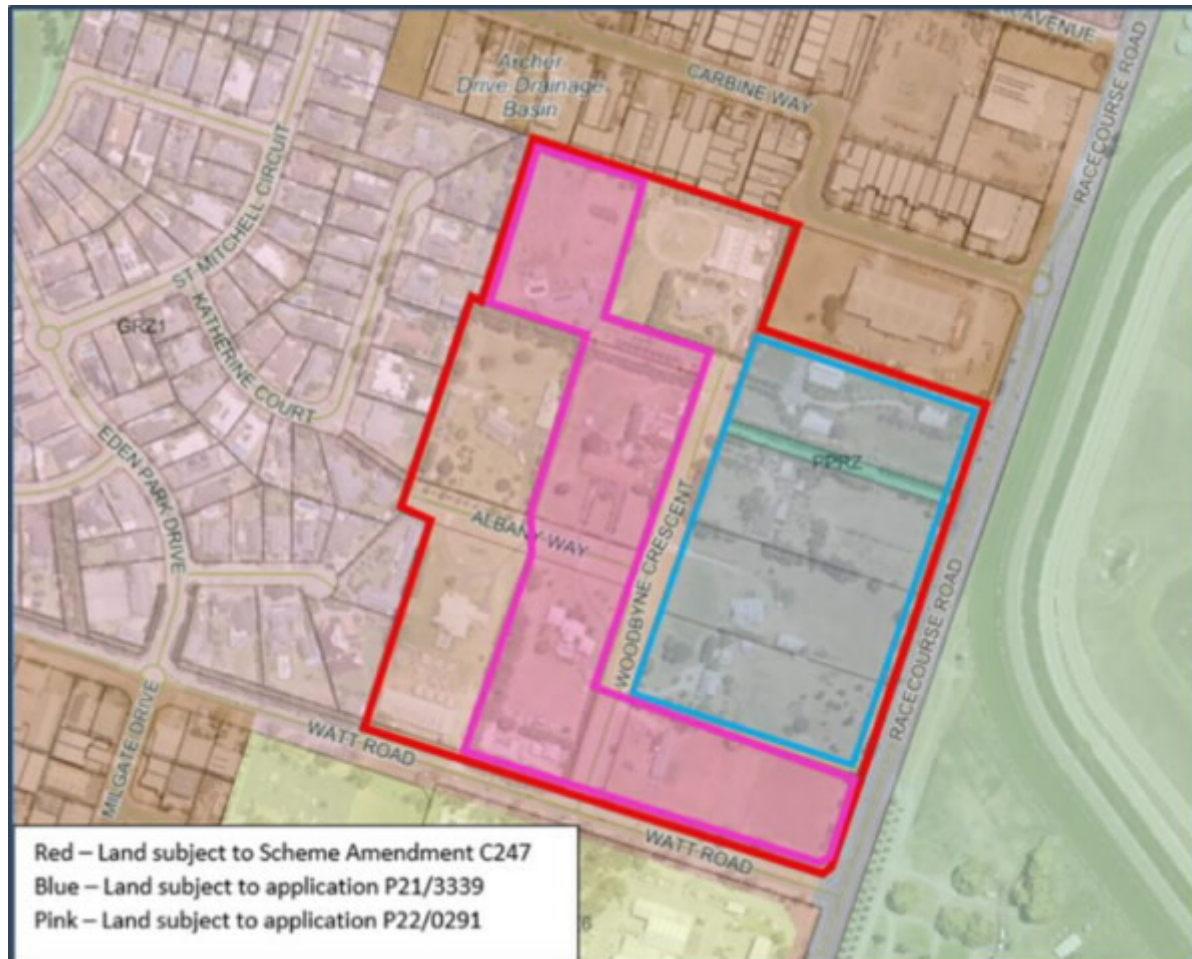
- ☐ Attachment 1 – Woodbyne Precinct Master Plan
- ☐ Attachment 2 – Explanatory report
- ☐ Attachment 3 – Instruction sheet
- ☐ Attachment 4 – Schedule X to NRZ
- ☐ Attachment 5 – Schedule 25 to DPO
- ☐ Attachment 6 – Map NRZX
- ☐ Attachment 7 – Map DPO25
- ☐ Attachment 8 – Map remove DDO6
- ☐ Attachment 9 – Draft Planning Permit P21/3339
- ☐ Attachment 10 – Tango subdivision layout
- ☐ Attachment 11 – Draft Planning Permit P22/0291
- ☐ Attachment 12 – BFF subdivision layout
- ☐ Attachment 13 – Woodbyne Precinct Development Plan report
- ☐ Attachment 14 – Sustainable Subdivision Management Plan
- ☐ Attachment 15 – Officer's assessment report.

4.2 (Cont.)

Subject land

A full description of the subject land, planning context and technical assessment of key issues is included in Attachment 15.

The proposed Woodbyne Precinct is bounded by Racecourse Road and Watt Road Mornington. It is located approximately 3.9 kilometres from the Mornington town centre. The subject land and the sites included in the two subdivision applications are shown on the following map:



The proposed Woodbyne Precinct land area is approximately 11.3 hectares. All 11 properties are currently used for residential purposes and have dwellings with associated outbuildings. A few properties contain stables and horse facilities associated with the racing industry. There are medium canopy trees (of various health and condition) scattered across the precinct and located along title boundaries as windrows.

All existing properties within the precinct are serviced by existing underground infrastructure, including water, sewer, gas, telecommunications, and electricity.

There are two small existing Council reserves within the precinct:

- ☐ a 10-metre-wide reserve between 8 and 10 Woodbyne Crescent providing a pedestrian link, and
- ☐ a 5-metre-wide reserve located along the property boundary frontages to Racecourse Road and Watt Road.

The existing surrounds are:

4.2 (Cont.)

- ☐ North – Carbine Way industrial estate
- ☐ South – Mornington Resource Recovery Centre (MRRC) and Shire depot at 128 Watt Road and Community Animal Shelter & Pound at 126 Watt Road
- ☐ East – Mornington Racecourse
- ☐ West – Eden Park Drive residential estate.

Current planning controls

- ☐ Low Density Residential Zone (LDRZ)
- ☐ Schedule 6 to the Design and Development Overlay (DDO6)
- ☐ Schedule 1 to the Vegetation Protection Overlay (VPO1).

There is a local planning policy applying to the area called 'Regional and local places – Mornington North' at Clause 11.03-6L of the planning scheme. This local policy implements the Mornington North Outline Development Plan (ODP). The subject site is located in 'Precinct 6' of the ODP which has the following strategies:

- ☐ Support low-density residential development that complements the housing diversity of the residential area to the west.
- ☐ Minimise potential conflicts between residential uses and nearby non-residential uses through setbacks and other design measures.
- ☐ Enhance the landscaped character for the precinct, including the provision of landscaped fringes along Watt Road and Racecourse Road.

Proposed changes to zone

In 2020, Council adopted the HSS which outlines the directions for future housing and population growth within the Mornington Peninsula Shire up to 2036. The HSS identified several 'investigation areas' where additional housing supply may be provided in the future should thorough investigations strategically justify a rezoning. These areas were selected due to the sites being strategically located with potential for denser development. The Woodbyne Precinct is identified as an 'investigation area'.

Amendment C247morn proposes to rezone the land from LDRZ to Neighbourhood Residential Zone (NRZ). The NRZX is a new zone schedule and is similar to the proposed NRZ6 for adjoining residential area to the west (Eden Park Drive residential estate) under proposed Amendment C219morn which seeks to implement Council's HSS and NCS&G. The NRZ6 is based on the neighbourhood type 'Garden Court 1' identified in the NCS&G.

As an immediately neighbouring infill area, it is logical to apply a similar zone to the proposed Woodbyne Precinct to ensure consistent built form and design outcomes, but with modifications to allow a relatively moderate increase in density within what amounts to a new and separate residential precinct. The NRZX therefore allows for smaller lots and medium density sites, however, development is limited to two storeys with higher density development located centrally within the precinct, away from existing sensitive residential interfaces.

The 10 metre Council owned Watt Road plantation reserve (between 8 and 10 Woodbyne Crescent) is also proposed to be rezoned to NRZX and no longer be in the Public Park and Recreation Zone (PPRZ). This rezoning is intended to facilitate a 'land swap' wherein the public land will be consolidated into a single, more usable and embellished public open

4.2 (Cont.)

space located centrally within the precinct, with the former, linear reserve area to be incorporated into residential lots. The proposed land swap would result in no net loss of public open space.

Proposed changes to overlays

Amendment C247morn proposes to introduce and apply new DPO25 to the entire precinct which is a site-specific schedule which will ensure coordinated master-planning of the precinct. The draft DPO25 (contained in Attachment 5) requires the following planning principles to be included in any approved Development Plan:

- ☐ A single vehicular entry point via Watt Road.
- ☐ Landscaped buffers along Watt Road and Racecourse Road similar to the existing buffers in the Mornington North Outline Development Plan.
- ☐ Location of sites for medium density dwellings within the precinct (note there is a two-storey maximum height within the NRZX).
- ☐ A central open space park and three pocket parks.
- ☐ Retention of significant vegetation where practicable.
- ☐ Provision of a bus bay in Racecourse Road for the future bus route.
- ☐ Provision of usable public open space and landscaped linkages throughout the precinct and connecting to adjacent residential and industrial areas.

The DPO25 contains the following Development Concept plan to illustrate these objectives.



The draft DPO25 also lists permit conditions requiring developer contributions for the following aspects of the development:

- ☐ internal roads, shared path connections and traffic management solutions at the Watt Road/Woodbyne Crescent intersection and the Watt Road/Racecourse Road intersection
- ☐ for drainage infrastructure, including a landscaped retarding basin the in north-west corner of the site, and
- ☐ the provision of social or affordable housing (being a monetary contribution based on a percentage of the site's value, as is discussed later in this report).

Amendment C247morn also proposes to remove the existing DDO6 which will become redundant as the built form requirements in that overlay are included in the proposed NRZX.

Proposed Development Plan

In addition to the amendment and permits, the proponent is seeking concurrent approval of a Development Plan. The Development Plan provides the 'master-plan' for the precinct, outlining land use, built form, connectivity, and servicing provision for the Woodbyne Precinct

4.2 (Cont.)

in accordance with the requirements of the DPO25 (refer to Attachment 1 for the Woodbyne Precinct Master Plan and Attachment 13 for the Woodbyne Precinct Development Plan report).

The Development Plan report includes the following plans to be approved by the responsible authority (i.e. Council), as per the requirements of the draft DPO25:

- ☐ Site plan and contextual analysis
- ☐ Master Plan
- ☐ Open space plan
- ☐ Transport and movement plan
- ☐ Infrastructure and stormwater management strategy
- ☐ Acoustic attenuation report
- ☐ Environmentally sustainable development
- ☐ Environment and landscape concept plan
- ☐ Staging plan.

The Shire officer's assessment report has concluded that the Development Plan report and accompanying plans are consistent with the draft DPO25.

It is important to note that the Development Plan Overlay exempts third party notification and appeal rights for subsequent permit applications that are generally in accordance with the approved Development Plan. Therefore, the opportunity for neighbours or any interested community members to raise concerns is through the exhibition process associated with this combined Planning Scheme Amendment / Planning Permit process.

Draft Planning Permits

The two proposed planning permit applications to subdivide the land are:

- ☐ Planning permit application P21/3339 – 54 residential lots plus three medium density sites
- ☐ Planning permit application P22/0291 – 56 residential lots plus three medium density sites.

These permit applications do not include properties at 7 Woodbyne Crescent and 3 and 4 Albany Way. (Separate applications for these properties can be considered if/when Amendment C247morn is ultimately approved and gazetted by the Minister for Planning.)

