

*Planning and Environment Act 1987*

**Panel Report**

**Greater Geelong Planning Scheme Amendment C321 and  
Planning Permit 1234/2014**

**30 – 42 Geelong Road, Portarlington**

**20 July 2016**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Greater Geelong Planning Scheme Amendment C321

20 July 2016

A handwritten signature in black ink, appearing to be 'DM', written in a cursive style.

David Merrett, Chair

A handwritten signature in black ink, reading 'Peter Edwards', written in a cursive style.

Peter Edwards, Member

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## List of Abbreviations

C2Z	Commercial 2 Zone
DDA	Disability Discrimination Act
DDO	Design and Development Overlay
DDO14	Schedule 14 to the Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
EAO	Environmental Audit Overlay
GRZ2	Schedule 2 to the General Residential Zone
IHDA	Increased Housing Diversity Areas
LPPF	Local Planning Policy Framework
MUZ	Mixed Use Zone
PPN78	Planning Practice Note 78 <i>Applying the Residential Zones</i>
the Proponent	Batman Management Group Pty Ltd
PSP 2007	Portarlinton Structure Plan 2007
PSP 2016	Portarlinton Structure Plan 2016
RGZ3	Schedule 3 to the Residential Growth Zone

## Executive Summary

Amendment C321 seeks to rezone 30-42 Geelong Road, Portarlington from the Commercial 2 Zone to the Mixed Use Zone. Planning Permit 1234/2014 proposes a four storey, 55 dwelling apartment building with 569 sqm of commercial floorspace and 57 underground basement car spaces at 30-32 Geelong Road, Portarlington.

The process was initiated in 2014 with a rezoning and permit submission by the Batman Management Group for 30-32 Geelong Road. Council required all of the Commercial 2 Zone land to be rezoned as part of the request.

A total of 35 submissions were received, including 27 objecting submissions.

Those in support of the Amendment and permit proposal considered it would meet a critical shortage for high quality short term tourist accommodation on the Bellarine Peninsula; provide local jobs during and after construction; facilitate the redevelopment of a poorly presented precinct and public access to the recreation reserve to the rear; is a 'gateway' site that can accommodate higher built form, provide a well-designed development that is consistent with local policy and the coastal character of Portarlington.

The objecting submissions considered:

- the use of the Mixed Use Zone was inappropriate
- the height and bulk of the development was excessive and not in keeping with the low scale character of Portarlington
- there was a lack of parking for the commercial floorspace
- amenity would be detrimentally impacted by increased traffic, noise and construction activity
- high density housing should be located in the Increased Housing Diversity Areas of Portarlington
- the town centre would be adversely impacted by commercial uses that will be in conflict with its primary retail role
- the rezoning should have been considered in a thorough review of the Portarlington Structure Plan 2007.

The Panel has considered all written and oral submissions.

The Panel accepts much of the 'high level' strategic support and other benefits referred to by Council and the Proponent for the Amendment and planning permit, such as:

- the land has re-development potential
- the ability to meet the need for high quality tourist accommodation
- creating jobs during and after construction
- providing for ongoing support for other existing businesses
- the role of the Amendment land has changed from 2007 where it was to provide for uses within the seafood industry
- providing public access to the recreation reserve to the rear of the Amendment land
- the Amendment land is set within a broader residential context and has the capacity to accommodate residential uses.

However, this does not mean this outcome should override all other policy considerations. They need to be considered in a strategic sense that provides a local context such as the structure plan review for Portarlington.

The Panel does not support the Amendment and it should be abandoned for the following reasons:

#### Process issues

- Council chose to use the combined amendment and permit process. This process should only be used where the strategic basis of the Amendment is sound, particularly for a site specific rezoning and where the proposed development is appropriate. Neither is the case in this instance. Council's own policy framework does not support this outcome. The Panel has found significant inconsistencies with the Greater Geelong Planning Scheme and the Portarlington Structure Plan 2007.
- Despite most land in Portarlington having some control over height whether it be by zone or overlay, Council elected not to conduct a strategic investigation into the opportunities and constraints of the Amendment land with a view to providing some overall built form and height guidance. The Panel considers future development of the Amendment land should have this guidance.

#### Strategic considerations

- Local planning policy for Portarlington strongly favours development that respects the character and role of Portarlington where the low scale coastal character is to be maintained. Higher density mixed use development is encouraged in the town centre and high density apartment style housing development in and around the town centre. This is supported by Clause 21.06-3 (Urban consolidation), Clause 21.14 (The Bellarine Peninsula) and Clause 22.63 (Increased Housing Diversity Areas).
- The Amendment land is not located within the Portarlington Increased Housing Diversity Area where high density residential housing is expected and is an isolated precinct within a traditional residential context.
- The Mixed Use Zone would facilitate uses that cumulatively could compete with the role of the town centre. This includes commercial uses and higher density residential development. The Portarlington Structure Plan 2016, yet to be implemented in the planning scheme, was not given significant weight by the Panel as it has not been exhibited, tested or independently reviewed. The choice of zone and the built form opportunities should have been considered in the context of the review of the structure plan or, individually, by a more detailed strategic investigation. The Panel considers neither of these has occurred to a satisfactory level. The Panel considers the Amendment is premature.
- The Mixed Use Zone, under Council local policy is to provide for medium density, not high density housing. The Panel concludes the Mixed Use Zone is not appropriate for the site and future consideration should be given to the General Residential Zone.

The reference by parties to a VCAT decision at 1 Newcombe Street, Portarlington that refused a four storey apartment complex has not been given significant weight as it is located in a different zone and has different circumstances. The Panel's conclusion is based

upon the current policy within the planning scheme and how the Amendment and the proposal responds to this policy context.

The Panel's recommendation to abandon the Amendment should require a revisiting of the adopted, but yet to be implemented, Portarlington Structure Plan 2016 along with a more holistic review of the Amendment land and what controls should apply. It is for Council to determine how to approach this.

#### Planning Permit 1234/2014

As the Panel concludes it cannot support the Amendment, the draft Planning Permit 1234/2014 cannot be supported as the Commercial 2 Zone prohibits 'accommodation' uses. The Panel does note that if it did have the ability to consider the planning permit, it would not have been supported due to built form, height and scale issues, as well as insufficient car parking. The inconsistencies with ResCode standards is an indication that the development is an overdevelopment of the site.

#### **Recommendation**

Based on the reasons set out in this Report, the Panel recommends:

- 1. Greater Geelong Planning Scheme Amendment C321 be abandoned.**
- 2. Planning Permit 1234/2014 cannot be granted as the 'accommodation' use is prohibited in the Commercial 2 Zone.**

# 1 Introduction

## 1.1 The Amendment

Greater Geelong Planning Scheme Amendment C321 (the Amendment) was prepared by the Greater Geelong City Council as Planning Authority. Draft Planning Permit 1234/2014 (the permit) was exhibited concurrently under Section 96A of the *Planning and Environment Act 1987*. As exhibited, the Amendment proposes to:

- rezone 30 – 42 Geelong Road, Portarlinton (the Amendment land) from the Commercial 2 Zone (C2Z) to the Mixed Use Zone (MUZ)
- apply the Environmental Audit Overlay (EAO) to the land being rezoned
- replace Clause 21.14 with a new clause that removes the notation “*retain Business 4 Zone*” from the Portarlinton Structure Plan map at Clause 21.14-5.

## 1.2 The Permit Application

The permit, as exhibited, seeks approval for use and development of 30 – 32 Geelong Road Portarlinton (the permit land) for accommodation (55 dwellings) and retail premises (569 sqm), subdivision, reduction of car parking requirements, display of advertising signs, waive the requirement for loading and unloading of vehicles, waive the requirement for providing bicycle facilities and creation of access to a road in a Road Zone, Category 1.

## 1.3 Panel Process

The Amendment was prepared at the request of Batman Management Group Pty Ltd (the Proponent) and was authorised by the Department of Environment, Land, Water and Planning on 24 November 2014.

The Amendment was placed on public exhibition between 10 December 2015 and 8 January 2016, with a total of 35 submissions received; including 27 objecting submissions.

Council, under delegation on 22 April 2016, resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 28 April 2016 and comprised David Merrett (Chair) and Peter Edwards.

A Directions Hearing was held on 18 May 2016. Prior to the Directions Hearing, the Panel undertook an inspection of the subject site and its surrounds.

The Panel then met in the City of Greater Geelong offices of 15, 16 and 17 June 2016 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Appendix A contains the list of submitters to the Amendment and permit.

Appendix B contains the list of documents tabled at the Hearing.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Greater Geelong City Council	Mr Peter Schembri, Senior Strategic Planner and Mr Roger Munn, Acting Team Leader Statutory Planning
Batman Management Group	Ms Sarah Wright, Senior Planner, Spiire Consulting
Mr Sam Casa	Mr David King of the firm Kings Lawyers who called the following expert witness: - Andrew Clarke, Planner, Matrix Planning Australia
Mr Gray Barton	
Ms Patricia Hayes	
Portarlington Business Development Association	Mr John Rae
Committee for Bellarine	Mr Tom O'Connor

## 1.4 Planning history of the Amendment land

In its Part A submission, Council provided the following summary of the lands history:

1975: The land at 30-46 Geelong Road, Portarlington was zoned to the Service Business Zone under the Geelong Region Interim Development Order.

1981: The Service Business Zone was retained after the introduction of the Geelong Regional Planning Scheme.

2000: The land was rezoned to the Business 4 Zone when the New Format Planning Schemes were introduced.

December 2002: On 19 December 2002, 44-46 Geelong Road, Portarlington was rezoned to the Residential 1 Zone accompanied by an Environmental Audit Overlay (Amendment C25). This property was subsequently developed with 14 double storey dwellings.

April 2007: Adoption of the Portarlington Structure Plan identifying the precinct for retention of the Business 4 Zone.

January 2010: Implementation of the Portarlington Structure Plan 2007 (PSP 2007) key planning elements into the Greater Geelong Planning Scheme via Amendment C129.

## 1.5 Background to the proposal

Council provided the following summary of its discussions with the Proponent about the proposal:

### Late 2013 – Mid 2014

Council had initial discussions with the landowner of 30-32 Geelong Road, Portarlington and architecture firm Architecton about developing the site with a self-contained

accommodation and retail complex. The intended use was prohibited under the C2Z and the land would need to be rezoned.

Of key interest was whether consideration of the proposal should be deferred and brought under the broader umbrella of the next review of the Portarlington Structure Plan, scheduled for mid-2015. Council officers decided to support the proposal prior to the Structure Plan review for the following reasons:

*The proponent presented a compelling case for renewal and investment in a commercial precinct suffering long-term decline.*

*The proponent owned the land proposed for development and indicated a readiness to construct once approvals were received.*

*The proposed complex would help address a critical shortage of quality tourist accommodation on the Northern Bellarine.*

*The proposed complex would generate jobs during the construction period and support local businesses and the tourist industry into the future.*

*The building design was considered to be of high architectural quality and would set a new benchmark for development in Portarlington.*

*Rezoning the entire commercial precinct would further encourage redevelopment of the area.*

*The Mixed Use Zone would not disrupt the operations of existing businesses in the precinct and better complement the surrounding residential zone.*

*The proposal would be located inside the settlement boundary, within an existing urban setting, and would not encroach on the valued open farmed landscape beyond the Township.<sup>1</sup>*

Discussions continued about the building design with Architecton and Council planning officers and Urban Design Manager. Council officers confirmed that the amendment request should seek to rezone the entire C2Z precinct to the MUZ, accompanied by an EAO.

September 2014: An application was formally lodged by St Quentin Consulting on 25 September 2014, on behalf of the owner of 30 and 32 Geelong Road, Portarlington.

2015: Grabble Pty Ltd<sup>2</sup> acquired the land at 34 Geelong Road, Portarlington.

December 2015: Public exhibition of Amendment C321 and Permit No. 1234/2014 commenced on 10 December 2015.

May 2016: Adoption of the Portarlington Structure Plan 2016 (PSP 2016) that updates the PSP 2007 identifying the precinct for rezoning to the Mixed Use Zone and designated as a 'development opportunity'.

