



**MORNINGTON
PENINSULA**
Shire

AGENDA

COUNCIL MEETING

TUESDAY, 19 DECEMBER 2023

6.30PM

**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 Simon Brooks Cr Antonella Celi Cr Debra Mar
Watson	Cr Kate Roper

EXECUTIVE TEAM

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

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

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

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1 OPENING AND WELCOME

Appointed Chairperson – Mayor, Cr Simon Brooks

1.1 Acknowledgement of Country

To be read by Cr Roper

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

2 PROCEDURAL MATTERS

2.1 Apologies

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

2.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of the previous Council Meeting held on 12 December 2023, be confirmed.

2.4 Councillor Briefing Sessions

Councillor Briefing Sessions – 5 December 2023

RECOMMENDATION

That Council receives and notes the record of Councillor Briefing Sessions for 5 December 2023.

2.5 Council Decision Register

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

PURPOSE

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

Attached are Summaries of the 2019-2023 Decision Registers (Attachments 1-5) as at 11 December 2023.

RECOMMENDATION

That Council receives and notes the Decision Register Summaries for 2019-2023 (Attachments 1-5) as at 11 December 2023.

2.6 Public Question Time

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

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

Questions with notice are to be received in writing by 12.00pm the Friday prior to the relevant Council Meeting and can be lodged via the Shire's website. Questions received by this time will be provided with a considered response prepared by the relevant Shire officer and read by the Chief Executive Officer (CEO) at the Council Meeting.

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

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

3 COUNCILLORS AND DELEGATES REPORTS

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

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

Association/Committee	Representative/s	Substitute Representative/s	Shire Contact
Arts and Culture Advisory Panel	Cr Gill	Cr Dixon	Cheryl Casey, Manager – Arts, Culture and Community Services
Association of Bayside Municipalities	Cr Marsh	Cr Holland	Laura Crilly, Team Leader – Water and Coasts
Audit and Risk Committee	Cr Celi Cr Mar	Mayor	Bulent Oz, Chief Financial Officer
Australian Coastal Councils	Cr Marsh	N/A	Laura Crilly, Team Leader – Water and Coasts
Australia Day Committee	Cr Holland	Cr Celi	Joanne Fyfe, Team Leader – Destination Experience and Peninsula Events
Bass Park Trust	Cr Marsh	N/A	David Taylor, Manager – Legal and Governance
Community Consultative Committee on Gaming	Cr O'Connor		Chris Munro, Manager – Community Partnerships
Department of Energy, Environment and Climate Action Wildlife Management Plan for Mornington Peninsula	Cr Marsh Cr Gill Cr Mar		
Disability Advisory Committee	Cr Bissinger	Cr Dixon	Monica Seal, Disability Community Inclusion Officer
Friends of Lospalos	Cr Brooks		Chris Munro, Manager – Community Partnerships
Greater South East Melbourne	Mayor	N/A	John Baker, Chief Executive Officer
Health and Wellbeing Committee	Cr Celi	Cr O'Connor	Kate Hills, Team Leader – Community Wellbeing
Inter Council Aboriginal Consultative Committee	Cr Dixon	Cr Race	Cheryl Casey, Manager – Arts, Culture and Community
Interface Councils	Mayor	Deputy Mayor	Randal Mathieson, Manager – Advocacy,

**Council Meeting Agenda
3 (Cont.)**
19 December 2023

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

4 MANAGEMENT REPORTS

PLANNING & INFRASTRUCTURE

4.1 Planning Application P23/0814 - 1002-1004 Nepean Highway, Mornington - Development of an electronic major promotion sky sign

Prepared By	Charlotte McGillivray, Senior Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12586197
Briefing Note Number	Not applicable
Attachment(s)	1. Plans 2. Planning Report 3. Shire Officer Assessment 4. Submissions (confidential) 5. Traffic Report 6. Department of Transport & Planning Consent 7. Planning Provisions 8. Lighting Report

EXECUTIVE SUMMARY

The purpose of this report is to seek a position from Council regarding Planning Application P23/0814 for the proposed development of an electronic major promotion sky sign at 1002-1004 Nepean Highway, Mornington. The application is currently under appeal at the Victorian Civil and Administrative Tribunal (VCAT) pursuant to section 79 of the *Planning and Environment Act 1987* (the Act) for a failure to determine the application within the statutory timeframe. The application has been called in by Councillor Marsh for a decision by the Council.

The application received eight objections generally relating to the need for another billboard, visual impact and neighbourhood character, road safety including distracting drivers, and impeding views to existing signs.

The development demonstrates compliance with the objectives and purposes of the applicable planning controls being clause 52.05 – Signs of the Planning Scheme. A similar proposal for the same type of sign at 988 Nepean Highway (160 metres from this site) was subject to an appeal at the VCAT in the decision of *Drive by Developments Pty Ltd v Mornington Peninsula SC* [2020] VCAT 150. The VCAT decision is considered relevant in the assessment of this application due to its proximity and similar characteristics. However, this proposal has been assessed on its own merits and is considered acceptable having regard to the relevant provisions of the Planning Scheme and the Act.

The Department of Transport and Planning (DTP) is a Determining Referral Authority under Section 55 of the Act. DTP has considered the proposal with regard to road safety and as relevant road management authority. DTP has provided its conditional consent to the application.

The application is recommended for approval via a Notice of Decision to Grant a Permit, subject to the conditions contained within this report. As a section 79 appeal is underway,

4.1 (Cont.)

Council cannot issue a Notice of Decision to Grant a Permit, but the resolution would form the basis for Council's position at the VCAT hearing.

RECOMMENDATION**Part A**

That Council, being a Responsible Authority under the Mornington Peninsula Planning Scheme and the *Planning and Environment Act 1987*, having considered all submissions received to date and all matters required under section 60 of the *Planning and Environment Act 1987*, hereby resolves to support Permit Application P23/0814 for the development of an electronic major promotion sky sign at 1002-1004 Nepean Highway, Mornington, and that Council inform the Principal Registrar that it has decided to grant a Notice of Decision to grant a Planning Permit, subject to the following conditions:

COUNCIL CONDITIONS**Amended Plans**

1. Before the developments starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - A. A maximum height of 13.5 metres above natural ground level.
 - B. The height of the sign to Australian Height Datum (AHD).

Approved Development not Altered

2. The approved development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority (unless otherwise specified by a condition of this permit, consent is not required for any buildings or works which do not require a planning permit under the Mornington Peninsula Planning Scheme).

Maintenance

3. All signs must be designed to a professional standard, constructed and maintained in good condition to the satisfaction of the Responsible Authority.

Illumination

4. Sign illumination must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
5. The intensity of the external lighting and lighting in the signage must be limited so as not to cause glare or distraction to motorists or other persons or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.
6. Any wiring, cabling or anything similar must be concealed from view to the satisfaction of the Responsible Authority.
7. The signage must be wholly located within the subject property. No part of the sign may encroach into the road reserve.

4.1 (Cont.)

8. Additional to the Department of Transport Condition 13 below, the Maximum Vertical Illuminance(lx) to dwellings, measured in accordance with *AS4282 Control of the Obtrusive Effects of Outdoor Lighting*, must be no more than:
- A. Dwellings in Environmental Zone A3 – Post curfew (11.00pm – 6.00am daily) 2 lux.
 - B. Dwellings in Environmental Zone A4 – Post curfew (11.00pm – 6.00am daily): 5 lux.

Major Promotion Signs (mandatory condition)

9. The signs must not:
- A. Dazzle or distract drivers due to its colouring.
 - B. Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles.
 - C. Be able to be mistaken as an instruction to drivers.

DEPARTMENT OF TRANSPORT AND PLANNING CONDITIONS**Luminance Standard**

10. During the operation of the sign, the maximum average luminance and threshold increment values as specified in below must not be exceeded:
11. Maximum average luminance:
- A. Full sun on face of signage: No limit.
 - B. Daytime luminance: 6,000 candela per square metre (cd/m²).
 - C. Morning and evening twilight and overcast weather: 700 cd/m².
12. Threshold increment maximum %:
- Night time: 350 cd/m² (maximum 20%).
13. Adaptation luminance:
- Night time: 5.
14. The sign must operate in accordance with the Lighting Impact Assessment Report submitted with the application prepared by Electro Light, (04/04/2023) to the satisfaction of and at no cost to the Head, Transport for Victoria and the Responsible Authority.

Image Transitions

15. Where the graphical content or colours can change (such as for digital/electronic signage), any changes in image must occur in 0.1 seconds or less.

Brightness Levels

4.1 (Cont.)

16. The signs must be dimmable and have a suitable control system to enable maximum lighting levels to be set or adjusted if deemed necessary by the Responsible Authority and the Head, Transport for Victoria.
17. Where illuminated during the day, the sign must be fitted with Photocell/s (light sensor/s) that measure the ambient light and control system technology that enables the luminance of the sign to automatically adjust relative to the measured ambient light level.
18. Any change in brightness levels must be applied during an image transition, not while an image is being displayed.

Compliance Record

19. The operator must keep a Compliance Record of the operation of the sign. This must be provided to the Head, Transport for Victoria within five days of a written request. The Compliance Record must include:
 - A. The sign's luminance (cd/m² or as a percentage of its maximum luminance) in minimum 10-minute intervals.
 - B. The sign's photocell (light sensor) reading of the ambient light in minimum 10-minute intervals.
 - C. The dwell time and transition time between successive images.
 - D. All record information must be time and date stamped to show the time of measurement.
 - E. Compliance Records must be maintained for a minimum of 12 months.

Upward Light Ratio

20. Electronic signage must have an Upward Light Ratio (ULR) of less than 50% and the design must include facilities (such as integral baffles) to mitigate upward waste light.

Operational Parameters for Electronic Signs

21. No advertisement on the electronic sign may be displayed for less than 30 seconds.
22. The transition from one advertisement to another must be instantaneous.
23. The sign must not display content, images or text:
 - A. Giving the illusion of continuous movement.
 - B. Capable of being mistaken for traffic signals or traffic control devices, including red, amber or green circles, octagons, crosses or triangles.
 - C. Capable of being mistaken as an instruction to a road user, including the wording stop, give way, slow down, turn left or turn right.
 - D. With a flashing background, flashing text, flashing images, blinking or fading elements that create the illusion of movement.
 - E. Containing any animation.

4.1 (Cont.)

- F. Capable of being interpreted as projections beyond the face of the advertising screen such as through 3D technology.
 - G. Consisting of present time or other contemporary update information relating to news, weather or time.
 - H. Containing video, movie or television broadcasts.
24. The advertising area must not be split into two screens with different messages.
25. The sign and any displayed advertisement must not include any ancillary extension, embellishment or accessorisation within or outside the permitted advertising area unless the Head, Transport for Victoria has agreed to in writing prior to its installation.

Expiry (mandatory)

26. This permit will expire 15 years from the date of issue, at which time the sign and all supporting structures must be removed and the site made good to the satisfaction of the Responsible Authority.

Part B

That Council resolves that Attachment 4 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.

COUNCIL & WELLBEING PLAN

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

Theme 2: A robust, innovative and diverse economy.

- Strategic Objective 2.3: A thriving entrepreneurial economy, with a vibrant tourism sector, that provides accessible employment to our diverse community.

GOVERNANCE PRINCIPLES

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

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- F. Collaboration with other Councils and Governments and statutory bodies is to be sought.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- I. The transparency of Council decisions, actions and information is to be ensured.

4.1 (Cont.)

DISCUSSION

Purpose

The purpose of this report is to provide an assessment of planning application P23/0814 located at 1002-1004 Nepean Highway, Mornington for the proposed development of an electronic major promotion sky sign.

Proposal	Development of an electronic major promotion sky sign generally in accordance with the submitted plans.
Zoning and Overlays	Zone: Commercial 2 Zone (C2Z) – Clause 34.02-8 - Sign requirements are at Clause 52.05. This zone is in Category 1. No overlays.
Permit Triggers	52.05-2 - A permit is required to construct or put up for display a sign in Section 2 of the relevant category. 52.05-11 – Category 1 – Commercial Areas – A permit is required for an ‘electronic sign’, ‘major promotion sign’ and a ‘sky sign’ as they fall within Section 2.
Advertising	The application was advertised by sending direct notice to all properties within a 100-metre radius of the facility, and erecting a sign on site for 14 days.
Submissions	Eight objections have been received to date.
Consultation	No Planning Application Conference (PAC) was held.
Key Issues	Will the proposal have an impact on residential amenity? Is the site an appropriate location for an electronic major promotion sky sign? Will the proposed sign have an appropriate built form and visual presence in this context? Is the proposal acceptable from a Road Safety perspective? Consideration of the objections.
Recommendation	To advise the Principal Registrar that Council would have granted a Notice of Decision to grant a permit, subject to conditions.

BACKGROUND

Subject Site and Surrounds

The site is formally described as Lot 1 on Title Plan 090846. It has a rectangular shape with a site frontage of 58.86 metres to Nepean Highway and a maximum depth of 92.89 metres. The overall land size is 5.281 hectares (52,810 square metres). The orientation is from north west to south east.

The site is relatively flat, but slopes from the south western boundary to the north eastern boundary, with a fall of approximately 1.5 metres. The proposed siting of the sign is on land

4.1 (Cont.)

that is approximately 28 metres Australian Height Datum (AHD), in the north western corner. The proposed top of the sign would be 14.35 metres above that.

A large freestanding business identification sign is located east of the crossover to Nepean Highway, within the front setback. This freestanding sign identifies all the commercial tenancies within the subject site and is located on land approximately 27.5 metres AHD. This sign is approximately 8.5 metres high and the top of it would be approximately 2 metres below the bottom of the proposed sign.

The site is on the south-east side of the Nepean Highway in Mornington, between Pentecost Road and Mornington-Tyabb Road. The sign is proposed in front of the Bicycle Superstore. The site also contains a National Tiles, Petbarn, and Bridgestone Select Tyre and Auto Shop.

The subject site is located at the periphery of the Mornington Activity Centre, along the south eastern side of Nepean Highway. Land either side of Nepean Highway is located within the Commercial 2 Zone and land to the rear, along Yuilles Road is Industrial 3 Zone. The vacant site directly adjoining to the south west is Transport Zone Schedule 1.

The site is located with the north western portion of an approximately 750 metres long commercial strip containing various commercial activities and businesses from retail outlets, food and drink premises, shops, offices, warehouses and industry.

The closest residential receptors are located approximately 115 metres to the north west in Spray Street and then approximately 175 metres to the north east across Pentecost Road and the Tanti Creek Recreation Reserve.

Refer to Attachment 3 – Shire officer Assessment for detailed description of site and surrounding environs.

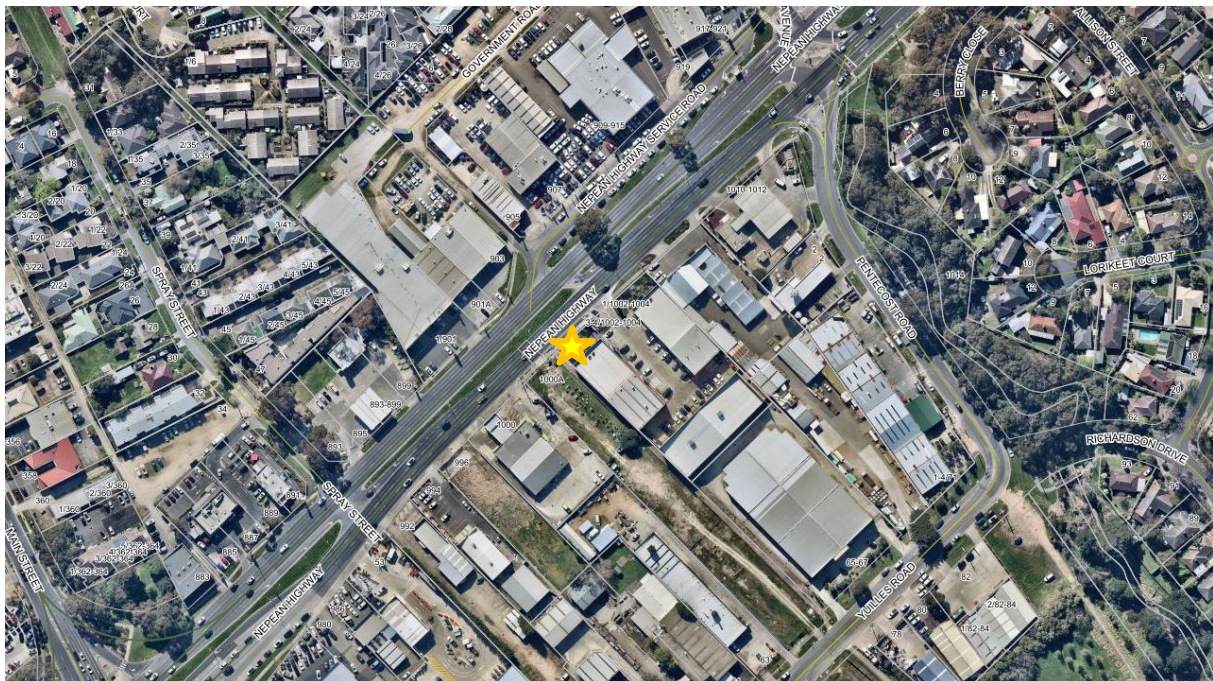


Figure 1: Aerial Photo showing subject site and surrounding properties (Nearmap August 2023)

Sign location 

Proposal

Council Meeting Agenda**19 December 2023****4.1 (Cont.)**

This application seeks approval for the development of an electronic major promotion sky sign.

- The sign is to be in front of 1/1002-1004 Nepean Highway, Mornington.
- It has two electronic display faces, each measuring 12.66 metres wide by 3.35 metres high. The overall structure is 14.35 metres high.