The two permit applications have been assessed by statutory planning officers following statutory referrals and consultation with relevant teams internal to the Shire. The draft DPO25 also lists planning permit conditions for any planning application in the area covered by the Development Plan. These conditions have been included in the draft version of both permits (as contained at Attachments 9 and 11).

Importantly, a permit condition requires that a Memorandum of Common Provisions (MCP) be registered on the title of each new lot. The MCP must include the Residential Lot Design and Construction Requirements specified in section 5.0 of the draft DPO25 and the Sustainable Subdivision Management Plan required by section 3.0 of the draft DPO25.

4.2 (Cont.)

The design requirements include:

- ☐ minimum front setback of 5.5 metres
- ☐ minimum lot width (external lots 12.5 metres and internal lots 10.5 metres)
- ☐ an area for canopy tree in front setback (4.5 x 4.5 metres)
- ☐ rear setback of 5 metres
- ☐ walls on one boundary only (excluding medium density lots)
- ☐ private open space for single dwelling of 40 square metres
- ☐ fences 1.2 metre high and 30% transparent.

The construction requirements will include standards for construction to mitigate acoustics as recommended by the Environment Protection Authority (EPA). For some lots that may be impacted from noise sources (Racecourse events and traffic noise), this will include options for wall and window insulation and locating living rooms and private open space away from the noise source. The developer will be required to provide an acoustic report prepared by a suitably qualified acoustic engineer prescribing the form of acoustic attenuation measure required. These measures will then be endorsed by the responsible authority.

The Subdivision Sustainability Management Plan will require:

- ☐ 7-star Nationwide House Energy Rating Scheme (NatHERS) rating
- ☐ 2.5 kilowatt (kW) solar photovoltaic (PV) system
- ☐ all-electric houses
- ☐ energy storage capacity of 9kWh
- ☐ WELS rated fixtures within 1 star of best available and comply with Built Environment Sustainability Scorecard (BESS) standard
- ☐ Stormwater Treatment (Model for Urban Stormwater Improvement Conceptualisation [MUSIC] modelling or similar) to achieve stormwater quality outcomes
- ☐ houses on lots greater than 400 square metres must be connected to rainwater collection tanks (minimum capacity 10,000 litres per dwelling)
- ☐ hard landscape and roofs to meet a Solar Reflective Index (SRI) of 50 or greater
- ☐ no black roofs.

The proponent will prepare a draft MCP demonstrating compliance with the above requirements to be placed on public exhibition alongside all other amendment and permit documentation.

Future Planning Permit approval process

The draft DPO25 requires the preparation of a Development Plan, which is distinct from a planning permit. Planning permits for subdivision, use and development will still be required, where there is an existing permit trigger under the underlying zone or existing overlays (such as the VPO).

4.2 (Cont.)

In the proposed NRZX, a permit is required for a single dwelling on lots less than 350 square metres. The majority of lots proposed in both subdivision applications are more than 350 square metres and will therefore not need a planning permit.

The purpose of the MCP is to attach design and siting requirements to the title of each lot. The provisions of the MCP are incorporated into the restrictions created by the plan of subdivision so that the MCP requires owners to develop the lot in accordance with the MCP.

The reason for applying the MCP to all lots is to ensure the same siting and design standards (which include ESD measures and acoustic treatments) are applied to all future dwellings, including those that do not require a planning permit – that is, lots above 350 square metres.

In the proposed NRZX, a permit is required to subdivide land. This will apply to future subdivisions for land not included in current Planning Permit applications P21/3339 and P22/0291 and for the future subdivision of the medium density lots.

Once the Development Plan is approved, the DPO25 requires that all planning permits granted must be 'generally in accordance' with the approved Development Plan. To fulfil this requirement, Council will test each proposal against the requirements of the plan. If it is considered that a substantial provision of the plan has not been met, a planning permit will not be granted. The proponent has the right to appeal Council's refusal to approve a permit at the Victorian Civil and Administrative Tribunal (VCAT).

ASSESSMENT***Is the proposed rezoning strategically justified?***

The proponent has submitted numerous background reports and technical assessments to support the rezoning request and subdivision applications. Reports include:

- ☐ Planning report Woodbyne Precinct (ADC, June 2023)
- ☐ Traffic report Woodbyne Precinct (OMG, June 2023)
- ☐ Engineering Services report Woodbyne Precinct (Charlton Degg, June 2023)
- ☐ Stormwater Strategy Woodbyne Precinct (Incitis, June 2023)
- ☐ Landscape Masterplan Woodbyne Precinct (Plan E, June 2023)
- ☐ EPA response (May 2023)
- ☐ Buffer Constraint report (PEC, June 2023)
- ☐ Acoustic report (Clarity, September 2022)
- ☐ Acoustic addendum (Clarity, February 2022)
- ☐ Acoustic peer review (Renzo Tonin, March 2023)
- ☐ Dust report (AOC, October 2022)
- ☐ Dust addendum (AOC, February 2023)
- ☐ Odour report (Ektimo, August 2022)
- ☐ Odour addendum (Ektimo, February 2023)

4.2 (Cont.)

- ☐ Site contamination report (AGS, January 2023)
- ☐ Ecological assessment (Ecology & Heritage Partners, November 2022).

The following technical reports for Planning Permit P21/3339 (Tango subdivision):

- ☐ Planning report – Tango subdivision (ADC, June 2023)
- ☐ Traffic report – Tango subdivision (OMG, June 2023)
- ☐ Engineering Services report – Tango subdivision (Charlton Degg, June 2023)
- ☐ Stormwater Strategy – Tango subdivision (Incitis, June 2023)
- ☐ Landscape Masterplan – Tango subdivision (Plan E, June 2023).

The following technical reports for Planning Permit P22/0291 (BFF subdivision):

- ☐ Planning report – BFF subdivision (Hansen, October 2022)
- ☐ Traffic report – BFF subdivision (OMG, June 2023)
- ☐ Engineering Services report – BFF subdivision (Charlton Degg, June 2023)
- ☐ Stormwater Strategy – BFF subdivision (Incitis, June 2023)
- ☐ Landscape Masterplan – BFF subdivision (Plan E, June 2023).

Each of the above reports have been assessed by Shire officers from various internal teams. Officers have also sought referral comments from various external authorities where relevant. Attachment 15 contains the full officer assessment of the proposal and all supporting documentation. The assessment includes officer recommendations for inclusions in the Development Plan and suggestions for planning permit conditions where indicated. Should the proposal proceed to public exhibition, all of the above listed documentation will be exhibited alongside the statutory amendment and permit documents.

Having reviewed all the documentation, Council must decide whether a rezoning request is strategically justified before requesting the Minister to authorise the amendment. Authorisation does not mean approval at this stage, rather it will allow formal exhibition to seek the views of landowners, neighbours, and the general community.

Overall, the officer's assessment report concludes that the proposed rezoning to NRZX with the new DPO25 is strategically justified for the following reasons:

- ☐ The proposed NRZX is the most appropriate residential zone for this 'investigation area' in the HSS. In addition to the controls in the NRZX, the site-specific schedule DPO25 will have additional built form and construction requirements to ensure development is responsive to the characteristics of the area.
- ☐ The NRZX zone is similar to the NRZ6 which is proposed under amendment C219morn for the adjoining area. This NRZ6 zone implements the recommendations of the HSS and the Neighbourhood Character Study and Guidelines.
- ☐ The Woodbyne Precinct will be a new local residential neighbourhood within an established urban area (within the urban growth boundary) and will deliver increased housing and utilise access to existing urban infrastructure.

4.2 (Cont.)

- ☐ The subdivision layouts and areas proposed for medium density housing will provide a range of housing stock for a range of income groups.
- ☐ The amendment documentation has been prepared in accordance with the Strategic Assessment Guidelines and is consistent with existing state and local planning policies for housing and residential subdivision design.
- ☐ The planning principles listed in the draft DPO25 and incorporated into the draft Development Plan respect and respond to the valued character of the Mornington North area and the built form strategies in the Mornington North Outline Development Plan.
- ☐ The draft Woodbyne Precinct Master Plan shows connections to adjacent residential and employment areas.
- ☐ The proposed layout in the draft Woodbyne Precinct Master Plan responds to non-residential interfaces and the permit conditions will address potential adverse amenity conditions.
- ☐ The proposed landscape masterplan includes indigenous plantings to create green corridors along road reserves linking with the central open space, that will provide bio links and reduce urban heat impacts.
- ☐ The MCP on title will ensure that future dwellings meet certain design standards to achieve a consistent neighbourhood character, incorporate Environmentally Sustainable Development measures and protect the amenity of future residents with respect to acoustic attenuation.

Amenity impacts of surrounding land uses on future residents

A number of technical reports have been provided to assess potential amenity impacts of noise, odours, and dust on the future residents of the Woodbyne Precinct from nearby land uses, namely the industrial precinct to the north, the Mornington Racecourse to the east and the Shire's Resource Recovery Centre and animal shelter to the south.

The EPA publication Recommended Separation Distances for Industrial Residual Air Emissions (EPA, 2013) suggests a buffer distance between a Waste Transfer Station and sensitive land use (residential) of 250 metres. The distance to the southern boundary of the Woodbyne Precinct is approximately 200 metres. The publication does allow for a site-specific assessment and therefore field surveys were undertaken by environmental consultants appointed by the proponent. The assessments support a lesser buffer due to the small quantities of rubbish handled at this local transfer station, the location of transfer activities at the southern end of the site, no composting of green waste on-site, and no handling of putrescible rubbish.

Protection of existing industrial land uses

Amendment C247morn will result in increased residential densities in proximity to existing land uses. The continued operation of these lawfully existing uses must be protected.

The industrial zone to the north in Carbine Way is approximately 200 metres wide and is surrounded by residential uses i.e. the subject LDRZ to the south, existing General Residential Zone with conventional densities to the west (Eden Park Drive estate) and the retirement villages to the north of Booker Avenue.

In the future, any proposed uses in this zone would need to meet amenity buffers set out in Clause 52.10 of the planning scheme. Many uses with likely impacts (noise, dust, odour) require larger buffers from residential zones, for example 200, 500 or 1000 metres.

4.2 (Cont.)

The proponent has also provided an audit of current uses. The majority of uses in this industrial estate can be categorised as trade supplies, warehouse and office uses. There are a few pre-existing uses with potential amenity impacts (powder coating, steel works, motor repairs and refuse vehicle depot). To mitigate any potential impact from these pre-existing uses, it is proposed to create a 5-metre landscape reserve for the retention or replanting of significant vegetation along the northern boundary. These block lengths will be 35 metres for greater separation of building form.

In addition, it is proposed to have a 2-metre-high acoustic fence along the northern boundary to mitigate any noise issues from the industrial estate in the future.

Road treatments to manage additional vehicle trips

A Traffic Impact Assessment (TIA) has been provided with projected traffic volumes of the completed development. The TIA states that expected traffic volumes generated by the development could be accommodated by the surrounding road network with both the Watt Road/Woodbyne Crescent and Watt Road/Racecourse Road intersections expected to operate within their respective capacities.

For the proposed increase in trips, a dedicated right turning lane into the Watt Road entrance to the Woodbyne Precinct will be provided. This is preferable to a roundabout which is problematical in this location with the staggered entry to the MRRC opposite in Watt Road.

The planning permits will require functional layout plans for all internal roads to allow for one car parking space per two lots to comply with Clause 56 of the planning scheme. The road layouts will also allow for a canopy street tree for each lot.

Vegetation removal and proposed planting schedule

The arboricultural assessments have identified trees of medium value to be retained. There are other scattered trees, bushes and windrows that will be removed. Most of the vegetation has been planted and is a mix of indigenous and introduced species. The vegetation assessment concluded that the majority of vegetation is low to medium retention value. The central park has been located specifically to retain existing medium value trees.