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<sup>1</sup> Council Part A submission, page 19.

<sup>2</sup> The Panel understands that Batman Management Group, as the Proponent for the Amendment and permit, initially lodged the application with Council on behalf of the then owner, Grabble Pty Ltd. Batman Management Group was then identified as the Proponent on the Amendment documentation.

## 1.6 The general area

The Amendment applies to land shown in Figure 1<sup>3</sup>.

The land is located approximately 600 metres west of the Portarlington shopping centre (town centre) on the main entry into Portarlington from Geelong, Clifton Springs and Drysdale. Council advised *“Portarlington is highly valued for its coastal landscape setting and the surrounding hills that provide a natural backdrop to the settlement. Acclaimed wineries including Jack Rabbit, Teringah Estate and Spray Farm are located in this area. The town itself has a low density suburban character of wide open streets and mainly one and two storey dwellings in garden settings.”*<sup>4</sup>



Figure 1 Amendment and planning permit site and surrounds

Along with other settlements on the Bellarine, the population of Portarlington swells significantly over the holiday periods, particularly summer. Recreational fishing is one of the key attractions. The Portarlington safe harbour project, yet to be completed, is expected to increase both the permanent and holiday populations.

<sup>3</sup> Council Part A submission, page 9

<sup>4</sup> Council Part A submission, page 7

The immediate area surrounding the Amendment land can be summarised as:

- land to the north is Crown Land managed by City of Greater Geelong as Committee of Management. The Portarlington Recreation Reserve is home to the Portarlington Football and Netball Club, Cricket Club, Tennis Club, Sports Club, Girl Guides and Fire Brigade
- land to the east is generally developed by detached dwellings. These dwelling also back onto the Portarlington Recreation Reserve
- land to the south is separated from the subject land by Geelong Road and associated service road. The land is elevated above the subject land, and continues to rise further to the south-east. Properties opposite the subject site are developed by a range of dwellings, both single and two storey form
- land to the west has been developed as a two storey medium density residential development. Several of these dwellings have been designed to take advantage of the aspect over the Portarlington Recreation Reserve and bay views.

### **1.7 The Amendment land**

The Amendment land comprises six separately titled and addressed lots. Figure 2<sup>5</sup> provides further detail on the current uses and nature of development. The total land area is 6,973 sqm.

The commercial precinct is developed with buildings used for seafood retailing, recycled clothing and furniture, automotive and marine repairs, blinds sales, as well as some vacancies. The precinct is surrounded by residential land other than to the north, where the Portarlington Recreation Reserve is located. The Amendment land gains access from Geelong Road, the primary road into Portarlington from the west.

### **1.8 The permit land**

The permit relates to 30-32 Geelong Road, Portarlington (the eastern end of the Amendment land). These two titles are used as follows:

- 30 Geelong Road – single dwelling used as an art gallery
- 32 Geelong Road – single storey galvanised shed that is unoccupied.

The Proponent also owns the property to the west at 34 Geelong Road, Portarlington. The land has a combined area of 2,292 sqm (33.84 metres wide and 69.97/67.13 metres deep). The land has a gentle fall to the rear and then a significant fall to the level of the recreation reserve.

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<sup>5</sup> Council Part A submission, page 10



Figure 2 The Amendment land

### 1.8.1 Draft Planning Permit 1234/2016

The permit proposes a four storey apartment building that contains the following:

- Basement – with ramp access from Geelong Road to 57 car spaces, dual lift and stair access to other floors, four storage areas generally located at the corners of the basement, bin storage, 85 sqm café and access to the recreation reserve. The footprint of the basement covers almost 100 per cent of the site area.
- Ground floor – lobby and reception area, 391 sqm of retail floor area across six premises (one defined as a café), four one bedroom dwellings each with a terrace that faces east and a public pedestrian access from Geelong Road to the recreation reserve at the rear.



- d) *The driveway ramp with a width of at least 6.0 metres for a length of at least 6.0 metres inside the front property and at a grade no steeper than 5% (1 in 20), before tapering to a width of 4.0 metres – 5.5 metres on the remainder of the ramp.*
- e) *A distance of at least 1.0 metre between the driveway ramp showing all relevant design levels, grades, transition and main ramp lengths, vertical curve lengths and headroom clearance.*
- f) *Swept path diagrams for the 85<sup>th</sup> percentile vehicle (and any larger vehicle expected to enter the basement carpark) that shows the ingress and egress travel paths along the ramp and entering/exiting the basement carpark, including ingress/egress from relevant car spaces. The swept path diagrams must be prepared by a qualified traffic engineering consultant.*
- g) *Details and drawings of the basement carpark traffic signal system demonstrating how the system will operate, including (but not limited to) vehicle holding points, traffic signal locations, locations of inductive loops, specifications and maintenance schedules.*
- h) *Allocation of each on-site car space to a particular dwelling or retail tenancy.*
- i) *A Parking Design and Allocation Plan in accordance with Condition 47.*
- j) *A linemarked edge line in the Portarlington-bound carriageway, between the intersections with Hereford Street and Sproat Street, to depict a minimum 3.3 metre traffic lane and a maximum 2.5 metre parking lane.*
- k) *Provision of 18 bicycle spaces, including 5 accessible to the public.*
- l) *The basement 'stores' designed so that there is clear pedestrian access. The location of mailboxes.*

Other pertinent conditions are:

- Condition 11 – requirement for a waste management plan
- Condition 14 – a Section 173 agreement that enshrines public (not just the buildings residents) access along the western side of the ground floor to the recreation reserve at the rear
- Condition 15 – a screening plan that addresses overlooking
- Condition 48 – VicRoads requirement for line marking and no standing zone as well as a protected right turn lane and associated road widening to provide safe access and egress to and from the site to Geelong Road.

## **1.9 Panel directions**

### **1.9.1 Potential land contamination**

The Panel, in its covering letter to the directions and timetable, noted that:

*Amendment C321 proposes to apply the Environmental Audit Overlay (EAO) to the land to be rezoned, including the land the subject of draft Planning Permit 1234/2015. A sensitive use (residential apartments) is proposed. The EAO requires either a certificate of environmental audit or a statement from an*

*environmental auditor appointed under the Environment Protection Act 1970 that the environmental conditions of the land are suitable for the sensitive use. The Panel notes that neither the Amendment nor permit application contains:*

- *Information on the history of land use on the site; or*
- *Information on the nature of the fill on the site.*

*The Panel is concerned that Council may not have had information to satisfy itself under the provisions of Ministerial Direction No 1 – Potentially Contaminated Land or the EAO that the land is suitable for the sensitive use. Directions 9 and 10 address this matter.*

In response to Direction 9, Council proposed a permit condition that required further investigations to meet the requirements of the EAO.

In response to Direction 10, the Proponent provided an environmental site assessment (Douglas Partners) that reviewed the site history but did not conduct any bore hole analysis and recommended:

*Based on a medium potential for contamination, a detailed site investigation (DSI) would be required to assess the contamination status of the site. The DSI should include a thorough assessment of the quality of filling at the site with reference to Australian Standard 4482.1-2005. It should also seek to classify the soil for off-site disposal which will be required prior to excavation for the basement construction commencing on the proposed development.<sup>6</sup>*

Council then proposed the following new permit condition to address this deficiency in the exhibited permit:

- 4 *Prior to the commencement of site works, either:*
  - a) *A certificate of environmental audit for the land must be issued in accordance with Part IXD of the Environment Protection Act 1970, or*
  - b) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for residential use of the development hereby approved.*

*to the satisfaction of the Responsible Authority.*

*Where a Statement of Environmental Audit is issued for the land, the development hereby approved must comply with all the directions and conditions contained within the Statement.*

### **1.9.2 Natural light to bedrooms**

Direction 11(e) required Council to advise how the Type 1 apartments provided natural light to the bedroom. Figure 4 contains the layout of the Type 1 apartment which comprises 18 of the 55 apartments proposed (or 33 per cent of the units).

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<sup>6</sup> Douglas Partners ESA, page 9

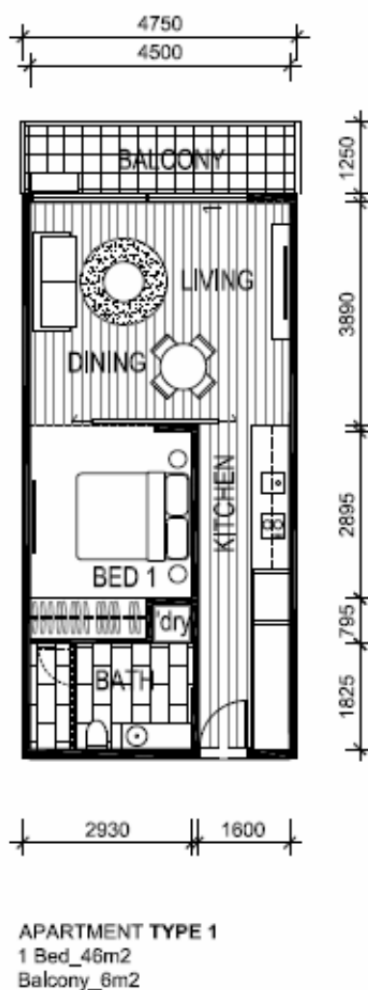


Figure 4 Type 1 apartment

The Panel was concerned that the bedroom did not have a window and relied on borrowed light via the dining and living area next to a recessed terrace. A response was to be provided in Council's Part A submission to be distributed prior to the Hearing. However, the Proponent addressed this issue with the circulation of unsolicited<sup>7</sup> amended plans by redesigning the apartments to ensure all bedrooms directly accessed natural light, amongst other changes.

### 1.9.3 The response from the Proponent

#### (i) Amended plans

A full set of amended plans was circulated by the Proponent in advance of the Hearing which, the Panel heard at the Hearing, resulted from a peer review of the plans by Ms Wright of Spiire that *incorporate corrections, clarification of material finishes and amendments listed below:*

<sup>7</sup> The amended plans were not requested by the Panel or its Directions

Corrections:

- *Applicable plan scale at A1 and A3*
- *Deletion of reference to 'dwelling' at 34 Geelong Road (west of the site)*
- *Removal of roof level visibility of people on east/west elevations – correction with roof level plan (planter separation/screening)*

Clarification:

- *External finishes within north elevation – retail/commercial unit (north east) corner*

Amendments:

- *Reduction in the number of apartment dwellings within the buildings*
- *Variation in the mix of apartment dwellings as detailed in the Development Summary*
- *Removal of front fence and section of side fence (western boundary)*
- *Roof level – continuation of planting treatment adjacent to stairwell and lift (planter separation/screening).<sup>8</sup>*

Additional plans (TP5-001 Rev E, TP6-001 Rev F, TP6-002 Rev B) were provided to address Panel Direction 13 that required elevation plans that showed the proposal in context with adjoining and beyond development from Geelong Road and the recreation reserve to the rear.

The schedule to these plans showed 49 apartments, yet the plans detailed 43.

The Panel requested prior to the Hearing a detailed schedule of changes from the exhibited plans to assist the Panel and other parties on the first day of the Hearing.

At the Hearing, the Proponent presented a further full set of amended plans that consolidated other plans that had been circulated the week prior to the Hearing. As Ms Wright took the Panel through the schedule of changes it became apparent that further detail was required in order to fully understand the degree of change from the exhibited plans.

