



**MORNINGTON
PENINSULA**
Shire

MINUTES

PLANNING SERVICES COMMITTEE MEETING

MONDAY, 28 MARCH 2022

5.30PM

**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 Antonella Celi Cr Kerri McCafferty Cr Debra Mar |
| Watson | Cr Paul Mercurio |

SENIOR LEADERSHIP TEAM

| | |
|---|---|
| Mr John Baker Ms Pauline Gordon Mr Mark Brady Mr Mike McIntosh | Chief Executive Officer Director – Community Strengthening Director – Corporate Strategy and Business Improvement Director – Planning and Infrastructure |
|---|---|

RECORDING

Please note that this Planning Services Committee Meeting was livestreamed to the Mornington Peninsula Shire's YouTube channel and a recording of the meeting is available on the Shire's website.

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1 OPENING AND WELCOME

Meeting opened at 5.32pm

Appointed Chairperson – Cr Sarah Race

1.1 Acknowledgement of Country

Read by Cr Mar

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

2 PROCEDURAL MATTERS

Present

Cr Sarah Race (Chairperson)
Cr Susan Bissinger
Cr Antonella Celi
Deputy Mayor, Cr Lisa Dixon
Cr David Gill
Cr Steve Holland
Mayor, Cr Anthony Marsh
Cr Debra Mar
Cr Paul Mercurio

Mr John Baker, Chief Executive Officer

2.1 Apologies

Cr Kerri McCafferty
Cr Despi O'Connor (Leave of Absence)

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

Nil.

2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Planning Services Committee Meeting held on 13 December 2022, be confirmed.

COMMITTEE DECISION

Moved: Cr Celi
Seconded: Cr Marsh

That the recommendation be adopted.

Carried Unanimously

2.4 Deputations

4.1 Planning Scheme Amendment C227morn Tootgarook Wetland – Adoption

- Ms Judy Walsh (representing the National Trust), Submitter
- Mr Rob McNaught, Submitter.

5.1 P08/3059.01 – 2/159 Shoreham Road, Red Hill South

- Mr Sam Coverdale, Applicant.

3 STRATEGIC PLANNING REPORTS

3.1 Submission to the Victorian Government's Parliamentary Inquiry into Protections within the Victorian Planning Framework

| | |
|----------------------|---|
| Prepared By | Anne Grogan, Heritage and Strategy Planner |
| Authorised By | Director - Planning and Infrastructure |
| Document ID | A11020322 |
| Briefing Note Number | Not applicable |
| Attachment(s) | <ol style="list-style-type: none"> 1. Shire Submission to the Victorian Government's Parliamentary Inquiry into Protections within the Victorian Planning Framework 2. Cover letter |

EXECUTIVE SUMMARY

Officers lodged a submission to the Victorian Government's Parliamentary *Inquiry into Protections within the Victorian Planning Framework* on 4 March 2022. The inquiry was initiated by a minor party and is not part of the State Government's existing program of planning reforms. The inquiry's Terms of Reference are extensive, and stakeholders were afforded minimal time to prepare and lodge a submission.

The officer submission (Attachment 1) addresses a range of issues. However, given the wide-ranging scope of the inquiry, tight timelines, and officer commitment to other existing Mornington Peninsula Shire (Shire) projects and work priorities, the submission provides high-level commentary based on adopted Council positions, policies and strategies (including content from previous submissions to various proposed planning reforms) and the views of Shire officers.

The recommendations in the submission suggest potential changes to the *Planning and Environment Act 1987* (the Act) as well as the Victorian Planning Provisions (VPPs) and/or ways in which the Department of Environment, Land, Water and Planning (DELWP) could improve the management of planning, environment, and heritage controls in planning schemes.

This report presents and seeks adoption of the submission.

RECOMMENDATION

That the Planning Services Committee adopts the officer submission to the Victorian Government's Parliamentary Inquiry into Protections within the Victorian Planning Framework contained in Attachment 1 to this report.

3.1 (Cont.)

COMMITTEE DECISION

**Moved: Cr Gill
Seconded: Cr Marsh**

- 1. That the Planning Services Committee adopts the officer submission to the Victorian Government's Parliamentary Inquiry into Protections within the Victorian Planning Framework contained in Attachment 1 to this report.**
- 2. That Council implements a Communications and Advocacy Plan as soon as possible.**

Carried Unanimously

COUNCIL & WELLBEING PLAN

Theme One – A healthy natural environment and well-planned townships

Vibrant and unique townships balanced with a natural environment that is protected now and into the future, accelerating climate action and celebrating cultural heritage.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Biodiversity Conservation Plan, MPSC, 2019
- Mornington Peninsula Housing and Settlement Strategy: Refresh 2020-2036, MPSC, 2020
- Mornington Peninsula Localised Planning Statement, Victorian Government, 2014
- Mornington Peninsula Shire Council submission to Better Regulation Victoria Planning and Building Approvals Process Review – Discussion Paper, 2019
- Mornington Peninsula Shire Council submission to Bushfire planning made clearer: Options for Victoria's planning system, 2022
- Mornington Peninsula Shire Council submission to Inquiry into Apartment Design Standards, 2021
- Mornington Peninsula Shire Council submission to Improving the Operation of ResCode, 2021
- Mornington Peninsula Shire Council submission to Planning for Melbourne's Green Wedges and Agricultural Land, 2021
- Our Climate Emergency Response From 2020 to 2030: Ensuring Our Future, MPSC, 2020
- Peninsula 2040 Community Vision, MPSC, 2021
- Planning Scheme Amendment C219morn
- Planning Scheme Amendment C271morn
- Social and Affordable Housing Policy, MPSC 2020
- Triple A Housing Plan 2020 – 2030, MPSC
- Western Port Coastal Villages and Surrounding Settlements Strategy, Ethos Urban, 2019.

3.1 (Cont.)**DISCUSSION****Purpose**

The purpose of this report is to present the officer submission provided to the Legislative Council's Environment and Planning Committee's inquiry into the adequacy of the *Planning and Environment Act 1987* (the Act) and the Victorian Planning Framework in relation to planning and heritage protection. The submission was lodged on 4 March 2022 to meet the inquiry deadline.

Background

The Terms of Reference for this inquiry is very broad and encompasses all aspects of the planning regulatory system, mainly the Act but, by extension, all the planning policies and controls within the Victorian Planning Provisions (VPPs) and local schedules to each municipal planning scheme.

It is noted that the Municipal Association of Victoria advised officers that this inquiry was initiated by a minor party, the Sustainable Australia Party, and that the inquiry is not associated with the Victorian Government's broader program of planning reforms.

It is further noted that the nominated period within which stakeholder submissions could be received coincided with the 2021 holiday season, with submissions due in January 2022, and that Council was not given prior notice of the inquiry.

Whilst an extension until 4 March 2022 was granted, this timeframe was insufficient for officers to comprehensively respond to such an extensive inquiry, including collating comments from all relevant departments within the Shire and presenting the submission to Council for adoption prior to the deadline, whilst progressing other committed and priority work across various Shire departments.

Given these constraints, the officer submission provides high-level commentary based on:

- Prior Council resolutions (including adopted policies, strategies and Council submissions to many previous State Government planning reforms over the years).
- Advice from officers within the Shire's Strategic and Infrastructure Planning, Development Services, Climate Change and Sustainability, Infrastructure Services, Community Partnerships and Community Safety and Compliance units.

The cover letter to the submission (Attachment 2) identifies that the submission reflects the views of Shire officers, and that the submission is subject to Council adoption in March 2022.

The officer submission (Attachment 1) is now presented to Council for formal adoption. The submission addresses the following aspects of the inquiry's Terms of Reference:

- The high cost of housing.
- Environmental sustainability and vegetation protection (including impacts of climate change, sea level rise, bushfire exemptions, biodiversity conservation, and vegetation management overlays).
- Delivering certainty and fairness in planning decisions for communities (including mandatory height limits, minimum apartment sizes, protecting Green Wedges and the urban growth boundary, community concerns about the Victorian Civil and Administrative Tribunal appeal processes, protecting third party appeal rights, and the role of Ministerial call-ins).

3.1 (Cont.)

- Protecting heritage in Victoria (including the adequacy of current criteria and processes for heritage protection, possible federal involvement in heritage protection, separating heritage protection from the planning administration, separating heritage protection from the planning administration, establishing a heritage tribunal to hear heritage appeals, the appointment of independent local and state heritage advisors, the role of Councils in heritage protection, and penalties for illegal demolitions).
- Ensuring residential zones are delivering the type of housing that communities want.

It is noted that whilst some of the recommendations contained in the submission specifically refer to changes to the Act, many relate to VPPs, or suggest improvements to the management of the planning system to be coordinated at State level through DELWP, as these suggestions do not necessarily require a change to the Act or regulations.

ENGAGEMENT

Not applicable. There was insufficient time, resources and budget to engage the community on the Shire's submission within the timeframes of the inquiry consultation period.

COMMUNICATIONS PLAN

If adopted, submission contained in Attachment 1 will be published to this Shire's website: page: www.mornpen.vic.gov.au/Building-Planning/Strategic-Planning/Submissions-to-the-State-Government.

LEGAL AND REGULATORY FRAMEWORK

The submission refers to Council's obligations under the *Planning and Environment Act 1987*.

SUSTAINABILITY CONSIDERATIONS

The submission addresses various Council policies, strategies and adopted positions regarding a range of environmental sustainability and vegetation protection issues, including impacts of climate change, sea level rise, bushfire exemptions, biodiversity conservation, and vegetation management overlays.

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.

3.2 Submission to the State Government's 'Bushfire Planning Made Clearer' Discussion Paper

| | |
|----------------------|--|
| Prepared By | Christian Lynch, Senior Strategic Planner |
| Authorised By | Director - Planning and Infrastructure |
| Document ID | A11024553 |
| Briefing Note Number | Not applicable |
| Attachment(s) | <ol style="list-style-type: none"> 1. DELWP Discussion Paper - Bushfire Planning Made Clearer 2. Council Submission - Bushfire Planning Made Clearer |

EXECUTIVE SUMMARY

- In December 2021, the Department of Environment, Land, Water and Planning (DELWP) released the 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' Discussion Paper (Attachment 1) inviting stakeholder feedback on how to make bushfire-related planning provisions easier to understand and apply.
- The Discussion Paper addresses seven topics including State planning policy, requirements in Bushfire Prone Areas (BPA), bushfire hazard assessments, preparing and assessing permit applications, permit exemptions for managing vegetation, compliance, and training, capacity building and longer-term opportunities.
- Feedback was sought via an online survey comprising 43 questions across all seven topics. Shire officers lodged a submission by the close of consultation on 11 February 2022 (Attachment 2). Due to the tight engagement timelines, there was no opportunity to brief Council on, or seek adoption of the submission prior to lodgement.
- The submission is based on previous Council positions and officer views from several departments within the Shire.
- This report seeks adoption of the officer submission.

RECOMMENDATION

That the Planning Services Committee adopts the submission to the State Government's Discussion Paper 'Bushfire Planning made clearer: Options for Victoria's Planning system' contained in Attachment 1 to this report.

COMMITTEE DECISION

Moved: Cr Gill
Seconded: Cr Marsh

1. **That the Planning Services Committee adopts the submission to the State Government's Discussion Paper 'Bushfire Planning made clearer: Options for Victoria's Planning system' contained in Attachment 1 to this report.**

3.2 (Cont.)

- 2. That Council implements a Communications and Advocacy Plan as soon as possible.**

Carried Unanimously

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.

Strategy 1.3.7: Revise the planning scheme with consideration to our vulnerability to flooding and bushfires and the protection of native vegetation.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Our Climate Emergency Response From 2020 to 2030: Ensuring Our Future (2020)
 Action 7: Grow community resilience to enhanced natural disasters.
 Task 7.7: Investigate and review the potential inappropriate use of bushfire risk reduction planning scheme exemptions (e.g. Clause 52.12) in low-risk urban settings.
- 5 October 2021 Planning Services Committee (PSC) Meeting, Notice of Motion (NOM) 310: That Council uses existing information to investigate and report by November 2021 further areas to be nominated for bushfire exemptions without which most of the significant vegetation, including iconic koala trees, can be removed from residential allotments without a permit.
- 16 March 2020 PSC Meeting (Item 2.1): That the [PSC] adopts the following advocacy position in relation to bushfire planning:
 - Position 1 – Advocate to the Minister for Planning to remove the ‘10/30 rule’ (Clause 52.12-1) and fence line vegetation exemptions (52.12-2) from identified low- to no-risk areas on the Mornington Peninsula.
 - Position 2 – Advocate to introduce a provision to Clause 52.12 that enables a responsible authority to consider vegetation recently removed under the exemptions where the land is subsequently proposed to be developed.
 - Position 3 – Advocate to the Minister for Planning to amend Schedules 1 and 2 to the Bushfire Management Overlay (BMO) to introduce tailored defendable space requirements that align to localised bushfire risk on the Mornington Peninsula.
 - Position 4 – Continue to develop and implement an active compliance regime for vegetation modification for defendable space within BMO areas aligned with bushfire risk to ensure that the amended, more locally appropriate defendable space requirements of the BMO1 and BMO2 are being delivered.
 - Position 5 – Continue to advocate to Department of Environment, Land, Water and Planning to complete its review of mapping in Sorrento, Portsea, Blairgowrie and Rye as requested in Council’s submission to the BPA14 and BMO-R5 Mapping Review.