The extent of proposed vegetation removal is significant and is likely to result in a moderate impact to the landscape and environmental values of the site, especially in the short term. For the long term, there will be an increase in canopy trees along all road reserves and within the central park and pocket parks, with species of new trees to be indigenous. In addition, the MCP will require sufficient space to provide a canopy tree in the front garden and the rear garden of each single dwelling. Collectively, an improved landscape and vegetation outcome will be achieved for the entire precinct in terms of a net increase in vegetation with better habitat value and urban cooling.

The Development Plan and permit conditions will require a minimum grassed nature strip width of 2.5 metres to be provided on both sides of all roads to accommodate large spreading canopy street trees and to ensure full, regularly spaced avenues are developed throughout the subdivision.

Net community benefit

The approval of a planning scheme amendment should also provide a net community benefit. The proponent has committed to provide a voluntary contribution to affordable housing on the Mornington Peninsula. An objective of the *Planning and Environment Act 1987* (the Act) is:

To facilitate the provision of affordable housing in Victoria.

4.2 (Cont.)

The Shire has adopted the Affordable Housing Policy 2020-2030 with the following policy:

9. *For any proposed planning scheme amendment that could potentially increase residential density, that Council seeks a developer's contribution in the form of social or affordable housing on the land or a financial contribution for the provision of offsite social or affordable housing.*

The draft DPO25 requires the developer to enter into a section 173 agreement under the Act for the affordable housing contribution. The contribution will be in the form of cash to a housing provider, being the lesser of:

- ☐ 5% of englobo land gross realisable value prior to rezoning
- ☐ 1.75% of englobo land gross realisable value post rezoning.

('Englobo' is an undeveloped lot, group of lots or parcel of land that is zoned to allow for, and capable of significant subdivision into smaller parcels under existing land use provisions.)

The Development Plan also provides a central park for the Woodbyne Precinct, three landscaped pocket parks, and a path around the retarding basin. These paths will connect to adjacent urban areas and will be accessible to the broader community.

Options for consideration

Having assessed the proposal, Council must decide whether to:

- ☐ Option A – support the combined planning scheme amendment and permit applications' request by resolving to seek authorisation from the Minister for Planning, pursuant to section 8A of the Act to prepare the combined amendment to the Mornington Peninsula Planning Scheme and concurrent permit applications (under section 96A); or
- ☐ Option B – refuse the amendment request and permit applications on the basis that the amendment lacks strategic justification.

If Council refuses the request, the proponent has no right of appeal.

Having considered the proponent's request and strategic planning assessment, officers conclude that the amendment is strategically justified given that it would create a net community benefit as explained in the Explanatory Report (Attachment 2). Officers therefore recommend that Council resolves to proceed with Option A.

ENGAGEMENT

If Council resolves to seek authorisation from the Minister to prepare the Planning Scheme Amendment, and authorisation is granted by the Minister, exhibition in accordance with the requirements of section 96C of the Act would occur.

This would involve the combined Amendment C247morn/Planning Permits P21/3339 and P22/0291 (and all accompanying background reports and technical assessments) being placed on public exhibition. Exhibition would be for a minimum period of one month with the following minimum notice to be undertaken:

- ☐ Notices placed in the Government Gazette and local paper.
- ☐ Direct notification to landowners and occupiers in the area.
- ☐ Amendment documentation available at Shire's offices and website.

4.2 (Cont.)

- ☐ Amendment documentation available on the Department of Transport and Planning (DTP) website.

Following exhibition, Council must consider all submissions received. In the event that issues raised in submissions cannot be resolved, Council will need to decide whether to abandon the amendment / permits, or refer the amendment / permits and all submissions to an Independent Planning Panel (appointed by the Minister) for review and recommendations.

COMMUNICATIONS PLAN

Not applicable, as public consultation is carried out as per the requirements of the Act.

LEGAL AND REGULATORY FRAMEWORK

As per the Act, under:

- ☐ Section 8A (2), Council as planning authority for its municipal district must not prepare an amendment to the State standard provisions or the local provisions of a planning scheme in force in its municipal district unless it has applied to the Minister under this section and the Minister has authorised it to do so.
- ☐ Section 96A, an application under this section must be made in accordance with the regulations and contain the information required by the Minister.
- ☐ Section 96C, Council must give prescribed notice of its preparation of the amendment and concurrent consideration of a permit application following Ministerial authorisation.

SUSTAINABILITY CONSIDERATIONS

The amendment's environmental, social, and economic effects are articulated in the Explanatory Report (Attachment 2).

FINANCIAL CONSIDERATIONS

The amendment is proponent-led. The proponent is required to pay Council statutory fees at various stages during the planning scheme amendment process in accordance with regulation 6 of the *Planning and Environment (Fees) Regulations 2016*. These include:

- ☐ **I & S** to consider the amendment request (already paid)
- ☐ **I & S** to consider the planning permit applications (already paid)
- ☐ **I & S** to **I & S** to review community submissions received during exhibition (depending on the number of submissions)
- ☐ **I & S** for Council to adopt the amendment.

The proponent will also pay the administrative costs of exhibition such as the mail out cost, notices in the Government Gazette and local newspaper and hire of venue (if required) for community consultation sessions.

In the event a planning panel is required following exhibition, there will be additional fees to appoint the panel and for any third-party representation – all of which is yet to be determined at this stage in the amendment process and will depend on the number and nature of submissions. These costs will be borne by the proponent.

4.2 (Cont.)**CONFLICTS OF INTEREST**

No person involved in the preparation of this report has a conflict of interest in the subject matter of this report.

4.3 Recreational Facilities for Mountain Bike and BMX Strategy

Prepared By	Jayne Robinson, Recreation Planning and Project Officer
Authorised By	Director - Planning and Infrastructure
Document ID	A11818079
Briefing Note Number	BN1722 – 9 May 2023
Attachment(s)	<ol style="list-style-type: none"> 1. Recreational Facilities for Mountain Bike and BMX Strategy 2. Citation Reserve Dirt Jumps Pilot Program Evaluation Report/ Delivery Model

EXECUTIVE SUMMARY

The Recreational Facilities for Mountain Bike and BMX Strategy (the Strategy) (Attachment 1) outlines a strategic plan to guide the future provision, distribution and standard of recreational bike park facilities (dirt jumps, skills parks and pump tracks) across the Peninsula.

The Strategy assists in supporting the increasing community demand for more informal recreation opportunities and outlines that rider involvement in the building and maintenance of local level dirt jumps is a feasible model.

RECOMMENDATION

That Council adopts the Recreational Facilities for Mountain Bike and BMX Strategy (Attachment 1) and the Dirt Jumps Pilot Program Evaluation Report/ Delivery Model (Attachment 2).

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

- ☐ Theme 3 – A flourishing, healthy and connected community.
 - Strategic Objective 3.4 – A community with vibrant arts, culture, sport and recreational opportunities that foster connections and participation across generations, backgrounds and abilities.

RELEVANT COUNCIL DECISIONS AND POLICIES

At the Council Meeting held on 18 October 2022, Council resolved to:

1. Place the draft Recreational Facilities for Mountain Bike and BMX Strategy on public exhibition for a period of 6 weeks from 20 October to 1 December 2022.
2. Endorse the commencement and delivery of the six-week Dirt Jumps Pilot Program at Citation Reserve, Mount Martha from 30 October until 11 December 2022.

4.3 (Cont.)**DISCUSSION****Purpose**

The purpose of this report is to seek Council adoption of the Strategy and the Dirt Jumps Pilot Program Evaluation Report/Delivery Model (Attachment 2).

Background

In the last decade (mainly during COVID-19 lockdowns) there has been a high number of reports of illegal dirt jumps being built by the community across the Mornington Peninsula Shire (Shire), with the majority occurring in the Northern Planning Area, where no bike park facilities had existed.

The Shire has a responsibility to ensure the safety of the community and to minimise environmental impacts, and as such is currently removing the jumps. This has resulted in significant community feedback, some positive with majority negative.

Following the above, '@leisure Planners' a leading sport, leisure, and open space consultancy company with significant experience in this area were engaged to assist in the development of the new Strategy. The purpose of the Strategy is to ensure dirt jumps, skills parks and pump tracks are in appropriate locations and designed together with the community.

A key finding from initial consultations held in 2021 found that the community (mainly young people) want to be involved in the building of dirt jumps and want to know where they are allowed to build, as this is what they enjoy the most along with riding the jumps.

On 18 October 2022, Council endorsed the draft Strategy to be placed on public exhibition for a six-week period. This also included a six-week community-built dirt jump pilot program that allowed the community to be educated and involved in the design, build and maintenance of dirt jumps at Citation Reserve in Mount Martha.

The six-week pilot program was delivered by Council in partnership with @leisure Planners, Trailscapes and Cycling Australia and was well attended with in excess of 60 young people aged between 10 and 17 participating. A short video summarising the program can be viewed at: [Bike Jump Pilot Program - Citation Reserve, Mount Martha - YouTube](#)

The trail educators during the three planned sessions educated the participants about vegetation protection and its importance. The jumps were built using appropriate soil, which was delivered to site.

The evaluation report (Attachment 2) further details and reviews the pilot program for building dirt jumps in partnership with the local community at Citation Reserve in Mount Martha. The pilot program demonstrated that rider involvement in local dirt jumps is feasible.

In response to the community feedback received together with the success of the pilot program the Strategy proposes the following number of sites under the facility hierarchy of Local, District and Regional to accommodate the demand for recreational bike park facilities across the Peninsula:

- ☐ Local Level – Up to nine sites built and maintained with rider involvement as per the pilot program model.
- ☐ District Level – Three sites.
- ☐ Regional Level – One site is desirable.

4.3 (Cont.)**Options for consideration**

- ☐ Adopt the Strategy. Given the success of the pilot program, this report and the Strategy (Attachment 1), recommends that up to nine local level sites be delivered across the Peninsula via the pilot program model, to be resourced with a new full-time Sport Development Officer role that was recently approved through Council's budget process.
- ☐ The other option (not recommended) would be Council not adopt the Strategy. This would require a full review of the provision and management of BMX and Mountain Bike Facilities in the Shire and may also have a negative financial impact as professional services would need to be engaged to manage and maintain existing facilities.

ENGAGEMENT

The public exhibition period of the draft Strategy was held from 20 October 2022 until 1 December 2022 and included a six-week community-built dirt jump pilot program that allowed the community to be educated and involved in the building and maintenance of dirt jumps at Citation Reserve in Mount Martha.

The community were invited to view the draft Strategy and details on the pilot program via the following methods:

- ☐ A Shape page on the Shire's website dedicated to the draft Strategy.
- ☐ A Shape page on the Shire's website dedicated to the Citation Reserve dirt jump pilot program.
- ☐ Citation Reserve pilot program session days (three).
- ☐ Media releases.
- ☐ Social media posts.
- ☐ Customer service advertising.
- ☐ Direct email to registered shape page stakeholders and pilot program participants.
- ☐ Posters distributed to schools.

Below are the combined metrics associated with the level of digital engagement on the draft Strategy:

- ☐ Impressions (total number of times the project information/media release, posts, etc. were seen) – 90,021.
- ☐ People reached (the number of unique users/individuals that viewed project media information) – 27,482.
- ☐ Total link clicks (the number of users that clicked on the information/media release, etc. to gain further information) – 692.

In addition to the above, 38 written submissions were received.

Of the responses received, 92% were supportive of the draft strategy.

4.3 (Cont.)

Further information is included in Attachment 1.

COMMUNICATIONS PLAN

Following adoption, a copy of the final Recreational Facilities for Mountain Bike and BMX Strategy (Attachment 1) will be available for the community to view on the Mornington Peninsula Shire Website under the Strategy and Plan Listing page. Community members who submitted feedback on the draft Strategy will also be notified.