Mr King circulated an email on 14 June 2016 to the Panel and other parties that raised concerns over the amended plans. He stated:

*We continue to act for Sam Casa.*

*We note from the two emails below that it appears to be the proponent's intention to try and substitute amended plans for the exhibited plans at the commencement of the hearing. We wish to advise that our client objects to such a substitution and believes that any late substitution would seriously prejudice his case. We will raise this matter with the panel chair at the commencement of the hearing tomorrow. The purpose of this email is give all parties including the panel the opportunity to consider the relevant issues prior to the hearing.*

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<sup>8</sup> Spiire letter dated 7 June 2016

*We submit the principles of procedural fairness and natural justice both need to be given careful consideration before allowing these amended plans.*

*We wish to advise that our client objects to such a substitution and believes that any late substitution would seriously prejudice his case. We will raise this matter with the panel chair at the commencement of the hearing tomorrow. The purpose of this email is give all parties including the panel the opportunity to consider the relevant issues prior to the hearing.*

*We submit the principles of procedural fairness and natural justice both need to be given careful consideration before allowing these amended plans.*

*It is noted that the application/exhibited plans are dated September 2014. The proponent has had ample time throughout the exhibition process, the Council consideration process the directions hearing for the panel to apply or foreshadow they are seeking to amend the plans. The proponents have never foreshadowed such amendments.*

*To attempt to substitute new plans at this late stage in the hearing will mean that the Council has not had the opportunity to consider those, the effects on other members of the public have not been able to be properly considered and further advertising may or may not be required. Of more immediate importance is the fact that our clients case including the only expert evidence before the panel has been prepared on the basis of the exhibited plans.*

*As an indication of what may be considered a reasonable process for amending or substituting plans we refer the panel to VCAT practice note PNPE 9. We submit the panel's duty to act fairly is reinforced by the general procedures for hearings outlined at Section 161 of the Planning and Environment Act 1987.*

*Noting that the panel hearing is due to commence tomorrow and all parties presumably are ready to proceed we suggest that the hearing be conducted on the basis of the exhibited plans. If ultimately the rezoning occurs and the Minister directs that a permit should issue, then the proponents would have the opportunity to amend their plans either as a secondary consent or through the process outlined in the Act.*

Ms Wright received instructions from the Proponent on Day 1 to revert back to the exhibited plans and stated that it would consider any further amendments to the proposal (referring to the amended plans) if the amendment/permit is successful.

Some of the key changes to the amended plans were:

- a reduction in the number of apartments from 55 to 43
- an overall reduction in building height from 13.6 metres to 12.3 metres at the Geelong Road frontage achieved by reducing the floor to ceiling height at ground level from 4.3 metres to 3.0 metres. The height does not account for the roof top terrace, lift overrun and services.

**(ii) Rear access to the recreation reserve**

During the Hearing, the Proponent advised the Panel on a number of occasions that the rear pedestrian access to the recreation reserve was a Disability Discrimination Act (DDA) compliant ramp. The exhibited plans seem to indicate steps. The Panel directed the Proponent to provide further plan detail that demonstrated the ramp was DDA compliant within the current extent shown. In an email response to Planning Panels Victoria on 23 June 2016 further plans were provided that detailed a DDA compliant ramp that extends further than that shown on the exhibited plans and occupies the full width of the block. Figures 5 and 6 show the exhibited and revised rear access.

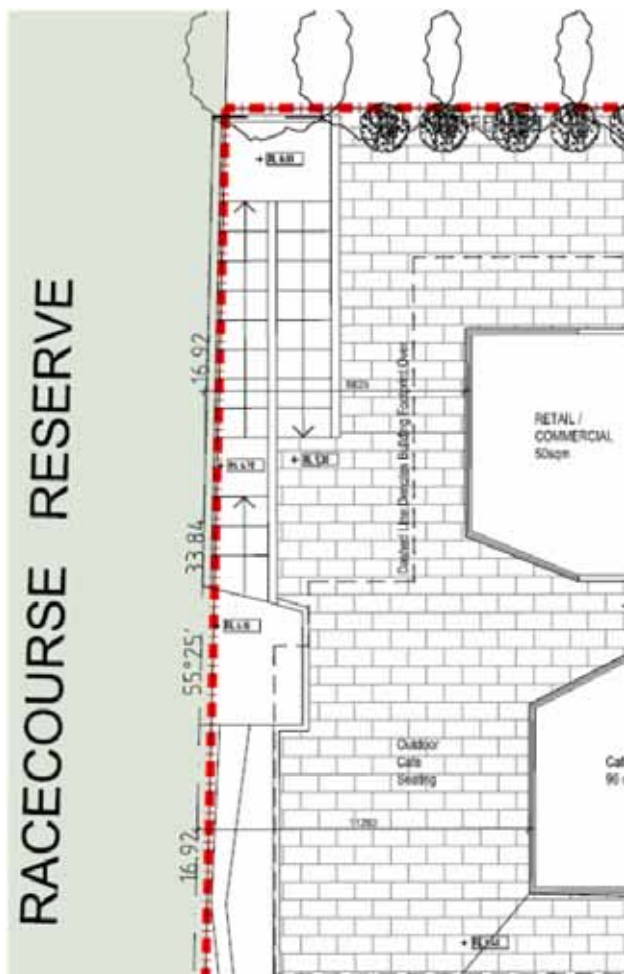


Figure 5 Exhibited access - stairs

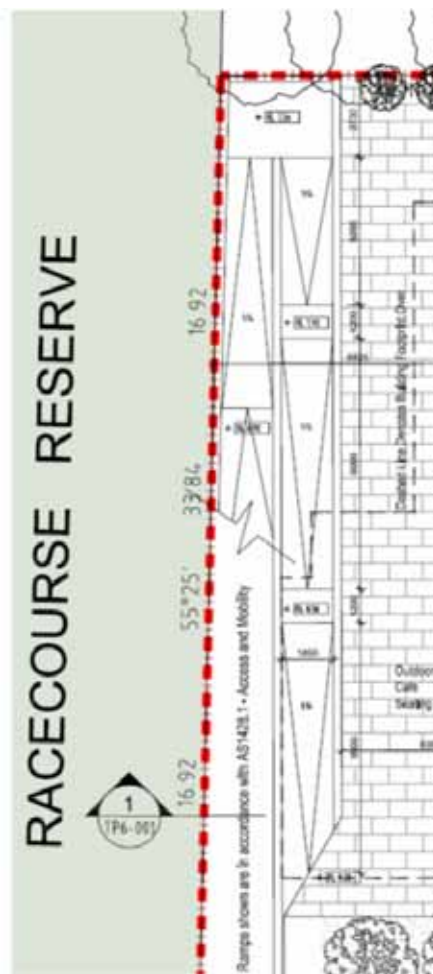


Figure 6 Revised access - ramp

This confirmed to the Panel that the access to the rear shown on the exhibited plans was not DDA compliant.

**1.10 Post exhibition changes to the planning permit**

Council submitted an updated planning permit that it wished to rely on at the Hearing. This revised permit contained a variety of changes and is marked 'Panel Hearing Version 1'. For the purpose of this report, future references to the planning permit refer to this version.

The key changes are:

- Condition 1 – delete part (j) and add:
  - n) *Deletion of any reference or inference of boundary fencing along the front (southern) property boundary.*
  - o) *1.8 metre high fencing of ground floor secluded private open space areas to prevent these areas being accessed by the public.*
  - p) *Locations of windows and doors to retail/commercial tenancies.*
  - q) *Details of proposed advertising signs.*

- Conditions 4 and 5 – new conditions:

**Environmental Audit**

4 *Prior to the commencement of site works, either:*

- a) *A certificate of environmental audit for the land must be issued in accordance with Part IXD of the Environment Protection Act 1970, or*
- b) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for residential use of the development hereby approved.*

*to the satisfaction of the Responsible Authority.*

*Where a Statement of Environmental Audit is issued for the land, the development hereby approved must comply with all the directions and conditions contained within the Statement.*

5. *Where a Statement of Environmental Audit is issued for the land, prior to the occupation of the development hereby approved, and prior to the issue of an Occupancy Permit under the Building Act 1993, a letter prepared by an Environmental Auditor appointed under Section 53S of the Environment Protection Act 1970 must be submitted to the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied.*

- General renumbering of conditions to reflect the above.
- Add “*unless otherwise approved in writing by the Responsible Authority*” to conditions 8, 11, 12, 13, 14, 15, 16 and 18.
- Add new condition 17:

**Section 173 Agreement – Statement of Environmental Audit**

17. *Unless otherwise approved in writing by the Responsible Authority, where a Statement of Environmental Audit is issued for the land and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, prior to the commencement of the development the permit holder must enter into an Agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act*

*1987. All costs associated with setting up the Agreement must be borne by the owner. The Agreement must be registered on Title and run with the land, and must provide to the satisfaction of the Responsible Authority:*

- a) That the registered proprietor will undertake all required maintenance and/or monitoring in accordance with the Statement.*
- b) Prior to the development commencing, application must be made to the Registrar of Titles to Register the Section 173 Agreement on the title to the land under Section 181 of the Planning and Environment Act 1987.*

- Add new condition 22:

***Public Open Space Contribution***

*22. The owner of the subject land must pay to the Council a sum equivalent to 10 per cent of the site value of all of the land in the subdivision as a Public Open Space contribution pursuant to Clause 52.02 of the Greater Geelong Planning Scheme. The contribution will be payable prior to the issue of a Statement of Compliance.*

This resulted in a total of 55 permit conditions. Appendix C contains 'Panel Hearing Version 1' of the permit with post exhibition changes tracked.

Council advised the public open space contribution condition was inadvertently omitted from the exhibited permit.

Conditions 4 and 17 respond to the EAO that is to be applied to the permit land.

## 2 Identification of issues

### 2.1 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

#### 2.1.1 Greater Geelong City Council

The key issues for the Council were the Amendment and permit proposal would:

- deliver a zone and development that is more compatible with surrounding residential and recreation uses
- regenerate an unattractive and underutilised commercial precinct that has a prominent town entry location, access opportunities to the reserve, and natural advantages of views and proximity to the bay
- support the local economy during and after construction
- fulfil a gap in the tourist accommodation market for the northern Bellarine
- protect the primary retail role of the Portarlington town centre
- respect the recognised urban character values of Portarlington and enhance the town's role and identity
- deliver a high quality, architecturally designed building that will attract visitors and residents, and set a benchmark for new development in Portarlington
- ensure potentially contaminated land and amenity impacts are addressed
- relieve pressure on development of land outside of the township settlement boundary.

#### 2.1.2 Batman Management Group - proponent

The Proponent raised similar issues to that of Council. The Proponent provided the following additional issues:

##### (i) Amendment C321

- The Panel may wish to support some of the design improvements from the 'amended plans' in relation to building height and design.
- There are no current building height restrictions.
- The MUZ is the most appropriate zone as it allows for the consideration of accommodation and some retail uses.
- Increased building height should be expected in Portarlington and planning policy does not intend to prevent change.

##### (ii) Planning Permit 1234/2014

- It will facilitate the renewal of a poorly presented precinct.
- It will provide for public access to the recreation reserve to the rear.
- Is DDA compliant at all levels.
- It will meet a need across the Bellarine for tourist and short stay accommodation.
- It will not impede access to views for properties in the area.
- It complies with all relevant policy and variations to the ResCode standards are acceptable.

- Should not be hindered by being the first to pursue the scale of development that policy intent would facilitate.

### **2.1.3 Individual submitters**

#### **(i) Amendment C321**

##### Objections

- Council has put ‘the cart before the horse’ as there is no strategic support for the rezoning within the planning scheme or the PSP 2007. The PSP 2016 is not a seriously entertained planning proposal as Ministerial authorisation has not been granted, it has not been exhibited and has not been considered by a panel.
- The PSP 2016 is driven by this proposal and the PSP 2007 was not expected to be reviewed until 2020.
- The site is not a prominent or gateway site where a built form statement could be made.
- The rezoning will not result in a net community benefit.
- A Design and Development Overlay should be in place to guide the future development of the precinct.

##### Support

Submitters 10, 12, 15, 28, 30 and 31 supported both the Amendment and the permit proposal on the following basis:

- The development will fill a critical shortage for short stay accommodation in the Bellarine.
- The site is suitable for higher density development.
- The development will facilitate greater duration of stays on the Bellarine and increased spending in the local economy.
- The development will increase the number of jobs for locals during and after construction.
- The development has a high standard of urban design.