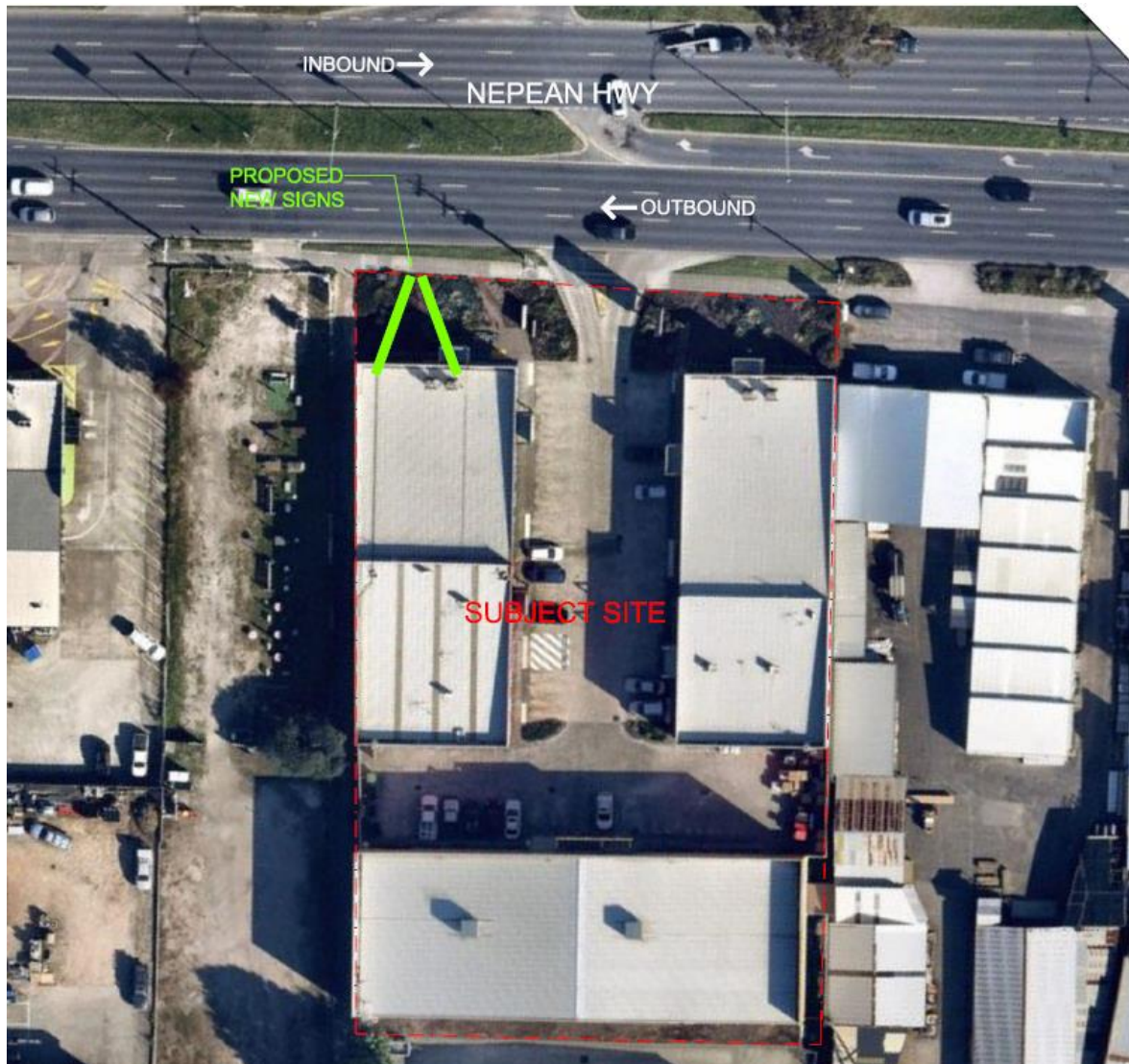


Figure 2: Site Plan

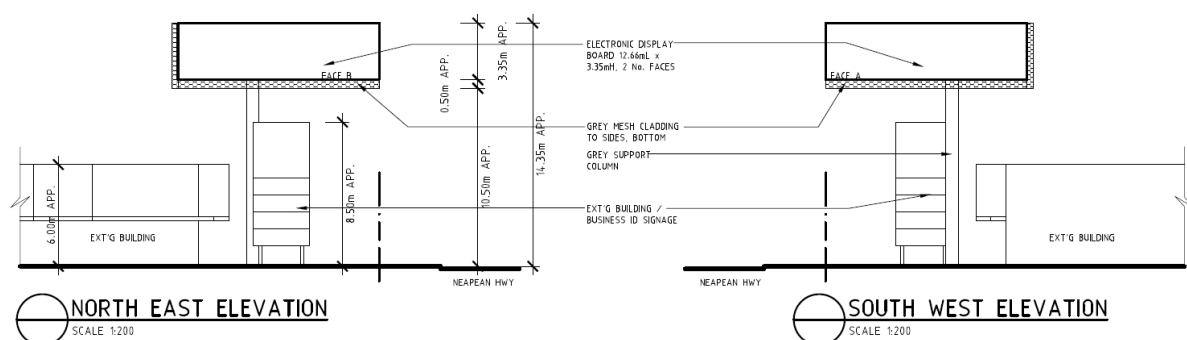


Figure 3: Development Plans

4.1 (Cont.)

Please refer to the following for further details:

Attachment 1 – Development Plans

Attachment 2 – Submitted Planning Report

Attachment 3 – Shire Officer Assessment.

Relevant permits and history

P19/1048 was for the Development of an electronic major promotional sky sign at 988 Nepean Highway, Mornington. Council determined to refuse to grant the permit on 28 August 2019. However, the permit was approved by the VCAT in *Drive by Developments Pty Ltd v Mornington Peninsula SC* [2020] VCAT 150.

Relevant to consideration of this application (amongst other things), VCAT found:

9. *I find that the review site is appropriate for a major promotion sign having regard to these decision guidelines, and the range of other guidance provided by the Mornington Peninsula Planning Scheme. I make this finding for the following reasons.*
 - a. *The review site is mostly within the Commercial 2 Zone, with the rear component not subject to this application within the Industrial 1 Zone. As such, it is a commercial location. I find that the proposal sign complements the character of the area, for the reasons sets out in the next section of these reasons.*
 - b-f ...
14. *For these reasons I find that there is a considerable level of support for an electronic major promotional sky sign on the review site. This finding informs the analysis that follows.*
26. *Thirdly, and this repeats one of the key principles set out above, in applying these provisions and policy, it is important to understand that major promotional signage will, by its very nature, be of a certain size and visual presence. As I set out in the decision of *Connect East v Maroondah CC* [2014] VCAT 423:*
 - [18] *No matter where they are located, major promotional signs by their very nature are intended to be large and prominent, and visually noticed by the passer by. That is their intended role. Any sign that is not so noticeable will not be performing its intended function, and will likely be a commercial disappointment for its owner. The fact therefore that this sign will be prominent and noticeable to drivers is not a negative, but simply a reflection of the type of sign that is proposed.*
28. *... I cannot come to the conclusion that this sign will create an unreasonable outcome. It will be a relatively minor signage element in a broad landscape, and not unreasonably dominate any part of the highway corridor or surrounding environs. This is largely due to the wide and robust nature of the Nepean Road environment, and therefore the extent of panorama that is available from any one viewing point, of which this sign will only ever take up a relatively small proportion. Further, the sign will be read above the existing collection of signs, and thereby not add to the visual clutter or congestion of signage at, and nearer to, street level. The height of the proposed sign will place the sign at a different viewing position to the other signage in this locality, and result in it being viewed from different locations to the smaller signage closer to street level. Additionally, the proposed sign will not tower over any important viewing point, nor dominate to any degree any streetscape or intersection. To the extent to which the sign will appear partly above the skyline on certain views to northbound traffic, this*

4.1 (Cont.)

skyline does not form an important landscape, and already comprises a high level of commercial and signage forms in the foreground. As such, the proposed sign will not unreasonably change the nature and extent of skyline views available from these locations.



Figure 4: aerial showing existing sign from previous VCAT appeal in context of the subject site

That permit was not acted upon and has expired, however the applicant then applied again for the same proposal and a planning permit (P22/0268) was granted on 5 October 2022.

NOTIFICATION AND CONSULTATION

The application was advertised by sending direct notice to all properties within a 100-metre radius, and erecting a sign on the site for 14 days.

Submissions

Please refer to the following for further details:

Refer to Attachment 3 – Shire Officer Assessment for detailed assessment of concerns.

Refer to Confidential Attachment 4 – Submissions.

To date, eight objections have been received. The concerns raised can be summarised as:

- The need for another billboard
- Visual impact and neighbourhood character
- Road safety including distracting drivers
- Impeding views to existing signs.

These are addressed in summary below.

4.1 (Cont.)**Consultation**

No formal mediation has been undertaken with the objectors.

REFERRALS

A referral was undertaken to the Department of Transport and Planning. They provided conditional consent to the Application.

Please refer to Attachment 6 – Department of Transport and Planning Consent.

CONSIDERATION

Refer to Attachment 3 – Shire Officer Assessment for detailed assessment against all relevant criteria.

Refer to Attachment 7 – Planning Provisions for all relevant planning scheme provisions.

The proposed sign is considered to be consistent with the objectives and strategies of the relevant Planning Policy Framework (PPF) and objectives and decision guidelines of Clause 52.05. The following key issues are summarised:

Will the proposal have an impact on residential amenity?

As previously discussed in the subject site and surrounds section, the proposal will be approximately 115 metres from the nearest residential receptor. The applicant has also submitted a Lighting Impact Assessment that provides an assessment of the proposal in compliance with the *Department of Transport Requirements and Guidelines for Illuminated Outdoor Advertising Signage* and *AS4282-2019 Control of the Obtrusive Effects of Outdoor Lighting*.

From the perspective of residential amenity, the assessment against the criteria in *AS4282-2019* is considered most relevant to determine the acceptability of the sign. The report finds that the maximum illuminance to dwellings is 0.55 lux. These dwellings are located adjacent to the commercial area where amenity impacts already exist and the maximum acceptable lux level is 5 lux. The projected level at the signs brightest level of illumination is therefore 11% of the maximum acceptable in *AS4282*. The report then assesses the maximum illuminance to dwellings in that are further from the site in a more suburban setting. The anticipate maximum lux level is 0.25 lux, with the maximum in *AS4282* in such setting being 2 lux. This would be 12.5% of the maximum.

Refer Attachment 8 – Lighting Report.

The surrounding dwellings have also all been designed to ‘face’ away from the commercial area as there would be limited desire to address the commercial interface from a dwelling. The proposal is not considered to have a negative effect on residential amenity.

Is the site an appropriate location for an electronic major promotion sky sign?

This area of the Nepean Highway is not considered to have strong built form character as described by VCAT in *Drive by Developments Pty Ltd v Mornington Peninsula SC* [2020] VCAT 150. This means there is no specific overlays or strategic framework requiring built form outcomes and it would be possible for development or redevelopment of the sites within this corridor to have greater flexibility in this regard and without having any defined characteristics. It is a main road in a commercial area that has a wide variety of front setbacks, frontage treatments, extent of landscaping, number of crossovers, and rhythm and spacing of buildings.

4.1 (Cont.)

The site is not within a significant view corridor, viewline, gateway location or landmark site identified in a framework plan or local policy. Since the *Drive by Developments* decision, local policy (Clause 22.10) relating to signage has been reduced in its content to Clause 15.01-1L. This is due to the 'planning policy neutral' Planning Scheme Amendment process that the DTP required all Council's to translate and integrate local policies into the Victorian Planning Policy Framework. Mornington Peninsula Shire's Translation amendment was C279Morn. C279 had the effect of removing objectives and guidelines from local policy that were considered to duplicate or overlap with existing State provisions within either the PPF, 52.05 or other controls.

State policy encourages Major promotion signs in commercial and industrial locations in a manner that complements or enhances the character of the area. While this sign will be larger and taller than most nearby signage or signage generally across the Peninsula, it is considered to respond to the attributes and development expectations of the Mornington Peninsula, including those expressed by the Localised Planning Statement. This is demonstrated by the relatively constrained size and overall height of the sign comparative to similar types of signs in Metropolitan Melbourne along wide arterial roads in commercial zones. In metropolitan Melbourne context, such signs would often be much larger in size and height.

Whilst a major promotion sign must be prominent by its inherent nature, the sign is not considered to unreasonably dominate any part of the highway corridor or surrounding environment. This is largely due to the wide nature of the Nepean Highway environment, where the extent of panorama that is available will mean the sign will only ever take up a relatively small proportion. Further, if the height is reduced to a maximum of 13.5 metres as recommended, it will lower the height relative to the existing major promotion sign at 988 Nepean Highway. The sign will be seen above other existing signs in the immediate area, but below the other one that is approximately 1 metre higher in terms of the land's AHD level.

The proposal could be considered to be a progression toward visual clutter or a cumulative impact in terms of congestion of signage in the surrounding area. However, it is not considered to be that yet. It is the second major promotion sign in a 750 metre long commercial strip that intersects another arterial road into Mornington's Main Street. The sign is considered far enough from the other major promotion sign (approximately 160metres) and is also approximately 1 metre lower. As such, even if it does obstruct some views to the existing sign as it is approached from the north east, that will reduce the other sign's visual dominance. Approaching them from the south west, they will both be visible from the Main Street intersection, but the proposed sign would be marginally lower when viewed from this perspective. Both signs would not be directly visible if travelling north-south through the intersection of Mornington-Tyabb Road and Main Street.

For the reasons above and explained in greater detail in the Shire officer assessment, the site is considered an appropriate location for the proposed sign.

Will the proposed sign have an appropriate built form and visual presence in this context?

Given the approved sign at 988 Nepean Highway, it is considered appropriate to reduce the overall height of this proposed sign from 14.35 metres to 13.5 metres. The proposed sign would then be lower in overall height within the streetscape compared to the existing sign as the land is approximately 1 metre lower than the location of the existing sign. The applicant has agreed to such a condition. It would also reduce the sign's height comparative to the existing business identification signage on the site and existing building. Instead of the bottom of the proposed sign being 2 metres above the top of the existing sign, it would be approximately 1.2 metres above it, meaning it would still be visible, as expected of a major promotion sign, but not intrusive or dominant.

4.1 (Cont.)

The proposed sign is not considered to detract from the amenity and character of the locality, as the site is not in a sensitive landscape area, but on a main road in a commercial area as discussed above. The sign will not detract from the review site and the buildings on that site, as it will sit as a separate structure, and be read at a much greater distance from the immediate streetscape view at which the other features of the review site will be appreciated.

Is the proposal acceptable from a Road Safety perspective?

The electronic nature of the signs means that a range of static images can be projected, and it is proposed that the minimum dwell time of each image will be 30 seconds amongst other specific conditions relating to illumination and display, in accordance with the recommendations of the lighting report to ensure safety.

Mandatory conditions in the planning scheme and the 16 conditions from the Head, Transport for Victoria (expert in road safety and determining referral authority) ensures the proposal will not unreasonably or unsafely distract drivers or pedestrians in this locality.

Refer to Attachment 8 – Lighting Report.

Consideration of the Objections

Please refer to confidential Attachment 4 – Submissions.

The need for another billboard

Demonstrating commercial need is not an objective or decision guideline of Clause 52.05, and is outside of the scope of the planning scheme. However, the sign is on a major arterial road, where some degree of advertising can be expected and promoted by State Policy.

Visual impact and neighbourhood character

This has been addressed above and in detail in the Shire officer assessment.

Road safety including distracting drivers

This has been addressed above and in detail in the Shire officer assessment.

Impeding views to existing signs

The sign will be read above the existing signs in the immediate area except for the existing major promotion sign at 988 Nepean Highway, as discussed previously. The sign is far enough from the other billboard (approximately 160 metres), that it is not considered contribute to visual clutter or have a cumulative impact in the existing road corridor.

CONCLUSION

The proposal is not considered to have an unreasonable impact on the amenity of the surrounding area. The proposed development of an electronic major promotion sky sign is considered to be an acceptable outcome with regard to the relevant provisions of the Planning Scheme and Act, subject to appropriate conditions. It is therefore recommended that Council advise the Principal Registrar of VCAT that it would decide to grant a Notice of Decision to grant a permit.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.2 Creswell Street East, Crib Point - Development Contributions Plan - Planning Scheme Amendments C300morn and C295morn

Prepared By	Nadia Smith, Principal Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12711919
Briefing Note Number	BN1800 – 8 November 2023
Attachment(s)	1. Amendment C295morn documentation 2. Amendment C300morn documentation 3. Existing Development Contributions Plan (DCP) documentation 4. Existing DCP area vs revised DCP area map 5. FAQs for the revised DCP and Amendment C295morn 6. DCP Peer Review Report by Mesh

EXECUTIVE SUMMARY

The Creswell Street East Crib Point Development Contributions Plan (April 2018) (DCP) facilitates the funding and delivery of road and drainage infrastructure to service privately owned properties in Creswell and Cooma Streets, Crib Point which were rezoned from industrial to residential purposes in 2019.

The DCP is incorporated into the Mornington Peninsula Planning Scheme and implemented via Schedule 1 to the Development Contributions Overlay (DCPO1). It requires mandatory financial contributions from landowners – which must be paid before development can occur on private land – and co-funding from Council. As the Development Agency, Council is required to administer the DCP and deliver the infrastructure.

An independent review of the DCP has identified several issues and risks – the most significant being that the infrastructure costs in the DCP fall well short of current construction costs. A revised DCP has therefore been prepared and is recommended for adoption. In summary, the revised DCP includes the increased construction costs, extends the road and drainage works to fill identified gaps, adjusts the method of calculating contributions per property for greater equity, extends the infrastructure delivery date, and places a greater financial onus on the landowners that directly benefit from the infrastructure.

To ensure the timely delivery of the infrastructure and address a shortfall in available Council funding, it is recommended that Council obtain a loan to deliver the infrastructure by 30 June 2028 – the financing costs of which are factored into the revised DCP.

A planning scheme amendment is required to introduce and implement the revised DCP. It is therefore recommended that Council seeks Ministerial authorisation for proposed Amendment C295morn. If authorised, the amendment would undergo the regular process of public notification and exhibition, consideration of submissions and public participation in any subsequent independent planning panel hearing process (should objections be received).

As Amendment C295morn will likely take more than 12 months to complete, it is recommended that Council concurrently requests the Minister for Planning to fast-track approval of administrative Amendment C300morn to extend the expiry date of the existing DCP so that Council can continue to collect contributions whilst Amendment C295morn is being progressed.

4.2 (Cont.)

In addition to the revised DCP and associated planning scheme amendments, it is recommended that Council commits to voluntarily secure and pay for native vegetation offsets required to deliver the infrastructure which cannot be incorporated into landowner contributions under the proposed revised DCP.

RECOMMENDATION

That Council:

1. **Adopts the revised Creswell Street East Crib Point Development Contributions Plan (Mesh, December 2023) as contained in Attachment 1 to this report.**
2. **Requests the Minister for Planning to prepare and approve Amendment C300morn to the Mornington Peninsula Planning Scheme, pursuant to Section 20(4) of the *Planning and Environment Act 1987* generally in accordance with the documentation as at Attachment 2 to this report.**
3. **Seeks authorisation from the Minister for Planning pursuant to Section 8A of the *Planning and Environment Act 1987* to prepare Amendment C295morn to the Mornington Peninsula Planning Scheme generally in accordance with Attachment 1 to this report.**
4. **Undertakes exhibition of Amendment C295morn to the Mornington Peninsula Planning Scheme in accordance with Section 19 of the *Planning and Environment Act 1987* following receipt of authorisation from the Minister for Planning.**
5. **Authorises the Director – Planning and Infrastructure to make editorial and administrative changes to Attachments 1 and 2 to this report prior to submission of Amendment C300morn for Ministerial approval and before exhibition of Amendment C295morn commences, as required.**
6. **Commits to voluntarily secure and pay for native vegetation offsets for the extent of native vegetation removal required to deliver infrastructure under the revised Creswell Street East Crib Point Development Contributions Plan (Mesh, December 2023) if Amendments C300morn and C295morn are approved and gazetted by the Minister for Planning.**
7. **Consider the costs to deliver the infrastructure under the revised Creswell Street East Crib Point Development Contributions Plan (Mesh, December 2023), as part of Council's future annual budget process, should Amendment C295morn be approved and gazetted.**

COUNCIL & WELLBEING PLAN

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

Theme 3: A flourishing, healthy and connected community.

- Strategic Objective 3.5: A community that is well connected through sustainable, accessible and integrated transport options.

GOVERNANCE PRINCIPLES

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

4.2 (Cont.)

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- D. The municipal community is to be engaged in strategic planning and strategic decision making.
- G. The ongoing financial viability of the Council is to be ensured.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.