LEGAL AND REGULATORY FRAMEWORK

Council's obligations under the *Occupational Health and Safety Act 2004* (Victoria) were duly considered. To that effect the following requirements will need to be executed and managed by the new Sport Development Officer resource (under Council's Community Facilities and Precincts department), when it comes to the setup and delivery of the pilot program model across local level dirt jumps sites outlined in the Strategy:

- ☐ Ensure a Risk Assessment is conducted for each new site (same format as the trial but taking into consideration any specific features of the respective location).
- ☐ Clearly define who is the 'main contractor' during civil construction work (primarily delivery and installation of the dirt jump soil).
- ☐ Ensure site supervision and regular site inspections are conducted.

Refer Attachment 1 and 2 for further details.

SUSTAINABILITY CONSIDERATIONS

The Strategy supports a sustainable approach for the future development of recreational bike park facilities.

The implementation of the Strategy will consider a range of sustainability criteria, including but not limited to climate change, biodiversity, cultural heritage, Environment Sustainable Design initiatives and also include the Environmental Protection Authority for potential sites previously used for landfill or other commercial uses.

The future development of more bike park facilities will further benefit the community's social, health and wellbeing and will also assist in mitigating the building of unauthorised dirt jumps in unsuitable areas (including areas of environmental significance) on Council owned/managed land.

FINANCIAL CONSIDERATIONS

As part of the Strategy an implementation plan has been prepared, which lists a total of 11 bike park facilities (combination of new and revitalisation of existing bike parks). Should the Strategy be adopted some funding is immediately available to commence works, while further funding will be subject to Council's future budget process and availability of suitable grant funding.

Up to nine local level dirt jump sites will be delivered with rider involvement via the cost saving pilot program model.

The cost to deliver local community-built dirt jumps provides good value for money, with the Citation Reserve Pilot Project costing approximately **I & S** with ongoing maintenance being undertaken by the community in collaboration with the Shire. The cost to deliver a similar outcome through a professional trail builder is approximately **I & S**

4.3 (Cont.)

In addition, the indicative annual cost to maintain a local level dirt jumps site, such as Citation in partnership with the community is approximately \$10,000. If the site was to be only maintained by professional contractors, this would be an indicative annual cost of \$20,000.

As the Shire does not currently have the internal capacity or inhouse expertise to support the community in safely building and maintaining dirt jumps across multiple sites, it has been identified that to facilitate the delivery of the actions contained within the Strategy, a dedicated full-time Sport Development officer position would need to be filled by a suitably qualified and experienced candidate. This new position was endorsed in Council's 2023/2024 financial year budget.

Shire officers also anticipate that should the Strategy be adopted external grant funding can be pursued, as having an agreed strategic position adds weight to external funding applications.

CONFLICTS OF INTEREST

No person involved in the preparation of this report has a conflict of interest in the subject matter of this report.

4.4 Coastal Advisory Groups Review

Prepared By	Hayden Forrest, Coastal Planner; Gerard Cook, Coastal Planner; Isabelle Spinks, Coastal Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12287432
Briefing Note Number	BN1704 – 28 March 2023 and BN1731 – 23 May 2023
Attachment(s)	<ol style="list-style-type: none"> 1. Current Terms of Reference 2. Draft Terms of Reference 3. Initial Survey 4. Initial Survey Results 5. Follow up Survey 6. Follow up Survey Results

EXECUTIVE SUMMARY

Ten township-based Coastal Advisory Groups (CAGs) were appointed through an Expression of Interest (EOI) process between October 2019 and January 2020 for a term of three years. The CAGs term was later extended to 30 June 2023.

The current groups share local knowledge, participate in the strategic planning for coastal areas, make recommendations for future works and act as a key link to the local community on matters related to the coastal township area for which they are appointed.

In accordance with Item 10.1 of the current Terms of Reference (TOR) (Attachment 1) and Council decision on 4 October 2022, Shire officers have completed a review of the purpose, structure, and membership of the CAGs.

The review has illustrated that while township-based CAGs offer significant benefits, particularly with regards to contributing local knowledge to strategic planning projects, there are opportunities to improve the effectiveness of the groups to better utilise volunteer time and Mornington Peninsula Shire (Shire) resources. The review proposes recommendations to improve the current CAG arrangement and ensure the sustainable continuation of these advisory groups.

RECOMMENDATION

That Council:

1. **Ceases the current model of Coastal Advisory Groups and establishes five area-based Coastal Advisory Groups as follows:**
 - A. **Northern Port Phillip: Mount Eliza, Mornington, Mount Martha**
 - B. **Central Port Phillip: Safety Beach, Rosebud, McCrae**
 - C. **Southern Port Phillip: Rye, Sorrento, Portsea**
 - D. **Northern Western Port: Bittern, Hastings, Somerville**
 - E. **Southern Western Port: Somers, Flinders.**
2. **Adopts the new Draft Terms of Reference (Attachment 2).**

4.4 (Cont.)

- 3. Supports the development of an organisation-wide Code of Conduct for Volunteers.**

COUNCIL & WELLBEING PLAN**Council and Wellbeing Plan 2021-2025 Strategic Theme**

This aligns with the Council and Wellbeing Plan, in particular:

Theme 1: A healthy natural environment and well-planned townships.

- ☐ Strategic objective 1.1 An accessible and unique natural environment that helps our community to be healthy and well.
 - 1.1.2 Work with our community to raise awareness about the value of our natural environment.
 - 1.1.3 Look after our public spaces through our Open Space Strategy and site-specific plans.
 - 1.1.5 Continue putting the Climate Emergency Plan into action and build community resilience to mitigate the effects of the climate emergency.

Theme 3: A flourishing, healthy and connected community.

- ☐ Strategic objective 3.1 A healthy and self-determined community where everyone feels valued, supported, and safe.

RELEVANT COUNCIL DECISIONS AND POLICIES**Council Meeting – 11 June 2019**

1. *That Council changes the name of the Foreshore Advisory Groups to Coastal Advisory Groups.*
2. *That Council adopts the Terms of Reference.*
3. *That Council undertakes an Expression of Interest process for a six-week period calling for members of the ten Coastal Advisory Groups.*

At subsequent meetings on 22 October 2019, 6 November 2019, 28 January 2020, 23 November 2020 and 24 August 2021 Council resolved to appoint members to the Coastal Advisory Groups.

Council Meeting – 4 October 2022

1. *That Council resolves to extend the current term for 10 Coastal Advisory Groups from 31 October 2022 (Mount Eliza, Mornington, Mount Martha, Safety Beach, Rye, Sorrento, Portsea, Hastings) and 31 January 2023 (Rosebud, Flinders) until 30 June 2023.*
2. *At the end of the extended term (30 June 2023), officers bring to Council a review of the purpose, structure and membership of the Coastal Advisory Groups, in order to ensure the continuation of these Advisory Groups, as per the Terms of Reference 10.1, the review to be presented to Council in March 2023.*

4.4 (Cont.)

That a report is brought to Council as part of the review outlining outcomes and actions directly attributed to each of the 10 Coastal Advisory Groups since their inception, excluding community consultation exercises.

DISCUSSION**Purpose**

The purpose of this report is to present a review of the purpose, structure, and membership of the Coastal Advisory Groups (CAGs) as required by Item 10.1 of the TOR (Attachment 1) and Council decision on 4 October 2022. It is recommended that Council ceases the current model of CAGs and establishes a new structure and TOR (Attachment 2) be adopted to ensure the sustainable continuation of the CAGs.

Background

CAGs are currently appointed for areas that the Shire is the Committee of Management for and operate within the TOR adopted by Council in June 2019 (Attachment 1).

The current CAGs were appointed between October 2019 and January 2020. Their term concluded on 30 June 2023.

During the appointment term of the CAGs between 2019-2023, a total of 24 members resigned. A total of 10 new members were subsequently appointed to Sorrento (five) and Flinders (five) CAGs via an Expression of Interest process as per the TOR.

This review considers the purpose, structure, and membership of the CAGs over the last three years, as required by Item 10.1 of the TOR and Council decision on 4 October 2022. It is based on both direct feedback from CAG members via two surveys and officer observations.

The review was initially presented to Council at a briefing on 28 March 2023 (BN1704), following an initial round of consultation with CAG members through a survey and discussions at official meetings held in February and March 2023. Three options were proposed for the continuation of the CAGs.

The direction from that Council briefing was for officers to undertake further consultation with CAG members, present a Ward-based approach for future CAGs and seek further feedback on potential changes to the purpose, structure, and membership of the CAGs.

A second round of consultation was conducted with CAG members through a follow-up survey and an amended CAG review was presented at a Council briefing on 23 May 2023 (BN1731). This report includes the requested changes discussed at the briefing, including shifting to geographical-based CAGs rather than township-based and updates to the draft TOR.

Initial Survey

An initial survey (Attachment 3) was circulated to CAG members on 2 February 2023 and remained open until 5 March 2023. This survey was completed by 33 members, which is around 52% of the current membership (63 members).

Results from the survey and conversation from the briefing confirmed that Council supported the CAGs continuing, with the opportunity to consider improvements to the purpose, structure and membership of the groups moving forward. A more detailed summary of the results provided are included within Attachment 4.

4.4 (Cont.)***Follow Up Survey***

At the direction from Council, at a briefing held on 28 March 2023, officers undertook further consultation with CAG members to present a Ward-based approach for future CAGs and seek further feedback on potential changes to the purpose, structure, and membership of the CAGs.

A follow-up survey (Attachment 5) was circulated to CAG members on 6 April 2023 and remained open until 23 April 2023. The total number of survey responses received was 22, which is around 35% of the total membership (63 members).

Results from the survey and second briefing reiterated the importance of continuing the CAGs. The key changes resulting from the survey and briefing were:

- ☐ propose a geographical-based approach across five groups
- ☐ introduce a yearly forum for all CAG members
- ☐ each group is to prepare a report prior to the forum to present to the other groups
- ☐ invite a representative from other Committees of Management to attend meetings
- ☐ updates to the draft TOR to reflect the abovementioned changes.

A more detailed summary of the results is provided within Attachment 6.

The survey results and briefing discussions confirmed that Council is committed to the continuation of the CAGs. The Shire has a commitment to being leaders in coastal planning and management and CAGs are a unique arrangement that supports our organisation to guide the management and future of our coastlines.

Options for consideration

Three options were considered with regards to the future of the CAGs through this review.

Option 1 is to continue the current CAG arrangement and TOR without changes and appoint new members through an EOI process. This option is not preferred, given that the review process has highlighted numerous opportunities for improvement to the current CAG arrangement.

Option 2 is to alter the current CAG structure to five geographical-based groups and adopt a new, simplified TOR (Attachment 2). This is consistent with the proposed officer recommendation in this report. This option is preferred as it will address the issues identified throughout the review, make better use of volunteer time and Shire officer resources, and be more consistent with current marine and coastal policy and guidelines. The follow-up survey results indicated that at least 68% of respondents would want to participate in these broader groups.

Option 3 is to discontinue the current CAG arrangement and engage with community on an 'as needs' basis for strategic coastal projects. This option is not preferred as CAGs provide significant community expertise, input, and key local knowledge, which is highly valuable in the context of coastal planning and management.

ENGAGEMENT

Engagement with CAG members included two surveys sent out via email in February and April 2023, as well as in-person discussions about the review at the February/March 2023

4.4 (Cont.)

official meetings. The results of the survey and CAG responses have previously been detailed in this report.

Shire officers also engaged with the Association of Bayside Municipalities (ABM) network through survey questions sent out via email in March 2023. The purpose of the survey was to understand how other coastal municipalities engage with community and encourage community participation in coastal planning and management. Officers sought further advice on this matter from the Department of Energy, Environment and Climate Action (DEECA) at a meeting in April 2023.