#### **(ii) Planning Permit 1234/2014**

##### Objections

- Design, height and bulk of the building will be incompatible with the surrounding residential character.
- Development of this scale should be located within the town centre or the Residential Growth Zone Schedule 3 (RGZ3) which provides for increased housing diversity. The impact of additional retail floorspace on the town centre is unknown.
- Cannot understand how the additional parking and bicycle spaces can be accommodated within the footprint of the basement.
- The proposal will impact the views of adjoining residents.
- The proposal will increase parking and traffic congestion.
- The proposal will have amenity impacts from construction noise, overlooking and use of the rooftop deck.
- Accept the public access to the recreation reserve and the provision of tourist accommodation are positive aspects.

The Panel notes that submitters 2, 7, 18, 20, 25, 35 while objecting to the scale of the development, concede that the Amendment land has development potential at a less intense scale.

## **2.2 The approach of the Panel**

The Panel must first consider whether the land should be rezoned as this provides the ability to consider the draft planning permit. If the Panel does not support the rezoning, then the permit cannot be supported as the C2Z prohibits 'accommodation' uses.

## **2.3 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning context

### Chapter 4 - Amendment C321

- Has the role of the Amendment land changed?
- Is the Amendment land a 'gateway' site?
- Can the Amendment land accommodate residential development?
- Is high density residential development appropriate?
- Has the use of the Mixed Use Zone been strategically justified?
- Is the rezoning premature?
- Is further design and built form guidance required?

### Chapter 5 - Planning Permit 1234/2014

## **2.4 Issues not addressed in this report**

The Panel notes that some submissions are concerned about loss of property values. This issue has been raised in many Panel and VCAT hearings and is not a relevant planning consideration. The Panel does not consider this issue further.

### 3 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

#### 3.1 Policy framework

##### (i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

- Clause 11.05-5 (Coastal settlement) – encourages urban renewal and development within settlement boundaries to avoid urban sprawl.
- Clause 11.07 (Geelong G21 regional growth) – Portarlington is designated as a settlement and is not identified as an area where significant growth is expected.
- Clause 11.14-1 (Localised planning statements) – refers to the Bellarine Peninsula Localised Planning Statement 2015. The statement seeks to maintain the non-urban breaks between settlements, protect the coastal ecology, protect urban character values and support the sharing of views, ensuring new development is consistent with structure plans and supports sustainable tourism.
- Clause 12.02 (Coastal areas) – refers to the Victorian Coastal Strategy 2014 and its four principles:
  - Principle 1: Ensure the protection of significant environmental and cultural values.
  - Principle 2: Undertake integrated planning and provide clear direction for the future.
  - Principle 3: Ensure the sustainable use of natural coastal resources.
  - Principle 4: Ensure development on the coast is located within existing modified and resilient environments where the demand for development is evident and any impacts can be managed sustainably.
- Clause 13.03-1 (Use of contaminated and potentially contaminated land) – aims to ensure that potentially contaminated land is suitable for its intended use and development.
- Clause 15 (Built environment and heritage) – seeks to ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.
- Clause 17.03-1 (Facilitating tourism) – seeks to encourage tourism development and consider any relevant regional tourism development strategy.

The Panel considers there are significant strategic issues contained in the State Planning Policy Framework that require further discussion. These include the strategic justification of the Amendment and how the proposal is consistent with Portarlington's role as a seaside

village with incremental growth potential in the G21 Regional Growth Plan and the Bellarine Localised Planning Statement.

## **(ii) Local Planning Policy Framework**

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.06 (Settlement and housing) is supported because the Amendment and proposal:
  - are located on land within the settlement boundary and provide for a new accommodation mix that is not currently present in Portarlington
  - are located on land within the MUZ where support for medium density housing is a purpose of the zone.
- Clause 21.07 (Economic development and employment) – seeks to retain the primacy of the Portarlington town centre as a focus for retail and commercial development.
- Clause 21.14 (The Bellarine Peninsula) – contains the Portarlington Structure Plan that seeks to retain the Business 4 Zone on the Amendment land and to consolidate the town centre.

The Panel considers there are significant strategic issues in the Local Planning Policy Framework that require further discussion. These include:

- the level of support for mixed use development and apartment style housing on the Amendment land
- its impact upon on the Portarlington town centre
- whether development of this scale should be provided elsewhere.

## **(iii) Other planning strategies or policies used in formulating the Amendment**

### **G21 Regional Growth Plan**

The G21 Regional Growth Plan 2013 manages growth and land use pressures across the Geelong region to 2050. The Plan reinforces the role of structure plans as key policy instruments to provide more detailed growth planning for towns, including Portarlington.

Figure 7 identifies Portarlington as an area for incremental growth.

### **Portarlington Structure Plan 2007**

The PSP 2007 has the following relevant provisions:

- The Amendment land is to retain the Business 4 Zone to promote the ongoing development of Geelong's seafood and aquaculture industry, particularly Aussie Blue Mussels which has now vacated 42 Geelong Road Portarlington and been replaced by a seafood retailer. These uses are now encouraged to locate at the Portarlington industrial estate in Tower Road.
- Preserving residential character which includes the open coastal setting, modest scale buildings and landscape features.
- Providing for a reasonable sharing of views.
- Focus redevelopment for medium density housing within walking distance (400 metres) of the Portarlington Town Centre.

- Encourage incremental infill medium density housing throughout the remainder of the Residential 1 zoned areas, subject to neighbourhood character considerations.



Figure 7 Excerpt of G21 RGP – Identified planned growth

Sensitive interfaces such as residential areas along the coast required a Design and Development Overlay (DDO) control. The Amendment land was not identified as a candidate for the DDO as the policy was to retain its commercial focus for the seafood industry at the time. The Amendment does not propose a DDO for the land.

Figure 8 contains the current Portarlington Structure Plan.

### Portarlington Structure Plan 2016

Council submitted that the PSP 2016 should be given significant statutory weight as a planning scheme amendment is likely to be on exhibition in August 2016 (Amendment C352) to implement it in the planning scheme. The amendment had been submitted to the Minister for Planning seeking authorisation, however this had not been granted at the time of the Hearing.

Figure 9 contains the proposed Portarlington Structure Plan.

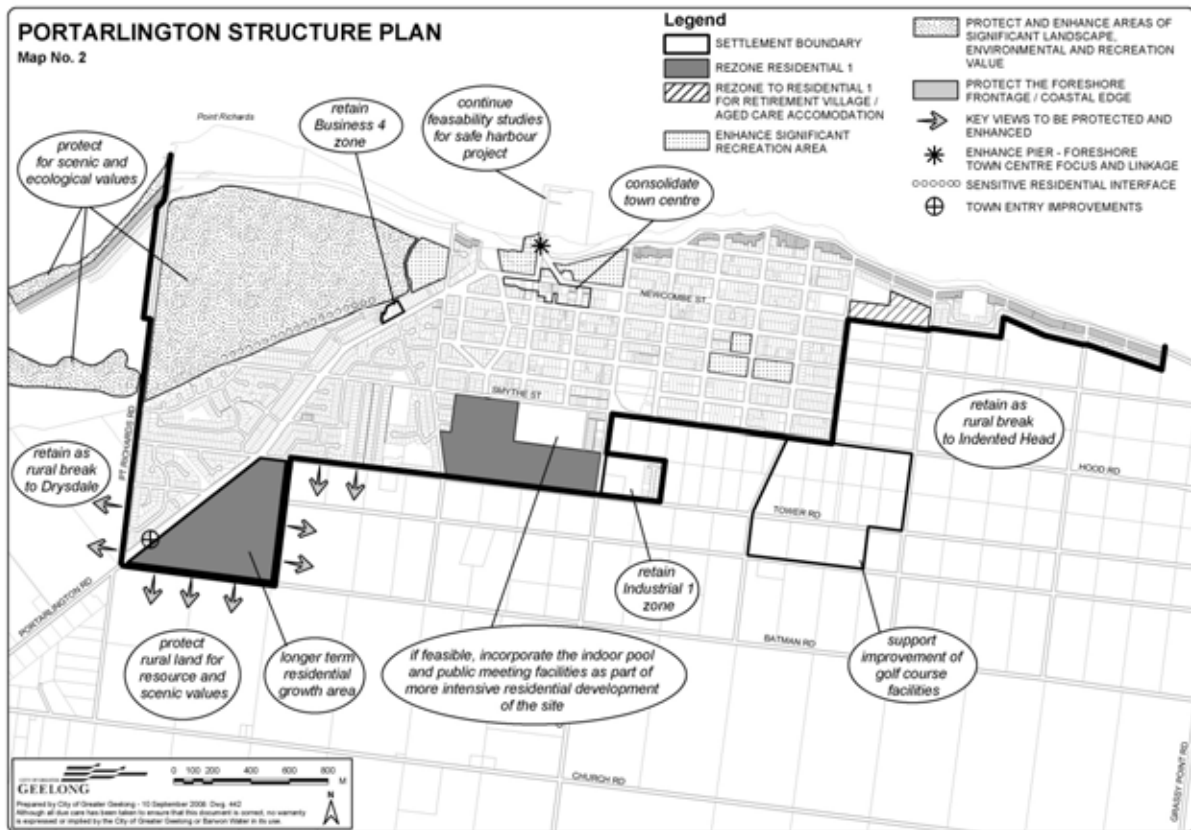


Figure 8 Current Portarlington Structure Plan

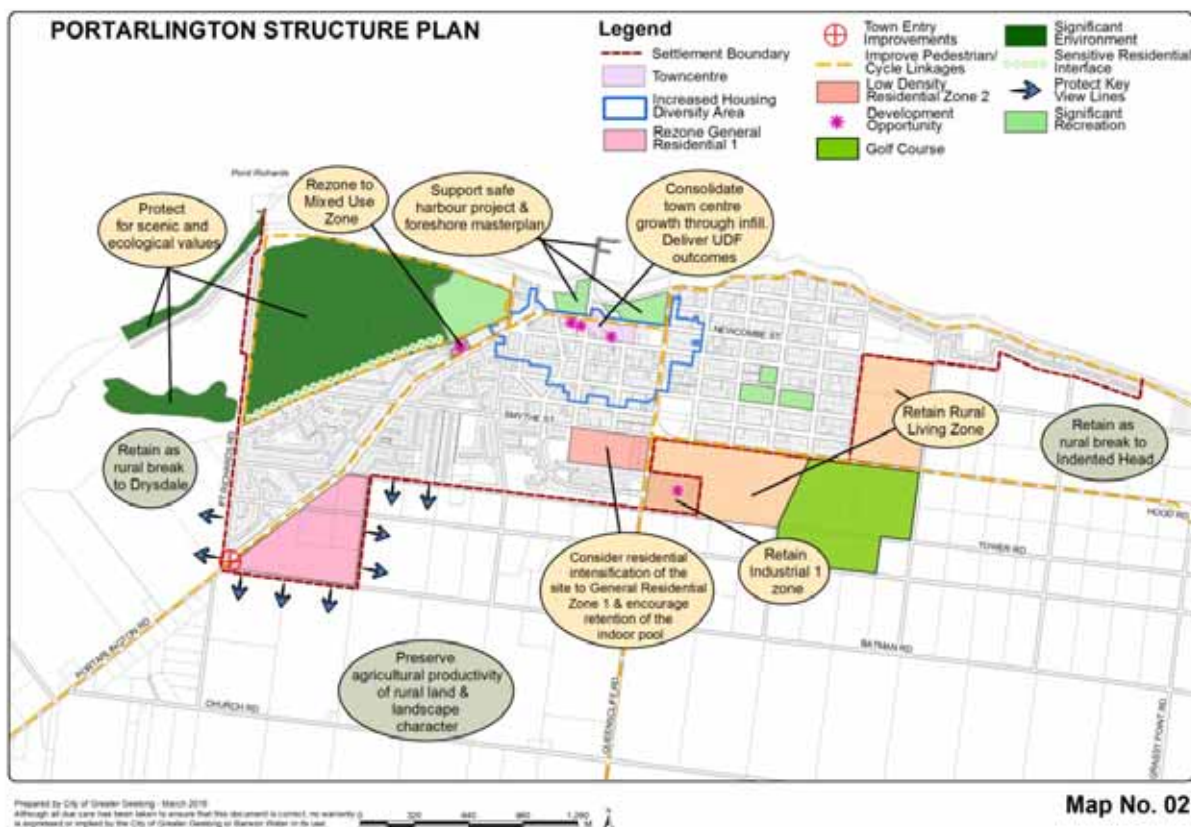


Figure 9 Proposed Portarlington Structure Plan

The PSP 2016:

- deletes the designation to retain the B4Z and replaces it with 'rezone to mixed use zone'
- uses the term 'Increased Housing Diversity Area' (IHDA) to refer to development within 400 metres of the town centre where the Residential Growth Zone (RGZ) applies
- maintains the reference in the G21 RGP to limit the growth of Portarlington
- refers to the Urban Design Framework 2011 for Portarlington that focusses on building design and scale opportunities within the town centre
- refers specifically to the Amendment as one of two secondary centres along Geelong Road where it states:

*The change to a mixed use zone will retain the ability for the area to cater for smaller scale, local service businesses and uses related to local produce. It will be important to encourage non-accommodation and activated uses on the street front at the ground floor level within the area. Development design should recognise the prominent entry location of the site to Portarlington. Development should also ensure that a pedestrian connection is provided from Geelong Road to the Portarlington Recreation Reserve.<sup>9</sup>*

A relevant direction is:

*Support the mixed use development at 30 to 42 Geelong Road where accommodation uses are not encouraged at the street front on the ground level.<sup>10</sup>*

The reliance on the PSP 2016 to strategically justify the rezoning and permit application is a central concern for a number of the submitters. The Panel considers this is a valid concern and discusses this more fully in Chapter 4.