3.2 (Cont.)

That the [PSC] undertakes the actions required to facilitate the above positions generally in accordance with the Advocacy Position and Action Plan [attached to the officer report].

- 14 May 2019 Council Meeting (Item 3.2): That a further paper be brought to Council reviewing any right to remove vegetation throughout the Shire under the 10/30 and 10/50 right, including redevelopment of land to require canopy tree planting, incorporating acknowledgement of the Localised Planning Statement and establish an advocacy position for Council to adopt.
- 18 March 2019 PSC Meeting (Item 2.1): That the Committee:
 - Does not pursue any amendments to the mapping of the BMO Schedules 1 and 2 in the Mornington Peninsula Planning Scheme.
 - Adopts and forwards [a submission] to DELWP requesting that the mapping of Bushfire Prone Areas (BPA) in Portsea, Sorrento and Blairgowrie be verified and that Department of Environment, Land, Water and Planning (DELWP) engage a suitably qualified expert to further investigate and justify this variation as part of the next round of formal mapping reviews.
 - Engages a suitably qualified expert to investigate the nature of bushfire risk in all areas of the Mornington Peninsula Shire outside the BMO that are not affected by BPA mapping as part of the Neighbourhood Character Study, with a view to determining whether removal of the 10/30 exemption in these areas is appropriate

DISCUSSION

Purpose

The purpose of this report is to present and seek adoption of the officer submission to DELWP's Discussion Paper – 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' which was lodged on 11 February 2022.

Background

Over the past 10 years, the Victorian Government has changed how planning schemes consider bushfire issues with a focus on prioritising human life over other policy objectives. Many changes to the Victoria Planning Provisions (VPPs), building regulations and bushfire hazard mapping were made in response to recommendations from the 2009 Victorian Bushfires Royal Commission (VBRC). As a result of these changes, there is a much greater emphasis on bushfire in planning and building decision making.

In December 2021, DEWLP released a Discussion Paper – 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' for public comment, stating that the Government's focus over the next two years is to enhance existing bushfire planning provisions by making them clearer. The intent of the Discussion Paper was to generate feedback on potential improvements, including many improvements that stakeholders (including local councils) have identified over the last few years.

Significantly, the Government has clearly stated that it 'remains committed to the planning policy objective of prioritising human life in decision making' (Discussion Paper, page 4), and that '[the] scope of this work excludes the provisions that support bushfire recovery and rebuilding in bushfire affected communities' (page 4).

3.2 (Cont.)

The Discussion Paper addresses the following seven topics:

1. More usable state bushfire policy
2. Clearer planning requirements in bushfire prone areas
3. Better bushfire hazard assessments
4. Better approaches to prepare and assess planning applications
5. Permit exemptions for managing vegetation
6. Compliance with bushfire-related planning permit conditions
7. Training, capacity building and longer-term opportunities.

Summary of the officer submission

The officer submission was lodged with DELWP on 11 February 2022 which was the closing date for submissions. Due to the tight timelines, there was no opportunity to brief Council on, or seek adoption of the submission prior to lodgement.

The submission was made via DELWP's online survey which contained 43 questions across the seven topics listed above. The officer submission addresses all questions and is based on:

- Council's adopted advocacy position from the 16 March 2020 (concerning the accuracy of bushfire mapping and need to minimise unnecessary vegetation loss).
- Views from officers within the Shire's Natural Systems, Strategic Planning, Statutory Planning and Community Safety and Compliance teams.

Below is a summary of the key points and recommendations covered in the submission:

- Council has previously indicated its strong support of the establishment of an inter-agency group to collaboratively review bushfire planning provisions and other associated actions.
- Clause 13.02-1S (Bushfire Planning) and the decision guidelines of Clause 53.02-4.5 should be strengthened regarding 'unacceptable biodiversity impacts' to ensure development minimises its impact on biodiversity and reduces bushfire risk.
- Consider the inclusion of fire authorities as a referral authority for uses to guide planning officers on the appropriate level of information for each application (for example, bushfire emergency plans, bushfire management statements).
- The State Government should prepare bushfire hazard landscape mapping for each local government to link bushfire risk considered in the Bushfire Management Strategies and State Emergency Management Plan Bushfire Sub-Plan.
- Applying the VicSmart permit assessment process into the BMO should be avoided.
- Vegetation clearing exemptions for bushfire protection (Clause 52.12-1) promote the complete removal of all relevant vegetation within the 10/30 – 10/50 zones. This does not align with:
 - Defendable space standards in Table 6 of Clause 53.02.5 (Bushfire Planning).

3.2 (Cont.)

- Country Fire Authority (CFA) guidelines (Landscaping for Bushfire: Garden Design and Plant Selection, June 2021).
- Current scientific literature.
- More consideration should be to be given to the implications of the vegetation clearing exemptions on human health, heatwave related death, biodiversity, urban cooling and climate resilience.
- Vegetation clearing exemptions for bushfire protection (Clause 52.12-1) should be aligned with defendable space standards of Clause 53.02-5 to minimise the extent of unnecessary vegetation loss.
- It is difficult for councils to track and quantify vegetation removal resulting from bushfire exemptions.
- A planning permit requirement should be included in the VPPs which requires a landowner to demonstrate that defendable space can be created on their property without the need to remove all vegetation.
- BPA and BMO mapping should be reviewed and updated to prioritise higher bushfire risk areas and avoid unnecessary vegetation loss for bushfire protection in low-risk areas.
- It is difficult for councils to proactively monitor compliance with bushfire related planning permit conditions. Any initiatives that might improve compliance would likely be led by local government and require further resourcing to be undertaken.
- Improved guidance is needed in the form of a Planning Practice Note which includes assessment requirements, locations that may be more suitable for development, describing low fuel areas and development setbacks from bushfire hazards.

Next steps

Shire officers understand that once DELWP has reviewed all survey responses received, an engagement summary will be published between March and May 2022 before recommendations are forwarded to the State Government for final approval later this year.

It is noted that, in accordance with the 5 October 2021 NOM 310, the Shire recently engaged an expert bushfire planning consultant to progress the following works to inform Council's advocacy to State Government for improvements to bushfire planning provisions and the Shire's day-to-day statutory planning decision-making to minimise unnecessary vegetation loss:

- Preparation of a Shire-wide Bushfire Hazard Landscape Assessment to identify any areas on the Peninsula that are of low to no bushfire risk. The assessment will provide an evidence base to inform Council's advocacy to State Government for refinement of vegetation removal exemptions (e.g. '10/30 rule') and/or bushfire hazard mapping in the planning and building systems (i.e. BPA and/or BMO).
- Scoping of a 'Vegetation and Landscape Guide' or similar tool (to be prepared by a suitably qualified and experienced consultant). The Guide would be used by Council to demonstrate to landowners how high-quality landscaping outcomes are possible in a bushfire setting whilst still managing bushfire risk and without defaulting to denuding a property under the '10/30' or 'fence line' rules.

3.2 (Cont.)

- Investigating a credible mechanism to substitute existing bushfire planning controls requirements (i.e. the 10/30 and 10/50 rules) with bushfire responsive landscape objectives and outcomes. This work involves considering how the above Guide might be operationalised in the Planning Scheme, CFA referrals and other planning matters relating to bushfires to further minimise unnecessary vegetation loss.

Officers intend to brief Council on the progress and outcomes of the above work in mid-2022.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987.

SUSTAINABILITY CONSIDERATIONS

The officer submission addresses the need for the State Government to consider the implications of vegetation clearing exemptions within existing bushfire planning provisions on human health, heatwave related death, biodiversity, urban cooling and climate resilience.

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 PLANNING SCHEME AMENDMENT REPORTS

4.1 Planning Scheme Amendment C227morn Tootgarook Wetland - Adoption

| | |
|----------------------|--|
| Prepared By | Martin Chin, Senior Strategic Planner |
| Authorised By | Director - Planning and Infrastructure |
| Document ID | A11008951 |
| Briefing Note Number | BN1541 – 15 February 2022 |
| Attachment(s) | <ol style="list-style-type: none"> 1. Mornington Peninsula C227morn Panel Report 2. Mornington Peninsula C227morn Mapping 3. Mornington Peninsula C227morn Ordinance 4. Mornington Peninsula C227morn Explanatory Report 5. Mornington Peninsula C227morn Instruction Sheet 6. Mornington Peninsula C227morn Background Documents 7. Mornington Peninsula C227morn Supporting Documents |

EXECUTIVE SUMMARY

Planning Scheme Amendment C227morn (Tootgarook Wetland) has been reviewed by an independent Planning Panel (appointed by the Minister for Planning) via a public hearing process. Council has received the Panel's report. This report presents the Panel's findings and recommendations and explains the matters and options for Council to consider before making a decision about the amendment. This report recommends that Council adopts the amendment with minor changes as recommended by the Panel and officers and submits the amendment to the Minister for Planning for approval and gazettal.

RECOMMENDATION

That the Planning Services Committee:

1. Receives and considers the Panel Report dated 7 January 2022 (Attachment 1) for Amendment C227morn pursuant to section 27 (1) of the *Planning and Environment Act 1987* (the Act).
2. Adopts Amendment C227morn pursuant to section 29 (1) of the Act, generally in accordance with Attachments 2 to 7 to this report.
3. Submits the adopted Amendment C227morn together with the prescribed information to the Minister for Planning for approval pursuant to section 31 (1) of the Act.
4. Authorises the Director of Planning and Infrastructure to make administrative and editorial changes, if required, prior to submitting Amendment C227morn to the Minister for Planning for approval.
5. Provides written notice to all submitters to Amendment C227morn of the Planning Services Committee's resolution.

4.1 (Cont.)

Deputations

- Ms Judy Walsh (representing the National Trust), Submitter.
- Mr Rob McNaught, Submitter.

COMMITTEE DECISION

Moved: Cr Celi
Seconded: Cr Mar

That the recommendation be adopted.

AMENDMENT

Moved: Cr Gill

6. That the Committee resolves to reaffirm Council's adopted position of 13 June 2017 (item 3.5) that Council is concerned with the potential environmental impacts of a freeway extension through the Tootgarook Wetlands and requests further investigation be undertaken by Department of Transport to explore viable alternatives.

Amendment Lapsed due to no Seconder

Vote by Division (Requested by Cr Celi)

For: Cr Celi, Cr Dixon, Cr Race, Cr Mar and Cr Mercurio

Against: Cr Gill, Cr Holland, Cr Marsh and Cr Bissinger

Carried

COUNCIL & WELLBEING PLAN

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.
- Strategic Objective 1.2: A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.

Amendment C227morn aims to protect the ecologically significant Tootgarook Wetland (the Wetland), which supports numerous flora and fauna of State and national significance and contains sites of cultural significance to Traditional Owners.

RELEVANT COUNCIL DECISIONS AND POLICIES

- 14 May 2018 Planning Services Committee Meeting – Council resolved to:
 - Adopt the final Tootgarook Wetland Management Plan (BMT, 2018).
 - Review the boundary of the Wetland extent and hence Environmental Significance Overlay – Schedule 30 (ESO30) by a professional ecologist and

4.1 (Cont.)

hydrogeologist, as outlined in Action 1.01 of the final *Tootgarook Wetland Management Plan*, as soon as practicable.

- 3 June 2019 Planning Services Committee Meeting – Council resolved to adopt the final *Extent of Tootgarook Wetland, Mornington Peninsula, Victoria* (Biosis, 2019).
- 16 December 2019 Planning Services Committee Meeting – Council resolved to request the Minister for Planning to authorise Amendment C227morn to the Mornington Peninsula Planning Scheme under section 8A of the Act.
- 21 April 2020 Planning Services Committee Meeting – Council resolved to approve a change to the proposed Amendment C227morn to rezone the entire Council-owned land at 40 Colchester Road, Rosebud, from the existing Industrial 3 Zone (IN3Z) to the Public Conservation and Resource Zone (PCRZ).
- 5 October 2021 Planning Services Committee meeting – Council resolved to:
 - Request the Minister for Planning to appoint a planning panel under Part 8 of the Act to consider the unresolved submissions to the proposed Amendment C227morn.
 - Refer unresolved submissions to the amendment to a planning panel in accordance with section 23 of the Act.

DISCUSSION
Purpose

The purpose of this report is to present the findings and recommendations of the Panel Report (the Report) for Amendment C227morn and recommend that Council adopts the amendment with minor changes and submits it to the Minister for Planning for approval and gazettal.

Background

Amendment C227morn seeks to implement the recommendations of the *Tootgarook Wetland Management Plan* (BMT, 2018) and *Extent of Tootgarook Wetland, Mornington Peninsula, Victoria* (Biosis, 2019) by amending the Municipal Strategic Statement, amending existing ESO schedules, introducing and applying a new ESO schedule to the current extent of the Wetland and buffers, and rezoning several public land parcels to better protect, recognise, maintain and enhance the Wetland.