The results from engagement with both ABM and DEECA revealed that CAGs are unique to the Shire, with no evidence of similar arrangements at other bayside municipalities.

COMMUNICATIONS PLAN

A communications plan to advertise and seek applications for the new Coastal Advisory Groups will be developed as required.

LEGAL AND REGULATORY FRAMEWORK

Not applicable.

SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

Not applicable.

CONFLICTS OF INTEREST

No person involved in the preparation of this report has a conflict of interest in the subject matter of this report.

4.5 Carbon Neutral Policy Review

Prepared By	Chris Yorke, Energy & Carbon Management Officer
Authorised By	Director - Planning and Infrastructure
Document ID	A12329846
Briefing Note Number	BN1741 – 6 June 2023
Attachment(s)	<ol style="list-style-type: none"> 1. Draft Amended Carbon Neutral Policy 2. Carbon Neutral Policy Consultation Responses (Redacted)

EXECUTIVE SUMMARY

The Draft Carbon Neutral Policy (Attachment 1) is being presented to Council following Council endorsement at the Council Meeting on 21 February 2023 for public exhibition from 3 April 2023 to 1 May 2023, and consideration of the public feedback.

No further changes to the draft Policy are recommended following the public consultation period. Most feedback reinforced the proposed amendments to support more local action and direct benefits of the community but did not support the revised target date. A target date earlier than 2030 however would unlikely be achieved without relying on the purchase of carbon credits from projects outside of the municipality and/or value chain of the Mornington Peninsula Shire (Shire).

Support for local action and any associated benefits of carbon offsetting being realised within the community was indisputable, which the revised Policy seeks to achieve in conjunction with the Climate Emergency Plan.

The Policy represents a balance between environmental priorities with social and economic considerations.

RECOMMENDATION

That Council adopts the revised Carbon Neutral Policy (Attachment 1).

COUNCIL & WELLBEING PLAN

This aligns with the Council and Wellbeing Plan, in particular:

Theme 1: A healthy natural environment and well-planned townships.

Strategic Objective 1.1: An accessible and unique natural environment that helps our community to be healthy and well.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles 2, 8 and 10 which are:

2. Integrity and impartiality: Council will be honest, diligent, avoid conflicts of interest, treat people with respect, act lawfully and show leadership.

4.5 (Cont.)

8. Participatory: Anyone affected or interested in a decision should have the opportunity to participate in the decision-making process.
10. Transparent: Council will clearly communicate the information, advice and consultation considered by Council to inform a decision.

RELEVANT COUNCIL DECISIONS AND POLICIES

Notice of Motion 153 – Council Meeting on 24 November 2014.

Carbon Neutral Policy (adoption) – Council Meeting on 8 February 2016.

Carbon Neutral Policy Review (endorsement for public exhibition) – Council Meeting on 21 February 2023.

DISCUSSION**Purpose**

The purpose of this report is to seek Council's adoption of the revised Carbon Neutral Policy.

Background

The previous version of the Policy was adopted by Council in February 2016 following Council's commitment to become carbon neutral through approval of Notice of Motion 153 in November 2014. The Policy determined Council's corporate operations would be carbon neutral within five years of adoption of the Policy and certified under the Climate Active Carbon Neutral Standard for Organisation (formerly known as the National Carbon Offset Standard).

Council has made significant investment and progress since adoption of the Policy, reducing emissions by 44% and realising savings in excess of **I & S** through projects delivered under the Policy. Carbon Neutral Certification was first achieved in 2021 for the 2019/20 reporting period and for the 2020/21 reporting period.

Council voted against the inclusion of funding in the FY23 Budget for carbon offsetting, carbon accounting services and Climate Active application and licence fees and therefore the Shire has not achieved Carbon Neutral certification for the 2021/22 reporting period.

Council endorsed a draft revised Policy on 21 February 2023, where the following key proposed amendments were presented:

Change	Reasoning
Amendment of the target date to be carbon neutral by 2030 (from 2021), or earlier subject to conditions being met.	<p>Offsetting to achieve net zero emissions is currently too expensive at 5 times the budgeted cost, estimated over \$1 million, following significant cost increases for carbon credits and purchasing carbon credits from international projects has been opposed by the community.</p> <p>A 2030 target allows:</p> <ol style="list-style-type: none"> 1. Time for the Shire to reduce emissions further before offsetting (reducing financial requirement).

4.5 (Cont.)

Change	Reasoning
	<ol style="list-style-type: none"> Australian offsetting market reform to take place as recommended in the Independent Review of Australian Carbon Credit Units; Australian offsetting market maturation. Establishment of local projects; whilst Maintaining a leadership position by committing to a net zero emissions target 10 years earlier than our 2040 community target.
Introduction of more stringent carbon offsetting conditions, with carbon credits needing to be sourced from projects that support Council's objectives or are within its value chain. This means directly related to Council's operations by geography, service provision or supply chain.	<ol style="list-style-type: none"> Alleviates concerns regarding spending money on international carbon credits (investing money overseas) and not realising economic and social co-benefits locally. Realigns investment commitment to spend locally and contribute to the Climate Emergency Plan targets and actions.
Introduction an expenditure cap of \$100,000 per annum for the purchase of suitable carbon credits that meet the new conditions, prior to reaching the proposed 2030 target.	<ol style="list-style-type: none"> This is a financial risk control to protect Council against rising offsetting costs. May allow the Shire to achieve Carbon Neutrality ahead of the proposed 2030 target, whilst managing financial risk.
Introduction of a requirement for infrastructure services contracts, with a value of \$10 million or more, to be carbon neutral and certified under the Climate Active Carbon Neutral Standard for Products and Services.	<ol style="list-style-type: none"> Reduces the Shire's indirect emissions and its overall carbon footprint. Provides financial incentive for our contractors to reduce their carbon footprint through what is essentially a carbon pricing mechanism.

Options for consideration

Not applicable.

ENGAGEMENT

The draft Policy was placed on public exhibition between 3 April 2023 to 1 May 2023. Several engagement initiatives were undertaken including:

- ☐ Media release
- ☐ Social media posts
- ☐ Social media paid advertising

4.5 (Cont.)

- ☐ Newspaper advert
- ☐ Shape webpage with survey.

Social media posts and advertising reached 9,746 people with 1,076 clicking through to the Shape webpage. The webpage had a total 1,151 visits by 980 visitors. 30 surveys were completed.

A targeted workshop was also planned with over 20 groups invited to attend but was changed to a public information session when no registrations were received. There were no attendees at the public information session.

Survey respondents were asked several specific questions as well as asked to provide their general feedback on the draft revised Policy. The consensus was that the community would rather Council spend money on initiatives that benefit the community rather than purchase offsets that have no local impact (Figure 1). However, they did not support pushing the target back to 2030 (Figure 2). The community therefore supported the amendment to carbon offsetting practices, that is to cease purchasing international carbon credits and focus actions that benefit this community, but they did not support pushing the target out to 2030 to enable that to be achieved.

Figure 1: Preferred funding and delivery approach to achieving net zero emissions

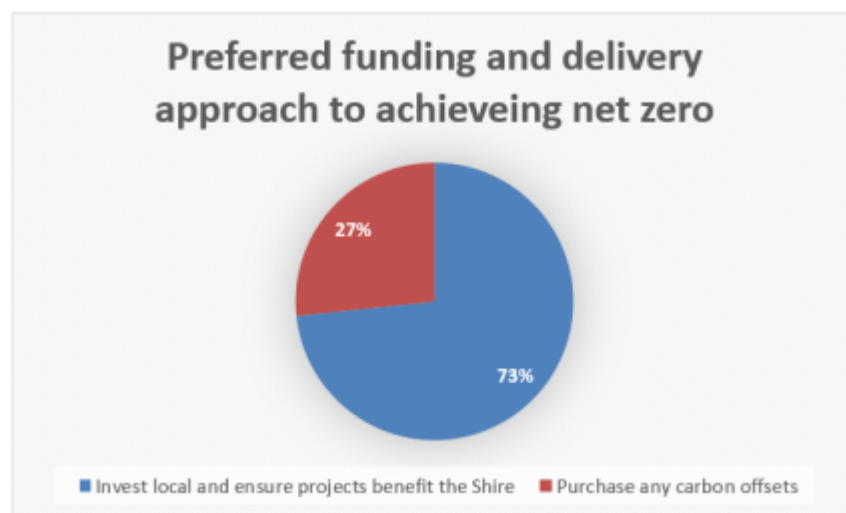
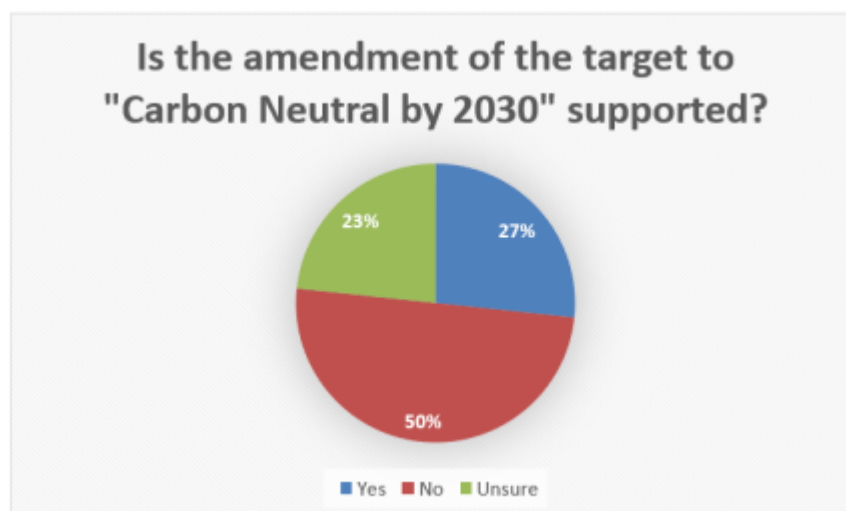


Figure 2: Support for revised carbon neutral target



4.5 (Cont.)

Consultation with the Shire's Citizens Panel was also undertaken previously on 7 September 2022 with the objective of understanding community preference for carbon offsetting, where a portion of carbon credits would be sourced from international projects or spending that money on local carbon reduction initiatives. The Panel was asked to respond on a sliding scale between the following options:

1. Investing in offsets and maintaining carbon neutrality, allowing Council to lead by example; or
2. Shifting the focus to future potential local emissions reduction initiatives within our community.

The support was towards 'local reduction initiatives' at 77%. The commentary on the rationale behind their rating reflected the difficulty of this decision. There was support for doing both and complete opposition to carbon offsetting. However, overwhelmingly the need to find ways to reduce carbon and invest locally for future benefit was highlighted as a preference. This was consistent with the consultation undertaken during the public exhibition period.

COMMUNICATIONS PLAN

The Policy will be published on our policy listing page.

[Policy Listing - Mornington Peninsula Shire \(mornpen.vic.gov.au\)](https://mornpen.vic.gov.au)

LEGAL AND REGULATORY FRAMEWORK

There are no legal or regulatory implications with the recommendations in this report.

SUSTAINABILITY CONSIDERATIONS

The revised Policy will not abate emissions globally by way of offsetting until 2030. The annual volume of the Shire's residual carbon emissions (approximately 25,000 to 26,000 tonnes per annum as of 2023) will only be offset before 2030 if the Policy offsetting conditions are met and within the funding cap of **I & S** annually.

FINANCIAL CONSIDERATIONS

The revised Policy will reduce budget requirements for carbon credits by a minimum of **I & S** per annum until 2030 or earlier if carbon credits eligible under the revised Policy are accessible and would not exceed a cost of **I & S** per annum.

