

Planning and Environment Act 1987

MORNINGTON PENINSULA PLANNING SCHEME

**AMENDMENT C17
EXPLANATORY REPORT**

Who is the Planning Authority?

This amendment has been prepared by the Mornington Peninsula Shire Council and the Mornington Peninsula Shire Council is the Planning Authority for this amendment.

Land Affected by the Amendment

The amendment affects various lots within the area bounded generally by Glen Shian Lane, Old Mornington Rd, Mt. Eliza Way, Canadian Bay Rd and the foreshore, Mount Eliza. The Ballar Creek traverses the affected land.

What the Amendment does.

The amendment:

- Amends the Municipal Strategic Statement Clause 21.07-1 by inserting an additional zones and overlays implementation measure being:
“Utilising the Erosion Management Overlay to identify areas of slope instability or land degradation within township areas.”
- Inserts an additional Local Policy: Clause 22.16 Ballar Creek. This Clause includes the basis for the policy, the objectives of the policy, the policy and decision guidelines. The policy makes reference to the report titled: *Mornington Peninsula Shire Council Landslide Zoning, Ballar Creek, Mt Eliza, Victoria* and dated 11 July 2000.
- Amends Clause 44.01 by inserting a new Schedule to the Erosion Management Overlay to be shown as EMO3 on the Planning Scheme Map. It relates to the Ballar Creek environs at Mount Eliza.. It does not contain any exemptions from the permit requirements of Clause 44.01-1 Buildings and works or Clause 44.01-2 Vegetation removal. It requires certain information to be submitted with an application for planning permit. It also standardises the format of the existing Schedules for EMO1 and EMO2.
- Amends the schedule to Clause 81 by inserting the document titled *Figure 3 Mornington Peninsula Shire Council Ballar Creek, Mount Eliza Landslide Zone Plan, 11 July 2000* as an incorporated document.
- Amends the Planning Scheme Maps by inserting an additional map: Overlay Map 1EMO applying the new overlay schedule, EMO3 to the land along Ballar Creek, Mount Eliza.

- Amends the Schedule to Clause 61.01 – 61.04 (inclusive) by inserting reference to Planning Scheme Map No 1EMO.
- Amends the List of Amendments by inserting mention of this amendment.

Why the Amendment is required.

Land degradation problems along Ballar Creek include clearly visible erosion of the banks and bed and less visible landslips of much larger areas. The resultant slope instability and risks related to the erosion of land or the exacerbation of erosion in other locations pose particular challenges for the location and design of buildings and works.

The amendment is required to:

- Alert people to areas along Ballar Creek requiring special measures for the management of erosion and slope stability.
- Help prevent any worsening of the land degradation and related environmental problems along Ballar Creek.
- Achieve development that is located and designed to take into account the challenges posed by the land degradation in the area.

The planning scheme provisions are one of a variety of measures that are being put in place to address the Ballar Creek erosion/slope stability problem. Other measures include a study of the problem by geotechnical engineers (the Coffey report) and underground drainage works.

Impacts of the Amendment.

Social and Economic Effects

The land affected by the amendment is characterised by existing dwellings but there are a few vacant lots particularly in areas that are affected by the most serious land degradation problems. The amendment does not prohibit further development in the area but costs associated with investigating and overcoming geotechnical risks may be expected to be greater than elsewhere. This could have a long term effect on the rate and nature of development. While some sites may be immediately viable to develop others may only become viable once the land has stabilised with the passage of time. The amendment is therefore unlikely to result in any significant change to the existing character of the area but may lead to it being developed more slowly than equivalent areas not so affected.

Any negative effects of the amendment are likely to be felt by people owning land within the overlay area. These would be associated with the extra costs and stigma attached to having land identified in the Erosion Management Overlay (It may be less attractive than other areas for residential development.). However the same people may also benefit because the overlay may be expected to lead to a better standard of development. The general community should only experience positive effects from

the amendment. Such positive effects would include environmental effects (less siltation and sediment transport to Canadian Bay, restoration of riparian vegetation); social effects (people will be aware of erosion management issues before purchasing in the area) and economic effects (less risk of buildings and works failing due to slope instability).

It is noted that the Erosion Management Overlay, is already applied or proposed to be applied over other areas of the State (e.g. Yarra Ranges) as part of new format Planning Schemes. It is also applied at numerous locations in the rural areas of this municipality and it is anticipated that future geotechnical studies may identify a need for further use of the overlay in urban areas.

Environmental Effects

The amendment should contribute to the management of erosion processes and therefore result in a positive environmental effect. The amendment addresses the effects the environment might have on the future use and development of land provided for by the existing planning scheme.

Minister's Directions.

The provisions envisaged by this amendment are not affected by any Ministerial Direction except the general Minister's Direction on the Form and Content of Planning Schemes made under Section 7(5) of the Planning and Environment Act 1987. The amendment is consistent with that Direction.

Strategic and Policy Justification of the Amendment.

The amendment helps to implement the State and Local Planning Policy Frameworks in particular the:

1. State Planning Policy Framework Clause 15.01 Protection of catchments, waterways and groundwater which has the objective:

“To assist the protection and, where possible, restoration of catchments, waterways, waterbodies, groundwater, and the marine environment.’