Exhibition of the amendment commenced 20 May 2021 and concluded 2 July 2021. Twelve submissions were received with four opposing. A Directions Hearing was held on 3 November 2021 followed by a Panel Hearing on 29 November 2021 via video conference. Two Mornington Peninsula Shire (Shire) officers, an advocate for the Shire from Jackson Lane Legal, an ecology expert witness from Biosis and four submitters attended the Panel Hearing. The four submitters included a National Trust representative and the owner of Boneo Park.

The key issues raised in the submissions and during the Hearing process included:

- the extent of the ESO31, which covers both the Wetland and buffers
- potential impacts on current land uses (particularly agricultural uses)
- the proposed permit trigger (particularly regarding fence types) in the proposed ESO31.

4.1 (Cont.)

The Panel Report

The Report (Attachment 1) was delivered Friday, 7 January 2022. In preparing the Report, the Panel assessed the amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Victoria Planning Provisions.

The Panel also considered all written submissions made in response to the exhibition of the amendment, and submissions and other material presented to it during the Hearing. It has reviewed the material and has been selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

1. The planning context

The Panel assessed the amendment against:

- relevant Victorian planning objectives in the *Planning and Environment Act 1987* (the Act)
- relevant policies in the State Planning Policy Framework (PPF) and Local PPF (*N.B.* the amendment was prepared prior to the approval of amendment C279morn 'PPF translation')
- other relevant planning scheme amendments, i.e. Amendment C188 (Part 2) which introduced the existing ESO30
- relevant planning scheme provisions, i.e. existing zones and overlays affected by the amendment
- relevant Ministerial Directions.

Although some policies in the PPF contain objectives that may conflict with the amendment (for example those that seek to increase housing and industrial land supply), the Panel agrees with the council that on balance, the amendment is expected to increase net community benefit and promote sustainable development considering that the environmental, social and economic benefits are likely to exceed the costs of losing the residential and industrial zonings.

The Panel concludes that the amendment is supported by, and implements, the relevant sections of the PPF, is consistent with the relevant Ministerial Directions, and is well founded and strategically justified. The Panel agrees with Council and those submitters that support the amendment, that the amendment will contribute to the enhancement and protection of the Tootgarook Wetland environs.

2. The extent of the proposed ESO31 – the Wetland and buffers

The Panel considered the issues raised in the submission on whether the extent of the proposed ESO31 (particularly the extent of the proposed buffer) is appropriate, and whether the controls in the proposed schedule are too onerous on property owners.

The Panel accepts the approach undertaken by Biosis and explained by the ecology expert witness, which includes the Wetland extent and required buffers. The Panel notes that, at the Hearing, no other ecological evidence was provided and that no ecological or scientific reasons were put forward as to why the buffer should be reduced from that exhibited. Rather,

4.1 (Cont.)

it was the ecology expert witness' evidence that the buffers are conservative and could have been greater than 100 metres as is the case for other wetlands in Australia.

The Panel considers that it is of importance that the Department of Environment, Land, Water and Planning (DELWP) accepted the Biosis approach and mapping of the Wetland and buffers and has adopted the mapping into its Victorian Wetland Inventory and concluded that the mapping has been "accepted as a more accurate representation of the extent of the Wetland".

The Panel notes that despite several opposing submissions, there is general agreement that the Wetland is a natural asset of great significance given it is the largest groundwater-dependent ecosystem and freshwater marsh in the region and supports numerous flora and fauna of State and national significance.

3. *Potential impacts on current agricultural uses*

The Panel agrees with Council that applying the proposed ESO31 over land does not control or prohibit land use of the underlying zone (existing or future). The ESO31 is a planning overlay and it does not control or prohibit land use (existing or future). For properties not already covered by an ESO, the ESO31 includes new requirements for buildings and works, particularly fences.

4. *The permit trigger for fences in the proposed ESO31*

Although there may be some ambiguity as to what fences may or may not require a planning permit, the Panel resists placing further types of fences into the list of those fences excluded from the permit requirement at Section 3.0 of the proposed ESO31. The Panel's view is that this is an exercise best undertaken by Council at the application stage (if a permit is required).

5. *Community engagement and independent review of the Biosis report*

Given the process of developing a strategy for the Wetland included a Steering Committee of a number of government and key stakeholder groups who reviewed the strategy as it was being developed as well as Shire officers undertaking some ground-truthing of the proposed buffer, the Panel's view is that an independent review of the Biosis report is unnecessary. The Panel agrees with Council that the preparation process for the Tootgarook Wetland extent report included extensive consultation with community, key stakeholder groups, residents, commercial operators, non-government organisations and government agencies including DELWP who have supported and adopted the Biosis mapping in the DELWP Victorian Wetland Inventory database.

6. *Potential impacts on property values*

Other issues raised in the submissions included impacts on property values. The Panel notes that property values resulting from the application of planning controls to land is not a relevant planning matter to be considered by the Panel. The Act requires the economic effects of an amendment to be considered. The Panel interprets this as being at a broader community scale, and not an individual private impact. No submission or evidence demonstrated the amendment would have a negative community-wide economic impact.

7. *66 Henry Wilson Drive, Rosebud (owned by Melbourne Water)*

The Panel accepts the explanation regarding the mapping error at 66 Henry Wilson Drive, Rosebud and concludes that this mapping be amended as part of the approval process for the amendment.

4.1 (Cont.)

The Panel's recommendations regarding the proposed ESO31

The Panel concludes that the proposed ESO31 is well founded and should be introduced to meet the various objectives of the Mornington Peninsula Planning Scheme that aim to protect the Wetland and the Shire's natural assets. Regarding the introduction of the exhibited ESO31, the Panel recommends:

- Amend the Schedule to Clause 72.08 (Background documents) to include the *Tootgarook Wetland Management Plan* (BMT, 2018) and *Extent of Tootgarook Wetland, Mornington Peninsula, Victoria* (Biosis, 2019) as background documents.
- Apply a new Schedule 31 to the ESO to the newly defined current extent of the Wetland and its buffers as presented in Figure 1 of the Report and detailed in the exhibited maps.
- Include all of the land parcel (owned by Melbourne Water) at 66 Henry Wilson Drive, Rosebud in the ESO31 mapping.
- Delete the existing ESO30, which applies to parts of the Wetland.
- Delete the parts of ESO Schedules 14, 18 and 19 that overlap with ESO31.

Other matters

1. *Municipal Strategic Statement*

The exhibited amendment included proposed changes to Clause 21.02 (Profile of the Mornington Peninsula) and Clause 21.06 (Strategic framework and the Peninsula's settlement pattern) of the Municipal Strategic Statement (MSS) that sought to provide greater recognition and protection of the Wetland within a local policy setting. One submitter questioned the sensibility of providing a separate policy objective just for the Wetland under Clause 21.06.

Following advice from Biosis consultants, officers agree with the submitter that there is no need for a separate local policy provision for the Wetland given State policies already exist in the PPF that would achieve the same outcome. As per section 23(1) (a) of the Act, officers recommend that the amendment be changed by deleting the exhibited proposed changes to Clause 21.02 and Clause 21.06.

It is noted that, following gazettal of Amendment C279morn on 22 July 2021, the MSS (including both Clause 21.02 and Clause 21.06) no longer exists. Amendment C279morn reformatted various elements of the Mornington Peninsula Planning Scheme (the Scheme) to align with the State Government's new PPF and associated provisions.

2. *Local Planning Policies*

The exhibited amendment included a proposed change to Clause 22.14 (Mornington Peninsula land units) of the Local Planning Policies (LPP) to remove 'Tootgarook Swamp' from the name of the existing ESO14, which was referenced in the said clause. However, following the exhibition close date on 2 July 2021, the MSS and LPP were reformatted into the new PPF via Amendment C279morn on 22 July 2021.

Through Amendment C279morn, relevant sections in the MSS and LPP were translated into appropriate locations in the Municipal Planning Strategy (MPS), PPF or elsewhere in the Scheme. As a consequence, the proposed change to Clause 22.14 became redundant following the gazettal of amendment C279morn. Accordingly, officers recommend that the amendment be changed by deleting the exhibited proposed change to Clause 22.14.

4.1 (Cont.)

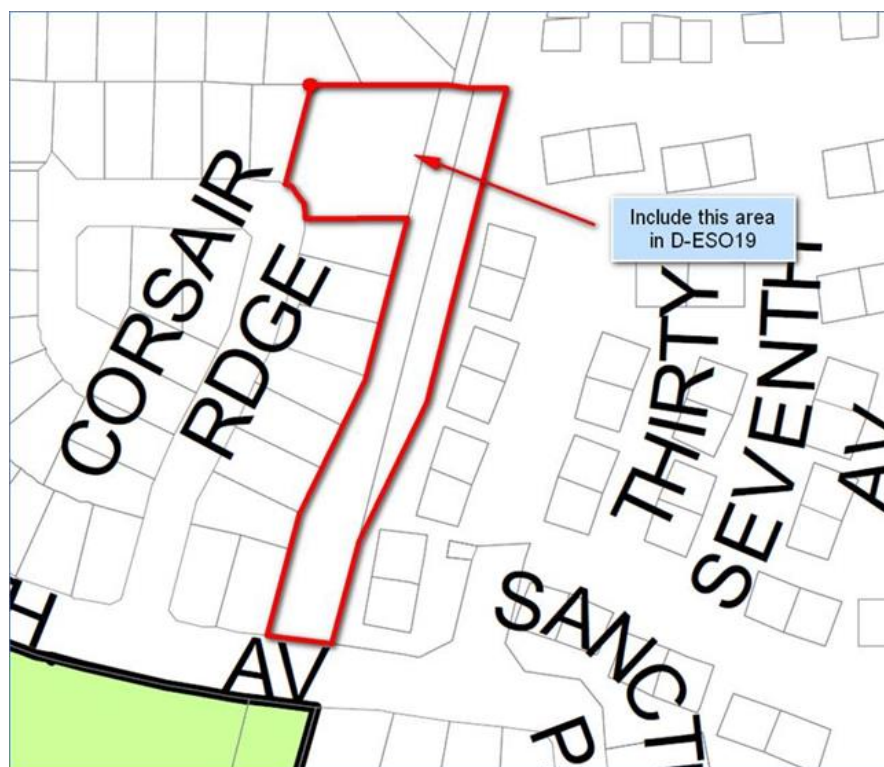
3. Minor mapping error relating to the ESO19

While preparing the amendment documents for adoption, following the receipt of the Panel Report, officers identified a minor mapping error that affects a small area in Capel Sound. The affected area comprises 20A Corsair Ridge, part of 90 Elizabeth Avenue, and 105 Elizabeth Avenue (see Figure 1 below). The area is currently maintained as a park / garden / drainage reserve / pipeline and wholly owned by the Shire.

Currently, the existing ESO19 applies to the area. The amendment proposes to apply the proposed ESO31 over the area as well. The existing ESO19 should therefore have been deleted from this area (i.e. included in the 'Delete ESO19 (D-ESO19)' mapping) under the amendment to avoid the unnecessary duplication of ESO schedules.

Officers have pre-empted the need to correct this mapping error with DELWP and the latter agrees that "the exclusion of the land from D-ESO19 instruction is an error which would result in the overlapping of ESO19 and ESO31."

Figure 1: Minor mapping error in Capel Sound

**Options for consideration**

Having received and reviewed the Panel's report, there are two matters which Council must now consider under the requirements of the Act, being:

- the Panel's recommendations
- Council's decision on the amendment.

1. The Panel's recommendations

The relevant options for consideration here are:

- accept the Panel's recommendations in full

4.1 (Cont.)

- accept part of the Panel's recommendations
- reject the Panel's recommendations in full.

Given the Panel concludes that the amendment is supported by, and implements, the relevant sections of the PPF, is consistent with the relevant Ministerial Directions, is well founded and strategically justified, and will contribute to the enhancement and protection of the Wetland environs – this report recommends that Council accepts the Panel's recommendations in full.

2. Council's decision on the amendment

The relevant options for consideration here are:

- abandon the amendment
- adopt the amendment as exhibited
- adopt the amendment as exhibited with changes.

Officers recommend that Council adopts the amendment given it has a strong strategic basis that is fully supported by the Panel. By adopting the amendment, Council would also be reaffirming its past decision to review and fix the boundary of the existing ESO30 and address the issues associated with the overlapping of multiple ESO schedules.

Given the Panel agrees that the mapping error associated with the Melbourne Water property at 66 Henry Wilson Drive, Rosebud be rectified as part of the approval process for the amendment, and DELWP's support to correct the additional minor mapping error concerning ESO19 and Shire-owned land, officers recommend that Council adopts the amendment with the following changes:

Mapping

- Include all of the land parcel (owned by Melbourne Water) at 66 Henry Wilson Drive, Rosebud in the ESO31 mapping.
- Delete the ESO19 from Shire-owned land at 20A Corsair Ridge, part of 90 Elizabeth Avenue, and 105 Elizabeth Avenue (shown in Figure 1) (i.e. include this land in the D-ESO19 mapping).