## **3.2 Planning scheme provisions**

### **3.2.1 Zones**

The Amendment proposes to rezone the land from C2Z to the MUZ.

Land to the west, east and south is zoned GRZ2. The GRZ2 has a mandatory height of 9 metres with potential to go to 10 metres in line with the slope of the land.

Land to the north is zoned Public Park and Recreation Reserve.

### **3.2.2 Overlays**

The Amendment applies the EAO to the Amendment land.

The Amendment land currently does not have any height controls and Council has not elected to impose height controls via the Amendment.

The GRZ2 land adjoining the Amendment land is affected by the DDO14 that triggers the need for a permit for a dwelling greater than 7.5 metres in height.

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<sup>9</sup> Portarlington Structure Plan 2016, page 14

<sup>10</sup> Ibid, page 16

### **3.3 Ministerial Directions and Practice Notes**

#### **3.3.1 Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

##### **Direction No 9 - Metropolitan Strategy**

Portarlington is not identified as a peri-urban (rural-urban interface) town with growth potential. Council submitted the growth envisaged by the Amendment is within the settlement boundary and supported by localised planning and therefore is not impacted by this designation.

##### **Direction No 11 - Strategic Assessment of Amendments**

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments).

##### **Direction No 17 – Localised Planning Statements**

Council submitted the Amendment is consistent with the Bellarine Localised Planning Statement.

##### **The Form and Content of Planning Schemes (s7(5))**

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

#### **3.3.2 Planning Practice Notes**

##### **Planning Practice Note 78 *Applying the Residential Zones (PPN78)***

Council submitted the use of the MUZ was consistent with the direction provided by PPN78.

### **3.4 Discussion**

The key issues for the Panel are:

- whether there is sufficient strategic justification to use the MUZ
- whether high density housing is appropriate for the Amendment land
- whether there should be some control on building height
- what statutory weight should be afforded to the PSP 2016.

In relation to the draft permit, the height and scale of the building, lack of parking and traffic congestion and pedestrian access are the key issues.

These matters are addressed further in the report.

## 4 Amendment C321

### 4.1 The issues

The Panel considers the following key issues require further consideration:

- Has the role of the Amendment land changed?
- Is the Amendment land a 'gateway' site?
- Can the Amendment land accommodate residential development?
- Is high density residential development appropriate?
- Has the use of the Mixed Use Zone been strategically justified?
- Is the rezoning premature?
- Is further design and built form guidance required?

These issues are addressed below.

### 4.2 Has the role of the Amendment land changed?

#### 4.2.1 Evidence and Submissions

Council and the Proponent considered the role of the Amendment land had changed since 2007 when it was identified as a precinct for the seafood/aquaculture industry and other local service uses. The aquaculture industry (referred to then as a business operated as Aussie Blue Mussels) have vacated the site and only a seafood retailer, boat sales and repairer and other non-aquatic uses remain on site. In their opinion, the future use of the Amendment land should provide for alternate uses that include residential development.

Council considered the Amendment land is now an urban renewal site with redevelopment opportunity as there has been a shift from its commercial role. Mr Clarke referred the Panel to Clause 21.06-3 of the Greater Geelong Planning Scheme in highlighting that the Amendment land is not identified as a 'Key Development Area' and cannot be considered as a strategic redevelopment site as it does not qualify as a 'gateway' site (refer to discussion Section 4.3).

One of the issues raised in support of the rezoning was that it could facilitate development that would meet the regional need for high quality tourist accommodation. The permit application proposes apartment-style accommodation which could be used for short stay or holiday accommodation, although this would be dictated by the market conditions as there is no permit condition proposed to control the nature of the tenure. Council and the Proponent referred to the *Greater Geelong and The Bellarine Tourist Development Plan 2016* that demonstrated a need for development of self-contained apartment/hotel accommodation. The Committee for Bellarine and the Portarlington Business Development Association both supported the development as it provides much needed tourist accommodation for the region.

Council agreed with the Panel that this style of accommodation may also meet a need for those that wish to age in place and down size to more appropriate permanent accommodation.

#### **4.2.2 Discussion**

The Amendment land was initially in the Business 4 Zone which translated to the Commercial 2 Zone with the new suite of commercial zones. The purpose of the precinct as described in the PSP 2007 was:

*The existing Business 4 zoned land on Geelong Road should be retained to cater for smaller scale, local service business and uses related to fishing/aquaculture, local produce, tourism and wineries.*

The Panel agrees that the strategic direction for the Amendment land now is not the same as it was in 2007. Market changes has determined this. The current mix of uses indicates there is a transition underway already.

The Panel does not consider the current seafood retailer strategically supports the use of the Amendment land for the aquatic/seafood industry, any more, than other uses in the precinct. Similarly, the boat sales and repairs use, while benefitting from the main road location, is not reflective of the 2007 role for the precinct. The aquaculture industry has vacated the Amendment land.

Land is now available in Portarlington for this industry and other uses to establish at the north west corner of Queenscliff-Portarlington Road and Tower Road. The Panel expects this transition will continue to occur, however this may be slowed by the benefits of a main road frontage for some of the current uses.

The Panel agrees that, on the basis of the documents presented, there is a need for self-contained apartment style accommodation in the Bellarine generally, and more specifically Bellarine north. This style of accommodation will assist in extending the stays of visitors and retaining expenditure in the region instead of it 'leaking' to Geelong and other areas.

The Panel notes that, at the local level, the type of redevelopment envisaged by the Amendment and permit is significant and the planning scheme should identify what the future role of the land is. This should be clearly defined to support the transition to a new form of use and development.

#### **4.2.3 Conclusion**

The Panel concludes:

- the role of the Amendment land has changed from a seafood/aquatic use focus to a greater mix of uses with no defined or clear current role
- there is a need to clearly define what the role of the Amendment land is and the nature of use and development that is envisaged
- the Bellarine north, which includes Portarlington, has a strategic need for short stay tourist accommodation.

### **4.3 Is the Amendment land a 'gateway' site?**

#### **4.3.1 Evidence and Submissions**

Council submitted that the Amendment land represented a 'gateway' site for the western entrance to Portarlington and therefore could accommodate higher density development.

Council referred to the PSP 2016 where the Amendment land is identified as a ‘development opportunity’ on the PSP 2016.

Mr Clarke, in providing planning evidence for Mr Casa, agreed that the Amendment land presented an opportunity for renewal, however, he did not agree it represented a ‘gateway’ site as the land:

- is not located at the western entry to Portarlington
- is not a corner site
- is at a mid-block location in a dip in the road
- is a ‘main street’ location that is not particularly relevant to Portarlington.

#### **4.3.2 Discussion**

As a precinct, the Amendment land is significant in its context to surrounding use and development by virtue of its land size, different use, under-utilised land, eclectic mix of buildings and length of frontage to Geelong Road. This, in itself, is one factor in support of alternate uses for the site but should not be a determining factor for the scale of development that could be accommodated due to its perceived ‘gateway’ characteristics.

The land is over one kilometre inside the western extent of the town, is not a corner site which would be more exposed to view and traffic and is at a mid-block location in a slight dip in the road. The Panel has already accepted the Amendment land has re-development potential, however it should not be considered as a ‘gateway’ site into Portarlington.

Further, the PSP 2007 makes no references to the Amendment lands’ significance as a ‘gateway’ and Council relies on the PSP 2016 that identifies it as a development opportunity site. This, however, should not be interpreted as the Amendment land not being able to support further development. The Panel has agreed that the role of the Amendment land has changed and its future role needs to be determined. The nature and scale of development is discussed at Sections 4.5 and 4.8.

The Panel agrees with Mr Clarke that the Amendment land does not present itself as a ‘gateway’ site.

The Panel notes that no other parties called planning or urban design evidence on this issue.

#### **4.3.3 Conclusion**

The Panel concludes the Amendment land:

- represents a large site within the context of Portarlington
- is not a ‘gateway’ site given its context and location.

### **4.4 Can the Amendment land accommodate residential development?**

#### **4.4.1 Evidence and Submissions**

Council and the Proponent considered that:

- the Amendment land is underutilised and poorly presented and in need of renewal
- introducing residential uses would be consistent with the surrounding use of land.

The Amendment includes the application of the EAO to address any potential contamination issues. The Douglas Partners report, submitted in response to Panel Direction No 10,

confirms the permit land has a medium risk of contamination. A certificate of environmental audit or a statement from an environmental auditor is required to confirm a sensitive use is appropriate for the land.

Mr Clarke considered residential uses in the precinct would be appropriate but that co-locating residential and non-residential uses should be considered further.

Submitters 10, 12, 15, 28, 30 and 31 supported the proposed development at the permit site and therefore generally considered the site could accommodate residential development.

#### **4.4.2 Discussion**

The Amendment land has been zoned for commercial use for many years. None of the buildings could be considered as purpose built for their current uses. Old iron sheds and re-used dwellings seem to be the main type of structures that remain today.

As a precinct, the Panel agrees that it presents as a disjointed mix of structures with little formality which is likely to undergo regeneration at some point in the future, whether it is retained for commercial uses or not. The question for the Panel is whether this regeneration should include residential use.

All surrounding land (apart from the recreation reserve at the rear) is used solely for residential purposes. Apart from the medium density residential development to its west, most, if not all, residential uses are a single dwelling on a lot. Therefore, the Panel considers that introducing residential uses is consistent with the underlying land use.

The regeneration of 'brownfield' sites, that are still actively used, for alternate uses inevitably has the potential to create conflict, particularly when residential uses are introduced. Mr Clarke stated that he noticed a smell from the seafood retailer that could potentially be a concern for those living close by. The Panel believes that, while these concerns may be real, they are relatively minor and that none of the existing uses are listed in Clause 52.10 (Uses with adverse amenity potential). 'Seafood processing' is listed however the current use operates more as a seafood retailer, than a processor.

The application of the EAO will address any potential contamination of the Amendment land. The Panel accepts the Douglas Partners report for the permit land concludes it has a medium risk of contamination and that other land in the precinct will also require an environmental site assessment to understand the level of contamination. These matters can be appropriately managed by the overlay control.

The Panel was surprised that this matter was not addressed by the draft planning permit at exhibition. However, this has now been addressed by a site assessment report and additional permit condition.

#### **4.4.3 Conclusion**

The Panel concludes:

- introducing residential use to the Amendment land:
  - is consistent with the surrounding underlying land use.
  - will not unreasonably be affected by the current land uses.
- the EAO will appropriately manage potential contamination issues for the Amendment land.