RELEVANT COUNCIL DECISIONS AND POLICIES

- **18 June 2018:** Council resolved to adopt Amendment C210morn to rezone private properties in Creswell and Cooma Streets in Crib Point from industrial to residential purposes and introduce the Creswell Street East Crib Point Development Contributions Plan (April 2018) via Schedule 1 to the Development Contributions Overlay (DCPO1) to fund and deliver associated infrastructure. Amendment C210morn was gazetted by the Minister for Planning on 6 June 2019.
- **Mornington Peninsula Shire Unmade Roads Construction Strategy (March 2006)** provides a strategic approach to managing road infrastructure on the Mornington Peninsula and identifies that all unmade sections of Creswell, Cooma and Glossop Streets should be sealed with a “low” (C) priority ranking.
- **Mornington Peninsula Shire Road Management Plan (September 2022)** identifies that Council’s roles as a road authority is limited by reasonably available funding and other resources and requires Council to consider a broad range of other services it provides to the community when making decisions.
- **Mornington Peninsula Shire Asset Plan 2022 – 2032** requires Council to provide for the affordable and equitable funding of new public infrastructure, including with development contributions to manage the impacts of growth and ensure costs are not unfairly borne by established communities. The plan also requires Council to prioritise maintaining and renewing existing assets over new ones, invest in assets based on current and future community need, and make sound investment decisions based on thorough risk assessment and maximising public value of infrastructure investment to enable improved social, environmental and economic outcomes for the community.

DISCUSSION**Purpose**

The purpose of this report is to present the findings of an independent peer review of the existing Creswell Street East Crib Point Development Contributions Plan (DCP) and a proposal to revise the DCP to ensure it provides for the fair funding and delivery of infrastructure to service recently rezoned residential land in Crib Point.

Background

A DCP is a mechanism which allows the fair funding and delivery of infrastructure. It is a planning and legal tool that requires landowners to contribute towards delivering infrastructure.

4.2 (Cont.)

A DCP identifies the area of land it applies to, the infrastructure projects the financial contributions would fund, and how these contributions are calculated and shared across landowners subject to the DCP. DCPs are permitted under *Planning and Environment Act 1987* (the Act) and as approved by the Minister for Planning via a planning scheme amendment.

A DCP must be prepared in accordance with the Ministerial Direction on the Preparation and Content of Development Contribution Plans (11 October 2016) and should comply with the State Government's Infrastructure Contributions Plan Guidelines (March 2021).

Residentially zoned land in Creswell Street, Crib Point (as shown in Figure 1 below) is currently affected by the Creswell Street East Crib Point Development Contributions Plan (April 2018). This DCP was incorporated into the Mornington Peninsula Planning Scheme on 6 June 2019 as part of privately led Amendment C210morn to the Mornington Peninsula Planning Scheme. A copy of the existing DCP is provided in Attachment 3 to this report.

Amendment C210morn generally:

- Rezoned the land in Figure 1 from Industrial 3 Zone (IN3Z) to the Schedule 1 to the Neighbourhood Residential Zone (NRZ1).
- Introduced and applied the Schedule 1 to the Development Contributions Plan Overlay (DCPO1) to the land.
- Included the Creswell Street East Crib Point Development Contributions Plan (April 2018) as an incorporated document within the Planning Scheme.

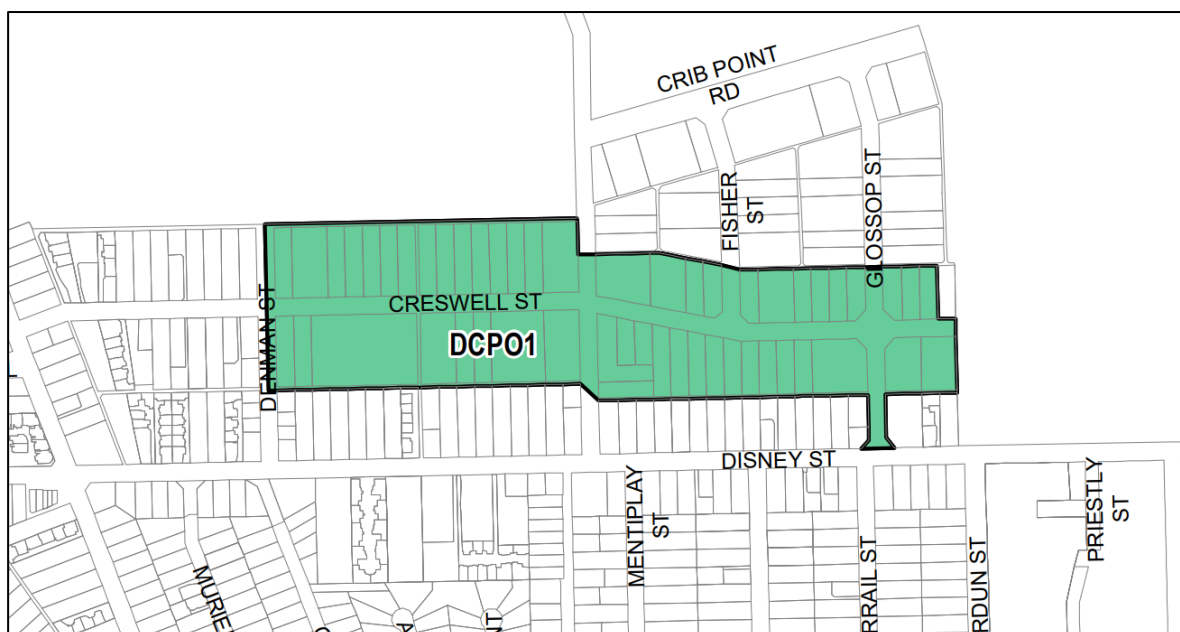


Figure 1: Area of the existing DCPO1

The DCP was required given the land that was rezoned is poorly serviced in terms of basic access roads (with some sections only accessible by 4WD when there has been poor weather), inadequate drainage and no water supply in some sections. The existing DCP:

- Is set to expire on 6 June 2024.
- Outlines the minimum infrastructure required to support localised residential development for the 64 lots included within the DCPO1 area.

Council Meeting Agenda**19 December 2023****4.2 (Cont.)**

- Establishes a framework for Council downers to make a fi contribution towards the infrastructure costs, bein **CIC** funded by Council an **CIC** unded by landowner contributions.
- Outlines the localised infrastructure to be delivered by Council, which includes road, drainage, public street lighting and optic fibre ready pit and pipe infrastructure within the unmade Council road reserves (within sections of Creswell Street and Cooma Street).
- Requires landowners to pay a contribution prior to development or subdivision of their land which is triggered by a planning or building permit.
- Provides for a total estimated project delivery cost of **CIC** (expressed in October 2017 dollars).
- States that contributions are apportioned and charged based o **CIC** (October 2017 dollars) per existing 20.12 metres of lot frontage.
- States those contributions are indexed on a quarterly basis to account for inflation.
- Requires landowners to pay their contribution once only – regardless of when or what triggers the contribution.
- Identifies that Council must deliver the outlined infrastructure when first of either occurs:
 - **CIC** f landowner contributions have been collected by Council, or
 - Within 5 years of the DCP being gazetted (i.e. by 6 June 2024).

This means, Council is currently legally bound to deliver the infrastructure by 6 June 2024, regardless of whether enough funds have been collected – i.e. Council must cover any financial shortfall.

- Is worded so that once the infrastructure is delivered, the DCP is removed from the Planning Scheme. Council could not collect any further contributions if the DCP were removed from the Planning Scheme.
- Contains a provision that it “is expected to be revised and updated every five years (or more frequently if required)”. Any proposed changes to the scope or contents of the existing DCP (including cost estimates, alternate timeframes, charge area, infrastructure to be delivered, cost-apportionment, etc.) require an amendment to the planning scheme.

Review of the existing DCP

The Mornington Peninsula Shire (Shire) appointed town planning firm Mesh to undertake an independent peer review of the existing DCP (Attachment 6). The review identified several issues, the most significant being that the project costs included in the existing DCP do not reflect the current construction costs.

The existing DCP identifies the total cost to deliver th structure i **CIC** The July 2023 indexed cost equates t **CIC** of whic **CIC** is to be a il **CIC** n **CIC** is to be a cost to the landowners **CIC**

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However, the estimated cost to deliver the infrastructure using 3 indexed rates of CIC is significantly higher than the existing DCP has risen to approximately CIC.

This means that if Council proceeds to deliver the existing DCP (which has been split between landowners and Council), Council will be paying approximately CIC for construction costs. This estimate is far greater than the identified CIC cost of (indexed July 2023) identified in the existing DCP. See Table 1 below.

	Existing DCP values (expressed in October 2017 dollars)	Existing DCP – indexed values (expressed in July 2023 dollars)	Indexation increase	Current estimated cost to deliver the existing DCP (July 2023 dollars)*
Landowner contribution (per 20.12 metres of lot frontage)		CIC		Not applicable
DCP cost to Council	Commercial In Confidence			
DCP cost to landowners				
Total cost to deliver the existing DCP*				

Table 1: Current indexed values compared with the original estimates of the existing DCP and current cost estimates.

**Note: these costs do not account for any other costs that are incurred by Council to deliver the existing DCP i.e. plan preparation costs, finance costs, native vegetation removal offsets, mains water supply etc.*

***Note: these costs do not represent the actual construction costs to deliver the infrastructure included within the existing DCP. As of 3 October 2023, Council has received landowner contributions from three properties and has an existing budget to deliver the infrastructure, with approximately CIC remaining.*

Given that the infrastructure being provided will deliver very localised infrastructure that provides very little benefit to the broader municipality/rate payers, it is considered appropriate that 100% of the infrastructure costs should be borne by the directly benefiting landowners.

Mesh also identified that the “DCP is based on Council delivering the project upfront and recouping funds over time as the land develops and therefore Council carries this cost including finance for some time. It is recommended that the DCP include the cost of finance to deliver the project ahead of when Council will receive the funds”.

Shire officers also identified that the existing DCP does not account for:

- Sections of unsealed roads, which would leave illogical gaps within the immediate sealed road network, including:

4.2 (Cont.)

- Removes the DCP expiry date and replaces it with:

This DCP commences on the date it is gazetted into the Mornington Peninsula Planning Scheme and it adopts a long-term outlook for development and is intended to operate for 20 years. This timeframe considers planned future development of the area and this DCP will end when it is removed from the Mornington Peninsula Planning Scheme.

This approach provides Council the ability to continue collecting contributions, regardless of whether works have been delivered, whilst the DCP remains in the Planning Scheme. Removing the DCP from the Scheme will require a planning scheme amendment in the future. Table 2 below provides an overview of the revised DCP average, minimum and maximum contributions that landowners would be required to pay based on existing lot sizes compared to the existing DCP.

	Revised DCP contribution rates proposed (100% landowner apportioned and per square metre of site area)	Existing DCP contribution rates (70/30 apportioned, July 2023 dollars and per 20.12 metre lot frontage)
Average		
Minimum	CIC	
Maximum		

Table 2: Revised vs existing DCP average, minimum and maximum landowner contributions

Appendix 2 to the proposed revised DCPO1 incorporated document (as at Attachment 1), provides the total parcel area and estimated contribution charge per parcel.

Proposed Planning Scheme Amendment C295morn (Attachment 1)

To implement the revised DCP, a planning scheme amendment is required.

This amendment would replace the existing DCP incorporated document in the Planning Scheme (dated April 2018) with the revised DCP incorporated document (dated December 2023) to provide the necessary access and drainage infrastructure to support the urban development of the 76 parcels within the DCP area.

The amendment – known as Amendment C295morn – is provided in Attachment 1 to this report.

It is important to note that whilst Amendment C295morn proposes to pass 100% of the road and drainage infrastructure construction, plan preparation and finance costs to the landowners benefiting from the localised infrastructure, Council will never collect 100% of the costs associated with delivering the revised DCP, because:

- CIC** in contributions has been received under the existing DCP.
- Council cannot 'double dip' on landowner contributions. That is, once a landowner has made their contribution as per the relevant condition on their planning or building permit, their obligations as a landowner under the DCP are considered met.

4.2 (Cont.)

- Council cannot require the landowner to make an additional contribution, nor can it request contributions at a higher rate than is otherwise specified in the DCP. For instance, if Council introduces a new DCP, it cannot ask those landowners who paid under a previous DCP to make a second contribution under the new DCP (which imposes a higher rate).
- Council will likely receive further contributions under the existing DCP (and associated lower contribution rate) as development continues to occur in the area up until a decision is made by the Minister for Planning on incorporating the new DCP into the Planning Scheme.
- Infrastructure delivery costs could increase beyond those estimated in the revised DCP and / or inflation.
- Native vegetation removal offsets are proposed to be voluntarily paid by the Shire and could increase in cost, noting the estimate was only valid for 30 days and voluntary offsets cannot be passed onto landowners (see discussion below).
- Basic utility costs (i.e. water supply) cannot legally be included within a DCP.
- The planning scheme amendment costs to incorporate the new DCP into the Planning Scheme cannot be included within the DCP.
- The finance costs are only estimated and could alter depending on loan rates at the time of securing the finance.

The planning scheme amendment would also amend the Schedule 1 to Clause 52.17 – Native Vegetation, to exempt vegetation required to be removed to deliver the infrastructure under the DCP from needing a planning permit.

The current planning controls require a planning permit to remove, destroy or lop vegetation, with offsets required for native vegetation removed. However, as part of the planning scheme amendment to incorporate the revised DCP into the Planning Scheme, Council can seek to exempt itself from the need to issue a permit for native vegetation removal (and therefore the need to provide offsets). This approach is commonly adopted for public infrastructure delivery in other DCPs across metropolitan Melbourne. This approach would reduce unnecessary administrative burden, by avoiding the need to undertake a separate and consecutive planning permit application process that would ultimately yield the same results (i.e. removal of vegetation).

Importantly, whilst there would no longer be a statutory planning permit application requirement, Council can still provide native vegetation offsets. Shire officers recommend that Council commit to voluntarily pay for the native vegetation offsets as part of its resolution to proceed with the planning scheme amendment. This ensures Council delivers on its commitment to taking a lead role in protecting and enhancing the Shire's biodiversity as is enshrined in Council's adopted Biodiversity Conservation Plan (Ecology Australia, 2019) and Climate Emergency Plan (Mornington Peninsula, 2020). The current cost of these native vegetation removal offsets is about **CIC** (current as at 28 July 2023). It is likely that this cost will increase by the time the vegetation is actually removed. It is noted that the cost of delivering native vegetation offsets on a voluntary basis cannot be passed onto landowners.

Proposed Planning Scheme Amendment C300morn (Attachment 2)

Alongside proposed Amendment C295morn, it is necessary to change the project delivery timing in the existing DCP by a further two years to ensure the existing DCP does not expire so that Council can:

4.2 (Cont.)

- continue to collect contributions until the 6 June 2026, whilst Amendment C295morn is being progressed, and
- retain contributions received to date and not refund them, given the infrastructure will not be delivered next year.

To make this change to the existing DCP, another planning scheme amendment is required. It is therefore proposed that Amendment C300morn is prepared under section 20A of the *Planning and Environment Act 1987* (the Act). A copy of Amendment C300morn is contained in Attachment 2 to this report.

Referred to as a ‘Ministerial amendment’, this type of amendment is approved by the Minister without the need for a full planning scheme amendment process. That is, no public notification or exhibition is required. A Ministerial amendment is considered appropriate in this situation because the proposed change to the existing DCP is largely administrative in nature. The amendment would ensure that the existing DCP remains in place whilst the revised DCP under Amendment C295morn goes through the normal planning scheme amendment process, including:

- public notification and exhibition of the amendment and all supporting documentation,
- review of public submissions by Council, and
- public participation in any subsequent independent planning panel process to review submissions and make recommendations about the amendment.

In other words, community members will be engaged on the substantive planning scheme amendment proposing to give effect to the revised DCP.

Targeted fauna surveys

The area covered by the DCP may contain habitat for State and/or nationally significant fauna species which might trigger the need for State and/or Commonwealth approval to conduct the infrastructure delivery works.

A recently completed biodiversity assessment report regarding the removal of native vegetation to deliver the infrastructure has identified that the “site is considered to support potential habitat” for five different fauna species listed under the *Environmental Protection Biodiversity Conservation Act 1999* (EPBC Act) and *Flora and Fauna Guarantee Act 1988* (FFG Act). Species include the Southern Brown Bandicoot and Swamp Skink which are both listed as endangered under the EPBC Act and the FFG Act.

The report recommends that targeted surveys be undertaken to confirm whether the species are present and therefore whether an EPBC Act referral and/or permit under the FFG Act are required. Surveys commenced mid-August 2023 and will need to run until May 2024.

If an EPBC Act referral and/or permit under the FFG Act is required, this may increase the overall costs of the project delivery with the potential need for mitigation measures including:

- changes to the design and/or location of infrastructure (to minimise fauna impacts)
- offsets
- relocation of species from the area under the direction of a zoologist.

Whilst these approval processes (if required) could be run concurrently with the planning scheme amendment process, they may result in delays to delivering the infrastructure (and associated cost increases), depending on how long the respective approval processes take

4.2 (Cont.)

to complete and possible mitigation measures imposed. Initial advice from ecological experts indicates that approval for habitat removal will likely be granted subject to mitigation measures such as those noted above. Shire officers have factored these possible delays into the proposed revised infrastructure delivery date of 30 June 2028.

Water supply

Shire officers are currently investigating delivering the missing mains water supply sections within Creswell Street and Cooma Street properties to connect to mains water prior to delivering the DCP works. These costs, which are yet to be confirmed, are to be fully funded by Council as basic utilities (which cannot be included in a DCP).

Options for consideration

The following options are provided for Council's consideration, with option 2 being the recommended approach.

Option 1: Retain the existing DCP – not recommended

Option 1 is not recommended given the significant deficiencies and risks identified by the independent peer review (Attachment 6) as detailed in this report, including that:

- The project costs included in the existing DCP do not reflect the current, and substantially higher, construction costs.
- The existing DCP compels Council to deliver the infrastructure by 6 June 2024 which is not feasible given insufficient funds have been collected from landowners and there are insufficient funds in Council's 2023-24 budget.
- Because the DCP has to be removed from the planning scheme once the infrastructure has been delivered, Council cannot collect any further contributions meaning Council would end up bearing most of the infrastructure costs.
- The existing DCP delivers localised infrastructure for the sole benefit of landowners in the DCP area, but effectively requires co-payments from broader ratepayers that do not benefit from the infrastructure.
- The existing DCP would result in illogical gaps of the sealed road network and does not account for native vegetation removal, or any costs associated with Council obtaining a loan to fund infrastructure delivery or associated plan preparation costs.

Option 2: Adopt the proposed revised DCP and proceed with Amendments C295morn and C300morn – recommended

Option 2 is recommended because it:

- Rectifies identified issues with the existing DCP to provide for the fair funding and delivery of required infrastructure.
- Includes a transparent statutory planning scheme amendment process in which affected landowners can have their say about the proposed changes.
- Allows Council to continue to collecting contributions until the Minister decides whether to approve the proposed revised DCP.

Option 3: Adopt the proposed revised DCP and proceed with Amendments C295morn and C300morn but modified to retain the existing 70/30 cost split between landowners and Council and/or existing DCP scope – not recommended

4.2 (Cont.)