Ordinance

- Delete the exhibited proposed changes to Clause 21.02 and Clause 21.06 of the MSS.
- Delete the exhibited proposed change to Clause 22.14 of the LPP.

All recommended changes to the mapping and ordinance of the exhibited amendment have been incorporated into the amendment documents (Attachments 2 and 3 respectively). Associated changes have also been made to the Explanatory Report (Attachment 4) and Instruction Sheet (Attachment 5).

ENGAGEMENT

As discussed above, a Panel Hearing via video conference was conducted on 29 November 2021. Two Shire officers, an advocate for the Shire from Jackson Lane Legal, an ecology expert witness from Biosis, and four submitters attended the Hearing. The four submitters included a National Trust representative and the owner of Boneo Park.

4.1 (Cont.)

COMMUNICATIONS PLAN

Once Council has decided on the amendment, officers will notify all submitters of Council's resolution. Officers will also advise the Minister for Planning of Council's resolution.

If the amendment is adopted and then submitted to the Minister for approval and gazettal, all owners and occupiers affected by the amendment as well as all submitters will be notified if, and when the Minister approves the amendment.

LEGAL AND REGULATORY FRAMEWORK

As per the *Planning and Environment Act 1987*, under:

- Section 27 (1), the council must consider the Panel Report before deciding whether or not to adopt the amendment.
- Section 28 (1), the council must tell the Minister in writing if it decides to abandon an amendment or part of an amendment.
- Section 29 (1), the council may adopt the amendment or that part with or without changes after complying with Divisions 1 and 2 in respect of an amendment or any part of it.
- Section 31 (1), the council must submit an adopted amendment to the Minister together with the prescribed information.
- Section 36 (2), the council must give notice of the approval of the amendment in a manner satisfactory to the Minister.

SUSTAINABILITY CONSIDERATIONS

Environment, social and economic impacts

How the amendment addresses any environmental, social and economic effects is articulated in the Explanatory Report (Attachment 4). As discussed above, although some policies in the PPF contain objectives that may conflict with the amendment, the Panel agrees with Council that, on balance, the amendment is expected to achieve a net community benefit and promote sustainable development considering that the environmental, social and economic benefits are likely to exceed the costs of rezoning residential and industrial land, and applying new or consolidated planning controls (i.e. ESO31) to affected land.

Climate change impacts

The amendment will play a significant role in mitigating climate change impacts. As explained in the *Tootgarook Wetland Management Plan* (BMT, 2018),

The Wetland's value for providing flood storage, minimising the flood risk to Capel Sound has long been established. Detailed flood modelling of the Tootgarook catchment has recently been undertaken, confirming the Wetland's importance in regulating floodwaters by acting as a natural 'retarding basin', protecting the downstream urban area even in large flood events (Engeny Water Management, 2012). This function will be important to mitigate the impacts of climate change, which is expected to increase the intensity of storm events.

The Wetland's function as a natural flood retarding basin is recognised under Section 1.0 (Statement of environmental significance) of the proposed ESO31. Given the proposed overlay seeks "To protect and enhance the ecological values and functions of Tootgarook

4.1 (Cont.)

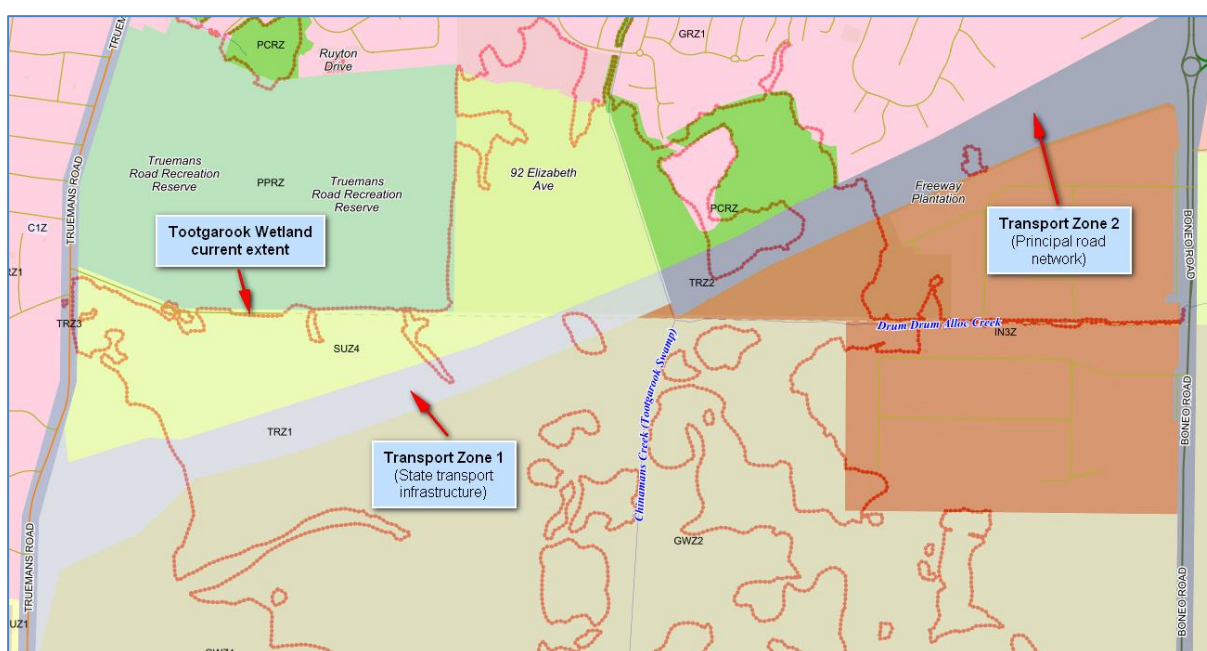
Wetland” as its environmental objective, the amendment therefore ensures future developments in and around the Wetland would not compromise the flood mitigation function of the Wetland.

Mornington Peninsula Freeway (M11) extension

It is noted that land set aside for the potential extension of the Mornington Peninsula Freeway (M11) is currently shown on the Mornington Peninsula Planning Scheme maps (Figure 2) under the following two Transport Zone (TRZ) categories:

- TRZ1 – State transport infrastructure
- TRZ2 – Principal road network.

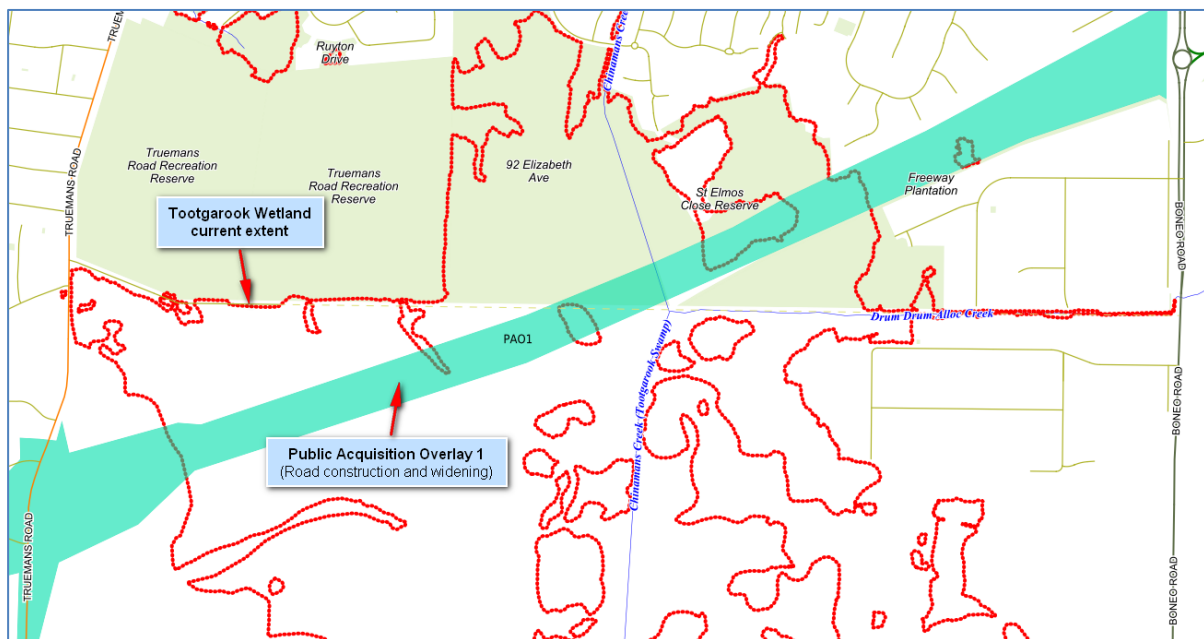
Figure 2: Tootgarook Wetland and the M11 extension



A Public Acquisition Overlay 1 (PAO1), which identifies land for potential road construction and widening, also applies over the land as shown in Figure 3. The PAO1 mapping is also included in the Mornington Peninsula Planning Scheme maps.

4.1 (Cont.)

Figure 3: Public Acquisition Overlay 1 (PAO1)



This amendment has no impact on the TRZ nor the PAO1 given the said zoning and overlay will continue to apply over the affected land. What the amendment does is to replace the existing schedules to the ESO that currently affect the Wetland (including the land set aside for the potential M11 extension) with a single schedule, i.e. the proposed ESO31, to accurately reflect the Wetland's current extent including buffers and the significant environmental values of the area.

As part of any planning for the potential M11 extension, the environmental values of Tootgarook Wetland would need to be considered and the benefits of the potential extension weighed up against its costs via an environmental impact assessment.

It should be noted that during the community consultation phase of the *Extent of Tootgarook Wetland, Mornington Peninsula, Victoria* (Biosis, 2019) project, officers sought feedback from VicRoads (now part of the Department of Transport) on the draft Biosis report. In its submission dated 5 April 2019, VicRoads stated that:

VicRoads has assessed the report along with the proposed changes to the Environmental Significance Overlays contained in the Mornington Peninsula Planning Scheme.

VicRoads notes that some of the land affected by the current and proposed Environmental Significance Overlays is also affected by a Public Acquisition Overlay (PAO) for a possible future extension of the Mornington Peninsula Freeway. VicRoads informs the Council that the Government's position is that the PAO is to be retained.

Notwithstanding, VicRoads offers broad support for the proposal to change the Environmental Significance Overlays to remove overlaps between existing environmental overlays and to have a single overlay that more accurately aligns with the boundaries of the wetland and provides for suitable buffers. (Emphasis added.)

FINANCIAL CONSIDERATIONS

The Shire has incurred the following financial costs to progress the amendment through the Planning Panel stage of the process which are already accounted for within existing budgets:

4.1 (Cont.)

- Approximately **I & S** (including GST) to have an independent planning panel appointed to review the amendment, submissions, conduct a public hearing and prepare a report.
- Approximately **I & S** (including GST) for engaging Biosis consultants to help review and respond to submissions and act as an expert witness for the Panel Hearing.
- Costs to engage a lawyer from Jackson Lane Legal to act as an advocate for the Shire during the Directions and Panel Hearings.

In the event Council decides to adopt the amendment as recommended, the Shire will be required to pay a **I & S** fee to DELWP under the *Planning and Environment (Fees) Regulations 2016* when Council submits the amendment to the Minister for approval and gazettal.

Following gazettal, the amendment is expected to have a very minor impact (if any) on the resource and administrative costs of the Shire given much of the land where proposed ESO31 will apply is already affected by one or more ESO schedules that trigger the need for a planning permit for vegetation removal and most buildings and works.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 STATUTORY PLANNING REPORTS

5.1 P08/3059.01 - 2/159 Shoreham Road, Red Hill South

| | |
|---------------------|---|
| Prepared By | Alex Harrison, Senior Planner |
| Authorised By | Director - Planning and Infrastructure |
| Document ID | A11056535 |
| Attachment(s) | <ol style="list-style-type: none"> 1. P08/3059.01 - Advertised material 2. Objection (confidential) 3. P08/3059 - Current Permit |
| Application No. | P08/3059.01 |
| Proposal | Amendment to endorsed plans and conditions of permit |
| Melway Reference | 191B7 |
| Zoning | Commercial 1 Zone |
| Applicant | Samuel Coverdale c/o Nick Robbins of Taylors Development Strategists |
| Date of Application | 18 December 2020 |
| Item Called in? | Yes – Cr Gill 19 December 2021 |

PURPOSE

The purpose of this report is to seek a decision from the Planning Services Committee (the Committee) regarding an amendment to Planning Permit Application P08/3059 (the Application P08/3059.01).

The application at 2-5/159 Shoreham Road, Red Hill seeks permission to extend the licensed area and increase the number of patrons permitted from 60 to 100 by amending the conditions of the permit and endorsed plans. The proposal also seeks to delete Condition 8 of the permit to allow the restaurant to operate at the same time as another restaurant on the subject site.

The application has been considered against the relevant provisions of the Mornington Peninsula Planning Scheme (Planning Scheme), including the Municipal Planning Strategy, Planning Policy Framework, Commercial 1 Zone (C1Z) and the relevant particular and general provisions. The application is considered acceptable having regard to the relevant considerations of the C1Z, Clause 52.06 (Car Parking) and Clause 52.27 (Licensed Premises).