And later states, in part, under Clause 15.01-2 General Implementation

Catchment planning and management

Planning authorities must have regard to relevant aspects of:

- any regional catchment strategies approved under the Catchment and Land Protection Act 1994 and any associated implementation plan or strategy, including regional vegetation plans, regional drainage plans, regional development plans, catchment action plans, landcare plans, and management plans for roadsides, soil, salinity, water quality and nutrients, floodplains, heritage rivers, river frontages and waterways.

- any special area plans approved under the Catchment and Land Protection Act 1994.

Planning and responsible authorities should coordinate their activities with those of the Boards of catchment management authorities appointed under the Catchment and Land Protection Act 1994 and consider any relevant management plan or works program approved by a catchment management authority.

Planning and responsible authorities should consider the impacts of catchment management on downstream water quality and freshwater, coastal and marine environments and, where possible should encourage:

- The retention of natural drainage corridors with vegetated buffer zones at least 30m wide along waterways to maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, to minimise erosion of stream banks and verges and to reduce polluted surface runoff from adjacent land uses.
- Measures to minimise the quantity and retard the flow of stormwater runoff from developed areas.
- Measures, including the preservation of floodplain or other land for wetlands and retention basins, to filter sediment and wastes from stormwater prior to its discharge into waterways.

Water quality protection

Planning and responsible authorities should ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and ground water resources, rivers, streams, wetlands, estuaries and marine environments.

Incompatible land use activities should be discouraged in areas subject to flooding, severe soil degradation, groundwater salinity or geotechnical hazards where the land cannot be sustainably managed to ensure minimum impact on downstream water quality or flow volumes.

Planning and responsible authorities should ensure land use and development proposals minimise nutrient contributions to waterways and water bodies and the potential for the development of algal blooms, consistent with the Preliminary Nutrient Guidelines for Victorian Inland Streams (EPA 1995), the Victorian Nutrient Management Strategy (Government of Victoria 1995) and any nutrient or water quality management plans approved by Government.

2. Municipal Strategic Statement Clause 21.07-1 Housing and Integrated local area planning indicates that integrated local area planning will involve:

“Providing for a diversity of housing choice and promoting sustainable forms of residential development, in terms of construction practices, energy conservation, waste water and storm water disposal.

Protecting and enhancing local environmental conditions and environmentally sensitive features, particularly associated with areas of remnant vegetation, streamlines and wetlands.”

And later calls for Further Strategic Work to include:

“Reviewing the Mornington Peninsula Drainage and Stream Condition Due Diligence report to:

- Identify necessary environmental management actions.
- Identify potential engineering infrastructure requirements.
- Develop storm water management plans, policies and provisions to implement”

3. Municipal Strategic Statement Clause 21.08 Foreshores and coastal areas which has the following strategy in respect to objective 1:

“Identify threatening processes including the spread of environmental weeds, introduced pest fauna, erosion and the pollution of water, groundwater, air and land that may impact on the foreshore’s natural systems and sites and applying appropriate management techniques.”

Applying the Environmental Significance Overlay to coastal areas subject to erosion.

The amendment is consistent with the above policies because:

- It is specifically required to address catchment management issues namely erosion and waterway degradation. The proposed overlay, although not an Environmental Significance Overlay (ESO), has similar provisions that would enable catchment management outcomes to be achieved. The Erosion Management Overlay is a better mechanism than the ESO in this instance because the erosion/slope stability issue is the main issue of concern that needs to be highlighted.
- The amendment is the result of a first stage review of the Due Diligence report. This report identified Ballar Creek as a pollution “hot spot” and stated on page 17:

“The creek forms the common rear boundary of private residential properties. The development of the catchment and creek zones has led to major erosion problems, slope instabilities and weed infestation through the creek valley.

The creek supports predominantly exotic vegetation throughout its entire length and there is no native regeneration. It therefore has relatively little flora conservation value and little habitat for native fauna.

Bed erosion has led to steepening of the creek banks and adjacent slopes with resultant loss of residential assets including gardens, tennis courts and homes. Slumping of the banks and slopes is especially prevalent at times of heavy rainfall and high stream flow. Remedial works will be extremely expensive.”

- A full review of the Due Diligence report would require extensive further study and awaiting this would compromise other objectives of the MSS which call for appropriate management techniques for environmental problems. Timeliness is fundamental to this.
- The Port Phillip and Westernport Regional Catchment Strategy and the Westernport Catchment Action Program whilst not specifically mentioning the Ballar Creek issues are designed to address such issues. The proposed amendment is supported by these documents, in particular:
 - the Regional Catchment Strategy Action 8.3 which calls for necessary planning responses to key issues identified in Catchment Action Plans; and,
 - the Westernport Catchment Action Program that has Waterway Management Actions WM11 (partnerships between organisations to improve the condition of waterways) and WM12 (Works to be targeted at priority areas including protection and improvement works on the majority of the waterways of the Mornington Peninsula).

The Mornington Peninsula Shire Council and Melbourne Water have recognised Ballar Creek as a priority area and have recently undertaken a joint project to improve drainage and stabilise slopes. The proposed Erosion Management Overlay will supplement these on-ground works and exemplify the coordination that is required between local government and drainage authorities.