Option 3 is not recommended because it does not address all of the deficiencies or risks identified in the peer review (Attachment 6), namely:

- The existing **CIC** contribution split would continue to burden broader ratepayers with the cost of delivering infrastructure that has a localised benefit and with substantially higher costs than are captured within the existing DCP.
- The existing DCP would leave illogical sections of unsealed road within the existing network to the detriment of affected landowners.

ENGAGEMENT

Shire officers have written to affected landowners and occupiers about this report to Council and the opportunity to attend the 19 December Council Meeting. The letter contains information about what is being proposed and next steps in the process.

If Council resolves to seek Ministerial authorisation for Amendment C295morn, and authorisation is granted, public notice and exhibition will be undertaken in accordance with the requirements of section 19 of the Act.

If Council resolves to request the Minister to prepare and approve Amendment C300morn as a fast-tracked amendment under section 20(4) of the Act, the public exhibition and notification requirements section 19 of the Act would not apply. (That is, the amendment would be prepared, approved and gazetted without community engagement). As discussed in this report, this approach is considered appropriate due to the administrative nature of Amendment C300morn, and the ability of the community to be engaged on the more substantive Amendment C295morn which proposes to implement the revised DCP.

To assist with community engagement on the proposed revised DCP and Amendment C295morn, Frequently Asked Questions (FAQs) have been developed to assist affected landowners in better understanding how the proposed changes may affect their property. A draft of the FAQs is contained in Attachment 5 and will be made available on Council's website.

COMMUNICATIONS PLAN

Not applicable because, if authorised, notification and public exhibition of Amendment C295morn would be carried out as per the requirements of the Act. No notification or exhibition would be required for Amendment C300morn, however, should the Minister approve and gazette Amendment C300morn, Shire officers will notify affected landowners in accordance with the directions of the Minister.

LEGAL AND REGULATORY FRAMEWORK

Amendments C295morn and C300morn have been prepared in accordance with the requirements of the Act, relevant Ministerial Directions and the State Government's DCP Guidelines.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

The environmental, social, and economic effects of proposed Amendments C295morn and C300morn are noted in the respective Explanatory Reports for each amendment as at Attachments 1 and 2 of this report.

FINANCIAL CONSIDERATIONS

As outlined within this report, the costs to deliver the existing DCP have risen substantially and so has the cost to Council (beyond 30%). This means that if Council proceeds to deliver

4.2 (Cont.)

the existing DCP (which has a 70/30 cost split between landowners and Council), Council will be paying approximately **CIC** or just the construction costs. This estimate is far greater than the identified **CIC** of **CIC** (indexed July 2023) identified in the existing DCP. Delivering the existing DCP will likely cost Council more than the above given that the existing DCP needs to be removed from the Planning Scheme once delivered and Council would no longer be able to collect contributions. Furthermore, there are other costs that the existing DCP does not and cannot pass onto landowners that will be incurred by Council as identified within the body of the report

Under the proposed revised DCP, the costs to Council are estimated to be about:

- **I & S** should Council adopt the recommended 100% landowner funding approach. This cost is more in-line with the **CIC** that Council committed to under the existing DCP. Importantly, this figure does not account for the following additional costs which cannot be passed onto landowners:
 - implementation of proposed Amendment C295morn or C300morn (which may range from **I & S** depending on whether a planning panel process is required for Amendment C295morn)
 - voluntary native vegetation offsets (which will cost a minimum **I & S**)
 - water supply costs (yet to be determined).
- or **I & S** if Council chooses to retain the existing **CIC** (not recommended). Again, this figure does not account for the abovementioned additional costs that cannot be passed onto landowners.

As previously noted in this report, some of the above estimated costings are based on assumptions that may change over time (such as interest rate rises). Therefore, the final costs to Council may be higher.

Secondly, for the various reasons previously detailed in this report, Council will never collect 100% of the costs associated with delivering the revised DCP regardless of what the revised DCP nominates as a percentage of cost sharing to landowners.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.3 Planning Scheme Amendment C293morn Rezoning Transport Land in Somerville to a Commercial Zone

Prepared By	Louis Beanland, Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12662114
Briefing Note Number	BN1770 – 29 August 2023
Attachment(s)	1. Mornington Peninsula C293morn - Strategic Planning Assessment - Adoption 2. Mornington Peninsula C293morn - Explanatory Report - Adoption 3. Mornington Peninsula C293morn - Instruction Sheet - Adoption 4. Mornington Peninsula C293morn - 001znMap08 - Zoning map - Adoption 5. Mornington Peninsula C293morn - 002dd0Map08 - DDO map - Adoption 6. Mornington Peninsula C293morn - Redacted Submissions - Adoption 7. Mornington Peninsula C293morn - S173 Agreement

EXECUTIVE SUMMARY

The purpose of this report is to present the outcomes of public exhibition of Amendment C293morn (the Amendment) to the Mornington Peninsula Planning Scheme (the Planning Scheme) and recommend that Council adopt the Amendment as exhibited.

The Amendment is a privately led proposal by Vision Australia Limited (the proponent) to rezone a small parcel (666 square metres) of land at 1100 Frankston-Flinders Road near Somerville Railway Reserve for commercial purposes. The land is underutilised, vacant and not required for public purposes. The Amendment specifically seeks to rezone the land from Transport Zone 1 – State Transport Infrastructure (TRZ1) to Commercial 1 Zone (C1Z), and apply Design and Development Overlay, Schedule 30 – Somerville Town Centre (DDO30).

The Minister for Planning (the Minister) authorised Council to prepare the Amendment on 13 April 2023. The Amendment was publicly exhibited for a period of six weeks, from 18 May to 30 June 2023. Public notice was given via an advertisement in Western Port News, letters to owners and occupiers of land surrounding the subject site, relevant authorities, community groups and other stakeholders. Two in-person community information sessions were also held at Somerville Mechanics Hall.

Two submissions were received – one from VicRoads and one from South East Water. As both submissions stated no objection and did not request changes to the Amendment, there is no need to refer the Amendment and submissions to a Planning Panel for independent review. Mornington Peninsula Shire (Shire) officers therefore recommend that Council adopt the Amendment as exhibited (without any changes) because it is strategically justified, is not opposed by the community or relevant authorities, and aligns with the vision and strategic objectives of Council's adopted Somerville Township Structure Plan (2019).

Should Council adopt the Amendment, the Amendment proponents and both submitters will be notified of Council's decision and officers will submit the Amendment to the Minister for approval.

4.3 (Cont.)

RECOMMENDATION

That Council:

1. **Adopts Amendment C293morn as exhibited pursuant to section 29(1) of the *Planning and Environment Act 1987* (the Act), generally in accordance with Attachments 1 to 7 of this report.**
2. **Submits the adopted Amendment C293morn to the Minister for Planning for approval pursuant to section 31(1) of the Act generally in accordance with Attachments 1 to 7 of this report.**
3. **Authorises the Director of Planning and Infrastructure to make minor editorial or administrative changes to Attachments 1 to 7 to this report if required prior to submission.**
4. **Gives written notice of Council's decision on Amendment C293morn to the proponent of the Amendment and both submitters to the Amendment.**

COUNCIL & WELLBEING PLAN

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

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

- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

GOVERNANCE PRINCIPLES

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

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- D. The municipal community is to be engaged in strategic planning and strategic decision making.
- F. Collaboration with other Councils and Governments and statutory bodies is to be sought.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.
- I. The transparency of Council decisions, actions and information is to be ensured.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Somerville Township Structure Plan (adopted by Council in July 2019)
- At the 7 February 2023 Council Meeting, Council resolved to, among other things:

4.3 (Cont.)

- *Seek authorisation from the Minister for Planning to prepare Amendment C293morn to the Mornington Peninsula Planning Scheme.*
- *Undertake exhibition of Amendment C293morn to the Mornington Peninsula Planning Scheme following receipt of authorisation from the Minister for Planning.*

DISCUSSION**Purpose**

The purpose of this report is to present the outcomes of the public exhibition of Amendment C293morn to the Mornington Peninsula Planning Scheme to Council and recommend that Council resolve to adopt the Amendment and submit it to the Minister for approval.

Background

Milner Planning Advisory (MPA), who acts on behalf of Vision Australia Limited (the proponent), lodged the Amendment request with the Shire on 21 July 2022.

The land affected by the Amendment (see maps in Figures 1-3) previously accommodated the former station master's residence and directly adjoins the railway reserve. It is currently vacant and occupies approximately 666 square metres.

Although the land has been in private ownership and ceased serving a public use role when the proponent acquired it in 1996, it has remained in a public land zone since this time. The land was rezoned from the Public Use Zone, Schedule 4 – Transport (PUZ4) to TRZ1 as part of Amendment VC205 on 20 January 2022.

The proponent has identified the land as surplus to its requirements. However, given the land is not a public asset, the relevant authorities, including VicTrack and the Shire, have expressed no interest in acquiring it.

The proponent submits that:

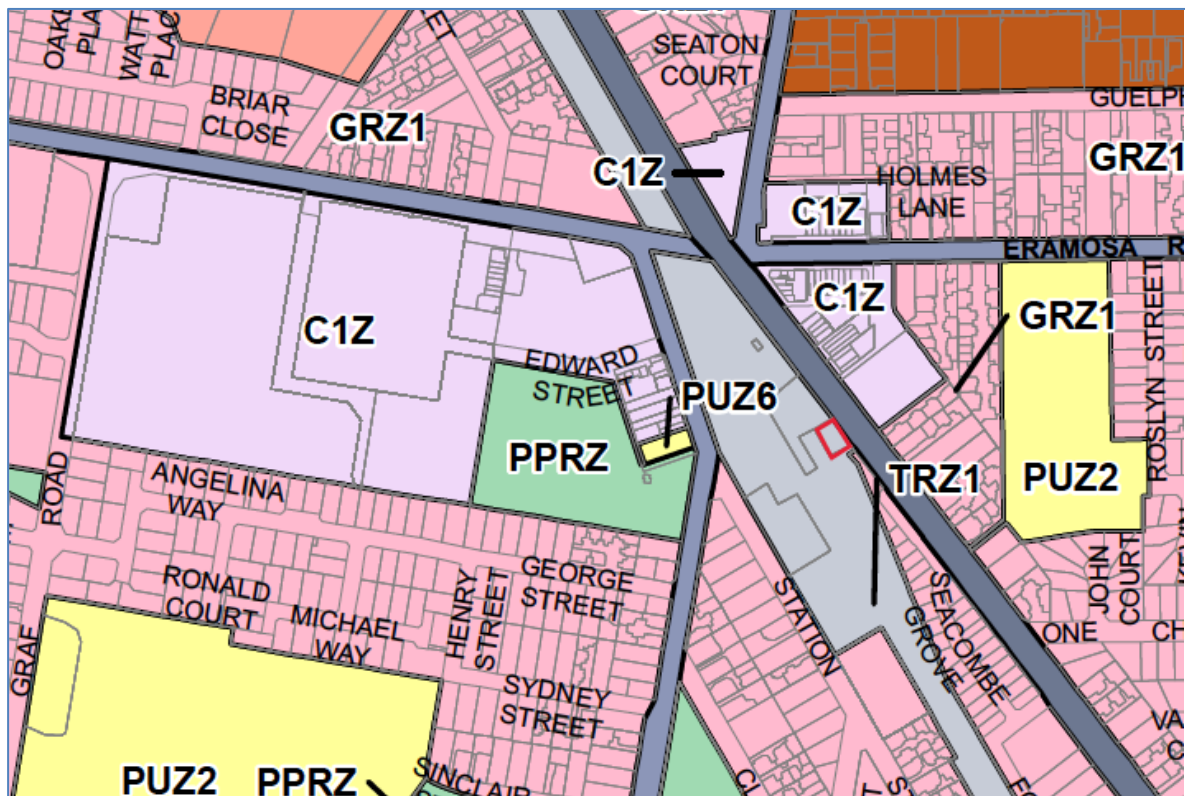
- The justification for including the land in a public zone and/or a reservation for transport purposes is obsolete and no longer appropriate given it does not accommodate public infrastructure or assets.
- The land presents a unique 'in-fill' development opportunity given its proximity to Somerville Activity Centre and Somerville Station, and that the proposed C1Z provides the most appropriate alternate zone given the land is no longer used or required for public purposes.

The proponent seeks to have the land rezoned prior to its intended future sale.

Figure 1: Aerial Map

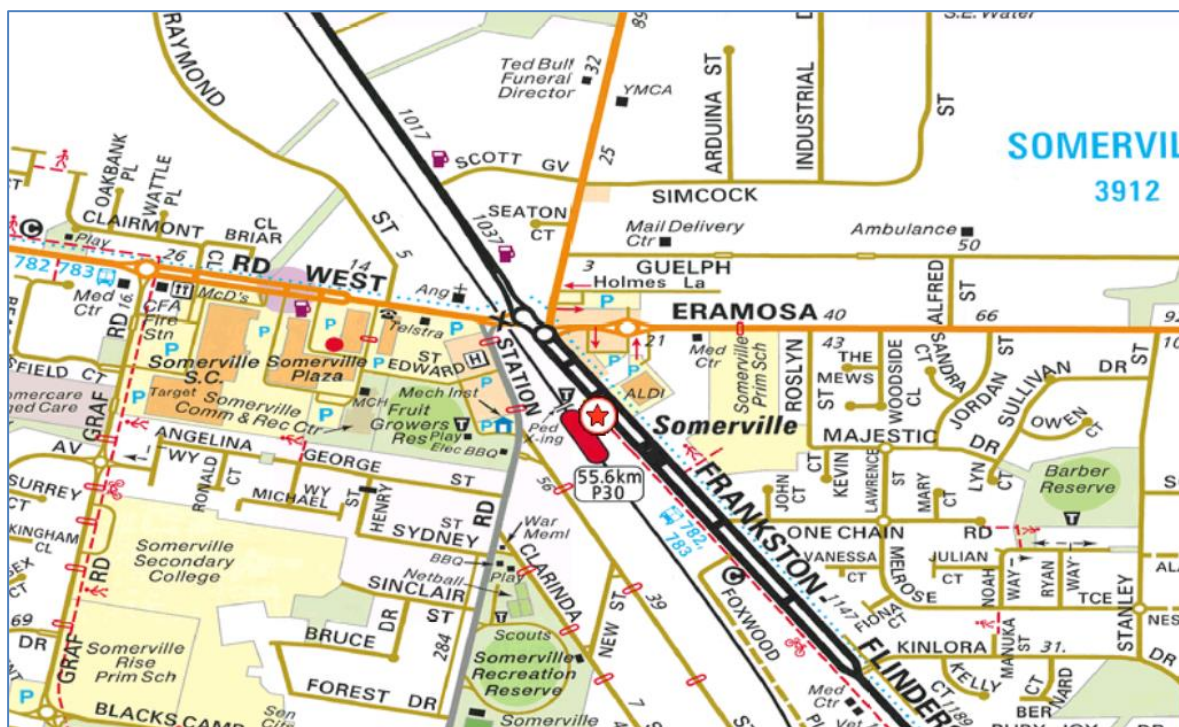


Figure 2: Current Zoning Map



4.3 (Cont.)

Figure 3: Melway Map

**Strategic Planning Assessment**

The strategic planning assessment of the Amendment request provided by MPA (Attachment 1) submits that the Amendment:

- Is consistent with the strategic policy context at both the State and local level regarding:
 - Building up activity centres as a focus for high-quality development, activity and living.
 - Supporting continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies.
 - Directing growth to the Shire's activity centres, close to services and facilities, including increased housing diversity and a concentration of commercial and non-commercial services to serve the needs of the community, visitors and tourists.
- Aligns with the vision and objectives of Council's adopted Activity Centres Strategy (2018), Somerville Township Structure Plan (2019) and Housing and Settlement Strategy: Refresh 2020-2036 (2020).
- Identifies the C1Z as the most appropriate zone relative to others such as the Mixed Use Zone (MUZ), given it provides the opportunity and flexibility for a wider range of commercial and accommodation uses without the same discretionary restrictions on certain floor area requirements.
- Aligns with the broader application of the DDO30 across the activity centre and will thus support and ensure any future built form outcome on the land is consistent with the preferred development of the Somerville Activity Centre.
- Assists to limit and manage, via the DDO30's discretionary 11 metres / three storeys height control, the height and scale of future development alongside the existing rail

4.3 (Cont.)

corridor with attached benefits for the protection of sightlines per VicTrack's requirements.

Shire officers support the above observations and findings.

External referral comments (prior to exhibition)***VicTrack***

The proponent referred the Amendment request to VicTrack for comment. VicTrack confirmed that it does not have any objection to the proposal, noting that the land is no longer part of the rail corridor. VicTrack advised that any future use and development of the land would need to respond appropriately to the rail corridor interface which is dynamic but that interface issues could be resolved as part of any future planning permit application.

Department of Transport (DoT)

The DoT advised that it does not object to the proposed rezoning.

Internal referral comments (prior to exhibition)***Economic Development***

The Shire's Economic Development Team supports the Amendment and considers that the land provides an excellent opportunity for commercial development given its proximity to a major road, Somerville Station and established commercial developments including Aldi. The Economic Development Team also noted that the rezoning may spearhead the redevelopment of the railway station precinct, which is one of the objectives in Council's adopted Somerville Township Structure Plan (2019).

Property Operations

The Shire's Property Operations Team confirmed no objection to the proposal, noting that the Shire has no intention to acquire the land for public purposes.

Development Engineering and related Section 173 Agreement

The Shire's Development Engineering Team does not object to the proposal, but identified that an agreement under section 173 (Section 173 Agreement) of the *Planning and Environment Act 1987* (the Act) is required prior to the rezoning to ensure that:

- the land is provided with a stormwater drainage inlet within the property at the cost of the landowner, and
- stormwater discharge from the land is appropriately connected to the existing Shire-owned underground drainage system.

The agreement was finalised and registered on the subject land's Certificate of Title on 27 November 2023. A copy of the agreement is included at Attachment 7 of this report.

Vegetation Officer

The Shire's vegetation officer noted that the land contains a mature specimen of a Golden Cypress tree that has fair health, poor structure, and moderate retention value. The Shire officer does not consider that the tree is of special significance or warrants special protection and therefore does not object to the proposed rezoning.

Other Shire Departments

The Shire's Traffic and Transport Team and Road, Drainage and Cleansing Operations Team both indicated no objection to the Amendment.