OFFICER DIRECT OR INDIRECT INTEREST

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

OFFICE OF THE CEO

4.6 Authorisations under the Planning and Environment Act 1987

Prepared By	Diana Harris, Governance Officer
Authorised By	Manager - Legal and Governance
Document ID	A12324163
Briefing Note Number	Not applicable
Attachment(s)	1. Officers Authorised Under Planning and Environment Act

EXECUTIVE SUMMARY

To allow for practical, efficient and effective delivery of services, a council can delegate or authorise staff and others, to undertake functions or exercise powers on its behalf. Council is granted these powers through the Delegations (clause 11) of the *Local Government Act 2020* and Authorised Officers (Clause 224 (1)) clauses of the *Local Government Act 1989*.

The attached Instruments of Appointment and Authorisation have been prepared to ensure the relevant Mornington Peninsula Shire (Shire) officers are properly authorised under the legislation.

It is recommended that Council appoints the relevant Shire officers as Authorised Persons under the *Planning and Environment Act 1987*.

RECOMMENDATION

1. **That In the exercise of the powers conferred by section 224 of the *Local Government Act 1989* and the other legislation referred to in the attached Instruments of Appointment and Authorisation, Council resolves that:**
 - A. **The members of Council staff referred to in Attachment 1 be appointed under the *Planning and Environment Act 1987*.**
 - B. **The Instruments come into force upon the resolution of Council.**

COUNCIL & WELLBEING PLAN

Theme 1: A healthy natural environment and well-planned townships:

- ☐ Strategic Objective 3.1: A healthy and self-determined community where everyone feels valued, supported and safe

Theme 2: A robust, innovative and diverse economy:

- ☐ Strategic Objective 3.2: A resilient and confident community where everyone connects and is supported.

Theme 3: A flourishing, healthy and connected community:

4.6 (Cont.)

- ☐ Strategic Objective 3.1: A healthy and self-determined community where everyone feels valued, supported and safe

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles 1, 2 and 3 which are:

1. Accountability: Council will report, explain and respond to consequences resulting from decisions made on behalf of the community.
2. Integrity and impartiality: Council will be honest, diligent, avoid conflicts of interest, treat people with respect, act lawfully and show leadership.
3. Following the rule of law: Decisions are consistent with relevant legislation or common law and are within the powers of Council.

RELEVANT COUNCIL DECISIONS AND POLICIES

The Appointment of Authorised Officers by Council occurs regularly to ensure new employees are appointed in a timely manner. The previous report was presented to Council for endorsement on 2 May 2023.

DISCUSSION**Purpose**

The purpose of this report is to authorise the Shire officers listed for the purposes of enforcing the *Planning and Environment Act 1987*. Appointments are formally made by a signed Instrument of Appointment and Authorisation (Attachment 1).

Planning and Environment Act 1987

When Shire officers enter a property, make observations, or gather evidence, if the matter were to proceed to enforcement, their entry, observations and gathering of evidence is only lawful if the Shire officer is an Authorised Officer under the particular Act.

In addition, there is a requirement for some administration staff to be Authorised Officers if they have a role in the issuing or review of Planning Infringement Notices issued pursuant to the *Planning and Environment Act 1987*.

The extent of authorisation is limited by the position description and operating procedure for each team.

The Instrument of Appointment provides for Council to appoint Shire officers by a resolution, pursuant to section 147 (4) of the *Planning and Environment Act 1987*. This report recommends the following Shire officers be appointed and authorised under the *Planning and Environment Act 1987*:

- ☐ Tammy Tam – Planner – new staff member
- ☐ Jade Kim - Planner – new staff member
- ☐ Bridie Found – new staff member.

4.6 (Cont.)**Background**

Delegations involve a council giving its powers to staff, who then act on behalf of Council. When Council authorises an individual, that person has the power of the statutory position, i.e. they are not acting as delegates or on behalf of Council.

When Shire officers enter a property, make observations, or gather evidence, if the matter were to proceed to enforcement, their entry, observations and gathering of evidence is only lawful if the Shire officer is an Authorised Officer under the particular Act.

In addition, there is a requirement for some administration staff to be Authorised Officers if they have a role in the issuing or review of Planning Infringement Notices issued pursuant to the *Planning and Environment Act 1987*.

The extent of authorisation is limited by the position description and operating procedure for each team.

Options for consideration

Not applicable.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Under Clause 224 (1) of the *Local Government Act 1989*, Council may appoint any person other than a Councillor to be an Authorised Officer for the purposes of the administration and enforcement of any Act, regulations or Local Laws which relate to the functions and powers of the Council. This clause has been retained and was not repealed with the commencement of the *Local Government Act 2020*.

SUSTAINABILITY CONSIDERATIONS

There are no direct sustainability considerations.

FINANCIAL CONSIDERATIONS

Not applicable.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.7 Letters Under Seal - 2023 Australian Honours Recipients – The King's Birthday Honours List

Prepared By	Christine Aslanidis, Team Leader Governance and Legal Support
Authorised By	Chief Executive Officer
Document ID	A12341756
Briefing Note Number	Not Applicable
Attachment(s)	Nil

EXECUTIVE SUMMARY

The purpose of this report is to seek Council endorsement for the sealing of the documents described in the below schedule.

Schedule	
Sealing No.	Document Description
06/23	Congratulations and recognition letters to Mornington Peninsula residents who were included in 2023 King's Birthday Australian Honours List.

RECOMMENDATION

That the Common Seal of the Mornington Peninsula Shire be affixed to the documents described in the schedule of this report.

COUNCIL & WELLBEING PLAN

Theme 3: A flourishing, healthy and connected community.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles 1, 9 and 10 which are:

1. Accountability: Council will report, explain and respond to consequences resulting from decisions made on behalf of the community.
9. Building and sustaining good relationships: Maintaining good relationships between the elected representatives, Mayor and Council, Council and the Shire, as well as Council and the community.
10. Transparent: Council will clearly communicate the information, advice and consultation considered by Council to inform a decision.

RELEVANT COUNCIL DECISIONS AND POLICIES

Acknowledgement of Special Events or Achievements of Citizens, Councillors and Council Officers Policy.

4.7 (Cont.)**DISCUSSION****Background**

On Monday, 12 June 2023, the Governor-General announced the list of 1,192 Australians recognised in the 2023 King's Birthday Honours List (the Honours). This list included awards in the Order of Australia (General and Military Divisions), meritorious awards and recognition for distinguished and conspicuous service.

The Honours list included the following sixteen residents of the Mornington Peninsula:

- ☐ Mr Gerard Francis Williams AO of Rosebud has been appointed an Officer of the Order of Australia for distinguished service to critical care nursing, to medical education, to professional organisations and as a mentor.
- ☐ Ms Simone Dorothea Leyden AM of Blairgowrie has been appointed a Member of the Order of Australia for significant service to community health, particularly through neuroendocrine cancer organisations.
- ☐ Ms Robyn Ann Batten AM of Rye has been appointed a Member of the Order of Australia for significant service to the not-for profit, health and aged care sectors.
- ☐ Dr Anna Lavelle AM of Portsea has been appointed a Member of the Order of Australia for significant service to science and innovation through a range of roles.
- ☐ Ms June McLoughlin AM of Mornington has been appointed a Member of the Order of Australia for significant service to child advocacy and early learning.
- ☐ Mr Philip Lance Endersbee OAM of Sorrento has been awarded the Medal of the Order of Australia for service to the community through charitable organisations.
- ☐ Mrs Pauline Elizabeth D'Astoli OAM of Balnarring has been awarded the Medal of the Order of Australia for service to the community through a range of roles.
- ☐ Ms Rosemarie Draper OAM of Rosebud has been awarded the Medal of the Order of Australia for service to the community through social welfare organisations.
- ☐ Mr Christopher Grady OAM of Capel Sound has been awarded the Medal of the Order of Australia for service to Aged Welfare.
- ☐ Mrs Margaret Hope Kendall OAM of Mornington has been awarded the Medal of the Order of Australia for service to the community of the Mornington Peninsula.
- ☐ Mr William Timothy Kendall OAM of Mornington has been awarded the Medal of the Order of Australia for service to the community of the Mornington Peninsula.
- ☐ Mr Donald Cameron McLardy OAM of Sorrento has been awarded the Medal of the Order of Australia for service to charitable organisations and to Australian Rules Football.
- ☐ Mrs Dawn Elizabeth Nelson-Furnell OAM of Crib Point has been awarded the Medal of the Order of Australia for service to archery.
- ☐ The Rev Kenneth William Parker OAM of Mornington has been awarded the Medal of the Order of Australia for service to Anglican Church of Australia.

4.7 (Cont.)

- ☐ Mrs Joanne Kate Wilton ABSM of Safety Beach was awarded the Ambulance Service Medal for her significant contribution in the critical area of cardiac arrest over her 22-year career at Ambulance Victoria.
- ☐ Mr Edward Robert Linder ESM of Somerville was awarded the Emergency Service Medal for his 20 years of volunteering services and dedication to Marine Rescue Victoria, and to the boating public.

The Mornington Peninsula Shire Council will send a letter congratulating each award recipient acknowledging their significant contributions to the Mornington Peninsula and to the broader community.

The award recipients will also be invited to attend the next Civic Recognition Event hosted by Council in 2024.

Options for consideration

Not applicable.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Not applicable.

SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

Not applicable.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.8 Victorian Electoral Commission Report on the Watson Ward By-election

Prepared By	Christine Aslanidis, Team Leader Governance and Legal Support
Authorised By	Chief Executive Officer
Document ID	A12340764
Briefing Note Number	Not applicable
Attachment(s)	1. Mornington Peninsula Shire Council Watson Ward By-election Report 2023

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with a copy of a report prepared by the Victorian Electoral Commission (VEC) on the Mornington Peninsula Shire Council 2023 Watson Ward By-election.

RECOMMENDATION

That Council receives and notes the attached Victorian Electoral Commission report titled 'Mornington Peninsula Shire Council Watson Ward By-election Report 2023' (Attachment 1).

COUNCIL & WELLBEING PLAN

Theme 1: A healthy natural environment and well-planned townships.

Theme 2: A robust, innovative and diverse economy.

Theme 3: A flourishing, healthy and connected community.

GOVERNANCE PRINCIPLES

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principles 1,2 and 10 which are:

1. Accountability: Council will report, explain and respond to consequences resulting from decisions made on behalf of the community.
2. Integrity and impartiality: Council will be honest, diligent, avoid conflicts of interest, treat people with respect, act lawfully and show leadership.
10. Transparent: Council will clearly communicate the information, advice and consultation considered by Council to inform a decision.

RELEVANT COUNCIL DECISIONS AND POLICIES

Not applicable.

4.8 (Cont.)**DISCUSSION****Background**

An extraordinary vacancy occurred in the Watson Ward of the Mornington Peninsula Shire Council as a result of Cr Paul Mercurio being elected to the Victorian Parliament on Friday, 9 December 2022.

The Chief Executive Officer of Mornington Peninsula Shire Council advised the VEC on Monday, 12 December 2022 of the vacancy.

As per section 260 of the *Local Government Act 2020* a by-election was required to be held to fill the vacancy in the single-councillor ward.

Options for consideration

Not applicable.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Local Government Act 2020.

SUSTAINABILITY CONSIDERATIONS

Not applicable.

FINANCIAL CONSIDERATIONS

Not applicable.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 NOTICES OF MOTION

Notices of Motion must be received 10 clear business days prior to a meeting.

5.1 Notice of Motion 403 (Cr Race)

Cr Sarah Race has given notice of her intention to move the following motion at the meeting.