It is therefore recommended that the Committee resolves to support the application and issue an amended Planning Permit.

| | |
|-----------------|--|
| Proposal | <p>To amend the endorsed plans and conditions of the permit being P08/3059 via:</p> <ul style="list-style-type: none"> • Amendment to the description of the land (to include common property). |
|-----------------|--|

5.1 (Cont.)

| | |
|----------------------------|--|
| | <ul style="list-style-type: none"> • Deletion of Condition 8 (to allow the restaurant to operate on the site at the same time as another restaurant). • Amendment of Condition 9 (to increase the patron numbers). • Amendment of endorsed plans (to include the enlargement of the red line plan - licensed area). |
| Zoning and Overlays | <ul style="list-style-type: none"> • Commercial 1 Zone • Bushfire Management Overlay • Environmental Significance Overlay – Schedule 10 • Environmental Significance Overlay – Schedule 26 • Significant Landscape Overlay – Schedule 1 • Significant Landscape Overlay – Schedule 6. |
| Permit Triggers | Planning Permit P08/3059 currently provides planning permission for development, use of the land to sell or consume liquor and for the variation of car parking requirements of Clause 52.06 |
| Advertising | Notice of the Application was undertaken by sending letters to surrounding properties via the distribution of notification letters and one (1) sign displayed on the site. |
| Submissions | At the time of this report's preparation one objection had been received. |
| Consultation | No |
| Key Issues | <ul style="list-style-type: none"> • Car parking provision. • Amenity impacts. • Traffic impacts. |
| Recommendation | That Planning Permit application P08/3059.01 be supported, subject to conditions and a Notice of decision to amend a planning permit be approved. |

BACKGROUND**Previous Permits**

Planning Permit P08/3059 was issued on 27 March 2009 for the development of buildings and works, on premises liquor licence and variation to the car parking requirements of clause 52.06 in accordance with the endorsed plans.

Planning permit P07/3180 authorised "The operation of a 40 seat licensed restaurant / bistro in Shops 2 and 3 and a licensed bottle shop (including local cheese and wine sales) in Shops 4 and 5. External buildings and works and reduce parking requirement of at least 14 car

32

5.1 (Cont.)

Surrounding Land

The site is located within the Red Hill South local activity centre, which is a lower order activity centre mainly serving the local community and providing facilities for tourists. The restaurant ('Many Little') is bound by road reserve to the north, commercial uses (Endota day spa, a clothing store, a café, an office, a hairdresser, a real estate agency, the Epicurean and a hardware supply yard) to the east, and parkland to the south and west. The closest dwelling to the site is located on the opposite side of Shoreham Road, approximately 65 metres to the north at 160 shoreham road.

The Red Hill South local activity centre is located within the 'Arthurs Seat-Red Hill-Merricks North hills area' and is close to significant tourism destinations such as Arthurs Seat and numerous wineries. The Merricks to Red Hill rail trail starts from 155 Shoreham Road and can be directly accessed from the Red Hill South centre.

PROPOSAL

It is proposed to amend the existing permit by amending the description of the land, permit conditions and endorsed plans in the following way:

Amendment to description of land

The 'address of the land' on the permit refers to Shop Units 2, 3, 4 and 5 at 159 Shoreham Road, Red Hill South. It is proposed to amend the address of the land to include common property at 159 Shoreham Road, Red Hill South.

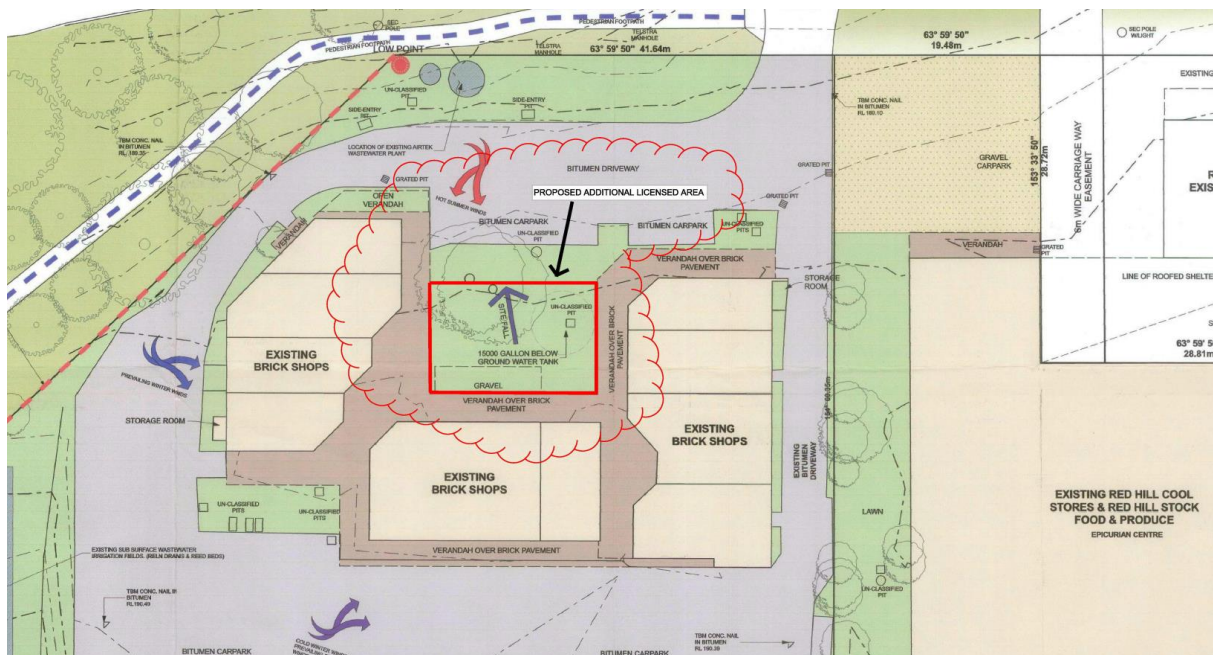


Figure 2: Additional licensed area within common property (red line)

Deletion of Condition 8

Condition 8 states that: the restaurant on the subject land operating under this permit must not operate at any time a restaurant is operating on other land or buildings contained within plan of subdivision PS402319.

5.1 (Cont.)

Amendment of Condition 9

Condition 9 states that: The restaurant premises must not have more than 60 seats for patrons on the premises at any one time. This includes external seating.

It is proposed to amend this condition to read:

The restaurant premises must not have more than 100 patrons on the premises at any one time. This includes patrons in the restaurant and in the common property seating area outside.

Amendment of endorsed plans

Extension of the licensed area to the outdoor area within Common Property and around the building to align with the roof of the existing verandah.

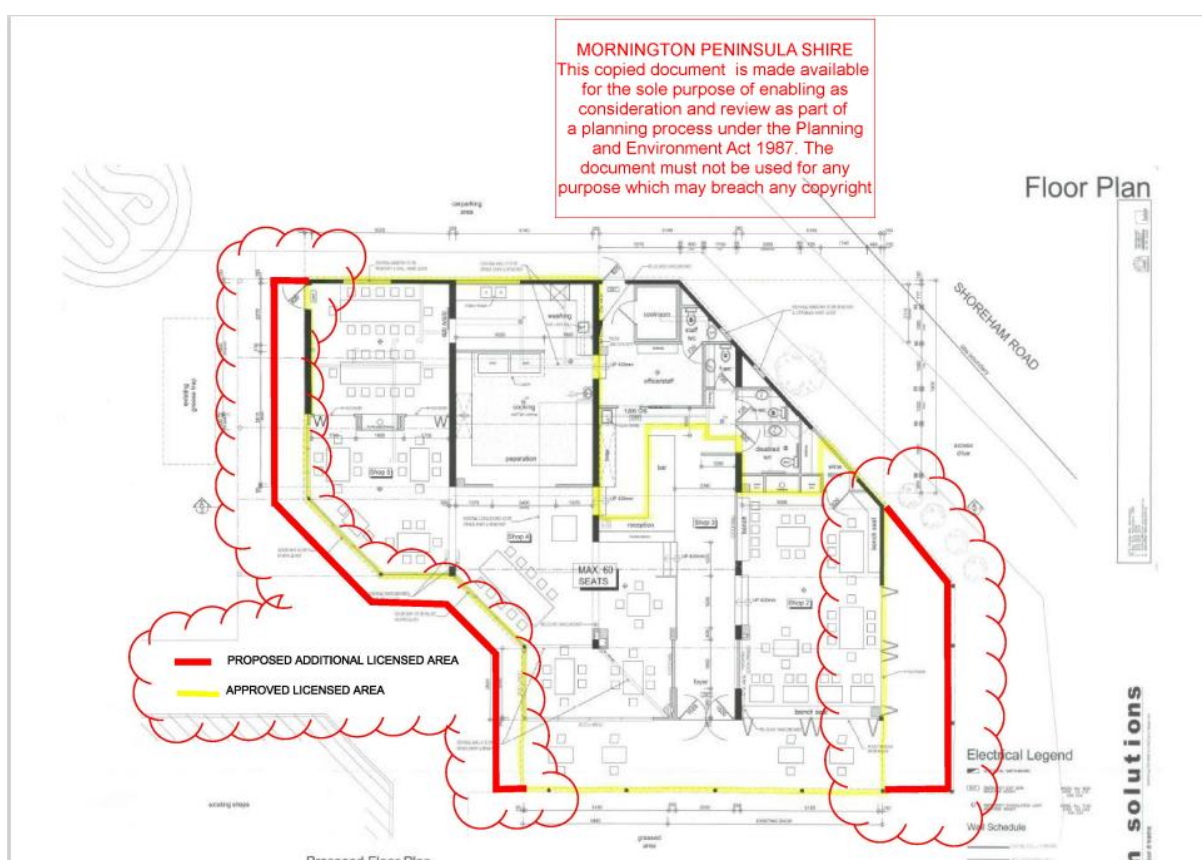


Figure 3: Additional licensed area under verandah (red line)

NOTIFICATION AND CONSULTATION**Notification**

Letters were sent to surrounding properties and a sign was displayed on the site.

One (1) objection was received (confidential Attachment 2) which can be summarised as:

- lack of on-site car parking
- resulting traffic issues
- how will Council manage car parking?

5.1 (Cont.)

REFERRALS

External Referrals

Environment Protection Authority (EPA) – No objection subject to conditions.

It is noted that the applicant is to submit a pathways assessment to determine what approvals are required to ensure compliance with the *Environment Protection Act 2017*.

Internal Referrals

Health – No objection subject to conditions on approval requiring an upgraded waste-water management system under the *Environment Protection Act 2017* and the connection of a reticulated sewer.

Traffic – Objection to reduction in car parking:

- lack of 16 on-site car spaces
- adequate parking should be provided by the restaurant.

PLANNING SCHEME PROVISIONS

Permit Triggers

Clause 52.06 – Car Parking:

- A permit is required to reduce the number of car spaces required under Clause 52.06-5.

Clause 52.27 – Licensed Premises:

- A permit is required to use land to sell or consume liquor if the area that liquor is allowed to be consumed or supplied under a licence is to be increased.

| State Planning Policy Framework |
|---|
| Clause 02.02 – Vision |
| Clause 02.03 – Strategic directions |
| Clause 02.04 – Strategic Framework Plan |
| Clause 11.01-1L – Settlement – Mornington Peninsula |
| Clause 11.03-1L – Activity Centres – Mornington Peninsula |
| Clause 12 – Environmental and Landscape Values |
| Clause 13 – Environmental risks and Amenity |
| Clause 15.01-2L – Building Design - Mornington Peninsula |
| Clause 17 – Economic Development |
| Particular Provisions |
| Clause 52.06 – Car parking |
| Clause 52.27 – Licensed premises |
| Clause 65 – Decision Guidelines |

5.1 (Cont.)

CONSIDERATION

The application proposes extending the licensed area of the existing restaurant use to an outside area of common property and increasing patron numbers from 60 to 100. It is not proposed to alter the existing hours of the restaurant and no buildings or works are proposed.

The key issues for the consideration of this proposal are amenity and car parking;

Amenity

- 'Many Little' is an existing restaurant within the Commercial 1 Zone. It is 'as-of-right' and does not trigger a permit for the use.
- The restaurant is well set back and separated from sensitive uses (the closest dwelling is located on the opposite side of Shoreham Road, approximately 65 metres to the north). It is surround by other commercial uses, recreation and road reserve.
- The increase in patron numbers from 60 to 100 is not considered to detrimentally affect the amenity of the surrounding area by way of noise. Existing permit conditions already restrict the amount of noise generated by the restaurant use permitted under Planning Permit P08/2039.
- The extension of the red line (licensed area) to incorporate the verandah and common area adjacent to the existing restaurant will value add to the dining experience whilst still being far removed from any sensitive interfaces. The extension of the licensed area will allow diners to consume alcohol in association with their meals in an outdoor alfresco environment.
- The extension of the license area and patron numbers will further assist in fostering tourism and employment for the Red Hill area. It will also value add to the vibrancy of the local area and the Mornington Peninsula. This is consistent with State Planning Policies which encourage use and development that meets the community needs for retail services and supports growth in tourism.