Authorisation

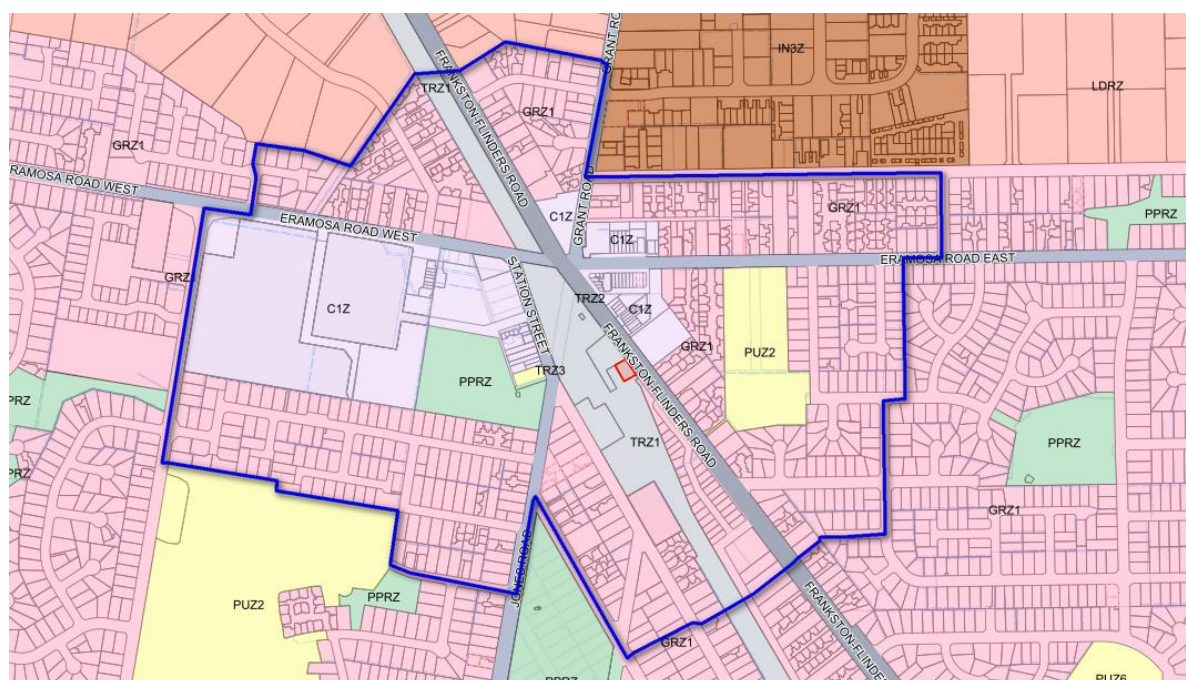
At its meeting on 7 February 2023, Council resolved to seek authorisation from the Minister to prepare and exhibit the Amendment pursuant to section 8A(2) of the Act. Shire officers lodged the authorisation request with the Minister on 13 February 2023. The Department of Transport and Planning (DTP), under delegation from the Minister, authorised the Amendment on 13 April 2023, subject to conditions requiring minor changes to the Explanatory Report.

Exhibition

The Amendment was publicly exhibited for a period of 6 weeks, from 18 May to 30 June 2023. Notice of the amendment was given by:

- public notices in the Government Gazette and Western Port News
- a dedicated webpage on the Shire's website
- individual letters to owners and occupiers of land surrounding the subject site (as shown in Figure 4 below)
- notices to prescribed ministers and other relevant ministers, including the Minister for Public Transport, the Minister for Roads and Road Safety, the Minister for Suburban Development, and the Minister for Transport and Infrastructure
- notices to public authorities including Public Transport Victoria, South East Water, United Energy, and VicRoads
- notices to other stakeholders including the Somerville, Tyabb and District Heritage Society.

Figure 4: Extent of notification area



4.3 (Cont.)

During the exhibition period, members of the community could enquire about the Amendment with Shire officers via phone, email or in writing.

Two in-person community information sessions were also held to allow community members to speak directly with a Shire officer and a representative from the proponent's planning consultant – MPA. These sessions were held on:

- Session 1: Wednesday, 14 June (5.00pm to 7.00pm)
- Session 2: Wednesday, 21 June (5.00pm to 7.00pm).

Despite widespread notice of the Amendment as outlined above, only one individual community member attended the information sessions (Session 1).

Submissions

A total of two submissions were received – one from VicRoads and one from South East Water. Both submissions stated no objection and did not request any changes to the Amendment. The submissions are Attachment 6 to this report.

Options for consideration

As no submissions opposing or requesting changes to the Amendment were received, Council is not required to refer the Amendment and submissions to a Planning Panel for independent review and recommendations, pursuant to section 23 (1)(b) of the Act.

Pursuant to section 29(1) of the Act, Council must now decide whether to:

- Option 1: adopt the Amendment as exhibited and without changes, as per section 29 (1) and submit it to the Minister for approval as per section 31 (1), or
- Option 2: abandon the Amendment and notify the Minister of its decision, as per section 28 (1).

Officers recommend that Council proceed with Option 1, because the Amendment:

- is strategically justified
- is not opposed by the community or relevant authorities, and
- aligns with the vision and objectives of Council's adopted Somerville Township Structure Plan (2019).

ENGAGEMENT

Engagement on the Amendment was carried out as per the public exhibition requirements set out in the Act and directed by the Minister. As detailed previously in this report, the Amendment was publicly exhibited for a period of 6 weeks, from 18 May to 30 June 2023. Public notice was given via an advertisement in Western Port News, notice in the Government Gazette, letters to owners and occupiers of land surrounding the subject site, relevant authorities, community groups and other stakeholders. Two in-person community information sessions were also held at Somerville Mechanics Hall. Two submissions were received from public authorities which did not object to the Amendment or request any changes. No submissions were received from any community members or nearby landowners/occupiers.

4.3 (Cont.)**COMMUNICATIONS PLAN**

A Communications Plan is not required as all public notice is given in accordance with the requirements of the Act.

Once Council has resolved whether to adopt the Amendment, Shire officers will notify both submitters of Council's decision as well as the proponents. Shire officers will also update the Shire's webpage.

Should Council adopt the Amendment and submit it to the Minister for approval, Council will notify the proponents and submitters of the Minister's final decision once received and in accordance with any requirements given by the Minister. Shire officers will also update the Shire's webpage.

LEGAL AND REGULATORY FRAMEWORK

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

- section 29(1) Council may adopt this Amendment
- section 31(1), if Council adopts the Amendment, it must submit the Amendment together with prescribed information to the Minister
- section 36(2), Council may be required to give more notice of the Amendment if specified by the Minister.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

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

FINANCIAL CONSIDERATIONS

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

- **CIC**
 - consider the Amendment request (Stage 1(a) of Regulation 6)
 - carry out public exhibition as per Division 1 of Part 3 of the Act (Stage 1(b)), and
 - consider any submissions received during exhibition which do not seek a change to the amendment (Stage 1(c))
- **CIC**
 - adopt the Amendment or a part of the Amendment in accordance with section 29 of the Act
 - submit the Amendment to the Minister for approval in accordance with section 31 of the Act, and
 - give notice of the approval of the Amendment required by section 36(2) of the Act.

The proponent has paid the above fees.

4.3 (Cont.)

The proponent has also paid for the cost of preparing and registering the Section 173 Agreement on title regarding the provision of drainage infrastructure to the land.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.4 Combined Planning Scheme Amendment C247morn and Planning Permits P23/2400 and P23/2402 - Woodbyne Crescent and Albany Way, Mornington – Administrative changes

Prepared By	Anne Grogan, Principal Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12727529
Briefing Note Number	BN1806 – 21 November 2023
Attachment(s)	1. Woodbyne Precinct Master Plan 2. Explanatory report 3. Instruction sheet 4. Schedule X to NRZ 5. Schedule 25 to DPO 6. Map NRZX 7. Map DPO25 8. Map remove DDO6 9. Draft Planning Permit P23/2400 10. P23/2400 - Tango subdivision layout 11. Draft Planning Permit P23/2402 12. P23/2402 - BFF subdivision layout 13. Woodbyne Precinct Development Plan report 14. Sustainable Subdivision Management Plan 15. Officer's assessment report

EXECUTIVE SUMMARY

On 11 July 2023, Council resolved to seek Ministerial authorisation of combined Planning Scheme Amendment C247morn and Planning Permits P21/3339 and P22/0291 affecting land at 2, 4, 5, 6, 7, 8 and 10 Woodbyne Crescent and 1-4 Albany Way, Mornington (the Woodbyne Precinct). This privately led combined amendment and permits seek to facilitate the multi-lot subdivision of the land for infill housing.

Following Council's resolution, officers lodged the authorisation request with the Department of Transport and Planning (DTP) on 25 July 2025. The authorisation request is currently under consideration by the DTP.

This report seeks a Council resolution to correct an administrative error affecting the two permit applications for resubmission to the DTP. New permit application numbers are required for both permits to correct a mistake on the original application forms regarding the cost of works. The costs need to be corrected so that they only include costs for works that actually require a planning permit.

No other changes are proposed or required to the planning permit applications or the planning scheme amendment.

The administrative change to both permits is necessary to avoid any risk of procedural defect during the planning scheme amendment process, should the Minister decide to authorise the proposed combined amendment and permits.

It is therefore recommended that Council resolves to include the new permit application numbers – P23/2400 and P23/2402 – and submit them to the DTP to be considered as part of the authorisation request.

4.4 (Cont.)

RECOMMENDATION

That Council resolves to:

1. **Correct an administrative error regarding proposed Planning Scheme Amendment C247morn to the Mornington Peninsula and Planning Permits P21/3339 and P22/0291 affecting land at 2, 4, 5, 6, 7, 8 and 10 Woodbyne Crescent and 1-4 Albany Way, Mornington (the Woodbyne Precinct) by:**
 - A. **substituting Planning Permit Application P21/3339 with new Planning Permit Application P23/2400 to correct an administrative error regarding the costs of works**
 - B. **substituting Planning Permit Application P22/0291 with new Planning Permit Application P23/2402 to correct an administrative error regarding the cost of works**
2. **Submit new Permit Applications P23/2400 and P23/2402 to the Department of Transport for consideration as part of the authorisation request for Planning Scheme Amendment C247morn, generally in accordance with the documentation in Attachments 9-12 of this report.**
3. **Update the Council's previous resolution of the 11 July 2023 to include the revised permit application numbers as follows:**
 - A. **Seeks authorisation from the Minister for Planning, pursuant to section 8A of the *Planning and Environment Act 1987* (the Act), to prepare combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and Planning Permits P23/2400 and P23/2402 under section 96A of the Act generally in accordance with the documentation reattached as Attachments 1 to 15 to this report.**
 - B. **Undertakes exhibition of combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and Planning Permits P23/2400 and P23/2402 and the Development Plan in accordance with section 96C of the Act following receipt of authorisation from the Minister for Planning.**

COUNCIL & WELLBEING PLAN

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

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

- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

4.4 (Cont.)**GOVERNANCE PRINCIPLES**

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. This report aligns with principle A which is:

- A. Council decisions are to be made and actions taken in accordance with the relevant law.

RELEVANT COUNCIL DECISIONS AND POLICIES

On 11 July 2023, Council resolved the following:

That Council:

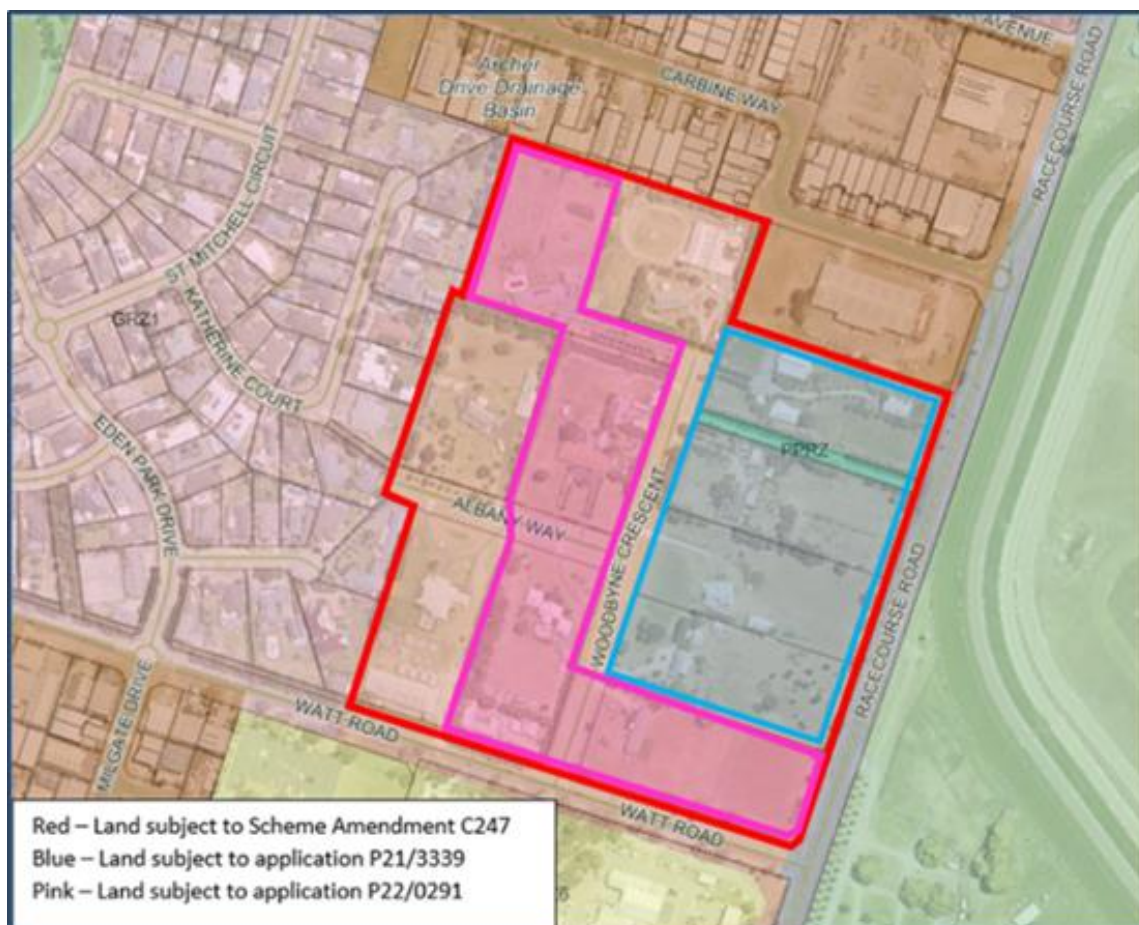
1. *Seeks authorisation from the Minister for Planning, pursuant to section 8A of the Planning and Environment Act 1987 (the Act), to prepare combined Planning Scheme Amendment C247morn to the Mornington Peninsula Planning Scheme and Planning Permits P21/3339 and P22/0291 under section 96A of the Act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

DISCUSSION**Purpose**

To seek a Council resolution for an administrative change to correct a mistake affecting the planning permit application numbers for the proposed combined planning scheme amendment and permit applications for the Woodbyne Precinct, Mornington.

Background

The proposed Planning Scheme Amendment C247morn and Planning Permit applications P21/3339 and P22/0291 affect land at 2, 4, 5, 6, 7, 8 and 10 Woodbyne Crescent and 1-4 Albany Way Mornington (Woodbyne Precinct) as shown in the map on the following page.



The proposal seeks to:

- Rezone the land from Low Density Residential Zone (LDRZ) to Neighbourhood Residential Zone Schedule 6 (NRZX).
- Apply a new Schedule 25 to the Development Plan Overlay (DPO25).
- Remove Design and Development Overlay (DDO6).
- Remove the Public Park and Recreation Zone (PPRZ) from the Council owned Watt Road plantation reserve.
- Approve Planning Permit application P21/3339 – 54 residential lots plus three medium density sites.
- Approve Planning Permit application P22/0291 – 56 residential lots plus three medium density sites.

Mornington Peninsula Shire (Shire) officers submitted the proposed Amendment C247morn and both permit applications to the Minister for Planning (the Minister) for authorisation on 25 July 2023. The Department of Transport and Planning (DTP), on behalf of the Minister, has since queried why the planning permit applications were not accompanied by Metropolitan Planning Levy (MPL) certificates.

For background, *Planning Practice Note 82 Applying the Metropolitan Planning Levy*, May 2016, explains that the MPL applies to planning permit applications for projects valued at over \$1,207,000 (this is the current threshold as of 1 July 2023). The development cost is based on works that require a planning permit.

4.4 (Cont.)**Planning application P21/3339**

The application form for P21/3339 stated a development cost of **I & S** but was not accompanied by a MPL certificate. Because of this, the application is now considered void.

To ensure there is no potential defect in procedure, the applicant has withdrawn Permit Application P21/3339 and lodged a new planning permit application P23/2400. The applicant has also advised that the **I & S** development cost was incorrect as the majority of that cost relates to matters that do not require a planning permit, namely, roadworks, drainage, sewer, water, electricity and stormwater. The estimated development cost of **I & S** is for works that do require a planning permit. As this amount is below the threshold, an MPL is not leviable for this subdivision.

The subdivision plan has not changed.

Planning application P22/0291

The application form for P22/0291 did not state any development cost and therefore the application is incomplete. The applicant has withdrawn Permit Application P22/0291 and lodged a new permit application P23/2402 with the correct estimated cost of \$541,000. As this amount is well below the threshold, an MPL is not leviable for this subdivision.

The subdivision plan has not changed.

Options for consideration

Option A – Council resolves to submit the new planning applications to the DTP as part of the authorisation request. Shire officers recommend this option to ensure that the planning permit applications are correct and valid.

Option B – do nothing. This option is not recommended. Shire officers have received legal advice that the original applications should be withdrawn, and new applications submitted, to avoid any potential defect in procedure during the next stages of the planning scheme amendment process.

ENGAGEMENT

Should authorisation be granted by the Minister, exhibition in accordance with the requirements of section 96C of the Act will occur, including exhibition of two draft permits P23/2400 and P23/2402.

COMMUNICATIONS PLAN

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

LEGAL AND REGULATORY FRAMEWORK

As per the Act, under:

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

4.4 (Cont.)

- Section 96C, Council must give prescribed notice of its preparation of the amendment and concurrent consideration of a permit application following Ministerial authorisation.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

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

FINANCIAL CONSIDERATIONS

The amendment is proponent-led. The proponent is required to pay statutory fees at various stages, administrative costs of exhibition and costs of third-party representation at panel.

There are no costs to make the recommended administrative change to the proposed planning permits.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.5 Update to Planning Scheme Bushfire Exemptions Mapping Review

Prepared By	Christian Lynch, Senior Strategic Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12682463
Briefing Note Number	BN1786 – 10 October 2023
Attachment(s)	1. Bushfire Exemptions Explained 2. Original Advocacy Actions and Implementation Program 3. Council Letter to the Planning Minister 4. Planning Minister Response 5. Bushfire Planning Made Clearer MPS Submission March 2022 6. Shire-wide Strategic Planning Bushfire Assessment May 2023 7. Updated Advocacy and Actions Plan

EXECUTIVE SUMMARY

This report responds to Notion of Motion 310 which required the investigation of areas on the Mornington Peninsula where bushfire planning permit exemptions for as-of-right vegetation removal should be reduced to minimise unnecessary vegetation loss. The report:

- explains what the bushfire exemptions are and how they work
- outlines Council's previous advocacy efforts to effect change to these exemptions
- details the results of strategic work recently completed to help Council's advocacy efforts
- identifies additional technical and advocacy work that Council could pursue, and
- recommends a staged approach to complete this additional technical and advocacy work having regard to resource and funding constraints and pending State Government changes to bushfire planning controls.

RECOMMENDATION

That Council:

- 1. Adopts the Mornington Peninsula Shire Strategic Planning Bushfire Assessment (Kevin Hazell Bushfire Planning, May 2023) (SPBA), as at Attachment 6.**
- 2. Writes to the Department of Transport and Planning (DTP) requesting a review of Bushfire Prone Area (BPA) and Bushfire Management Overlay (BMO) mapping in specific areas of Sorrento and Portsea as recommended by the SPBA.**
- 3. Writes to the Minister for Planning outlining Council's updated advocacy positions (detailed in Attachment 7 to this report) and request that the Minister engages relevant experts to undertake the following work (also detailed in Attachment 7 to this report) using Mornington Peninsula Shire as a pilot test case:**

4.5 (Cont.)