1. *That Council writes to the Hon. Sonya Kilkeny MP, Minister for Planning, urging her to provide clear and concise planning guidance in the form of a State Government led coastal hazard planning overlay for Port Phillip and Western Port Bay that responds to the most up to date scientific evidence in relation to sea level rise.*
2. *That copies be forwarded to our local Federal and State MPs.*

Officer Comment Prepared by	Katanya Barlow, Manager – Strategic and Infrastructure Planning
Authorised by	Mike McIntosh, Director – Planning and Infrastructure

OFFICER COMMENT

Clause 13.01-2S (Coastal inundation and erosion) of the Victoria Planning Provisions (VPPs) recognises the need to plan for and manage coastal hazard risk and climate change impacts associated with predicted sea level rise (SLR). Key strategies include:

- ☐ planning for a SLR benchmark of not less than 0.8 metres by 2100
- ☐ ensuring that land subject to hazards is identified and appropriately managed to ensure that future use and development is not at risk
- ☐ avoiding use and development in areas vulnerable to coastal inundation and erosion
- ☐ responding to marine and coastal processes in the context of the coastal compartment type, and
- ☐ assessing the effectiveness, costs, benefits, impacts (direct, cumulative and synergistic) and path dependency of available adaptation options.

Currently, however, there are no planning controls (such as a coastal hazard zone or overlay) that are specifically designed to address SLR issues. Instead, planning controls such as the Erosion Management Overlay (EMO), Land Subject to Inundation Overlay (LSIO), Floodway Overlay (FO) or Urban Floodway Zone (FZ) are variously used (or proposed to be used) by councils along Victoria's coastline to identify land subject to SLR and manage associated risks to land use and development. Whilst the State Government updated the LSIO in September 2021 to recognise coastal erosion and inundation (as part of implementing the [Marine and Coastal Policy \(Victorian Government 2020\)](#) via Ministerial [Amendment VC171](#)), these controls are not necessarily fit-for-purpose in managing SLR issues. Further, councils are seeking to apply these planning controls through council led planning scheme amendments based on data that is produced by the State Government (usually as part of regional coastal hazard assessments).

Planning scheme amendments of this nature are not only costly and time-consuming for local councils to undertake, but they often cannot keep pace with evolving SLR scientific evidence.

5.1 (Cont.)

Further, the time lag between completing a regional coastal hazard assessment and applying corresponding planning controls creates significant uncertainty and associated risks for councils and communities regarding appropriate land use and development outcomes in the interim. The issues have recently been experienced in the Mornington Peninsula Shire (Shire) as outlined below.

In 2014, the State Government prepared the [Western Port Local Coastal Hazard Assessment \(Earth Tech, 2014\)](#) (WPLCHA) which identifies land around Western Port Bay that is subject to erosion or inundation hazards from predicted SLR. The assessment is based on three SLR scenarios of 0.2 metres by 2040, 0.5 metres by 2070, and 0.8 metres by 2100. Based on this assessment, the Shire partnered with Melbourne Water to undertake [Amendment C216](#) to the Mornington Peninsula Planning Scheme (planning scheme) to apply the LSIO to land identified as subject to SLR hazards under the 0.8 metre by 2100 benchmark. The amendment was prepared in mid-2017, subject to an independent Planning Panel process in July 2018, and approved and gazetted in March 2019. Excluding officer time, the amendment cost the Shire approximately **I & S** to complete.

Following Council's adoption of the [Western Port Coastal Villages & Surrounding Settlements Strategy \(Ethos Urban, 2019\)](#) (Strategy), Council then undertook Amendment C271morn to implement the Strategy. Amongst other things, the amendment introduces a new EMO schedule and updated LSIO schedules to land identified as subject to erosion and inundation hazards, consistent with SLR hazard mapping from the Strategy and the WPLCHA. The amendment also introduces objectives, statements of risk, and planning permit application requirements to facilitate a risk-based approach to responding to SLR hazards commensurate with Clause 13.01-2S (Coastal inundation and erosion) and the Marine and Coastal Policy (Victorian Government, 2020). Excluding officer time, the amendment cost Council over **I & S** to complete. The amendment has taken nearly two years to complete and is still waiting for approval from the Minister for Planning.

Significantly, whilst Amendment C271morn was being progressed, the State Government announced, via Action 3.9 of [the Marine and Coastal Strategy \(Victorian Government, 2022\)](#), that the current SLR benchmark imbedded in the VPPs will be updated to reflect the significantly higher benchmark of 1.1 metres by 2100 as identified in the latest [Intergovernmental Panel for Climate Change \(IPCC\) report](#). Given Amendment C271morn is based on the 0.8 metre by 2100 benchmark (as required by the current VPPs), Council would need to undertake another planning scheme amendment to update the LSIO and EMO mapping to reflect the 1.1 metre scenario. The amendment would likely take another two years to complete at a similar cost to Amendment C271morn.

The current locally led approach to managing SRL risks is also creating significant uncertainties for councils and landowners in terms of how to make decisions about land use and development where SLR data and/or hazard mapping is available but no corresponding planning controls are in place. The absence of planning controls is problematic because there is no formal means for landowners to transparently identify that their land is impacted by SLR hazards, nor is there a clear framework to assist councils in decision-making. Councils instead grapple with whether to make decisions about land use and development applications based on the available data – which could be readily appealed at VCAT – or risk approving inappropriate development that could otherwise put properties at risk of SLR impacts.

This issue has been experienced by the Shire for the Western Port Bay coastline during the intervening period between the release of the WPLCHA in 2014 and pending approval of Amendment C271morn, as well as for the Port Phillip Bay coastline with pending release of the State Government's [Port Phillip Bay Coastal Hazard Assessment \(PPBCHA\)](#). Currently, there is no EMO or LSIO for land along the Port Phillip Bay coastline to address SLR concerns, despite the availability of existing Melbourne Water and Victorian Coastal Inundation Data sets which identify areas at risk of coastal inundation. As with data affecting the Western Port Bay coastline, these data sets are available on both the State Government

5.1 (Cont.)

and Shire websites. However, unlike for Western Port Bay, a planning scheme amendment has not yet been initiated for the Port Phillip Bay coastline because data from the PPBCHA will replace existing datasets as the most up-to-date evidence base for SLR impacts. Due to be completed several years ago, the PPBCHA has been subject to multiple delays and is still yet to be finalised.

To manage potential SLR impacts along both coastlines in the interim, the Shire has adopted a risk-based approach by requesting permit applicants to provide a Coastal Vulnerability Hazard Assessment (CVHA) as part of development applicants in affected areas (where appropriate) to ensure risks are identified and appropriately mitigated before new developments are approved. This approach forms the basis of Amendment C271morn and was supported by the independent Planning Panel that reviewed Amendment C271morn.

Given the issues experienced by the Shire to date regarding implementing SLR planning controls, the Shire has lobbied – via the Municipal Association of Victoria's (MAV) Association of Bayside Municipalities (ABM) – for the Minister for Planning to apply appropriate planning controls along the Port Phillip Bay coastline following release of the PPBCHA. Ministerial amendments are prepared and approved via a fast-tracked process that is undertaken by the Minister for Planning at no cost to Council. This approach is consistent with the State Government's approach to addressing other environmental risks in planning schemes – namely bushfire.

In addition to State planning policy at Clause 13.02 (Bushfire), bespoke planning and building controls – in the form of the Bushfire Management Overlay (BMO) and Bushfire Prone Area (BPA) – have been applied by the Minister to identify and manage land subject to bushfire hazards. Unlike planning controls used for SLR, bushfire planning controls are specifically designed to address bushfire risks and provide greater certainty and clarity about expected land use and development outcomes for councils and the community. Again, the form and mapping of these controls are updated by the Minister as and when required in response to changes in the nature and extent of hazards based on scientific evidence. The same could be applied with regards to SLR, particularly as the State Government updates SLR benchmarks in line with IPCC reports and/or undertakes or updates regional coastal hazard assessments.

Legal Implications

None.

Financial and Resourcing Implications

None.

Potential Alternative Wording

1. *That Council writes to the Hon. Sonya Kilkeny MP, Minister for Planning, urging her to:*
 - A. *provide clear and concise planning guidance in the form of a State Government led coastal hazard planning zone and/or overlay that is specifically designed to address risks to land use and development around Port Phillip and Western Port Bay from predicted sea level rise, and*
 - B. *ensure that the zone and/or overlay is promptly applied and continually updated by the State Government in response to the most up to date scientific evidence regarding sea level rise.*
2. *That copies be forwarded to our local Federal and State MPs.*

5.2 Notice of Motion 404 (Cr Race)

- Attachments
1. Letter to the Minister for Planning
 2. Secondary Dwelling Code Submission

Cr Sarah Race has given notice of her intention to move the following motion at the meeting.

1. *That to address the Housing Crisis in the State of Victoria Council writes to the Hon. Sonya Kilkenny MP, Minister for Planning, urging her to reinstate clause 51.06 of the Victorian Planning Provisions, and allow Victorian councils to amend their local planning schemes to include a Secondary Dwelling Code, including the provision to require a section 173 agreement, if warranted, to ensure they are not used for Short Stay Accommodation.*
2. *That copies be forwarded to the Hon. Colin Brooks MP, Minister for the Housing and our local Federal and State MPs.*

Officer Comment Prepared by	Katanya Barlow, Manager – Strategic and Infrastructure Planning
Authorised by	Mike McIntosh, Director – Planning and Infrastructure

OFFICER COMMENT

From August 2020 to March 2021, Clause 51.06 (Secondary Dwelling) was introduced to the Greater Bendigo, Kingston, Moreland and Murrindindi planning schemes on an interim basis to pilot a 'Secondary Dwelling Code'.

The intent of the Code was to facilitate diverse and affordable housing options that would create housing choice and meet changing household needs. The Code specifically provided for the fast-tracked approval of a small second dwelling on the same lot as an existing dwelling, provided the land was zoned for residential purposes and the Second Dwelling met a series of siting and design requirements, including that it could not be subdivided from the primary existing dwelling on the land.

The pilot has now concluded, and Clause 51.06 (Secondary Dwelling) has been removed from the planning schemes of the municipalities involved in the pilot.

During the pilot, a total of 10 planning permit applications for a secondary dwelling were received across the pilot councils. The Department of Transport and Planning has advised that the data gained from the pilot and feedback from the four councils will help inform any future projects.

Council considered the implications of the pilot at the 9 March 2021 Planning Services Committee Meeting and made a submission to the State Government in response to the pilot on 11 March 2021 [Submissions to the State Government - Mornington Peninsula Shire \(mornpen.vic.gov.au\)](https://mornpen.vic.gov.au/submissions-to-the-state-government-mornington-peninsula-shire).

The main points of the Planning Services Committee report and submission are summarised below:

- ☐ The Code should include a mandatory requirement for a section 173 Agreement to prohibit the use of a Small Secondary Dwelling for Short Stay Accommodation because:

5.2 (Cont.)

- Secondary Dwellings are likely to be used for holiday accommodation in tourist areas such as the Mornington Peninsula
- using Secondary Dwellings for Short Stay Accommodation would subvert the intent to provide long-term, affordable housing options, and
- councils otherwise have limited ability to control the use of dwellings for Short Stay Accommodation.

The State Government should provide councils with a standardised template for such an agreement to ensure consistency and reduce administrative costs.

- ☐ The use of the VicSmart (i.e. 'fast-tracked') assessment pathway for Secondary Dwellings needs to be given further detailed consideration because this pathway would have limited application in municipalities such as the Mornington Peninsula Shire where multiple other planning controls apply to land (such as Design and Development Overlays, Vegetation Protection Overlays, Environmental Significance Overlays, etc.) which trigger the standard planning permit application assessment process including advertising and objection rights.
- ☐ The State Government should define and publish clear guidance as to the relationship between 'Tiny Homes' and Secondary Dwellings, if any, given Tiny Homes are not currently defined in the Victoria Planning Provisions (VPPs) and it is not certain if, or how, they would be defined as a Secondary Dwelling.
- ☐ The Minister for Planning should consider providing regulatory clarification or reform in relation to the definition of Dependent Person's Unit (DPU) as per the Tribunal's advice in *Mornington Peninsula SC v Premier Homes (Vic) Pty Ltd (Red Dot)* [2021] VCAT 94.