Car parking

The application proposes to increase patron numbers by 40 (from 60 to 100 patrons). Clause 52.06 of the Mornington Peninsula Planning Scheme (Car Parking) requires 0.4 on site car spaces to each additional patron for the restaurant use.

| Use | Rate | Car Parking Measure | Requirement |
|------------|------|---------------------|---------------|
| Restaurant | 0.4 | To each patron | 40 x 0.4 = 16 |

On a strict interpretation and without existing context, this would suggest that if a proposal does not provide any car parking, the proposal would require a formal reduction of 16 car spaces pursuant to Clause 52.06 (Car Parking) of the Planning Scheme. However, the existing restaurant is part of an established development that has a mix of shops and offices. The original shop and office development (P2429 approved in 1977) was provided with 28 car parking spaces, however that original marking has since disappeared and been reconfigured. Unfortunately, historical development scenarios pre-dating current Planning Scheme provisions have not always formalised parking areas as per current standards or requirements. Therefore, the proposal is assessed on an empirical assessment of parking availability, rather than a strict interpretation of the planning scheme requirement.

5.1 (Cont.)

The site is considered to have approximately 100 spaces combined with the adjoining land at 165 Shoreham Road, that is also in the same ownership. A Traffic Impact Assessment was submitted with the application. This assessment concluded that there was sufficient off-street parking available at 159 and 165 Shoreham Road to accommodate the additional patrons during peak parking demand generated by the restaurant on a Friday and Saturday night when the restaurant would be at its busiest. Peak occupancy in the survey of November 2019 identified up to 41 spaces being available. This peak for the use, does not coincide with the peak of some of the other shops/offices in the overall development.

The upper limit of 100 patrons is likely to only occur during special events where customers have hired out the venue, in which case patrons are more likely to carpool with a higher vehicle occupancy than normal. Nonetheless the applicant has stated that they are willing to accept a cap on patron numbers at 60 patrons prior to 5.00pm on all days and 100 patrons thereafter. This would assist in alleviating conflicts during daytime hours (especially at lunchtimes on weekends should they eventuate) when other commercial operators are occupying their tenancies. This conflict would subside when the majority of tenancies would close. This will form a condition on any approval and will result in amending Condition 9.

Council's Traffic Department is concerned that there will be a crossover between business within the area such as the nearby Epicurean. Although this maybe the case it is noted that other retail uses within the site (not restaurants) will cease operating before peak time for the restaurant uses and therefore free up car spaces that may have otherwise be taken by patrons of these non-restaurant uses.

It is noted that the submitted Traffic Impact Assessment is an empirical assessment of parking demand for the whole shopping centre (159 and 165) which accounts for epicurean customers also parking on 159 Shoreham Road. The traffic assessment takes into consideration the adjoining parking within the Rail Trail land as additional or overflow parking availability. However, for completeness, this parking is not considered necessary to support or substantiate the parking reduction being sought.

It is also noted that of community concern, that during peak times such as Australia Day, etc. there have been times where patrons of the properties at 159 and 165 Shoreham Road (and surrounding uses) have exceeded the capacity of the car parking available on-site. This has resulted in vehicles parking outside of the sites, sometimes illegally. The issue of vehicles parking illegally is not a planning consideration and is a separate enforcement matter. It is acknowledged that at times, during the busiest periods, most uses/development will not accommodate the full requirement for traffic/parking generation even if they comply with the parking requirements of the Planning Scheme. The role of the parking rates/provisions is not to provide an overabundance of car parking during average operating times of uses in order to cater for peak periods.

On balance, it is considered that the formal reduction in car parking requirements is acceptable having regard to the empirical assessment.

Deletion of Condition 8

Planning Permit P08/3059 was issued on 27/3/2009 for the development of buildings and works, on premises liquor licence and variation to the car parking requirements of clause 52.06 in accordance with the endorsed plans. Condition 8 of this permit states:

The restaurant on the subject land operating under this permit must not operate at any time a restaurant is operating on other land or buildings contained within plan of subdivision ps402319.

The reasoning for this condition was:

5.1 (Cont.)

- The restaurant use moved from Shop 6 to Shops 2, 3, 4 and 5.
- Condition 8 was implemented to restrict any new restaurant in Shop 6 (which may have relied on existing use rights in so far as a permit is required to satisfy the car parking requirements) to avoid the potential for two restaurant uses (one in Shop 6 and the other in Shops 2, 3, 4 and 5) to operate at the same time which may have generated a requirement for 72 car spaces.

Condition 8 refers to Planning Permit P07/3180 and attempts to tie it (P08/3059) and Planning Permit P07/3180 together. Planning Permit P07/3180 is no longer operational. It is therefore appropriate that Condition 7 be deleted as well. Condition 7 state:

The uses permitted under Planning Permit P07/3180 must not occur at the same time that the restaurant on the subject land operates under this permit.

These conditions are also considered to be unreasonable and potentially ultra-vires (beyond power). That is, they are attempting to prohibit the use of land within a Commercial 1 Zone for a restaurant which is an 'as of right' use (no permit required). It is acknowledged that their intent was not specifically to prohibit a restaurant, but instead limit potential parking issues. They are considered unnecessary even if not beyond power, as the Planning Scheme would require additional permission in the form of another parking reduction should the shops use seek to be changed in future. This would be considered on its merits at the appropriate time. As such, the conditions should be deleted.

A new condition requiring satisfaction of EPA requirement is also considered necessary.

OFFICER DIRECT OR INDIRECT INTEREST

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

CONCLUSION

It is recommended that Council supports the amendment.

RECOMMENDATION

That the Planning Services Committee resolves to issue a Notice of Decision for an Amended Planning Permit P08/3059.01 for 2, 3, 4, and 5 and Common Property PS402319 VOL 10408 FOL 020 at 159 Shoreham Road Red, Hill South for the development of buildings and works, on premises liquor licence and variation to car parking requirements of clause 52.06 in accordance with the endorsed plans subject to the following conditions:

Conditions Nos. 1 to 10 inclusive:

1. The layout of the land and the buildings and works thereon shown on the endorsed plan must not be altered or modified without the consent of the Responsible Authority.
2. Prior to the occupation of the premises, the owner must provide to the satisfaction of the Responsible Authority and in accordance with the endorsed plan:
 - A. Line-marking of car spaces.
 - B. Lighting of and signage to the car park.
 - C. Screening of the waste receptacles.

5.1 (Cont.)

- D. Drainage of the car park area.
 - E. Trimming of vegetation and other maintenance works to the car park to ensure that it functions appropriately.
 - F. Repair of the car park surface and infrastructure to a satisfactory standard.
3. Prior to the occupation of the premises, the premises must be connected to a functioning waste water treatment and dispersal system approved by the Responsible Authority and the Environment Protection Authority.
 4. Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2.
 5. The restaurant must not be open to the public outside of the hours of:

TRADING HOURS

- Sunday between 10.00am and 11.30pm
 - Good Friday between 12 noon and 11.30pm
 - Anzac Day (being Monday to Saturday) between 12 noon and 12 midnight.
 - Anzac Day (being a Sunday) between 12 noon and 11.30pm
 - Saturday (when the next day is Christmas Eve/Day, New Year's Eve/Day) between 7.00am and 1.30am the day following
 - On any other day between 7.00am and 1.00am the day following.
6. The area (including verandah) outside the restaurant building must not be used for serving of drinks or meals outside of the hours of:
 - Sunday between 10.00am and 11.00pm
 - Good Friday and Anzac Day between 12 noon and 11.00pm
 - Any other day between 7.00am and 11.00pm.
 7. *DELETED*
 8. *DELETED*
 9. The restaurant premises must not have more than 60 patrons prior to 5.00pm and 100 patrons after 5.00pm on the premises at any one time. This includes patrons in the restaurant and in the common property seating area outside.
 10. Amplified music must not be audible from land outside the Red Hill Centrepoint Shopping Centre, to the satisfaction of the Responsible Authority.
 11. Noise from the land must comply with State Environment Protection Policies (Control of Noise from Commerce, Industry and Trade) N-1 and (Control of music noise from public premises) N-2.

**Planning Services Committee
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5.1 (Cont.)

12. Prior to the use of the development, the Responsible Authority must provide to Council the relevant approvals that are required for the upgraded wastewater management system under the Environment Protection Act 2017. This includes plans, specifications and management requirements for the wastewater system.

Part B

That the Committee resolves that Attachment 2 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 which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

Deputation

- Mr Sam Coverdale (Applicant).

MOTION

Moved: Cr Gill
Seconded: Cr Mar

That the Planning Services Committee, having considered all submissions received and all matters required under section 60 of the *Planning and Environment Act 1987* hereby resolves that Planning Permit Application P08/3059.01 to amend the endorsed plans and permit conditions to allow for an increase in patron numbers, increase in area to sell and consume liquor to reduce the car parking requirements at 2-5/159 Shoreham Road, Red Hill South not be supported and that a Notice of Decision to Refuse to Grant an amendment to the Permit be issued on the following grounds:

1. The proposal does not provide sufficient car parking in accordance with clause 52.06 of the planning scheme;
2. The proposal will have undesired traffic impacts as a result of overuse of the subject land.
3. It is considered that the proposed amendment, having regard to the context of the site and surrounding area would be an inappropriate planning outcome contrary to Clause 65 (Decision Guidelines) as it relates to general amenity.

Part B

That the Committee resolves that Attachment 2 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 which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

Vote by Division (Requested by Cr Gill)

For: Cr Gill and Cr Mar

Against: Cr Celi, Cr Holland, Cr Marsh, Cr Dixon, Cr Race, Cr Mercurio and Cr Bissinger

Lost

**Planning Services Committee
Minutes**

28 March 2022

5.1 (Cont.)

COMMITTEE DECISION

Moved: Cr Celi

Seconded: Cr Marsh

That the recommendation be adopted.

Vote by Division (Requested by Cr Gill)

For: Cr Celi, Cr Holland, Cr Marsh, Cr Dixon, Cr Race, Cr Mercurio and
Cr Bissinger

Against: Cr Gill and Cr Mar

Carried

6 NOTICES OF MOTION

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

6.1 Notice of Motion 332 (Cr Gill)

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

1. *That the importance of town planning to the Mornington Peninsula community be recognised by this Council adopting a policy to ensure public accountability through all officers writing reports being available at all public Planning Services Committee Meetings and allowed to answer questions from Councillors regarding their reports and that these officers present their reports verbally to the Council.*
2. *That this policy be effective at the next Planning Services Committee Meeting.*

| | |
|-----------------------------|---|
| Officer Comment Prepared by | Amanda Sapolu, Manager – Legal and Governance |
| Authorised by | Chief Executive Officer |

OFFICER COMMENT

Council has in place a number of mechanisms to ensure that Councillors are provided with accurate, timely and fulsome information to ensure they are well informed before they enter the Council Chamber. This includes:

- Briefing Sessions
- Extended Pre-Meet Briefings (briefings the Wednesday before the Planning Services Meeting)
- Short Pre-Meet Briefings (briefings immediately before the Planning Services Meeting)
- Publications of Agendas the Tuesday before the Planning Services Meeting
- Councillor Requests System.

Each of these mechanisms provides Councillors with opportunities to question and interrogate the information before them, both in formal settings and through their own enquiry. These mechanisms support the democratic decision-making process.

Further, the *Local Government Act 2020* section 46 states that the Chief Executive Officer has exclusive responsibility for staffing matters including directing staff, managing interactions between members of Council staff and Councillors and ensuring a safe workplace. As worded, this recommendation proposes a direction of staff which is unlikely to be lawful.

Lastly, even if the Chief Executive Officer makes resources available, under the Governance Rules adopted by Council on 24 August 2021, questions from Councillors of officers are ...*at the discretion of the chairperson* (Rule 14(2)). Therefore, it is still in the discretion of the Chair whether to allow questions or not.

6.1 (Cont.)

Legal Implications

Section 46 of the *Local Government Act 2020* states that the Chief Executive Officer is responsible for all staffing matters and managing interactions between members of Council staff and Councillors. Section 28 states that the role of a Councillor *does not include the performance of any responsibilities or functions of the Chief Executive Officer*.

A resolution seeking to direct the attendance of staff is likely to be unlawful.

Financial and Resourcing Implications

Staff that are employed under the Certified Agreement may be able to claim overtime or time in lieu for meetings attended outside of business hours.

Potential Alternative Wording

That the Chief Executive Officer ensures that appropriate resources are available to allow Councillors to ask questions of Management Reports.

However, I note this still does not address the issue of the Chair's discretion.

MOTION

Moved: Cr Gill
Seconded: Cr Holland

1. That the importance of town planning to the Mornington Peninsula community be recognised by this Council adopting a policy to ensure public accountability through all officers writing reports being available at all public Planning Services Committee Meetings and allowed to answer questions from Councillors regarding their reports and that these officers present their reports verbally to the Council.
2. That this policy be effective at the next Planning Services Committee Meeting.