- A. Analyses the impact of other planning provisions and bushfire planning scheme requirements that could be resulting in vegetation loss and change.**
- B. Investigates potential changes to the Victoria Planning Provisions (VPPs) that would allow councils to consider vegetation removed under the bushfire planning exemptions (before a planning permit application for development is lodged) to prevent misuse of exemptions to gain a development advantage.**
- C. Reviews bushfire behaviour on the Mornington Peninsula to identify areas of lower risk where the mapping of bushfire controls (and associated permit exemptions) could be reduced.**

COUNCIL & WELLBEING PLAN

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

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

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

GOVERNANCE PRINCIPLES

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

- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.

RELEVANT COUNCIL DECISIONS AND POLICIES**18 March 2019 Planning Services Committee Meeting**

Council resolved to:

- *Not pursue any amendments to the mapping of the Bushfire Management Overlay Schedule 1 and 2 in the Mornington Peninsula Planning Scheme.*
- *Adopt and forward 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.*
- *Engage a suitably qualified expert to investigate the nature of bushfire risk in all areas of the Mornington Peninsula Shire outside the Bushfire Management Overlay 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.*

4.5 (Cont.)**14 May 2019 Council Meeting**

Council resolved:

- *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.*

16 March 2020 Planning Services Committee Meeting

Council resolved to adopt five specific advocacy positions in relation to bushfire planning and to undertake actions to facilitate the adopted positions as part of an Advocacy Position and Action Plan. The advocacy positions included:

- *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 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.*

5 October 2021 Planning Services Committee Meeting (Notice of Motion 310)

Council resolved:

- *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.*

28 March 2022 Planning Services Committee Meeting

Council resolved to make a submission to the State Government’s ‘Bushfire Planning Made Clearer: Options for Victoria’s Planning System’ Discussion Paper which reflected Council’s advocacy position as per previous resolutions.

DISCUSSION**Background**

At the 5 October 2021 Planning Services Committee Meeting, in response to Notice of Motion 310, Council resolved:

4.5 (Cont.)

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.

Below is a summary of the existing Planning Scheme Bushfire Planning Provisions, Council's previous advocacy efforts and an update on the strategic work that has been undertaken in response to NOM 310.

Planning Scheme Bushfire Planning Provisions

State bushfire planning provisions allow vegetation to be removed from land covered by the Bushfire Prone Area (BPA) and the Bushfire Management Overlay (BMO) without the need for permit, provided a range of specific criteria are met. Known as the '10/30', 'fence line' and '10/50' rules, these exemptions are designed to help residents make their properties safer in the event of a bushfire. The exemptions are State controls within the VPPs and only the Minister for Planning (the Minister) can amend the exemptions or where they apply. Attachment 1 (sections 1-3) explains the exemptions in further detail, noting how and where they apply and several important caveats.

Whilst exemptions have been introduced (and strengthened) over the past two decades in response to major bushfire crises, many councils and communities across Victoria, including the Mornington Peninsula Shire (the Shire), have long held concerns that the exemptions may be resulting in unnecessary vegetation loss which can threaten biodiversity, natural systems, wildlife habitat, neighbourhood character, heritage and resilience to other climate change impacts (such as the 'urban heat island effect').

As explained in Attachment 1 (section 4), the exemptions operate within a sensitive political context. The mandated supremacy of protecting human life over all other policy considerations, coupled with the increasing severity and frequency of bushfire activity in Victoria (and the associated loss of life, property and infrastructure) has created a political setting within which change to bushfire exemptions is complex and difficult to achieve.

Before committing to further work aimed at effecting change in bushfire protection exemptions – and in addition to the context provided in Attachment 1 – it is important to understand Council's previously resolved advocacy positions and their progress to date.

Previous Council Advocacy Efforts

In 2019 and 2020, the Shire resolved to investigate and advocate for change to bushfire-related provisions to strike a better balance between the need to manage bushfire risk, whilst avoiding unnecessary vegetation loss. The 2020 resolution listed above included the adoption of an advocacy program developed in consultation with a leading Bushfire Planning Consultant (Attachment 2). The program was informed by an understanding of the complexities of the exemptions themselves and the political intricacies within which they function. Essentially, the advocacy program involved:

- Inviting the Minister to establish an inter-agency taskforce (with the then Department of Environment, Land, Water and Planning (DELWP), the Country Fire Authority (CFA), the Municipal Association of Victoria (MAV) and other interested councils) to investigate a range of potential refinements to various bushfire provisions (including exemptions) that would enhance bushfire resilience whilst minimising unnecessary vegetation loss.
- Requesting a review of existing Bushfire Prone Area (BPA) mapping in the entire southern region of the Shire (from Rye to Portsea).

Council's advocacy program has achieved mixed success:

4.5 (Cont.)

- In May 2020, Council made its offer to the Minister to establish the taskforce and commence a review of bushfire provisions (see Attachment 3). In June 2020, the Minister advised that a review was premature given various inquiries into the 2019-2020 bushfire season were pending which may impact any such review (refer to Attachment 4).
- In August 2020, the State Government nevertheless (and without prior notification) reduced the scope of the '10/30 rule' from municipal-wide application to mapped BPA areas only. As explained in Attachment 1 (section 1), however, this change has minimal beneficial impact for the Shire in terms of preventing unnecessary vegetation loss, given the substantial coverage of BPA on the Mornington Peninsula and limited extent of vegetation protection controls in areas outside the BPA and BMO in which exemptions could otherwise be deployed.
- In September 2020, Council successfully procured a review of BPA mapping in the southern region of the Shire. However, the review (which took the Department 12 months to complete) only resulted in increased coverage of mapped areas (albeit a minor increase) (Attachment 1, section 5). This result demonstrates how difficult it can be to alter the extent of BPA, and that mapping review requests can result in more BPA – and therefore more 10/30 rule – coverage, not less.
- Shire officers have previously engaged with other councils, the CFA, MAV and DELWP under the auspices of the 'Living Melbourne' cooperative since mid-2020 (Attachment 1, section 6).
- In March 2022, Council resolved to make a submission to the State Government's 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' Discussion Paper (the Discussion Paper) which sought feedback on issues and opportunities for improvements to bushfire planning provisions. The Shire's submission reiterated its resolved advocacy position from March 2020 regarding the accuracy of bushfire mapping and the need to minimise unnecessary vegetation loss through bushfire exemptions (Attachment 5). It is expected that recommendations from this engagement process will be put to the State Government later this year, including potential changes to the VPPs.

Strategic work – Enhancing bushfire decision making

In response to NOM 310, additional strategic work was required to identify areas on the Peninsula that have lower bushfire risk to support Council's advocacy to State Government to modify the vegetation removal exemptions in the Mornington Peninsula Planning Scheme.

This additional strategic work, the Shire-wide Strategic Planning Bushfire Assessment, has now been completed.

Shire-wide Strategic Planning Bushfire Assessment

The 'Mornington Peninsula Shire Strategic Planning Bushfire Assessment' (Kevin Hazell Bushfire Planning, May 2023) (the SPBA), Attachment 6, includes a detailed analysis of the landscape types present on the Peninsula and identifies locations that have a higher or lower landscape risk. The landscape types are categorised from 1 to 4 (refer to table below) and are informed by guidance included in the 'Planning Permit Applications Bushfire Management Overlay Technical Guide' (DELWP, 2017).

Council Meeting Agenda

4.5 (Cont.)

19 December 2023

LANDSCAPE TYPE 1	LANDSCAPE TYPE 2	LANDSCAPE TYPE 3	LANDSCAPE TYPE 4
- There is little vegetation beyond 150 metres of the site (except grasslands and low-threat vegetation) - Extreme bushfire behaviour is not possible - The type and extent of vegetation is unlikely to result in neighbourhood scale destruction of property - Immediate access is available to a place that provides shelter from bushfire	- The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site - Bushfire can only approach from one aspect and the site is located in a suburban, township or urban area managed in a minimum fuel condition - Access is readily available to a place that provides shelter from bushfire. This will often be the surrounding developed area	- The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site - Bushfire can approach from more than one aspect - The area is located in an area that is not managed in a minimal fuel condition - Access to an appropriate place that provides shelter from bushfire is not certain	- The broader landscape presents an extreme risk - Bushfires may have hours or days to grow and develop before impacting¹ - Evacuation options are limited or not available
← Lower risk from the bushfire landscape Higher risk from the bushfire landscape →			

(Mornington Peninsula Shire Strategic Planning Bushfire Assessment, 2023)

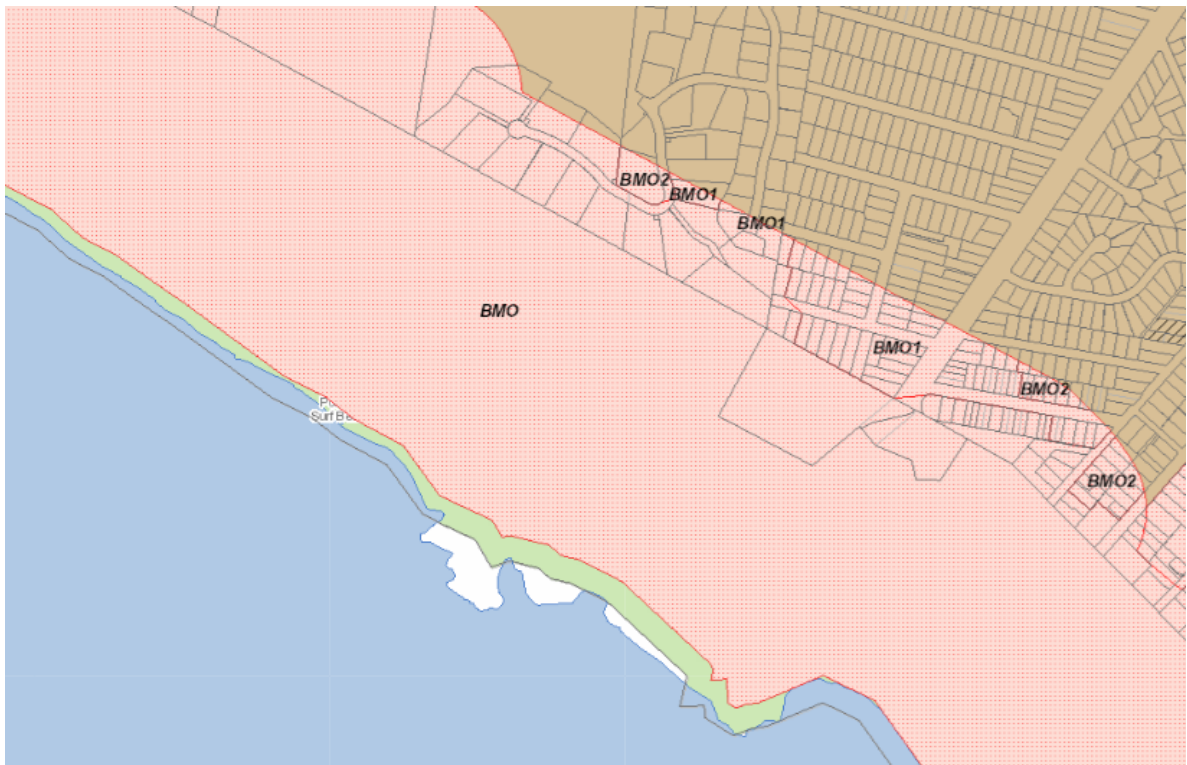
The Bushfire Planning Consultant (the Consultant) has applied landscape types to specific areas of the Peninsula based on likely bushfire scenarios, the potential for neighbourhood scale destruction and the availability and safe access to lower Bushfire Attack Level (BAL) areas – which are all key criteria and considerations within the policies of Clause 13.02-1S Bushfire Planning.

Crucially, the SPBA makes two conclusions relevant to NoM 310:

1. Land has been identified in the Southern Peninsula (Melbourne Road area from Rye to Sorrento) where BMO mapping appears to be based on non-bushfire hazard features such as lot boundaries, which are not consistent with contemporary planning scheme and building regulation bushfire mapping (Attachment 6, section 9.4).



(Planning Scheme map appearing to show BMO applied to lot boundaries)



(Planning Scheme map appearing to show BMO applied as a buffer from identified bushfire hazard)

Additionally, most of the land from Rye to Sorrento is included within a BPA area but land in parts of Portsea is excluded (shown below). The SPBA notes that it is not clear, in terms of the underlying landscape hazards, as to why land has been included or excluded.



(Planning Scheme map showing BPA not applying to parts of Portsea)

4.5 (Cont.)

The SPBA suggests that these areas could be a focus of the Shire's future advocacy to the State Government to review bushfire mapping to ensure that BMO and BPA mapping criteria have been applied correctly. These suggestions come with a caveat that any mapping review may result in land being excluded, as well as additional land being included in bushfire mapping in this area.

Council could write to the Department of Transport and Planning (DTP) requesting a review of the above areas.

2. A bushfire landscaping guide could be prepared and applied to different areas of the Peninsula based on the landscape type areas identified in the SPBA (Attachment 6, section 9.5).

The preparation of a bushfire landscaping guide is detailed in the next section.

Updated program of actions

Further advice was sought from the Consultant on a program of potential actions that the Shire could consider implementing in the shorter term to improve bushfire decision making. This program would complement the continued progression of longer-term advocacy actions calling for changes to bushfire planning controls. The proposed program is guided by three principles being:

- it prioritises life-safety over all other considerations
- it is in alignment with State-wide bushfire management policy
- it is actionable by the Shire.

The actions are either short term (1 year) or medium to longer term (1-3 years) and are set out below. An updated program of actions and advocacy positions is also summarised in Attachment 7.

1. Adoption of the Shire-wide 'Strategic Planning Bushfire Assessment' (short term, no additional cost)

The adoption of the SPBA is recommended so that it can be used to inform the early consideration of bushfire policy in the preparation of the Shire's strategic planning projects and planning scheme amendments.

The SPBA has already proven to be a useful resource during the preparation of the Shire's key housing amendment, Amendment C219morn, where it informed modest refinements to the Amendment in response to matters raised by the CFA during public consultation. This ultimately secured the CFA's agreement with the Amendment prior to the Planning Panel and efficiencies in this process were gained as a result.

As stated previously, the SPBA includes landscape and risk analysis' that can be used to pursue further advocacy for the review of bushfire provisions and inform the preparation of a bushfire landscaping guide.

Given the importance of this document to the Shire's bushfire decision making and advocacy activities, this report recommends the formal adoption of the SPBA. No additional costs or resources are required to implement this action.

2. Undertake an analysis of the implications of broader planning scheme changes and bushfire planning scheme requirements on vegetation loss and change (medium to longer term, CIC)

4.5 (Cont.)

The Consultant has advised that there is likely a range of bushfire and non-bushfire factors affecting landscaping and vegetation outcomes on the Peninsula. To confirm any assumptions in relation to this, an evidence-based analysis could be undertaken that looks extensively into the drivers of vegetation loss and change. This could include broader structural changes to the planning scheme and controls, as well as bushfire protection provisions.

The analysis would build up an evidence base and it is advised that this could look into:

- pre-development and approved development typology comparisons (larger dwellings replacing smaller dwellings as an example)
- the role of bushfire permit exemptions, including where they are and are not being used to contribute to bushfire outcomes for developments
- vegetation that has been modified or required to be introduced in new development
- vegetation changes on land where no development has occurred (no recent planning applications)
- whether the above factors play out differently across the Shire and if so, what the drivers of change could be.

The different risk areas identified in the SPBA would be used as the basis of a localised analysis of the changes to vegetation considering the above points.

There is currently no budget or staff resources available within Council's Strategic Planning team to undertake this project in the current financial year. Similarly, the team is already fully committed for the 2024-25 financial year delivering other funded strategic projects and planning scheme amendments that are currently underway. It is therefore proposed that this be considered as part of Council's future annual budget process.

3. *Investigate changes to the VPPs to enable councils to consider removed prior to planning applications (medium to longer term, I & S plus GST)* on I & S to

As noted previously, Council holds concerns that bushfire protection exemptions under Clause 52.12 (e.g.10/30 rule) are being used to remove vegetation without a planning permit to obtain a development advantage for future planning applications, rather than for creating a defensible space from bushfires as they are intended to be used.

To address the above notion, Council could consider advocating for a change to the VPPs to enable a responsible authority to consider vegetation that was recently removed prior to a planning application being made for a property.

At present, most new residential dwellings requiring a planning permit under the Planning Scheme need to identify existing trees and any trees removed from a site in the past 12 months as part of an application. Updates could be sought to existing planning controls to include a requirement that trees, and other vegetation recently removed under bushfire permit exemptions need to be identified in a planning application.

To progress this proposed action, the following tasks would need to be undertaken:

- Seek legal advice on case law and practical examples of consequences that could be applied in instances where the misuse of the bushfire protection exemptions has been identified, noting that it would need to be implementable under the *Planning and Environment Act 1987*.

4.5 (Cont.)

- Draft an appropriate change to the VPPs which would enable the consideration of vegetation recently removed under bushfire protection exemptions prior to a planning application being lodged.
- Prepare a request to the Minister for Planning to formally consider the proposed change/s to the VPP. Any such request would need to articulate what (if any) consequences should be applied to identified misuse of the bushfire permit exemptions.

There is currently no budget or staff resources available within Council's Strategic Planning team to undertake this project in the current financial year. Similarly, the team is already fully committed for the 2024-25 financial year delivering other funded strategic projects and planning scheme amendments that are currently underway. It is therefore recommended that funding to undertake the bushfire behaviour review be considered as part of Council's annual budget process in a future financial year.

4. *Engage a bushfire behaviourist to review bushfire behaviour on the Mornington Peninsula to support advocacy for refined bushfire mapping (medium to longer term, I & S)*

An analysis of bushfire behaviour is necessary in informing any potential changes to bushfire mapping because BMO and BPA mapping is guided by an understanding of bushfire behaviour.

The Consultant's advice suggested that a bushfire behaviourist could be engaged to investigate the areas of lower risk identified in the SPBA (Landscape Type 1), including:

- Land north-east of Melbourne Road between Rye and Portsea (noting that a review of a similar area was undertaken by the Department in 2020).
- Land between Safety Beach and Mount Eliza, where bushfire hazards are contained within urban development and are configured in narrow corridors.

The above areas are recommended as the most likely for any potential changes to be considered.

An analysis could be used to inform further advocacy for refinements to BPA and BMO should its findings on bushfire behaviour be in misalignment with existing mapping in certain areas.

There is currently no budget or staff resources available within Council's Strategic Planning team to undertake this project in the current financial year. Similarly, the team is already fully committed for the 2024-25 financial year, delivering other funded strategic projects and planning scheme amendments that are currently underway. It is therefore recommended that funding to undertake the bushfire behaviour review be considered as part of Council's annual budget process in a future financial year.

5. *Investigate a pilot of a Bushfire Landscaping Design Guide (or similar product) for a specific area of the Mornington Peninsula (medium to longer term, CIC t CIC*

The Consultant identified that a Bushfire Landscaping Design Guide (or similar product) could be prepared and used by the Shire to show landowners how high-quality landscaping outcomes are possible in bushfire prone areas without necessarily denuding all vegetation under the '10/30' or 'fence line' rules. Importantly, the guide would not override or interfere with the 10/30 rule, but rather provide a safe and beneficial alternative to extensive vegetation removal.

4.5 (Cont.)