## 4.5 Is high density residential development appropriate?

### 4.5.1 Evidence and submissions

Council referred to the sites' potential to support high density residential development and referred the Panel to the MUZ zone purpose that "*provides for housing at higher densities.*"

Mr Clarke considered that by selecting the MUZ there is an implicit support that this location is suitable for higher density development, given the third zone purpose of the MUZ to provide for housing at higher densities. Mr Clarke considered the Amendment land was not appropriate for higher density residential development as the site:

- is located 600 metres from the town centre and therefore is not within what is considered as a reasonable walking distance to the town centre
- is not in the RGZ3 that signifies IHDA around the town centre
- is not a gateway site where significant housing density and built form would be expected.

Ms Hayes referred to Clause 21.06-3 which encourages medium density housing in the Mixed Use Zone, not high density housing.

### 4.5.2 Discussion

Under the C2Z, the Amendment land has no potential for increased housing densities as accommodation uses are prohibited. The Panel has acknowledged the role of the Amendment land has changed and its future role should include residential development. As there is a strategic shift in the future role of the Amendment land, the Panel considers that existing policy should support the use of the land for higher density housing. This is particularly so where the Amendment land, in context, is in an area that contains traditional residential development that, clearly has redevelopment potential, but at a reduced intensity. This is evidenced by the medium density housing to its immediate west and mandatory height controls that would facilitate redevelopment.

Council has the following local policy setting that directs housing intensity (Clause 21.06-3):

*Manage urban consolidation and housing change across the municipality, by:*

- *Accommodating medium and high density housing in Key Development Areas (as defined by the maps included in this clause).*
- *Maximising opportunities for housing within Increased Housing Diversity Areas (as defined in Clause 22.63 Increased Housing Diversity Areas) by accommodating;*
  - *high density housing in the activity centres consistent with their primary commercial and retail role; and*
  - *medium density housing in residential areas with more intensive development being located closest to the core of activity centres.*
- *Supporting appropriate medium density housing in the General Residential Zone (Schedule 1) areas.*
- *Providing for incremental change in the General Residential Zone (Schedule 2) areas.*
- *Limiting change in the Neighbourhood Residential Zone areas.*

- *Encourage medium density housing in the Mixed Use Zone.*

The planning scheme does not define medium and high density housing. As a guide though, it is clear Council policy attempts to differentiate between the two. High density housing in activity centres is encouraged which, in this case, would be the Portarlington town centre and less dense housing (medium density housing) in IHDA residential areas and the Mixed Use Zone.

The Panel notes Council's reference to the zone objectives. However, where there is a locally specific policy direction for the MUZ and what it could facilitate, the Panel considers this should take precedence. Council policy clearly seeks a medium density housing outcome for the MUZ. The Panel's conclusion on this matter may have been different if the planning scheme was silent on the MUZ or the Amendment proposed changes to this policy context that were soundly based. Neither is the case in this Amendment.

In support of this, the Panel notes the Amendment land is located 600 metres from the town centre and 100 metres from the RGZ3. What can be deduced from this policy setting is that high density residential development that includes a 4 storey apartment development with 55 dwellings is not appropriate on the Amendment land and that Council actively seeks this housing typology elsewhere in Portarlington.

#### **4.5.3 Conclusion**

The Panel concludes that the Amendment land is not appropriate for high density housing.

### **4.6 Has the use of the Mixed Use Zone been strategically justified?**

#### **4.6.1 Evidence and Submissions**

Council supported the use of the Mixed Use Zone as it:

- has as a zone purpose *"to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality" and "to provide for housing at higher densities"*
- *"would not disrupt the operations of existing businesses in the precinct and better complement the surrounding residential zone."*<sup>11</sup>

Council referred to the PSP 2016 to strategically justify the use of the MUZ in which the Amendment land is referred to as a development opportunity and to be rezoned to MUZ.

Council referred to the following policy in Clause 21.06-3 (Urban consolidation) to support the MUZ:

- Maximising opportunities for housing within IHDA (as defined in Clause 22.63 Increased Housing Diversity Areas) by accommodating:
  - high density housing in the activity centres consistent with their primary commercial and retail role
  - medium density housing in residential areas with more intensive development being located closest to the core of activity centres
  - encouraging medium density housing in the MUZ.

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<sup>11</sup> Council Part A submission, page 19

Council acknowledged the Amendment land “sits beyond the limit of Portarlington’s Increased Housing Diversity Area” and that “residential development outside of the Increased Housing Diversity Area would be expected to offer more conventional single or two storey product, or attached townhouses.”<sup>12</sup> Council’s position was:

*However, the context of the subject land is different in this case given its historic commercial use. The proposed development, in addition to 55 dwellings, contains retail outlets and a basement car park. Furthermore, the dwellings will be available for both permanent residency and as self-contained serviced apartments for short-term accommodation. The Accommodation Complex is located on the primary road in and out of Portarlington, and will be convenient to the Town Centre, foreshore and recreation facilities.*

In response to Mr Clarke’s assertion the site was isolated, Council submitted:

*The proposed Mixed Use Zone is not ‘isolated’ – it is located well within the settlement boundary, 600 metres from the Town Centre, surrounded by conventional and medium density housing, close to recreational and foreshore activities, and on the primary arterial road into Portarlington.*<sup>13</sup>

Council referred to Planning Practice Note 78 (PPN78) *Applying the Residential Zones* June 2015 in support of the MUZ that provides:

*The Practice Note (p. 7) states that the MUZ may be appropriate for:*

- *Brownfield or urban renewal sites*
- *Planned for apartment style development.*<sup>14</sup>

Council considered “the MUZ will allow for the proposed Accommodation and Retail Complex while also supporting the existing businesses and not undermining the primary retail role of the Portarlington Town Centre.”<sup>15</sup>

Council continued:

*The new zone will encourage further redevelopment which will also need to respond to the character values of the area, as is the case with concurrent Permit Application 1234/2014.*

*The MUZ includes Decision Guidelines at Clause 32.04-13, which will require permit applications to be assessed against a range of State and Local policies, consider amenity impacts, subdivision design and ResCode provisions.*

*Regardless of the merits of the Permit Application, the MUZ is considered to be a significantly better zone than the current C2Z, which is not encouraging investment and renewal. Because the MUZ sits within the residential suite of zones it will naturally be more compatible with the neighbouring General Residential Zone.*

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<sup>12</sup> Council Part A submission, page 55

<sup>13</sup> Council Part B submission, page 8

<sup>14</sup> Council Part A submission, page 59

<sup>15</sup> Ibid

*The proposed MUZ is also supported in the recently adopted 2016 Portarlington Structure Plan.<sup>16</sup>*

Mr Clarke considered “it should be a residential or non-residential outcome, and not attempt to be a combination of both.”<sup>17</sup> Mr Clarke considered the existing non-residential uses would become non-conforming under the MUZ and, if a rezoning was proposed, supported the GRZ2 for the site as this is the zone that surrounds the Amendment land.

#### **4.6.2 Discussion**

The Panel’s first reference is to the existing planning controls to seek direction on whether the use of the MUZ is appropriate.

Council’s reference to the PPN78 in support of the MUZ for brownfield sites is noted. However, PPN78 places a strong reliance on sound strategic planning to underpin the selection of zones; whether it is through a housing strategy or other strategic work. On this point, the Panel does not find any support within the current planning scheme provisions (including the PSP 2007) that indicate the Amendment land should be in the MUZ or is planned for apartment style development.

Council did not refer to a housing strategy to support the use of the land for apartment style housing. The Panel considers this is a fundamental flaw of the Amendment, particularly where there is a site specific strategic direction to retain the C2Z and the current policy is to direct medium density housing to the MUZ. Even in the PSP 2016, the merits of the MUZ or other zones are not considered; it simply defers to the current Amendment process that has determined that the use of the MUZ is appropriate. Council did present a comparison (Document 7) of the C2Z and the MUZ to demonstrate that the MUZ encouraged uses that were more appropriate in its residential context.

##### **(i) Impact on town centre**

The Panel has noted the availability of an industrial estate elsewhere in Portarlington that existing uses could re-locate to. Council and the Proponent assume this will be the case and any new commercial uses on the Amendment land will be cafes, professional offices, minor retail and consulting rooms. The Panel is concerned that there has not been a holistic review of the cumulative impact of commercial uses across the Amendment land and whether this might impact the role of the town centre. The Panel agrees with Mr Clarke that this issue is unresolved and should have been investigated.

Council’s choice of the MUZ, over the GRZ, indicates it expects that each development will provide an active commercial frontage to Geelong Road and support a greater diversity of retail and commercial uses than what could be expected in the GRZ. The current permit proposes around 550 sqm of commercial floorspace. If this style of development was replicated across the balance of the Amendment land, then Council could expect in the order of 1500-2000 sqm of additional commercial floorspace that has not been considered against what is a strong current local planning policy to:

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<sup>16</sup> Council Part A submission, page 60

<sup>17</sup> Mr Clarke evidence statement, page 19

*Support a mix of retail, commercial, community and entertainment uses within the town centre.*

*Support development in the Portarlington town centre incorporating accommodation uses above ground level retail floor space, where such development meets all parking and access requirements.<sup>18</sup>*

The Amendment land is located 600 metres outside of the town centre. The Panel agrees with Council that the Amendment land is within an urban context, however, it is isolated commercially from the town centre.

The town centre could not be described as being in the midst of significant re-development. An urban design framework has been completed that is now reflected in Schedule 21 of the Design and Development Overlay that applies to the town centre. It identifies a number of large site development opportunities for mixed use outcomes. The Panel understands that one of these sites may shortly start re-development.

More generally, the town centre presents as a traditional small town centre that has not entered its next phase of development. The market is yet to grasp this opportunity. This is one reason why the Panel prefers to act with caution to ensure that the current policy direction for the town centre is not compromised by what it considers to be an 'out of centre' development that would, unlike its current role, be in direct competition with the town centre; an outcome that is not contemplated by the planning scheme.

Strategically, it is the town centre, where mixed use development with high density housing should be located, within walking distance to services and facilities. Clause 21.06-3 (Urban consolidation), Clause 21.07-3 (Retail) and Clause 21.14 (The Bellarine Peninsula) support this outcome. The Amendment land is not identified as a centre where further retail/commercial development should be encouraged. To support the current proposal will inhibit the strategically supported mixed use development of the town centre.

In its closing submission, Council referred to the potential of an Aldi supermarket being developed on the Amendment land to demonstrate that concerns over retail impacts are potentially greater under the C2Z, than the MUZ on the town centre. This may be the case. The MUZ retains the potential for this to occur (with a permit). Council, however, did not turn its mind to the cumulative impacts of commercial development across all of the Amendment land.

The Panel acknowledges the PSP 2016 has been prepared but has not given it significant statutory or strategic weight in this report as it has not been exhibited, tested or independently reviewed.

The Panel notes it did not have any detailed submissions or evidence on the economic impacts of the Amendment.

## **(ii) The General Residential Zone**

The GRZ would limit the type of commercial uses to a medical centre (no permit required - conditional), convenience restaurant, convenience shop, food and drink premises (all permit

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<sup>18</sup> Clause 21.14 (The Bellarine Peninsula)

required). The GRZ is what the Panel would describe as a 'pure' residential zone and does not, by its title or purpose, seek a mixed use outcome. Therefore, if the GRZ was used, instead of the MUZ, Council and residents would not expect that a significant amount of commercial floorspace would be created. Cafes and restaurants would seem to be the limit of these uses.

The Panel agrees with Mr Clarke's evidence that:

*If a residential zone was proposed, that first prompt of the most suitable zoning would be the zoning of residential areas closest to the amendment site. That is, the General Residential Zone (GRZ2), not the Mixed Use Zone. I note a band of Residential Growth Zone encircles the activity centre at about 400 metres radius, but the amendment area is outside of that area. Therefore, if a residential outcome for the site is supported, the obvious candidate would be the General Residential Zone (GRZ2).<sup>19</sup>*

#### **4.6.3 Conclusions**

The Panel concludes:

- the MUZ is not appropriate for the Amendment land based upon the current Local Planning Policy Framework
- whether the MUZ would facilitate uses that could compete with the primary retail and commercial role of the town centre is unresolved and should be investigated further
- Council should consider whether the General Residential Zone is appropriate for the Amendment land.