Legal Implications

None.

Financial and Resourcing Implications

None.

Potential Alternative Wording

1. *That to address the Housing Crisis in the State of Victoria Council writes to the Hon. Sonya Kilkeny MP, Minister for Planning, urging her to:*
 - A. *Reinstate Clause 51.06 of the Victorian Planning Provisions to allow Victorian councils to implement the Secondary Dwelling Code*
 - B. *Provide additional associated support and guidance to local councils to ensure the desired outcomes of the Secondary Dwelling Code will be achieved, including:*
 - i. *a provision within Clause 51.06 that requires a section 173 Agreement that prohibits Secondary Dwellings from being subdivided or used for Short Stay Accommodation*
 - ii. *a standardised template for section 173 Agreements to ensure consistency and reduce administrative costs*
 - iii. *further consideration of the practicality of using the VicSmart assessment pathway in municipalities where multiple planning controls apply to land*

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- iv. *clarity and certainty regarding the relationship between ‘Tiny Homes’ and Secondary Dwellings (if there is any), including appropriate definitions within the Victoria Planning Provisions*
 - v. *regulatory clarification or reform in relation to the definition of a Dependent Person’s Units as per Mornington Peninsula SC v Premier Homes (Vic) Pty Ltd (Red Dot) [2021] VCAT 94.*
- 2. *That copies be forwarded to the Hon. Colin Brooks MP, Minister for the Housing and our local Federal and State MPs.*

5.3 Notice of Motion 405 (Cr Mar)

Attachment 1. A Strategic Framework for the Future of Western Port Bay

Cr Mar has given notice of her intention to move the following motion at the meeting.

1. *That Council supports the Strategic Framework for the future of Western Port Bay, as a formal document advocating for the restoration and protection of the marine environment and surrounding catchment of Western Port, to establish an ecologically sustainable and thriving economy for the future. Council is particularly supportive that the proposed Framework recognises the importance of ensuring the future economic prosperity of the region in conjunction with promoting environmental protection and restoration.*
2. *That Council writes to the Minister for Environment and the Minister for Climate Action, Energy and Resources to request:*
 - A. *Recognition for Western Port, its bay and surrounding catchment areas – including the Biosphere Reserve and Ramsar wetlands – as an important environmental, social and economic region; and a public commitment to protect it for those who reside, work and visit.*
 - B. *Delivery of a Strategic Plan and a dedicated fund for Western Port, that restores and protects the marine life environment, and continues to provide for a sustainable, thriving economy for the future.*
 - C. *That the Department of Energy, Environment and Climate Action (DEECA) establish a new collaborative management partnership with Traditional Owners, Melbourne Water and other key stakeholders (including community and other Bay users), under the Marine and Coastal Act 2018 and the State Environment Protection Policy (Waters) 2018, to protect and manage the bay's environmental values.*
 - D. *That the State Government acknowledges that the local community want projects that benefit a local green economy creating sustainable jobs in industries that support and value the Western Port environment. Mornington Peninsula Shire Council supports this position and sees it as an important region for sustainable industries.*

Background

Western Port Bay and its surrounding catchment area is an important environmental, social and economic region. Western Port was designated as a Biosphere Reserve by UNESCO in 2003 in recognition of this importance. The Western Port region is also recognised as a RAMSAR site which offers protection of marine life and internationally important shoreline birds and migratory birds.

Even though there are some protections of Western Port legislated through various Acts and policies, with the increase of port related industrial activities and international companies operating now and into the future in the Port, it is timely an extra layer of protection is applied to ensure a sustainable future for the region's sensitive environment.

Bass Coast Shire Council, Cardinia Shire Council and City of Casey have all brought this Notice of Motion to the chamber at Council meetings recently and was successfully voted in favour. With the added strength of these councils, and the Mornington Peninsula Shire Council writing to the Minister for Environment and the Minister for Climate Action, Energy and Resources, will add extra weight to this cause.

5.3 (Cont.)

Furthermore, the 'Western Port Strategic Framework' document aligns with the Mornington Peninsula Shire Council's strategic plans and policies and fully supports the environmental work of the Western Port Biosphere Foundation through delegation and financial contribution.

The 'Strategic Framework for the Future of Western Port Bay' also relates to industry and the economy that states:

- ☐ The Vision is to effectively manage, restore, and legally protect the marine and coastal environment of Western Port Bay and establish an ecologically sustainable economy for the future.
- ☐ Local communities have demonstrated their ambitions for future industrial projects in Western Port and its hinterlands to be aligned with the principles of ecologically sustainable development and ecosystem-based management. The community want projects that benefit a local green economy creating sustainable jobs in industries that support and value the Western Port environment.
- ☐ After seeking guidance from community, Traditional Custodians, land managers and tourism, fishing and other recreational bodies, the strategic framework proposes a 'whole of bay' integrated management framework that promotes environmental protection and economic sustainability for Western Port Bay, its coastlines and hinterland.
- ☐ A new Strategic Plan for Western Port Bay – bringing together objectives, actions and programs into a coordinated planning and management tool that recognises the natural values of the Western Port and the future economic prosperity of the region.

Officer Comment Prepared by	Hayden Forrest, Coastal Planner
Authorised by	Mike McIntosh, Director – Planning and Infrastructure

OFFICER COMMENT

The attached proposal for 'A Strategic Framework for the Future of Western Port Bay' (the Proposal) was previously presented to Council at a Briefing on 6 June 2023 (BN1735).

The Proposal identifies the need for development of a new Strategic Plan for Western Port that brings together all strategies and plans and their objectives, actions and programs into a coordinated planning and management tool.

The Proposal has been developed by a steering group including Western Port Biosphere, Save Westernport, Phillip Island Conservation Society and the Victorian National Parks Association.

The Proposal recognises that the health of Western Port is declining due to urban growth, industrial development, and climate disruption. With ongoing interest in the region for potential growth, development, recreation and deep port access, the health of Western Port may continue to decline. The Proposal seeks to address these issues by providing a 'whole of bay' integrated management approach which effectively manages, restores, and legally protects the marine and coastal environment of Western Port.

At a high level, management of Western Port is currently informed by the following plans and strategies:

- ☐ Western Port Ramsar Site Management Plan (DEECA, 2017).

5.3 (Cont.)

- ☐ Port Phillip and Western Port Regional Catchment Strategy 2021-2027 (Melbourne Water).
- ☐ *Marine and Coastal Act 2018* (the Act) and associated policies and guidelines (DEECA).
- ☐ Healthy Waterways Strategy 2018-2028 (Melbourne Water).

Officers consider the Proposal to align with and meet the guiding principles of the Act. The Proposal also draws upon multiple tools within the Act for its implementation including, Regional and Strategic Partnerships, Environmental Management Plan and Marine Spatial Planning.

The Proposal does not specify who would lead the development of the new strategic plan or the collaborative management partnership. Officers support the proposed motion that the DEECA would be the best suited agency to lead the plan and partnership given the alignment with and the proposed use of multiple tools from the Act.

In principle, officers consider progression of the Proposal 'A Strategic Framework for the future of Western Port Bay' would result in a new strategic plan that would bring existing plans under one umbrella, a collaborative partnership with other stakeholders for Western Port, and dedicated Western Port fund. This would be a positive outcome for the community and environment. Further consideration will be needed to confirm what role Council would play and how this may impact existing partnerships and management plan delivery.

Legal Implications

None recognised.

Financial and Resourcing Implications

None recognised.

Potential Alternative Wording

*That Council supports the **intent to develop a** Strategic Framework for the future of Western Port Bay, as a formal document advocating for the restoration and protection of the marine environment and surrounding catchment of Western Port, to establish an ecologically sustainable and thriving economy for the future. Council is particularly supportive that the proposed Framework recognises the importance of ensuring the future economic prosperity of the region in conjunction with promoting environmental protection and restoration.*

5.4 Notice of Motion 406 (Cr Gill)

Cr David Gill has given notice of his intention to move the following motion at the meeting.

That Council undertakes a timely social media campaign to help save Peninsula wildlife including koalas by:

1. *Highlighting the urgent need for a Peninsula Wildlife Management Plan.*
2. *Attributing ownership for the plight of 600 kangaroos at Cape Schanck because of lack of action from State Government.*
3. *Requesting all local Members of Parliament to protect the future viability of our local indigenous wildlife.*

Officer Comment Prepared by	James Rose, Team Leader – Natural Systems
Authorised by	Mike McIntosh, Director – Planning and Infrastructure

OFFICER COMMENT

The Natural Systems team will work with the Communications Team to support an appropriate campaign highlighting the need for a Peninsula Wildlife Management Plan.

Legal Implications

There are no legal implications for Council as responsibility for this plan sits at a State level.

Financial and Resourcing Implications

Officer time across multiple units including is required to implement the proposed Notice of Motion.

Potential Alternative Wording

Not applicable.

5.5 Notice of Motion 407 (Cr Gill)

Cr David Gill has given notice of his intention to move the following motion at the meeting.

That Council asks the State Government and relevant Ministers to allow an independent body such as the Victorian Electoral Commission to undertake independent reviews as has previously applied to all municipalities in line with democratic traditions.

Officer Comment Prepared by	Amanda Sapolu, Manager – Legal and Governance
Authorised by	Manager – Legal and Governance

OFFICER COMMENT

Sections 15 and 16 of the current *Local Government Act 2020* provides for electoral structure reviews to be affected through the Minister making recommendation to the Governor in Council to alter Wards, boundaries, names etc. The Minister may establish an electoral representation advisory panel to conduct a review. Previously, the *Local Government Act 1989* provided electoral representation reviews to be undertaken by the Victorian Electoral Commission (VEC), in any manner that the VEC considered appropriate.

Legal Implications

Not applicable.

Financial and Resourcing Implications

Not applicable.

Potential Alternative Wording

Not applicable.

6 URGENT BUSINESS

Under Council's Governance Rules, 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.

7 CONFIDENTIAL ITEMS

Advice to the Public

All reports, information and recommendations contained in 'Section 7 – Confidential Items' of this Agenda have been designated by the Chief Executive Officer as confidential pursuant to section 66 (2) (a) of the *Local Government Act 2020*.

MEETING CLOSED TO THE PUBLIC

The Council may resolve that the meeting be closed to members of the public in accordance with section 66 (5) (a) of the *Local Government Act 2020* if the meeting is discussing any of the following:

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.
- (b) Security information, being information that if released is likely to endanger the security of Council property or the safety of any person.
- (c) Land use planning information, being information that if prematurely released is likely to encourage speculation in land values.
- (d) Law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.
- (e) Legal privileged information, being information to which legal professional privilege or client legal privilege applies.
- (f) Personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.
- (g) Private commercial information, being information provided by a business, commercial or financial undertaking that:
 - (i) Relates to trade secrets.
 - (ii) If released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
- (h) Confidential meeting information, being the records of meetings closed to the public under section 66 (2) (a).
- (i) Internal arbitration information, being information specified in section 145.
- (j) Councillor Conduct Panel confidential information, being information specified in section 169.
- (k) Information prescribed by the regulations to be confidential information for the purposes of this definition.
- (l) Information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*.

RECOMMENDATION

That Council considers the confidential report listed below in a meeting closed to the public in accordance with section 66 (2) (a) of the *Local Government Act 2020*:

7.1 Somerville Soccer Investigation

This matter is considered to be confidential under section 3 (1) (c) of the *Local Government Act 2020*. It contains information in relation to land use planning information.