Such a guide could identify what vegetation species could be retained or planted on a property (and where) to not only improve the overall resilience of private properties to bushfires risk, but also protect and enhance local biodiversity, natural systems and native wildlife habitat. Importantly, the guide would help to yield positive results in terms of native vegetation retention, irrespective of whether the Minister modifies (or reduces the application) of bushfire protection exemptions or not.

The guide could also provide clarity to residents about expected and possible vegetation and landscaping outcomes having regard to the many requirements of the Mornington Peninsula Planning Scheme, including in Vegetation Protection Overlays, Environmental Significance Overlays, Significant Landscape Overlays and the like.

Preparation of a guide would also help implement Action 2.8 of the Shire's adopted Biodiversity Conservation Plan (2019) (BCP) which is to "Partner with organisations, such as the Country Fire Authority, Parks Victoria and Bunurong Land Council, to build community understanding and capacity to manage fire risk in the context of best practice biodiversity management."

The guide would need to be prepared by suitably qualified and experienced experts in bushfire behaviour, ecology, biodiversity and landscape architecture.

The CFA published a similar guide – the Landscaping for Bushfire: Garden and Plant Selection (CFA, June 2022) – in response to Recommendation 44 from the Victorian Bushfires Royal Commission. Whilst this document provides guidance about landscaping in a bushfire setting, it is not specific to the bushfire conditions or landscape and vegetation classes of the Mornington Peninsula. Importantly, it does not provide guidance about potentially retaining vegetation (particularly remnant native vegetation) that could otherwise be removed under the exemptions, noting that the exemptions are an option available to landowners as opposed to a mandatory requirement.

To be successful, the Consultant advised that it is critically important that the guide be developed in close collaboration with the CFA and DTP. Shire officers and the Consultant had initial discussions with the CFA about whether the CFA would support, and potentially work with the Shire to deliver a guide for the Mornington Peninsula. However, CFA officers expressed concerns about potential risks involved in preparing localised guides that may encourage vegetation retention in bushfire settings, noting that attempts to deliver similar guides in other parts of Victoria have failed to receive support from the CFA.

Given the CFA's reservations, the Consultant recommended that Council could offer to undertake a pilot version of the guide for a specific location and/or landscape type of the Peninsula to begin with. This would allow the guide to be tested and assessed on a smaller scale before its application is considered to broader areas of the Peninsula.

There is currently no budget or staff resources within either the Strategic Planning or Natural Systems teams to undertake this project in the current financial year. Similarly, both teams are already fully committed for the 2024-25 financial year, delivering projects that are currently funded and underway.

Significantly, the Natural Systems team is currently progressing Action 2.4 of the BCP which is to: "Develop practical guidance notes for landowners on key biodiversity conservation topics including environmental weeds, pest animals, biodiversity and fire risk, understanding vegetation types and habitat values, and the benefits of planting indigenous species to increase the cover of native vegetation." Preparation of the guidance note on biodiversity and fire risk is yet to commence and may largely fulfil the same role as the proposed landscape guide.

The guidance note is likely to include information on understanding fire risk at a landscape and property level; general guidance on preparing a property for bushfire; and advice on the

4.5 (Cont.)

consideration of biodiversity when preparing a property for bushfire. Importantly, this will provide broader and more effective advice targeted at all landowners on private properties that may be at risk of bushfire, plus its application would not be limited only to landowners looking to landscape their properties as is the case with the proposed landscape guide. The content of the guidance note will also be consistent with key CFA publications including the Your Guide to Property Preparation (CFA, June 2022) and the CFA landscaping guide referred to previously.

Given the above funding and resourcing limitations, and the potential for duplication with the planned guidance note on biodiversity and fire risk, it is recommended that the need for the landscape guide be reviewed following completion of the guidance note. If still warranted, funding for the preparation of the landscape guide could be considered as part of Council's annual budget process in a future financial year.

6. Consider further advocacy once a sufficient evidence base has been developed

Without a sufficient evidence base, progress in terms of advocacy for changes to bushfire planning provisions is likely to be limited. The delivery of Actions 2 to 4 as suggested by the Consultant would assist in building the Council's evidence base to support future advocacy. As noted above, there are budget and resource considerations of completing this work and there is no guarantee that some or all of the changes to bushfire protection provisions will be realised.

An evidence base would also need to be accompanied by 'good faith' engagement with key stakeholders such as the CFA, DTP and the Minister. A willingness to work within the context of ensuring that life-safety is prioritised above all other planning considerations will be key to any discussions.

Noting that the delivery of the above actions is not certain, there are other advocacy actions that could be pursued independently which are detailed below.

Continued advocacy to the State Government

The Shire previously wrote to the Minister in 2020 requesting the establishment of a taskforce to commence a review of bushfire provisions. The Minister advised at the time that a review was premature given various inquiries into the 2019-2020 bushfire season were pending. Since that time, four reports have been released:

- Inquiry into the 2019-20 Victorian Fire Season: Phase 1 – Community and sector preparedness for and response to the 2019-20 fire season (September 2020)
- Victorian Auditor-General's Office (VAGO) – Reducing Bushfire Risks (October 2020)
- Royal Commission into National Natural Disaster Arrangements (October 2020)
- Inquiry into the 2019-20 Victorian Fire Season: Phase 2: Progress and effectiveness of Victoria's immediate relief and recovery arrangements (October 2021).

Furthermore, the State Government released the 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' Discussion Paper in March 2022 (referred to earlier in this report). Council made a submission to the paper as per its 28 March 2022 resolution. The Minister is yet to confirm any changes to bushfire planning controls as a result of consultation on this Discussion Paper, but Shire officers understand that any changes are likely to be released in 2024.

Given that the above reports have been completed, changes to bushfire planning controls are pending, and a new Minister for Planning was sworn in following the 2022 State election;

4.5 (Cont.)

it is recommended that an updated letter be sent to the new Minister to raise the Council's advocacy positions once again (as highlighted in Attachment 7).

The letter would include a request that the State Government undertake actions similar to the ones suggested by the Consultant including Action 2 (analysis of impacts on vegetation loss) (updated bushfire VPPs), Action 3 (updated bushfire VPPs) and Action 4 (bushfire behaviour analysis) detailed above using the Mornington Peninsula as a pilot test case, with a view to applying the findings across Victoria (where appropriate). Additionally, it is recommended that the letter call for the immediate release of any recommended changes to planning controls arising from the Discussion Paper which may have implications on the strategic work outlined earlier.

The approach of requesting that the Minister undertake the above works using the Mornington Peninsula as a pilot test significantly reduces the cost and resource burden on Council. State Government commitment to undertaking the works would also increase the likelihood of effecting change to bushfire provisions more so than if Council attempted to lead such initiatives.

In terms of timing, the letter requesting the Minister to undertake the above actions could be sent immediately following a resolution of and before Council commits itself to funding and resourcing further strategic work that may not be required.

7. Community advocacy campaign I & S)

Another important element in effecting change to bushfire controls and mapping at a State level is community engagement and activism. To increase the political appetite for reviews and change, it is recommended that Council develop a Communication and Advocacy Plan to:

- A. Encourage the community (i.e. local residents, businesses, community groups/associations, not-for-profits organisations, etc.) to advocate to the State Government for refinements to bushfire provisions to reduce unnecessary vegetation loss.
- B. Keep the community informed of Council's resolved advocacy actions, progress, and opportunities for allied advocacy.

The Community and Advocacy Plan would be led by Council's Advocacy, Communications and Engagement (ACE) team in conjunction with the Strategic Planning and Natural Systems teams. The exact scope and activities included in such an advocacy program is subject to confirmation, however it may cost approximately I & S for implementation.

To be most effective, it is recommended that the Community and Advocacy Plan is implemented once the technical work identified in this report is completed (either by the Minister or Council) and that funding to undertake this is considered as part of Council's annual budget process in a future financial year.

Do Options for consideration

Option 1 – Do nothing (not recommended)

Council could choose not to undertake any further advocacy in relation to changes to the existing bushfire planning permit exemptions in the Mornington Peninsula Planning Scheme. This would be the most cost-effective option, however, it would not progress Council's adopted advocacy position of seeking changes to bushfire-related planning provisions to strike a better balance between the need to manage bushfire risk, whilst avoiding unnecessary vegetation loss.

4.5 (Cont.)***Option 2 – Undertake a staged approach to further works and advocacy (recommended)***

Option 2 includes:

- Adopting the recently completed Mornington Peninsula Shire Strategic Planning Bushfire Assessment (Kevin Hazell Bushfire Planning, May 2023) (SPBA). The SPBA provides Council with a sound understanding of bushfire risk areas across the Peninsula to inform future advocacy directions and other strategic planning projects and planning scheme amendments.
- Writing to the DTP requesting that the DTP reviews Bushfire Prone Area (BPA) and Bushfire Management Overlay (BMO) mapping in specific areas of Sorrento and Portsea as identified in the SPBA.
- Adopting the updated advocacy positions for changes to State Government bushfire planning controls (as outlined in Attachment 7 to this report).
- Writing to the Minister for Planning outlining Council's updated advocacy positions and requesting that Minister engages relevant experts to undertake the following work (also detailed in Attachment 7 to this report) using Mornington Peninsula Shire as a pilot test case:
 - Investigate potential changes to the VPPs that would allow councils to consider vegetation removed under the bushfire planning exemptions (before a planning permit application for development is lodged) to prevent misuse of exemptions to gain a development advantage.
 - Analyse the impact of other planning provisions and bushfire planning scheme requirements that could be resulting in vegetation loss and change.
 - Review bushfire behaviour on the Mornington Peninsula to identify areas of lower risk where the mapping of bushfire controls (and associated permit exemptions) could be reduced.

The above actions can be undertaken immediately and at no cost to Council.

If the Minister accepts Council's request to undertake the identified additional technical work using Mornington Peninsula as a pilot, a significant cost burden for Council would be avoided.

If the Minister declines Council's request, Council could consider funding to undertake the each of the identified projects as part of Council's annual budget process in future financial years. In this regard, it is recommended that Council only consider funding and implementing the recommended Communications and Advocacy Plan in support of Council's efforts if and when Council completes the identified projects.

It is also recommended that, to avoid potential duplication of effort and costs, Council defers funding and preparation of a Bushfire Landscaping Design Guide to a future financial year pending completion of the Guidance Note on Biodiversity and Fire Risk under the Shire's Biodiversity Conservation Plan (2019) (BCP).

Finally, the need for the above actions should be reviewed pending the release of any new or modified bushfire controls that result from implementation of the State Government's 'Bushfire Planning Made Clearer: Options for Victoria's Planning System' expected in 2024.

4.5 (Cont.)

Apart from being more cost-effective, the above staged approach ensures Council progresses its commitment to minimising unnecessary vegetation loss with inbuilt flexibility to adapt to any change in circumstances.

ENGAGEMENT

Community engagement would be considered as part of a Communications and Advocacy Plan to be prepared subject to funding and resourcing in a future financial year.

COMMUNICATIONS PLAN

As above.

LEGAL AND REGULATORY FRAMEWORK

Planning and Environment Act 1987

Building Act 1993

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

This report considers matters relating to protecting biodiversity on the Mornington Peninsula whilst enhancing community resilience to bushfire risk.

FINANCIAL CONSIDERATIONS

If Council were to undertake the further technical and advocacy work outlined in this report, the works may cost in the order of **I & S** and would require a dedicated staff resource to project manage delivery of the work.

As mentioned previously, if Council progresses the further work in a future financial year, the financial implications will be considered as part of Council's annual budget process.

OFFICER DIRECT OR INDIRECT INTEREST

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

4.6 CN2702 Residual Waste Processing Services - Tender Evaluation Outcome

Prepared By	Daniel Hinson, Team Leader - Waste Services
Authorised By	Director - Planning and Infrastructure
Document ID	A12743127
Briefing Note Number	BN1819 – 5 December 2023
Attachment(s)	1. CN2702 Tender Evaluation Plan (confidential) 2. CN2702 Tender Assessment Report (confidential) 3. Probity Auditor Report

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with the results of the tender process and evaluation form CN2702 Residual Waste Processing Services (CN2702) and to seek Council's acceptance of the recommended tender submission for the required services.

Following Council's decision to withdraw from the South East Metro Alternate Waste Processing (SEMAWP) project the intent was to secure a suitable service provider, at the best price possible, and manage the risks associated with a limited market of providers and a highly competitive Council need. Council were also looking for a shorter term of service than the SEMAWP 25-year commitment and no guaranteed minimum volume.

Council is seeking to appoint a contractor to deliver on the Mornington Peninsula Shire's (Shire) commitment of zero waste to landfill and provide a suitable alternative to reclaim and recycle the highest possible fraction from the waste and/or produce the highest rate of generated energy through an Advanced Waste Processing Facility (AWP) e.g. Waste to Energy.

The tender process has been successful and was able to achieve a good outcome financially while ensuring that there has been innovation and opportunities for continuous improvement with the service to be provided as requested in the tender documents.

RECOMMENDATION

1. That Council, having considered all tender submissions, hereby accepts the tender submission received from Tenderer B for the total value of \$XXX plus \$XXX GST being for CN2702 Residual Waste Processing Services.
2. That Council delegates the execution of the contract for the awarded tender to the Chief Executive Officer pursuant to section 11 of the *Local Government Act 2020*.

Part B

That Council resolves that Attachments 1 and 2 to this report be retained as confidential items, pursuant to section 3 (1) (g) (ii) of the *Local Government Act 2020* as they contain private commercial information, being information provided by a business, commercial or financial undertaking that if released would unreasonably expose the business, commercial or financial undertaking to disadvantage.

4.6 (Cont.)**COUNCIL & WELLBEING PLAN**

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

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

- Strategic Objective 1.2. A healthy ecosystem, in which our coastline, bushland, wildlife and green wedge is resilient to the climate emergency and development.
 - 1.2.6: Continue towards our goal of zero waste to landfill by 2030, by strengthening our circular economy as part of our Beyond Zero Waste (BZW) strategy.

Management and Delivery of the Shire's Circular Economy and Waste Services Contracts.

RELEVANT COUNCIL DECISIONS AND POLICIES

At a Council Meeting on the 18 October 2022, Council resolved the following:

1. That Council resolves to formally withdraw from the South East Metropolitan Alternative Waste Processing (SEMAWP) project.
2. That Council tenders as soon as possible Council's residual waste to procure an alternative waste processing supplier for this waste.
3. As per the Procurement Policy, Council approves the participation in any collaborative tenders that may be available for residual waste management.

COLLABORATIVE PROCUREMENT

Not applicable.

DISCUSSION**Purpose**

The purpose of this report is to provide Council with the results of the tender process and evaluation form CN2702 Residual Waste Processing Services (CN2702) and to seek Council's acceptance of the recommended tender submission for the required services.

Council is seeking to appoint a contractor to deliver on the Shire's commitment of zero waste to landfill and provide a suitable alternative to reclaim and recycle the highest possible fraction from the waste and/or produce the highest rate of generated energy through an Advanced Waste Processing Facility (AWP) e.g. Waste to Energy.

Background

Council currently disposes of its residual waste at the Council's Rye landfill. It is anticipated that the current cell at the Rye landfill will be full mid to late 2025 dependent on current disposal rates. However, it is possible this may change with ongoing settlement at the site and any change of volumes received. Therefore, an actual closing date is unable to be provided.

Council has made the decision to close the Shire's Rye landfill once the current operating cell is full/complete supporting the development of an AWP facility in the region for the management of waste collected through the Shire's kerbside household service.

Council Meeting Agenda**19 December 2023****4.6 (Cont.)**

Once the Rye landfill is closed the intention is for the residual waste to be transported to the AWP facility. If required, Council has an interim arrangement available if there is a gap between the Rye landfill closure and AWP being operational.

Over many years (June 2018 to 18 October 2022) the Shire was an active member of the South East Metropolitan Alternative Waste Processing (SEMAWP) with other councils in the south east region. This project was the collaborative procurement process for an AWP solution.

Council's Beyond Zero Waste Strategy 2030 is an ambitious 10-year plan to send zero waste to landfill. The success of recycling, Food Organics Garden Organics (FOGO) and finding alternatives to landfill is essential for Council to meet this target.

Options for consideration

Not applicable.

TENDER INVITATION

The tender was released to the market on Tuesday 3 January 2023 via The Age, the Shire's website and Tenderlink.

The tender closed at 2.00pm on Wednesday 8 March 2023.

Three submissions were received.

TENDER EVALUATION

Zero submissions did not pass mandatory gateways or were deemed to be non-conforming submissions.

Three submissions progressed to evaluation and assessed against the following criteria:

Evaluation Criteria	
Compliance – Pass/Fail	
Compliance with Tender Schedules	These criteria are not weighted and scored but are assessed on a pass/fail basis.
Willingness to undergo independent financial assessment and capability	
Willingness to undergo supplier verification	
Evidence of Environment Protection Authority Development Licence	
Extent of proposed departures from the Agreement	
Evidence of Quality Management Systems	
Evidence of Environmental Management Systems	
Evidence of Occupational Health and Safety (OHS) Systems	
Evaluation Criteria	Weighting
Resources, Capacity and Capability	18%

Council Meeting Agenda**19 December 2023****4.6 (Cont.)**

• Demonstrated experience and performance delivering similar services or 'comparable projects' • Technical, managerial, physical, financial resources (to fund the investment) • Quality and capability of proposed organisation and management structure performing the works • Risk Management principles and systems including business continuity • Customer Service and education activities	These sub-criteria are weighted and scored
Technology and Project Plan	15%
• Nominated Technology ○ Technology Performance ○ Energy recovery volume vs rate of energy recovery (including CO2 emissions) ○ Resource recovery rate • Transition / delivery plan	These sub-criteria are weighted and scored
Sustainability	10%
• Environmental Sustainability ○ Alignment with Council's Beyond Zero Waste Strategy ○ Environmental Sustainability ○ CO2e emissions ○ End products and markets • Social Sustainability ○ Local sustainability ○ Social impact ○ Carbon footprint of physical supply chain	These sub-criteria are weighted and scored
Innovation and Continuous Improvement	7%
• Innovation, trials and implementation • Continuous improvement • Access to large-scale generation certificates • Access to Australian Carbon Credit units	These sub-criteria are weighted and scored
Price	50%
Total	100%

Evaluation was guided by an approved Evaluation Plan (Confidential Attachment 1).

Council Meeting Agenda**19 December 2023****4.6 (Cont.)**

The findings of the Evaluation Panel against the above key evaluation criteria has been included as a confidential attachment to the report 'CN2702 Contract Report Tender Assessment' (Confidential Attachment 2)

EVALUATION PANEL

The Evaluation Panel consisted of:

Name and Title	Role in Evaluation Process i.e. price/non-price/independent/ financial/technical etc.	Scoring or Non-Scoring Member
Paul Rodgers, Procurement Consultant	Evaluation Chair	Non-scoring
Daniel Hinson, Team Leader – Circular Economy and Waste	Non-price	Scoring
Adam Wenczel, Innovation & Organisational Performance Officer	Non-price	Scoring
Kristen Gillespie, Circular Economy Coordinator	Non-price	Scoring
Kara Edwards, Project Coordinator Recreation and Aquatic Future Contracts	Non-price	Scoring
Jacqueline Salter, Community Environmental Education Coordinator	Non-price	Scoring
Melissa Burrage, Manager Climate Change and Sustainability	Technical	Non-Scoring
Mark Schubert, Manager Finance	Financial	Scoring – Financial only
Dominic Mazza, Team Leader – Contracts and Procurement	Independent	Non-scoring

PROBITY ATTESTATION

Probity throughout the procurement process has been provided by Johnathan Thomas, Director Assurance and Advisory Services, ShineWing Accountants & Advisors, and the detailed report is attached as Attachment 3.