### **4.7 Is the rezoning premature?**

#### **4.7.1 Evidence and submissions**

Council considered whether the rezoning request should be considered at the same time as the review of the PSP 2007. It decided to consider the request prior to the structure plan review because:

- *The proponent presented a compelling case for renewal and investment in a commercial precinct suffering long-term decline.*
- *The proponent owned the land proposed for development and indicated a readiness to construct once approvals were received.*
- *The proposed complex would help address a critical shortage of quality tourist accommodation on the Northern Bellarine.*
- *The proposed complex would generate jobs during the construction period and support local businesses and the tourist industry into the future.*
- *The building design was considered to be of high architectural quality and would set a new benchmark for development in Portarlington.*
- *Rezoning the entire commercial precinct would further encourage redevelopment of the area.*
- *The Mixed Use Zone would not disrupt the operations of existing businesses in the precinct and better complement the surrounding residential zone.*

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<sup>19</sup> Mr Clarke evidence statement, page 20

- *The proposal would be located inside the settlement boundary, within an existing urban setting, and would not encroach on the valued open farmed landscape beyond the Township.*<sup>20</sup>

Mr King and other submitters considered that “Council has put the cart before the horse in exhibiting this amendment and permit.” Mr King submitted that little weight should be given to the PSP 2016 as:

*The adopted 2016 draft precinct structure plan could not be said to be a seriously entertained planning proposal. In fact, it has not even received authorisation to be exhibited as part of a planning scheme amendment. At best it is still in its infancy and may well be the subject of further iterations, amendments, panel hearings, consideration by Council and ultimately will require the Ministers approval.*<sup>21</sup>

Mr Clarke considered the Amendment was driving the review of the structure plan, rather than the review driving the selection of zones. Mr Clarke provided the following methodology that, he submitted, Council should have followed:

*Review the structure plan in a comprehensive manner. The Amendment should not drive the structure plan review.*

*Determine the most appropriate outcome for the site in land use terms (this is now very unclear if the Amendment is approved and is unclear in the updated structure plan).*

*Apply the appropriate controls.*<sup>22</sup>

Ms Hayes submitted the review of the PSP 2007 was not due until 2020 and the proposed development has driven the review of the structure plan.

#### **4.7.2 Discussion**

Council had the opportunity early in the process to defer its consideration of the rezoning and permit to the structure plan review. It elected not to take this course. The Panel acknowledges the basis for this decision. However, the points made regarding a compelling case for renewal; a willingness to development; providing much needed tourist accommodation; high architectural value of the proposal; and construction jobs are best addressed in a strategic fashion that looks at all of the Portarlington. The Panel assumes that these matters have been addressed in the PSP 2007 and the current policy framework.

Council advised it expected that Amendment C352 that will introduce the PSP 2016 would be on exhibition in August 2016. If this was the case, then there is only a matter of months between this current Amendment process and that proposed for the PSP 2016.

A fundamental tenet of the Victorian planning system is that rezoning proposals must be strategically supported. The approach of Council is unfortunate. The Panel agrees with Mr

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<sup>20</sup> Council Part A submission, page 19

<sup>21</sup> Mr King submission, page 6, paragraph 28

<sup>22</sup> Mr Clarke evidence statement, page 18-19

King, Mr Clarke and Ms Hayes that there is an element of the ‘cart before the horse’. Ideally, this Amendment should have been deferred to the structure plan review.

#### **4.7.3 Conclusions**

The Panel concludes that the rezoning of the Amendment land is premature.

### **4.8 Is further design and built form guidance required?**

#### **4.8.1 Evidence and Submissions**

Council submitted that the preferred character of Portarlington was an important consideration in assessing height and scale issues. It referred to Clause 21.14 to substantiate this, where it seeks to preserve township character and promote contemporary design that reflects existing scale, setbacks, form and materials of buildings in the locality. Council accepted that:

*There are no design or height controls applying to the precinct however future development must still deliver acceptable built form outcomes.*<sup>23</sup>

Council also accepted that the proposed development would represent a new built form feature for Portarlington and submitted that “*the intention is that the building will be noticed.*”<sup>24</sup>

In addressing views, Council referred to DDO14 that applies to the GR22 land that triggers a permit for dwellings above 7.5 metres in height to ensure a sharing of views to the north across Corio Bay.

Council referred to a VCAT decision for 1 Newcombe Street, Portarlington where a permit was refused for a four storey apartment complex where Member Fong stated:

*Without an in-depth design analysis, I am not prepared to accept that the height, scale and massing of the proposed four storey building as befitting its context of Portarlington context.*<sup>25</sup>

Council responded to this comment by submitting, in this instance, that it had prepared an in-depth design analysis with a design and view analysis video prepared by Council’s Geographic Information System staff and photographs of the land and surrounds.

Ms Wright considered that the Panel should not put significant weight in the VCAT decision.

#### **4.8.2 Discussion**

The role of Portarlington is clearly described in the planning scheme as a low scale coastal town where there is a need to preserve its character and allow for incremental growth. The Bellarine Peninsula Localised Planning Statement, the PSP 2007 and the current provisions of the planning scheme all reinforce this role. One approach Council uses to achieve this outcome is to have control over height and design. Most of Portarlington has some sort of height control; whether it be via a zone control (for instance, the GR22 or RGZ3) or the

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<sup>23</sup> Council Part B submission, page 13

<sup>24</sup> Council Part B submission, page 13

<sup>25</sup> VCAT Reference No P1932/2010

overlay control (for instance, the DDO14 triggers the need for a permit for a dwelling above 7.5 metres in height).

The choice of the MUZ provided Council with the opportunity to insert a height control, albeit mandatory, for the Amendment land; yet this opportunity was not taken. The Panel notes, however, that mandatory height controls are not unusual for Portarlington. The RGZ has a mandatory height of 10.5 metres and the GRZ2, that surrounds the site, has a mandatory height of nine metres (up to 10 metres).

The Panel is concerned that Council, when the opportunity presented itself in 2014, did not insist on some sort of investigation into height controls for the Amendment land. This should have been completed by Council or, at the very least an urban design assessment should have been requested from the Proponent, particularly when it should have been apparent that local policy for Portarlington was being challenged. Responding to height issues is very important at this early stage of the Amendment lands' re-development. It is a significantly inferior approach to do this on a site by site approach – as applications are developed and lodged without overall guidance.

In electing to proceed with the Section 96A process, Council did not propose a further strategic review across the Amendment land to provide further design guidance. The Panel considers this is a significant flaw in the process. There should have been some sort of 'arms-length' independent investigation into design issues for all of the Amendment land in Council's role as the planning authority. To refer to the lack of height controls in the C2Z and the potential for a multi-storey warehouse and rely on a development proposal to provide this direction on height lacks appropriate rigour.

The Panel considers that a DDO is required for all of the Amendment land to provide guidance on height and other issues such as:

- DDA compliant access to and setback from the recreation reserve
- access from Geelong Road
- graduation of built form that could increase to the middle of the Amendment land
- separation of built form massing across all of the Amendment land to allow view sharing, instead of considering view sharing just on the permit land
- use of materials.

The Panel notes that no urban design evidence in support of the proposal was called by Council or the Proponent. The Panel believes this would have been useful in assisting its consideration of this issue.

### **4.8.3 Conclusions**

The Panel concludes:

- Council should have prepared a Design and Development Overlay based upon technical and professional input prior to considering the Amendment and proposal
- addressing height and design issues on a site by site basis is inappropriate.

## 4.9 Overall conclusions

The Panel does not support the rezoning of the Amendment land.

The Panel has found significant flaws in the Amendment that cannot simply be addressed by further work within the scope of the Amendment. The use of the Section 96A process should only be used where the strategic basis of the Amendment is sound and where the proposed development is appropriate. Neither is the case in this instance. Council's own policy framework does not support this outcome.

The Panel accepts much of the 'high level' strategic support referred to by Council and the Proponent for the Amendment and planning permit, such as its ability to meet the need for high quality tourist accommodation. This does not mean this outcome should override all other policy considerations. This needs to be balanced against local planning policy in a broader strategic sense. The Panel assumes that these matters have been taken into account in the preparation of the PSP 2007 and the current policy framework. The Panel has found that the current local planning policy for Portarlington strongly favours development that respects the character and role of Portarlington, with more intense apartment style housing development in and around the town centre.

The Panel's recommendation to abandon the Amendment should instigate revisiting the PSP 2016 along with a more holistic review of the Amendment land and what controls should apply. This is a matter for Council to determine how to approach this.

The reference by submitters to a VCAT decision at 1 Newcombe Street, Portarlington that refused a four storey apartment complex has not been given significant weight as the circumstances and context are different. The Panel's conclusion is based upon the current policy contained within the planning scheme and how the Amendment and the proposal responds to this policy context.

As the Panel concludes it cannot support the Amendment, the draft Planning Permit 1234/2014 also cannot be supported as the C2Z prohibits 'accommodation' uses. Notwithstanding this, in Chapter 5 the Panel provides some brief guidance to Council and the Proponent on the proposed development.

In summary, the Panel concludes Amendment C321 should be abandoned for the following reasons:

- The Mixed Use Zone is not supported by the Local Planning Policy Framework or the Portarlington Structure Plan 2007.
- The Mixed Use Zone will facilitate commercial development that, cumulatively, could compete with the Portarlington town centre.
- The land is not located in an area where, under current local planning policy, high density residential development is expected to occur.
- There is a need for built form guidance for the whole of the Amendment land.
- The Amendment is premature and its raises issues that should be considered in the review of the Portarlington Structure Plan.

The Panel gave consideration to an interim report or directing Council to re-exhibit the Amendment with the use of the GRZ. However, this would significantly transform the

Amendment, even with further notification and not overcome the lack of an appropriate built form review of all of the Amendment land and use of related overlay controls.

#### **4.10 Recommendation**

The Panel recommends that:

- 1. Greater Geelong Planning Scheme Amendment C321 be abandoned.**
- 2. Planning Permit 1234/2014 cannot be granted as the 'accommodation' use is prohibited in the Commercial 2 Zone.**

## 5 Planning Permit 1234/2014

As the Panel has not supported the rezoning of the land Planning Permit 1234/2014 cannot be supported based on the prohibition for accommodation in the Commercial 2 Zone. In terms of providing guidance to Council, the following is provided.

The Panel considers the height of the building at four storeys plus recreational roof garden and lift overruns is an overdevelopment of the site. In the opinion of the Panel, this is borne out by the following response to the ResCode objectives and standards:

- Clause 55.02-1 (Neighbourhood character) – the height of the proposal is not appropriate to the existing neighbourhood character of the site.
- Clause 55.02-1 (Residential policy objectives) – see Chapter 4.
- Clause 55.03-2 (Building height) – the height and bulk of the proposal does not respect existing neighbourhood character.
- Clause 55.03-3 (Site coverage) – the site coverage close to 100 per cent is well above the 60 per cent threshold.
- Clause 55.03-4 (Permeability) – the proposal has very little permeability, well under the 20 per cent threshold.
- Clause 55.04-1 (Side and rear setbacks) – a 4.75 metre side setback is proposed rather than the 10 metre standard.
- Clause 55.04-6 (Overlooking) – there is potential overlooking from all east facing apartments. Council proposes to address this by screening. No indication of how this is to be achieved has been provided or what its impact on design may be.
- Clause 55.05-4 (Private open space) – private open space is provided by either a terrace (ground level - 59 sqm) or balcony (levels 1, 2 and 3 – 6 to 20 sqm). The standard of 40 sqm is not met.
- Clause 55.05-6 (Storage) – Six cubic metres is required; 4 large, inaccessible storage areas are proposed that does not meet the standard.

The Panel's consideration of vehicle access to the site was hindered by the lack of a plan that detailed the protected right hand turn lane into the site from west bound traffic, road widening and line marking that VicRoads required. A key issue for submitters was the issue of traffic access and parking; which the Panel was unable to deal with fully. The Panel was also concerned that there was no understanding of how access was to be managed across all of the Amendment land.

