MPSC Ref.: A12417648

MORNINGTON PENINSULA Shire

22 August 2023

The Hon. Sonya Kilkenny
Minister for Planning
Level 16, 8 Nicholson Street
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Dear Minister Kilkenny

State Government Coastal Hazard Planning Controls

Following Mornington Peninsula Shire Council's resolution of 11 July 2023, I write urging you to:

a) provide clear and concise planning guidance in the form of a State Government led coastal hazard planning zone and/or overlay that is specifically designed to address risks to land use and development around Port Phillip and Western Port Bay from predicted sea level rise, and

b) ensure that the zone and/or overlay is promptly applied and continually updated by the State Government in response to the most up to date scientific evidence regarding sea level rise.

The background to this request is outlined in the attached document. In summary, coastal councils and communities like the Mornington Peninsula Shire are experiencing significant and disproportionate administrative, cost and risk burdens associated with:

- the current lack of planning controls within the Victoria Planning Provisions (VPPs) that are specifically designed to address sea level rise issues
- the requirement for local councils to facilitate planning scheme amendments to introduce and apply planning controls based on sea level rise hazard data produced by the State Government
- the lack of certainty for land use and development outcomes during the period between when State Government hazard data is released and planning scheme amendments are completed, and
- the inability of locally led planning scheme amendment processes to keep pace with advances in scientific evidence of sea level rise hazards and associated benchmarks.

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We consider that sea level rise hazards should be addressed in planning schemes by the State Government in much the same way as other key environmental hazards – namely bushfire – whereby the State Government produces the scientific data, fast-tracks implementation of appropriately tailored planning controls and continues to update the application of controls as hazards change, based on the best available scientific data.

Thank you for considering this request. Should you require any further information, please contact Katanya Barlow, Manager Strategic & Infrastructure Planning at katanya.barlow@mornpen.vic.gov.au or on 0466 826 236.

Yours sincerely

[redacted]

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Mayor, Mornington Peninsula Shire

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The Need for State Government Coastal Hazard Planning Controls

Current planning context

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

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

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

Planning scheme amendments of this nature are not only costly and time-consuming for local councils to undertake, but they often cannot keep pace with evolving SLR scientific evidence. Further, the time lag between completing a regional coastal hazard assessment and applying corresponding planning controls creates significant uncertainty and associated risks for councils and communities regarding appropriate land use and development outcomes in the interim. The issues have recently been experienced in the Mornington Peninsula Shire (Shire) as outlined overleaf.

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The Mornington Peninsula Shire experience

In 2014, the State Government prepared the Western Port Local Coastal Hazard Assessment (Earth Tech, 2014) (WPLCHA) which identifies land around Western Port Bay that is subject to erosion or inundation hazards from predicted SLR. The assessment is based on three SLR scenarios of 0.2 metres by 2040, 0.5 metres by 2070, and 0.8 metres by 2100. Based on this assessment, the Shire partnered with Melbourne Water to undertake Amendment C216 to the Mornington Peninsula Planning Scheme (planning scheme) to apply the LSIO to land identified as subject to SLR hazards under the 0.8 metre by 2100 benchmark. The amendment was prepared in mid-2017, subject to an independent Planning Panel process in July 2018, and approved and gazetted in March 2019. Excluding officer time, the amendment cost the Shire approximately $80,000 to complete.

Following Council's adoption of the Western Port Coastal Villages & Surrounding Settlements Strategy (Ethos Urban, 2019) (Strategy), Council then undertook Amendment C271morn to implement the Strategy. Amongst other things, the amendment introduces a new EMO schedule and updated LSIO schedules to land identified as subject to erosion and inundation hazards, consistent with SLR hazard mapping from the Strategy and the WPLCHA. The amendment also introduces objectives, statements of risk, and planning permit application requirements to facilitate a risk-based approach to responding to SLR hazards commensurate with Clause 13.01-2S (Coastal inundation and erosion) and the Marine and Coastal Policy (Victorian Government, 2020). Excluding officer time, the amendment cost Council over $150,000 to complete. The amendment has taken nearly two years to complete and is still waiting for Ministerial approval.

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

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

inappropriate development that could otherwise put properties at risk of SLR impacts.

This issue has been experienced by the Shire for the Western Port Bay coastline during the intervening period between the release of the WPLCHA in 2014 and pending approval of Amendment C271morn, as well as for the Port Phillip Bay coastline with pending release of the State Government's Port Phillip Bay Coastal Hazard Assessment (PPBCHA). Currently, there is no EMO or LSIO for land along the Port Phillip Bay coastline to address SLR concerns, despite the availability of existing Melbourne Water and Victorian Coastal Inundation Data sets which identify areas at risk of coastal inundation. As with data affecting the Western Port Bay coastline, these data sets are available on both the State Government and Shire websites. However, unlike for Western Port Bay, a planning scheme amendment has not yet been initiated for the Port Phillip Bay coastline because data from the PPBCHA will replace existing datasets as the most up-to-date evidence base for SLR impacts. Due to be completed several years ago, the PPBCHA has been subject to multiple delays and is still yet to be finalised.

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

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

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