CONTRACT VALUE

This is a Schedule of Rates contract.

TERM OF CONTRACT

The contract is for an initial period of five years, with the potential for two x five year options to extend, with a potential full contract term of 15 years.

DELEGATED AUTHORITY ASSESSMENT

Yes/No	Instrument of Delegation Conditions
No	The full amount is within budget

Council Meeting Agenda**19 December 2023****4.6 (Cont.)**

Yes	That the recommended Tenderer is the lowest cost tender
No	mended Tender is NOT the lowest cost tender and is I & S therefore Council determination required.

It has been determined in accordance with current Instruments of Delegation that Council will be the final decision-making authority.

CONFLICTS OF INTEREST

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

4.7 Sorrento Foreshore Masterplan

Prepared By	Adrian Hyland, Coastal Planner
Authorised By	Director - Planning and Infrastructure
Document ID	A12723321
Briefing Note Number	Not applicable
Attachment(s)	1. Final Sorrento Masterplan

EXECUTIVE SUMMARY

The Sorrento Foreshore Masterplan (Attachment 1) is being presented to Council seeking endorsement to allow detailed design and construction of the project as funding becomes available.

The Masterplan aims to improve access and amenity while maintaining the foreshore's historical character and beauty of the natural environment. Community and stakeholder feedback has informed updates including:

- Upgraded all access toilet facilities near the ferry terminal
- Improved all abilities beach access points
- Improved pedestrian access across the Esplanade to the Sorrento foreshore
- Formalised parking and improved amenity between the Baths and Websters Corner
- Upgraded all abilities play space and BBQ facilities at Websters Corner
- Interpretive signs highlighting the unique history and natural environment of Sorrento
- A cultural meeting place located at the Western Sister rest area.

RECOMMENDATION

That Council resolves to endorse the Sorrento Foreshore Masterplan to allow detailed design and construction to progress subject to Council funding.

COUNCIL & WELLBEING PLAN

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

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

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

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

4.7 (Cont.)

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

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.

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

- Strategic Objective 1.4: An accessible built environment that supports diverse, current and future community needs.

GOVERNANCE PRINCIPLES

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

- C. The economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.
- D. The municipal community is to be engaged in strategic planning and strategic decision making.
- H. Regional, state and national plans and policies are to be taken into account in strategic planning and decision making.

RELEVANT COUNCIL DECISIONS AND POLICIES

- Sorrento Coastal and Marine Management Plan 2018 (SCMMP)
- Notice of Motion 320 - 7 December 2021
- Sorrento Coastal and Marine Management Plan 2018 - Councillor Review - 31 October 2022.

DISCUSSION**Purpose**

The purpose of this report is to present the revised Sorrento Foreshore Masterplan to Council and seek endorsement to allow for detailed design and construction as funding becomes available.

Background

The Sorrento Foreshore Masterplan delivers key recommendations identified in the SCMMP. Community and stakeholders provided input into the development of the SCMMP and the subsequent draft Masterplan.

The Masterplan focuses on six areas along the Sorrento foreshore (Sorrento Foreshore, Sorrento Baths to Websters Corner, Western Sister, Webster's Corner, Western Sister, Western Sister: Rest Area and Sullivans Bay) and has been developed with feedback from stakeholders and community informing the final format being presented to Council for endorsement.

4.7 (Cont.)

During development of the Sorrento Masterplan 66 submissions were received from the community and stakeholders. While this number of submissions can be quite normal for consultation of this nature some Councillor concern was raised that community input has not been sufficient, and the recommendations do not represent the stakeholder views.

In December 2021, Council supported Notice of Motion 320 requesting the Chief Executive Officer refer the SCMMP to a Council briefing or workshop, to consider its impact and implementation, in particular addressing vegetation management and fencing. Response to Notice of Motion 320 was presented at Council briefing in February 2022. A further Council briefing in June 2021 sought Council's guidance and agreement on next steps for Councillor change requests to the draft Masterplan and outlined the processes required to amend the SCMMP, where/if required. Subsequently, in October 2022, Council resolved to retain the SCMMP 2018 in its current form and move forward with development of the Sorrento Masterplan.

Options for consideration

Not applicable.

ENGAGEMENT

Community consultation to develop the SCMMP was undertaken during 2017. Further consultation was carried out in the development of the Masterplan through public consultation in August/September 2020 and June/July 2021.

Engagement with community and stakeholder groups included:

- Nepean Historical Society
- Friends of Sullivan Bay and Western sister
- Nepean ratepayers Association
- Nepean Conservation Group
- Sorrento RSL
- Rotary club of Sorrento
- Sorrento Portsea Chamber of Commerce.

The feedback from community and stakeholders represented a broad range of suggestions, aspirations, and concerns for future development, use and management of the foreshore. Further engagement with targeted stakeholders will continue during detailed design phases including with the Sorrento RSL while finalising designs for cenotaph improvements. Department of Energy, Environment and Climate Action (DEECA) has also provided feedback and guidance during the development of the SCMMP and Masterplan.

The Bunurong Land Council Aboriginal Corporation were involved throughout the development of the Sorrento CMMP 2018 which has influenced the Masterplan design. Further collaboration with the Bunurong is required to see the values and input provided to date are reflected in on ground implementation.

COMMUNICATIONS PLAN

If Council resolves to adopt the Sorrento Foreshore Masterplan, the community will be informed of this decision and thanked for their ongoing involvement and contribution to the Masterplan via the following ways:

4.7 (Cont.)

- Update on Shire website
- Social media channels
- Direct contact with on-site stakeholder groups.

Further communication plans will be developed as required during detailed design and the construction phases.

LEGAL AND REGULATORY FRAMEWORK

Council is the appointed Committee of Management (CoM) for the majority of the Sorrento Foreshore. Some smaller portions of land are managed by Parks Victoria (Collins Settlement) and the neighbouring White Cliffs Committee of Management.

As CoM for the foreshore, Council has no legislative powers and is obligated to manage coastal Crown Land in accordance with the *Marine and Coastal Act 2018*, Marine and Coastal Policy 2020, Siting and Design Guidelines for Structures on the Victorian Coast 2020 and Marine and Coastal Strategy 2022.

Any future delivery of actions may be subject to further consent from DEECA, Environment Protection Authority Victoria and/or Parks Victoria based on the nature and location of the action.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

Our foreshore reserves provide vital economic, cultural, social and environmental values to community and visitors.

Council has a responsibility to plan and manage our foreshores in a way that protects and enhances these values, taking into consideration the increasing impacts of climate change such as sea level rise, storm surges, erosion and inundation.

FINANCIAL CONSIDERATIONS

Completion of detailed design and construction stages is dependent on funds being available. Funds will be sought through the Long-Term Capital Works Planning process, subject to Council approval. External funding sources will also be pursued.

OFFICER DIRECT OR INDIRECT INTEREST

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

OFFICE OF THE CEO

4.8 Naming of the Southern Peninsula Youth Hub

Prepared By	Pam Vercoe, Team Leader - Governance Services
Authorised By	Chief Executive Officer
Document ID	A12537250
Briefing Note Number	BN1820 – 5 December 2023
Attachment(s)	Nil

EXECUTIVE SUMMARY

The Southern Peninsula Youth Hub (SPYH) is nearing completion. This report outlines the process to be undertaken to name the SPYH as required under the Naming Rules for Places in Victoria – Statutory Naming Rules for Places in Victoria – 2022 (Naming Rules).

The SPYH will provide a variety of local care support services and programs as well as a drop in space for people aged 10-25. Engagement has been undertaken with some of the young people who will utilise the facility to come up with a list of words/names that signify what the hub means to them. This includes local primary and secondary schools, Mornington Peninsula Shire Youth Services Clients, Mornington Peninsula Youth Advisory Group members and local young residents.

We have consulted with the Bunurong Land Council Aboriginal Corporation (BLCAC) and they have provided three names for the naming of the SPYH based on the list of words provided by the young people.

This report seeks endorsement from Council for the three names provided by the BLCAC to enable the naming process to proceed to consultation with the three names. It is recommended that Council delegates the decision for the final name to the young people and wider community and as such the most popular name will be approved and submitted to the Registrar of Geographic Names for consideration and Gazettal.

RECOMMENDATION

1. **That Council endorses the three names proposed by the Bunurong Land Council Aboriginal Corporation for the naming of the Southern Peninsula Youth Hub being:**
 - A. **Tounnin Wominjeka (warm welcome)**
 - B. **Umanko Wominjeka (all, everyone welcome)**
 - C. **Kartnuk Bullito Wongonon (joy everywhere, all about).**
2. **That the youth groups and proposed users of the Southern Peninsula Youth Hub determine their preferred name from the Council endorsed list of three names.**
3. **That a period of public consultation for a period no less than 30 days will commence to seek feedback from the wider community on the preferred name as chosen by the youth groups.**

4.8 (Cont.)

4. That the final name, following consultation with the wider community, is the approved name for the Southern Peninsula Youth Hub and will be submitted to the Registrar of Geographic Names Victoria for consideration and Gazettal.

COUNCIL & WELLBEING PLAN

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

Theme 3: A flourishing, healthy and connected community.

- Strategic Objective 3.2: A resilient and confident community where everyone connects and is supported.
- Strategic Objective 3.3: A community in which people from all generations, backgrounds and abilities can access local services.

GOVERNANCE PRINCIPLES

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

- A. Council decisions are to be made and actions taken in accordance with the relevant law.
- B. Priority is to be given to achieving the best outcomes for the municipal community, including future generations.

RELEVANT COUNCIL DECISIONS AND POLICIES

Council's Place Naming Policy.

DISCUSSION**Purpose**

The purpose of this report is to seek Council endorsement for the list of three names provided by Bunurong Land Council Aboriginal Corporation (BLCAC) for the naming of the SPYH.

Background

The Statutory process for naming features is governed by the Naming Rules for Places in Victoria 2022 (Naming Rules). The Naming Rules include 13 principles that ensure there is no ambiguity, confusion, error or discrimination in naming and provides consistency.

Options for consideration

Council was briefed on the proposed naming process to be followed for the SPYH on 23 May 2023. It was agreed that BLCAC would be approached to consider some suitable names based on the words provided by the young people who have been involved in the development of the SPYH.

The young people had provided some words based on how they wanted the hub to represent them and how they feel. The following words were provided:

- Feel – safe, happy place, second home, warm and cosy, welcoming

4.8 (Cont.)

- Safe, calm, warm, welcome, free, want to be there, great time – meet friends or be creative
- Safe place to go, meet friends
- ‘Feel like’ – warm, comfortable, bright, safe, happy
- Comfortable
- Warm and welcome, feels like you belong, happy place, feel like you feel comfortable
- Inviting, want to go there
- Connection
- Cosy
- Non-judgmental
- Warm
- Inviting
- Safe like Home
- Natural
- Quiet
- Safe – like, feeling accepted
- Welcomes everyone, not judging
- Inviting, safe, crazy, happy, energy
- Openness, space where everyone can come and connect
- Safe, warm, inviting
- Like a house, a safe space and with no judgement
- Mind blowing, big, looks fun
- Fun, enjoyable
- Happy, happy place.

This list was provided to BLCAC who provided the following options:

- Joy everywhere, all about – **Kartnuk Bullito Wongonon**
- All, everyone welcome – **Umarko Wominjeka**
- Warm welcome – **Tounnin Wominjeka**.

4.8 (Cont.)

The Naming Process

Mornington Peninsula Shire (Shire) officers propose the following process to name the SPYH:

- Seek endorsement from Council for the three shortlisted names for the SPYH. BLCAC have determined that they will only provide names if Aboriginal language is to be used. They will not provide names to go up against other languages, therefore these will be the only three options.
- Council endorsement of the three names will allow the youth groups and users of the facility to decide which name they prefer.
- The Shire will engage with the youth groups and schools late January and February to allow for consultation outside of the school holidays. The three names will be provided to the youth groups to vote and they will be asked to select their preferred name. This name will be the final name for the hub that we will commence community consultation with to the wider community.
- Once the final name has been determined, the wider community will be consulted and provided with the opportunity to give feedback on the name. Consultation must run for a minimum of 30 days. It is proposed this will take place following the engagement with the young people to select their preferred name. This is scheduled to commence mid-February 2024 to avoid school holidays and the holiday period to maximise the reach to community members.
- The final name is then put on public exhibition for a further period of 30 days to inform the community of the decision, providing the opportunity for objections. This is required under the Naming Rules.
- Any feedback must be considered and objections addressed. The naming proposal is then lodged with the Registrar of Geographic Names Victoria for consideration and approval.
- Once approved, the name will be Gazetted and added to VICNAMES.
- The proposed process is summarised in the below table:

Date	Process
19/12/2023	Council endorses the three names provided by BLCAC as the proposed name for the Southern Peninsula Youth Hub.
15/1/2024 – 11/2/2024	Consultation to be undertaken with the young people on the three names. This will be undertaken through the School Holiday Program and also through schools once term one commences.
14/2/2024 – 13/3/2024	Consultation with the wider community to be undertaken providing the opportunity to provide support or feedback on the name chosen by the young people.
18/3/2024 – 16/4/2024	Notify the community of the decision on the final name providing the opportunity to object to the name. Under the Naming Rules, only objections that can show Council has not followed the correct process or that the name does not meet the requirements of the Naming Rules will be considered.

4.8 (Cont.)

17/4/2024	The final name is lodged with the Registrar for consideration and approval. If approved, the name will be Gazetted and added to VICNAMES.
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ENGAGEMENT

The Naming Rules require that the community is consulted on all naming proposals consultation is conducted with the community for a period of no less than 30 days to seek feedback on the final name. The community consultation is planned to avoid Christmas and school holiday time.

COMMUNICATIONS PLAN

Governance is working closely with the Communications Team to finalise the communications plan. This will include providing the opportunity for the young people to vote for their preferred name then communicate the final name to the wider community via the Shire website, social media etc., asking for feedback.

LEGAL AND REGULATORY FRAMEWORK

The Shire is the Naming Authority for the Mornington Peninsula and as such is responsible for place naming with the exception of public spaces that are not owned or managed by the Shire such as Crown Land.

CLIMATE AND SUSTAINABILITY CONSIDERATIONS

No direct climate considerations.

FINANCIAL CONSIDERATIONS

There are no budget implications in running the naming process.

OFFICER DIRECT OR INDIRECT INTEREST

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

5 NOTICES OF MOTION

5.1 Notice of Motion 426 (Cr Marsh) - Amendment to Councillor Code of Conduct re dispute mediation

Cr Anthony Marsh has given notice of his intention to move the following motion at the meeting.

That Council resolves:

1. *To amend the Councillor Code of Conduct 2022 (Code) by inserting a new clause at 5.2 (f):*

“The mediator must not provide, and must not be solicited by any party or Council staff to provide, any evaluation or advice on the merits of, or seek to determine the outcome of, the dispute being mediated. This requirement applies in the lead-up to, during and after any mediation relating to the dispute (i.e. it is enduring) but does not limit the ability of the mediator to conduct further mediation between the parties.”

2. *That the motion seeks only to address this identified and discrete gap in policy and does not constitute a full review of the Code. As such, the ‘Document Review Date’ shall remain as ‘February 2025’.*

Officer Comment Prepared by	Pamela Vercoe, Team Leader – Governance
Authorised by	John Baker, Chief Executive Officer

OFFICER COMMENT

Section 139 of the *Local Government Act 2020* (the Act) requires Council to develop a Councillor Code of Conduct that includes the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

Section 139(4) of the Act requires Council to review and adopt the Councillor Code of Conduct within the period of four months after a general election. The next general elections will be held in October 2024.

On 4 October 2022, the Councillor Code of Conduct was amended to include procedures for an internal dispute resolution process. The intention of this was to provide an opportunity for Councillors to resolve issues through internal or external mediation prior to consideration of referral to the Principal Councillor Conduct Registrar as provided for under the Act.

The Code states that the Mediator will “Provide independent, impartial mediation services and will document any agreement made as part of the mediation and provide to the parties involved”. The mediator’s role is impartial, to listen and facilitate an outcome if possible.

The Mediator and the respondent are provided with the details of the application for external mediation together with any supporting documents. The respondent is provided the opportunity to respond to the application and to have a support person at the mediation.

The Councillor Code of Conduct can be amended by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council, being eight Councillors.

5.1 (Cont.)

It would be prudent to revise the Councillor Code of Conduct holistically considering any further amendments that may be required since the last code was adopted in October 2022. It would be the officer's recommendation to complete this holistic review following the 2024 Elections.

Legal Implications

Not applicable.

Financial and Resourcing Implications

Not applicable.

Potential Alternative Wording

Not applicable.

5.2 Notice of Motion 428 (Cr Race) - Implementation of Transparency and Integrity Hub

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

That Council considers allocating budget for the implementation of the Mornington Peninsula Shire (Shire) Transparency and Integrity Hub at the next budget cycle 2024. The Transparency and Integrity Hub will allow the Shire to be leaders in transparent and open government.

Background

The Transparency and Integrity Hub will provide the community with unprecedented access to the city's finances and provide greater scrutiny over how Council spends ratepayers' money.

The Hub will be a digital portal that will enable the publication of financial data, decision making, and Council activities to be displayed as contemporary open data (intuitive, interactive, auditable and downloadable by selection).

The range of data available on the Transparency and Integrity Hub will be broad and deep. Stories will be developed to provide context to the data and to assist the community to discover more about how council works and to engage with council data based on areas of interest.

Officer Comment Prepared by	Patrick Dillon, Manager – Customer and Transformation
Authorised by	Sam Stanton, Director – Corporate Strategy and Business Improvement

OFFICER COMMENT

A proposal has been submitted for consideration through the Council's annual budgeting process to fund the implementation of a Transparency and Integrity Hub for financial year 2025. This proposal has been listed as an action to address the Council's below-average results in the annual Community Satisfaction Survey for 2023, concerning Governance and Decision Making.

A Transparency and Integrity Hub will offer the community streamlined access to selected Council data, stories, reports, and curated information.

Data published on the Transparency Hub may include:

- detailed financial records from the Council and its stakeholders
- asset management data (the Shire's Capital Works Program)
- procurement data, and more.

This online hub will allow visitors to explore and visualise data, providing an overview of the Shire's decision-making and activities.

This will require the procurement of a suitable web-based platform to publish these datasets for open consumption. It will also require the collection, cleansing and curation of each dataset to ensure it is accurate and ready for release.

5.2 (Cont.)**Legal Implications**

No legal implications.

Financial and Resourcing Implications

Sector benchmarking has shown similar initiatives ranging in price from I & S to I & S .

Implementation can be delivered within existing resourcing.

Potential Alternative Wording

Not applicable.

6 URGENT BUSINESS

Under Council's Governance Rules, no business may be admitted as urgent business unless it:

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

7 CONFIDENTIAL ITEMS

Advice to the Public

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

MEETING CLOSED TO THE PUBLIC

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

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

RECOMMENDATION

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

7.1 Road Discontinuance

This matter is considered to be confidential under section 3 (1) (e) of the *Local Government Act 2020* as it contains legal privileged information, being information to which legal professional privilege or client legal privilege applies.