Vote by Division (Requested by Cr Gill)

For: Cr Gill, Cr Holland and Cr Mar
Against: Cr Celi, Cr Marsh, Cr Dixon, Cr Race, Cr Mercurio and Cr Bissinger

Lost

COMMITTEE DECISION

Moved: Cr Holland
Seconded: Cr Celi

That the Chief Executive Officer ensures that appropriate resources are available to allow Councillors to ask questions of Management Reports.

Vote by Division (Requested by Cr Gill)

For: Cr Celi, Cr Gill, Cr Holland, Cr Marsh, Cr Dixon, Cr Race, Cr Mar and Cr Bissinger
Against: Cr Mercurio

Carried

6.2 Notice of Motion 333 (Cr Gill)

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

That officers report to Council in April 2022 about the recent extraordinary gap between Planning Services Committee public meetings of approximately a third of a year resulting in no planning matters being publicly debated.

| | |
|-----------------------------|---|
| Officer Comment Prepared by | Amanda Sapolu, Manager – Legal and Governance |
| Authorised by | Chief Executive Officer |

OFFICER COMMENT

Decisions on planning matters within the Mornington Peninsula Shire are either made under delegation, or they are brought to the Council for a Council decision. Councillors also have the ability to 'call-in' a decision that would otherwise be made under delegation.

The Planning Services Committee was convened on 5 October, 25 October, 23 November and 13 December 2021. A number of planning items were discussed and resolved by Council.

In accordance with the adopted Council resolution, the first Planning Services Committee was scheduled for 14 February 2022, followed by 28 March 2022. The meeting of 14 February 2022 did not have any items for discussion, so was cancelled.

As a result, a Planning Services Committee will not have been convened between 13 December 2021 and 28 March 2022. While this may appear a large gap, it also occurred over the Christmas break and more accurately only reflects one cancelled meeting.

Legal Implications

Nil.

Financial and Resourcing Implications

Nil.

Potential Alternative Wording

Nil.

MOTION

Moved: Cr Gill

That officers report to Council in April 2022 about the recent extraordinary gap between Planning Services Committee public meetings of approximately a third of a year resulting in few planning matters being publicly debated.

Motion Lapsed due to no Seconder

7 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.

Nil.

8 CONFIDENTIAL ITEMS

Advice to the Public

All reports, information and recommendations contained in 'Section 8 – 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*:

8.1 Sorrento Activity Centre - Investigation of alternatives to a Parking Overlay to help manage car parking demands

This matter is considered to be confidential under section 3 (1) (c) of the *Local Government Act 2020* as It contains information in relation to Land use planning information, being information that if prematurely released is likely to encourage speculation in land values.

COMMITTEE DECISION

Moved: Cr Bissinger
Seconded: Cr Marsh

That the recommendation be adopted.

Carried

Cr Gill wished for his opposition to the decision to be noted.

Adjournment of Meeting

The meeting was adjourned at 7.21pm for a short recess.

Resumption of Meeting

The meeting was resumed at 7.28pm.

8.1 Sorrento Activity Centre - Investigation of alternatives to a Parking Overlay to help manage car parking demands

| | |
|----------------------|--|
| Prepared By | Christian Lynch, Senior Strategic Planner |
| Authorised By | Director - Planning and Infrastructure |
| Document ID | A11018998 |
| Briefing Note Number | BN1457 – 10 August 2021 |
| Attachment(s) | <ol style="list-style-type: none"> 1. Sorrento Activity Centre Sorrento Activity Centre Parking Action Plan (February 2021) (confidential) 2. Sorrento Parking Options Investigation (September 2019) (confidential) 3. Amendment C229morn - Explanatory Report 4. Amendment C229morn - Parking Overlay Schedule (confidential) 5. Amendment C229morn - Parking Overlay Map (confidential) 6. Amendment C229morn - Public Acquisition Overlay Map (confidential) 7. Pakenham Activity Centre Parking Overlay Schedule 8. Sorrento Parking Overlay Cash In Lieu Scheme - Economic and Apportionment Analysis (February 2021) (confidential) |

This matter is considered confidential under section 3 (1) (c) of the Local Government Act 2020. It contains information in relation to Land use planning information, being information that if prematurely released is likely to encourage speculation in land values..

EXECUTIVE SUMMARY

This report identifies options and a recommended path forward to manage car parking issues in Sorrento. It follows previous resolutions of the Planning Services Committee (the Committee) in 2021 to defer a decision on whether to pursue:

- an amendment to the Mornington Peninsula Planning Scheme (Planning Scheme) to introduce a Parking Overlay (PO) to the Sorrento commercial area with revised land use car parking requirements for private land, a Public Acquisition Overlay (PAO) and associated cash-in-lieu (CIL) scheme to acquire private land and construct a new public carpark in George Street, or
- a modified PO and CIL scheme to fund a broader range of parking and non-parking projects not including the George Street proposal, and/or
- parking management methods outside the Planning Scheme to improve the efficiency of existing parking resources, such as smart parking, paid parking, improved parking compliance and sustainable transport movements.

This report considers decking the existing Morce Avenue carpark (potentially to be funded by the CIL scheme) as a further option.

Overall, the report recommends that the Committee abandon the George Street proposal and instead pursue a modified PO and CIL scheme to help fund other parking and non-parking projects as well as implementing measures outside the Planning Scheme to improve the efficiency of existing public parking resources. Confirmation of the final list of projects suitable for inclusion within the CIL scheme and measures to manage existing parking resources is subject to further detailed investigation and economic analysis. Completion of this work is subject to appropriate funding and resourcing in the 2022/2023 financial year.

RECOMMENDATION

That the Committee resolves to proceed with Option 1 to manage identified car parking issues in Sorrento. Option 1 is subject to appropriate funding and resourcing in the 2022/2023 Financial Year and includes:

1. Preparing a modified version of Amendment C229morn that comprises a Parking Overlay applied to commercially zoned land with:
 - A. a cash-in-lieu scheme for parking and non-parking projects (that does not include acquiring private land and constructing a public carpark in George Street, but may include decking the existing Morce Avenue carpark) subject to further detailed investigation and economic analysis
 - B. variations to the standard car parking requirements for several land uses listed in Clause 52.06 (Car Parking) as per the recommendations of the Sorrento Activity Centre Parking Action Plan (February 2021).
2. Progressing car parking management methods outside of the Mornington Peninsula Planning Scheme, including smart parking, paid parking, improved compliance, and improved sustainable transport movements, subject to further detailed investigation and analysis.
1. That the Committee resolves that Attachment 1, 2, 4, 5, 6, 8 to this report be retained as a confidential item pursuant to section 3 (1) (c) of the Local Government Act 2020 as they contain information relating to the potential public acquisition of private land that if prematurely released is likely to encourage speculation in land values except where release is permitted following review with the Mayor. .

COMMITTEE DECISION

Moved: Cr Bissinger
Seconded: Cr Holland

That the Planning Services Committee resolves to:

1. **Abandon further investigation in pursuit of a Planning Scheme amendment to introduce a Parking Overlay and/or Cash-In-Lieu Scheme for the Sorrento commercial precinct.**
2. **Review existing and consider new concept plans and prepare a business case for the construction of decked parking to maximise the capacity of the existing Morce Avenue public carpark.**

Part B

That the Committee resolves that the report, the Committee decision and Attachments 1-6 and 8 to this report be retained as confidential items pursuant to section 3 (1) (c) of the *Local Government Act 2020* as they contain information relating to the potential

public acquisition of private land that if prematurely released is likely to encourage speculation in land values except where release is permitted following review with the Mayor

Carried

Attendance

Cr Gill left the Chamber at 7.40pm and returned at 7.42pm

COUNCIL & WELLBEING PLAN

- Strategic Direction Theme 1: A healthy natural environment and well-planned townships.
- Strategic Objective 3.5: A community that is well connected through sustainable, accessible and integrated transport options.

RELEVANT COUNCIL DECISIONS AND POLICIES

- 8 October 2019 – Council resolved to prepare a Planning Scheme Amendment to develop a Parking Overlay and construct a 128 space at-grade carpark on land at 13, 15, 17 and 19 George Street, Sorrento. The carpark was to be partly funded by a CIL contribution scheme under the proposed PO.
- 9 March 2021 – The Committee resolved to defer a decision on proceeding with a PO and acquisition of privately held land in George Street to construct a new public carpark (via proposed Amendment C229morn) for six months so that officers could explore alternative options to manage car parking demands in Sorrento.
- 25 October 2021– The Committee resolved to defer a decision on alternative options to manage car parking demands in Sorrento to another meeting.

DISCUSSION

Purpose

The purpose of this report is to identify options and a recommended path forward to manage car parking issues in Sorrento.

Background

This report has been prepared in response to the Committee's 9 March 2021 resolution which sought advice on alternative parking management measures to those identified in the Sorrento Activity Centre Parking Action Plan (Action Plan) (Attachment 1) and Sorrento Activity Centre Parking Options Investigation Report (Investigation Report) (Attachment 2).

The Action Plan was developed to address parking issues in the commercial areas of Sorrento. One of the Action Plan's recommendations was to introduce a PO, including a CIL contribution scheme, into the Planning Scheme. The Investigation Report considered 10 potential off-street carpark options that could be funded by a CIL contribution scheme.

At the 8 October 2019 Council Meeting, Council resolved to prepare a Planning Scheme Amendment to develop a PO and construct a 128 space at-grade carpark on land at 13, 15,

17 and 19 George Street, Sorrento. The carpark was to be partly funded by a CIL contribution scheme under the proposed PO.

Amendment C229morn was prepared to give effect to the above resolution, proposing to apply a PO to commercially zoned land in the core of the Sorrento Activity Centre and apply a PAO to the nominated sites in George Street (see Attachments 3-6). Amendment C229morn was presented at the 9 March 2021 Committee Meeting.

The proposed PO included variations to the standard car parking requirements for several land uses listed in Clause 52.06 (Car Parking), which was a key recommendation of the Action Plan. The PO also included a CIL contribution scheme which would allow Council to collect financial contributions from permit applicants in-lieu of providing physical car parking spaces for new development on private land. The contributions would help fund delivery of a proposed new public carpark at George Street. Construction of a new carpark at George Street requires the acquisition of four private properties which would be facilitated by the PAO included in the proposed amendment.

HillPDA provided Council with an estimate of costs to deliver the George Street carpark (including land acquisition) which was in the order of **I & S**. Significantly, even with a large uptake of CIL contributions from future development, Council would still need to contribute at least **I & S** of its own funding to implement the project. Given these challenges, the Committee resolved at the 9 March 2021 Meeting to delay a decision on proposed Amendment C229morn for six months and directed Mornington Peninsula Shire (Shire) officers to explore alternative options included in the 9 March 2021 report and the Action Plan.

The balance of this report provides a summary of alternative parking management methods and a range of options for a revised approach moving forward.

Options For Consideration

The 9 March 2021 report and Action Plan list several car parking management methods that could be implemented in Sorrento to reduce parking demand and increase the efficiency of existing parking resources. Adoption of all or some of these methods may avoid, lessen, or delay the need to construct an additional public carpark in Sorrento:

- introduce smart parking
- introduce paid parking
- improve the existing regime of parking compliance within the centre
- improve sustainable transport movements.

Each of the above methods is described in turn below.

Smart Parking

Smart parking trials in Rye and Mornington have shown significant benefits in assisting drivers to locate available parking. Following the 8 June 2021 Council Briefing, the Shire's Traffic and Transport team has been developing a roadmap for improving parking management – including the rollout of smart parking – within the Shire. Due to high parking demands, Sorrento is considered one of the priority locations to implement smart parking. Recorded 24/7 data from smart parking sensors would provide a more detailed understanding of the seasonality of Sorrento parking demands and adequacy of parking supply, which would facilitate informed decisions about the management of parking in future.

Paid Parking

Paid parking can be an effective tool in increasing parking turnover and encouraging alternative choices in transport modes, both of which reduce car parking demand. Development of the abovementioned parking management roadmap is considering how paid parking may be able to be implemented in some locations within the Shire. Sorrento may be an ideal location to introduce paid parking, specifically for visitors only, given the high rates of visitation to the centre associated with seasonally high volumes of tourism.

Changes to Parking Compliance Regime

Existing parking data across the Shire (including in Sorrento) as well as data recorded during the Rye and Mornington smart parking trials shows that significant numbers of people are parking for longer than prescribed time limits. 'Parking overstay' (as it is known) restricts the ability of other users to access available public parking resources.

Traditionally, the Shire has adopted a relatively restrained approach to enforcing timed parking restrictions. Improved enforcement, coupled with improved signage, wayfinding and community awareness of restrictions, would significantly enhance compliance with time restrictions. Better compliance would not only increase the efficiency of existing public parking resources but result in more equitable parking access for all users.

Sustainable Transport Improvements

Land surrounding the Sorrento Activity Centre is fairly well serviced by footpaths and on- and off-road cycling infrastructure. However, there are a several missing links and footpath improvements that could be implemented to provide better connections to the commercial precinct. Greater connectivity would encourage more people to use sustainable transport modes (i.e. walking and cycling) to access the centre, thereby reducing parking demand.

In addition to pedestrian and bike paths, Sorrento is serviced by the 787 and 788 bus routes. These routes have historically been low frequency services and therefore have not provided a convenient option for people to access Sorrento. Shire advocacy to improve the frequency of the 788 has been successful with improvements recently implemented. Buses now run every 30 minutes on weekdays and 40 minutes on weekends. Accessing Sorrento by public transport is therefore now a more viable alternative which may reduce demand for parking in Sorrento over time. Options for further Public Transport improvements across the Mornington Peninsula will be explored through development of the Shire's Integrated Transport Strategy (ITS). Improving pedestrian paths to bus stops in the vicinity of Sorrento would further facilitate and encourage public transport use to access Sorrento.

The Sorrento Ferry Terminal upgrade will improve the service and user experience and will likely encourage more people to use the ferry to travel to and from Sorrento rather than drive around Port Phillip Bay. The pedestrian safety, accessibility and amenity improvements forming part of the upgrades will also likely encourage people to use the ferry without bringing their vehicle. Further improvements could be developed to increase pedestrian access and safety in the area to reduce parking demand in Sorrento.

Other Options – Complementary Council Projects

In addition to the above parking management methods, a range of complementary projects could assist in reducing parking demand in Sorrento. These include delivery of the Shire's ITS and the potential to accommodate limited additional parking demand in the planned upgrade of David McFarlan Reserve.

Mornington Peninsula's Integrated Transport Strategy

Development of a Shire-wide ITS is currently underway. The ITS will provide a strategic framework for the planning and delivery of transport infrastructure and services across the Mornington Peninsula. The ITS will be responsive to both current and future economic, social and environmental issues and opportunities.

Reduced reliance on private vehicles and corresponding increased uptake of alternative, more sustainable transport modes will be a key focus of the ITS. Combined, these strategic goals aim to reduce congestion and help manage future parking demand.

An important component of the ITS is to provide guidance on the role of parking provision in transport decisions, bearing in mind the principle of 'induced demand' (i.e. the provision of additional parking generally encourages more people to drive to their destination instead of walking, cycling or using public transport). Increased vehicular usage then contributes to greater carbon emissions and more congestion on Shire roads.

David McFarlan Reserve Master Plan

David McFarlan Reserve (located at 43-45 Hotham Road, Sorrento) is within walking distance of the main commercial precinct of Sorrento. The reserve is proposed to be upgraded under the proposed David McFarlan Reserve Master Plan. There is an opportunity to explore whether parking in the Reserve could be shared with the neighbouring commercial area of Sorrento, particularly during peak periods (such as summer) when parking demand for recreation uses is generally lower, but demand driven by other activities in the area (e.g. tourism) is higher.

It is noted, however, that this option was not investigated as part of the Action Plan. As such, further investigation would be required to determine whether the car parking areas could be shared without impinging on the needs of the reserve users.

Revised Parking Overlay and CIL Scheme Approach

In addition to the above alternative parking management methods, Shire officers have explored alternative approaches to implementing a PO and CIL contribution scheme that have been successfully implemented for activity centres in other local government areas. In this regard, officers reviewed arrangements introduced in Frankston, Heidelberg, Pakenham, and Wodonga. The Pakenham Activity Centre Parking Overlay (gazetted in November 2019) represents a model worth considering for Sorrento.

Schedule 1 to Clause 45.09 of the Cardinia Planning Scheme (Attachment 7) specifies a financial contribution that must be paid in-lieu of each car parking space that is not provided on site in new developments. Unlike the CIL scheme originally proposed for Sorrento which centres around delivering a public carpark, the Pakenham PO includes a CIL scheme that collects funds for a variety of parking and *non*-parking projects. Projects include:

- Upgrading two existing Council-owned public carparks (including progressing conceptual planning and design, preparing cost estimates for financial estimates to ensure one carpark can accommodate commercial development at the ground floor, and both carparks will be provided with improved lighting and ongoing maintenance).
- Delivering improved access to public transport, pedestrian connections and wayfinding signage, cycling paths and lanes, and end-of-trip facilities.

The list of projects in the schedule is derived from the *Pakenham Parking Precinct Plan (2019)* which provides the strategic justification for the PO.

The Pakenham approach is consistent with *Planning Practice Note 57 – The Parking Overlay* which states that a PO should include either projects that provide car parking facilities, or other measures that reduce the demand for parking (i.e. ‘non-parking’ projects).

In addition to the CIL scheme, the Pakenham PO provides for the reduction of parking requirements in Clause 52.06 (as has been proposed for Sorrento in the original version of Amendment C229morn). The strategic justification for the reduced requirements is also provided by the adopted Pakenham Parking Precinct Plan.

Morce Avenue Decked Carpark

The decking of the existing at-grade Morce Avenue carpark (area south of the Sorrento Community Centre only) is one of the 10 potential off-street parking projects considered as part of the Investigation Report in 2019 (Attachment 2). The preliminary investigation of the decked carpark option (Option 2A) identified that, if this option was to be pursued, future detailed design works would be required to address potential visual impacts of a decked carpark in this location, possible over shadowing impacts to the Sorrento Community Centre, as well as the cost to re-grade the existing at-grade parking spaces.

Another key consideration is the cost-benefit analysis of this option, having regard to the number of additional car parking spaces this project will provide versus the expense. The Investigation Report confirmed that the decked parking would provide 72 spaces, however, facilitating the decked parking would result in the loss of 22 existing at-grade spaces, reducing the net parking increase to 50 car parking spaces.

The cost for this parking project translated to be in the order of **I & S** which translates to an indicative cost of **I & S** per car parking space – the most expensive of all options considered in the Investigation Report. It should be noted that the Investigation Report’s project costings were based on a high-level assessment and concept plan. As such, should the Committee wish to proceed with this project, further feasibility and detailed design work would need to be undertaken by a suitably qualified traffic and transport consultant to prepare accurate project costings. (The ‘Financial Considerations’ section of this report details the costs for Council to complete this work).

It is further noted that, if the Committee decides to include this project in the list of projects for the PO and CIL scheme (as described in Option 1 below), the HillPDA Economic and Apportionment Analysis Report (Attachment 8) would need to be updated. The report currently recommends that the CIL contribution rate for a PO should be approximately **I & S** per parking space, based on the estimated **I & S** project cost. This figure does not factor in the cost of delivering the other transport projects proposed to be included in the updated PO and CIL scheme, which are detailed in turn below.

Proposed Update to the Sorrento Parking Overlay

Shire officers consider there is merit in adopting an approach similar to the Pakenham PO example as it provides a more flexible, holistic and achievable response to managing future parking demand. To this end, it is recommended that the changes in land use parking requirements originally proposed in Amendment C229morn be retained because – like the changes in requirements set out in the Pakenham example – the modified rates are strategically justified by a relevant parking study (i.e. the Action Plan (February 2021)).

Amendment C229morn could be updated, however, with a new CIL contributions scheme that has a broader range of parking and non-parking projects in the PO (not including the George Street parking project). Potential projects could include such items as:

- the decking of the Morce Avenue carpark (Option 2A)

- upgrades to other existing public carparks and bicycle parking facilities
- improved bicycle, footpath and shared path connections
- pedestrian access and safety improvements, including to local bus stops
- smart parking technology.

To adopt the Pakenham approach for Sorrento, Shire officers advise that the following preliminary works would need to be undertaken to ensure that the updated PO and CIL scheme is strategically justified:

- Confirm a list of potential projects to be funded by the PO and prepare estimated costings for each project. This would include the further investigation of the decking of the Morce Avenue carpark (feasibility, detailed design, cost estimates) if Council wishes to pursue this option.
- If a project is non-car parking related (e.g. cycling or pedestrian infrastructure), prepare justifications for how the project would reduce the demand for parking. This work should either be completed by, or peer reviewed by a suitably qualified and experienced traffic engineering consultancy with input from Shire officers.
- Engage a suitably qualified and experienced consultant to prepare and justify an updated CIL contribution rate for the PO.
- Arrange for updates to the HillPDA's Economic and Apportionment Assessment Report (March 2021) which provides important strategic justification for the PO.

It should be noted that, as with the previously drafted PO, Council would be bound to deliver *all* projects listed in the PO schedule and associated CIL scheme within a specified timeframe. Any funds received for projects that cannot be completed (or are otherwise abandoned by the Shire for other reasons) must either be refunded or reallocated by agreement with the Department of Environment, Land, Water and Planning (DELWP) and the Minister for Planning (the Minister).

Based on the above discussion, Shire officers have identified four options to manage parking in Sorrento. Each of these options and their associated risks and implications are outlined below.

Option 1: Modified Amendment C229morn including a PO with a modified CIL scheme

Should the Committee wish to proceed with a modified PO and CIL scheme as outlined above, officers would need to undertake the following for presentation at a future Committee Briefing:

- Finalise a list of preferred projects to be funded by the PO and associated estimated costings for each project (including the decking of the Morce Avenue carpark).
- Engage a suitably qualified and experienced consultant/s to:
 - complete or peer review strategic justification work for non-car parking projects
 - prepare and justify an updated CIL contribution rate for the PO based on the list of projects and estimated costings.

- Revise all relevant documentation for proposed Amendment C229morn (including removing the PAO to acquire sites in George Street).
- Commission any necessary changes to HillPDA's Economic and Apportionment Assessment Report (March 2021) which remains a key background document to justify the PO.

It should also be noted that whilst a PO and CIL scheme of this nature has been approved and implemented elsewhere in Melbourne, such an approach in Sorrento still needs to be approved by DELWP and the Minister for Planning. In advancing this option, there is a risk that the PO and CIL scheme may not be approved.

Finally, it is noted that this option can be progressed with or without the additional parking management methods outlined earlier in this report (i.e. smart parking, paid parking, improved compliance, and improved sustainable transport movements). The Traffic and Transport team can bring separate briefings and reports to Council to resolve whether, how and when to implement these actions.

Option 2: Modified Amendment C229morn including a PO without a CIL scheme

As noted previously, it is recommended that Council proceeds with introducing a PO to vary land use parking requirements for new development as per the recommendations of the Action Plan. The Committee can choose, however, to abandon the CIL scheme component altogether. Despite the financial impost and associated risks, progressing a modified CIL scheme as described above, Option 1 is recommended over Option 2 as Option 1 has the potential to help fund projects to address identified parking issues in Sorrento. Option 2 would only vary the parking requirements for new development.

Option 3: Abandon proposed Amendment C229morn and proceed with alternative parking management methods only

The Committee can opt to abandon Amendment C229morn (i.e. a PO and CIL scheme) altogether and instead elect to progress the implementation of the alternative parking management methods. As noted above, there is strategic merit in pursuing a modified PO and CIL scheme in conjunction with progressing alternative, non-planning scheme related parking management measures. As such, Option 3 is not recommended.

Option 4: Proceed with original proposed Amendment C229morn (i.e. George Street Public Carpark and original PO, CIL scheme and PAO)

The Committee can opt to proceed with the original Amendment C229morn (i.e. a PO and CIL scheme) previously presented to the Committee at the 9 March 2021 Meeting. Option 4 is not recommended given:

- The significant cost and financial implications for Council to acquire several parcels of private land and construct the carpark (which were detailed in the 9 March 2021 Shire officer report to the Committee – Item 7.1).
- Because constructing a new carpark does not promote sustainable transport, nor reduce parking demand in the centre. Rather, as noted earlier in this report, construction of the George Street carpark may in fact encourage greater use of private vehicles.

ENGAGEMENT

Not applicable.

COMMUNICATIONS PLAN

Not applicable.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987.

SUSTAINABILITY CONSIDERATIONS

This report includes consideration of sustainable transport and 'non-parking' options to help manage parking issues in Sorrento.

FINANCIAL CONSIDERATIONS

If Council wishes to proceed with a modified PO and CIL scheme as outlined in Option 1, funding would be required to undertake identified further investigations and detailed analysis to prepare and strategically justify proposed Amendment C229morn. Estimated costs to complete the additional works are as follows:

- **I & S** – To engaging a suitably qualified and experienced traffic and transport consultant to complete feasibility, detailed design and costings for the decking of the Morce Avenue carpark.
- **I & S** – To complete other actions listed under Option 1, including engaging a suitably qualified and experienced traffic and transport consultant to:
 - finalise the list of preferred projects to be funded by the PO and associated estimated costings for each project
 - complete or peer review the strategic justification work for non-car parking projects
 - prepare and justify an updated CIL contribution rate for the PO based on the final list of projects and estimated costings
 - document and report on the above works, including updating HillPDA's Economic and Apportionment Assessment Report (March 2021) as necessary.

The above costs are subject to approval of a Priority Project bid for the 2022/2023 financial year.

Shire officers estimate that the above additional work will take approximately three to four months to complete.

OFFICER DIRECT OR INDIRECT INTEREST

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

MEETING RE-OPENED TO THE PUBLIC

Moved: Cr Marsh

Seconded: Cr Dixon

That the meeting be re-opened to the public.

Carried

Attendance

Cr Gill left the meeting at 7.46pm and did not return.

9 MEETING CLOSE

As there was no further business, the meeting closed at 7.47pm

Confirmed this 9th day of May 2022

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Cr Sarah Race, Chairperson - Planning Services Committee