There were submissions over what parking rate should be used for the café. Mr Clarke submitted that the parking rate for a café should be 0.4 spaces per patron. He referred to the VCAT case, *New Street Project Pty Ltd v Bayside CC & Ors* VCAT 1057 (24 June 2013) VCAT Ref No P268/2013 that states:

*33. ... that the term café is not a use for which clause 52.06 includes an applicable rate, and that the use is more appropriately defined as a restaurant for which a parking rate of 0.4 spaces per patron is applied.*

This is consistent with the traffic and parking report and Council's traffic engineering department assessment of the application. No contrary evidence was submitted, and on

balance, the Panel believes that 0.4 spaces per patron would more accurately represent the cafe parking demand.

The proposed development provides 57 car spaces, or effectively one for every apartment and two car spaces for visitor parking and the entire commercial/retail uses. The proposal would generate a car parking demand of 110 car spaces<sup>26</sup>. This results in a shortfall of 53 car spaces. The Panel would expect that some provisions for these uses be made and not rely solely upon car parking along Geelong Road or neighbouring streets.

For these reasons in its current form the Panel would not have supported the permit as it:

- is an overdevelopment of the site
- proposes a four storey apartment building in an area that has not been identified for this scale of housing development
- will have an inappropriate impact upon neighbouring residential properties as it does not graduate the built form with increased side setbacks.

The Panel notes that the amended plans reduced the height of the building and the number of apartments and allowed for natural light into all bedrooms. The Panel considers these were an improvement. However, even with these improvements, the Panel's concern over the strategic deficiencies remains.

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<sup>26</sup> A number of different parking assessments were presented however the Panel's own assessment indicates 110 car spaces is required.

## Appendix A Submitters to the Amendment

No.	Submitter
1	S. Arbuckle
2	V and C Bare Pty Ltd
3	G and P Barton
4	G Barton (petition)
5	Barwon Water
6	T. Battersby
7	R. Brooke
8	S. Casa
9	P. Chircop
10	Committee for Bellarine Inc.
11	J. Duxson
12	Evolve Town Planning
13	J and L Ferguson
14	H. Freeman
15	J. Gavens
16	Geralis Nominees Pty Ltd
17	L. Guion
18	V. Gurciullo and C. Mazzarota
19	P. Hayes
20	W and S Hickson
21	L. Jonas
22	H. Kent
23	S. La Terra
24	A and M Marsten
25	K. Nicholson
26	K. Norman
27	R. O’Hair
28	Portarlington Business Development Association
29	C. Randall
30	L. Sharp

31	P. Sheard
32	C. Stavrou
33	S and J Supple
34	VicRoads
35	J. Webber

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## Appendix B Document list

No.	Date	Description	Presented by
1	15/6/16	Amended Permit plans	Sarah Wright, Spiire
2	15/6/16	Amended Permit 1234/2014	Roger Munn, Council
3	15/6/16	Zone/overlay maps, Portarlington SP etc.	Peter Schembri, Council
4	15/6/16	Various planning scheme provisions	Peter Schembri, Council
5	15/6/16	Council Part B submission	Peter Schembri, Council
6	15/6/16	Council minutes 10 May 2016	Peter Schembri, Council
7	15/6/16	C2Z/MUZ comparison, Clause 52.10	Peter Schembri, Council
8	15/6/16	Planning Practice Note 78 Applying the residential zones	Peter Schembri, Council
9	15/6/16	VicRoads response to permit	Peter Schembri, Council
10	15/6/16	Greater Geelong and Bellarine Tourism Development Plan	Peter Schembri, Council
11	15/6/16	Bellarine Peninsula Localised Planning Statement	Peter Schembri, Council
12	15/6/16	Photos of site and surrounds	Roger Munn, Council
13	15/6/16	VCAT P1932/2010 decision 1 Newcombe Street, Portarlington	Peter Schembri, Council
14	15/6/16	Bellarine coastal acid sulphate maps	Peter Schembri, Council
15	15/6/16	Greater Geelong Residential Character Study 2000 (Portarlington)	Sarah Wright, Spiire
16	15/6/16	Batman Management Group submission	Sarah Wright, Spiire
17	16/6/16	Aerial photograph with contours of site	Andrew Clarke
18	16/6/16	Route 60 bus timetable	Andrew Clarke
19	16/6/16	Sam Casa submission	David King, Kings Lawyers
20	16/6/16	Planning Practice Note 22 <i>Using the Car Parking Provisions</i>	David King, Kings Lawyers
21	16/6/16	Gray Barton submission	Gray Barton
22	17/6/16	Patricia Hayes submission	Patricia Hayes
23	17/6/16	Committee for Bellarine submission	John Rae
24	17/6/16	VCAT P512/2016 decision	Sam Casa
25	17/6/16	Batman Management Group closing submission	Sarah Wright, Spiire
26	17/6/16	Council closing submission	Peter Schembri, Council

## **Appendix C Planning permit with post exhibition changes – ‘Panel Hearing Version 1’**

Planning and Environment Regulations 2015 - Form 9, Section 96J

Panel Hearing Version 1

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**PLANNING  
PERMIT  
GRANTED UNDER SECTION 96I OF  
THE PLANNING AND ENVIRONMENT  
ACT 1987**

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Permit No.: 1234/2014

Planning scheme: Greater Geelong Planning Scheme

Responsible authority: Greater Geelong City Council

ADDRESS OF THE LAND: 30 – 32 GEELONG ROAD, PORTARLINGTON

THE PERMIT ALLOWS: COMBINED REZONING TO MIXED USE ZONE AND PERMIT FOR USE AND DEVELOPMENT OF LAND FOR ACCOMMODATION (APARTMENT DWELLINGS) AND RETAIL PREMISES, MULTI-LOT SUBDIVISION, DISPLAY OF ADVERTISING SIGNS, REDUCTION OF CAR PARKING REQUIREMENTS, WAIVER OF LOADING BAY AND BICYCLE PARKING REQUIREMENTS AND CREATION OF ACCESS TO A ROAD IN A ROAD ZONE, CATEGORY 1

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

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**Amended Plans**

1. Prior to the commencement of works, three (3) copies of 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 and must be generally in accordance with the plans date stamped 25 September 2014, but modified to show:
  - a) A proposed subdivision plan.
  - b) A minimum of 63 fully accessible car spaces in the basement carpark. This may be achieved by deleting the basement level café. If the café is deleted then the amended plans must include details of the materials and finishes of the north-western elevation façade to ensure an appropriate façade treatment.
  - c) The provision of at least one on-site disabled car space.
  - d) The driveway ramp with a width of at least 6.0 metres for a length of at least 6.0 metres inside the front property and at a grade no steeper than 5% (1 in 20), before tapering to a width of 4.0 metres - 5.5 metres on the remainder of the ramp.
  - e) A distance of at least 1.0 metre between the driveway ramp and the north-eastern property boundary.

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Date Issued:

Date Permit comes into operation:  
(or if no date is specified, the permit comes into operation on the same day as the amendment, to which the permit applies, comes into operation)

Signature for the Responsible Authority

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Permit No.: 1234/2014

Page 1 of 11

Planning and Environment Regulations 2015 - Form 9, Section 96J

- f) A longitudinal section of the driveway ramp showing all relevant design levels, grades, transition and main ramp lengths, vertical curve lengths and headroom clearance.
- g) Swept path diagrams for the 85<sup>th</sup> percentile vehicle (and any larger vehicle expected to enter the basement carpark) that shows the ingress and egress travel paths along the ramp and entering/exiting the basement carpark, including ingress/egress from relevant car spaces. The swept path diagrams must be prepared by a qualified traffic engineering consultant.
- h) Details and drawings of the basement carpark traffic signal system demonstrating how the system will operate, including (but not limited to) vehicle holding points, traffic signal locations, locations of inductive loops, specifications and maintenance schedules.
- i) Allocation of each on-site car space to a particular dwelling or retail tenancy.
- ~~j) A Parking Design and Allocation Plan in accordance with Condition 47.~~
- ~~jk) A linemarked edge line in the Portarlington-bound carriageway, between the intersections with Hereford St and Sproat St, to depict a minimum 3.3 metre traffic lane and a maximum 2.5 metre parking lane.~~
- ~~kl) Provision of 18 bicycle spaces, including 5 accessible to the public.~~
- ~~lm) The basement 'stores' designed so that there is clear pedestrian access.~~
- ~~mn) The location of mailboxes.~~
- ~~n) Deletion of any reference or inference of boundary fencing along the front (southern) property boundary.~~
- ~~o) 1.8 metre high fencing of ground floor secluded private open space areas to prevent these areas being accessed by the public.~~
- ~~p) Locations of windows and doors to retail/commercial tenancies.~~
- ~~q) Details of proposed advertising signs.~~

Prior to the commencement of use or Statement of Compliance, all buildings and works must be completed in accordance with the endorsed plans unless otherwise approved in writing by the Responsible Authority.

**Endorsed Plans**

- 2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3. The layout and site dimensions of the proposed subdivision as shown on the endorsed plan must not be altered or modified without the written consent of the Responsible Authority. There are no requirements to alter or modify the endorsed plan if a plan is certified under the provisions of the Subdivision Act 1988 that is generally in accordance with the endorsed plans.

**Environmental Audit**

4 Prior to the commencement of site works, either:

Date Issued:	Date Permit comes into operation: (or if no date is specified, the permit comes into operation on the same day as the amendment, to which the permit applies, comes into operation)	Signature for the Responsible Authority
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Planning and Environment Regulations 2015 - Form 9, Section 96J

- a) A certificate of environmental audit for the land must be issued in accordance with Part IXD of the Environment Protection Act 1970, or
- b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for residential use of the development hereby approved.

to the satisfaction of the Responsible Authority.

Where a Statement of Environmental Audit is issued for the land, the development hereby approved must comply with all the directions and conditions contained within the Statement.

- 5. Where a Statement of Environmental Audit is issued for the land, prior to the occupation of the development hereby approved, and prior to the issue of an Occupancy Permit under the Building Act 1993, a letter prepared by an Environmental Auditor appointed under Section 53S of the Environment Protection Act 1970 must be submitted to the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied.

**Environmental Construction Management Plan**

- 64. Prior to commencement of any works, a detailed Environmental Construction Management Plan must be submitted to and approved by the Responsible Authority. This plan must incorporate, but is not limited to, the following information:
  - a) Details of how off-site drainage during construction will be carefully managed to ensure appropriate protection of the adjacent wetland reserve.

**Construction Management Plan**

- 76. Prior to commencement of any works, a detailed Construction Management Plan (CMP) must be submitted to and approved by the Responsible Authority. This plan must incorporate, but is not limited to, the following information:
  - a) A staging plan for all construction phases including indicative dates for commencement and completion;
  - b) Engineering assessment of assets that will be impacted on by construction and recommended techniques to minimise any adverse impact;
  - c) Details of actions to be implemented in the event of damage to abutting assets infrastructure;
  - d) Proposed access to the site for all construction stages;
  - e) Location of site huts and amenities for all construction stages;
  - f) Proposed materials hauling route;

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- g) Swept path diagrams for the longest vehicle expected to access the site;
- h) Size, type and numbers of vehicles expected to be requiring access to the site during the different construction stages;
- i) Location of parking facilities for construction vehicles.
- j) Details of site cleanliness and clean up regimes;
- k) Material storage;
- l) Dust suppression;
- m) Phone numbers of on-site personnel or other supervisory staff to be contactable in Details of how the CMP accords with the EPA Publication No. 960 "Doing it right on Subdivision – temporary environmental protection measures for subdivision construction sites" and No. 480 "Best Practice Environmental Guidelines for Major Construction Sites";

When approved this Construction Management Plan will form part of this permit. All development and works must be carried out in accordance with the Construction Management Plan, to the satisfaction of the Responsible Authority.

(Note: where a conflict arises with the construction management plan and any legislation, the relevant legislation will take precedence).

#### Engineering Plans

86. Unless otherwise approved in writing by the Responsible Authority. Prior to the commencement of works, engineer designed drainage plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. These plans must show, but are not limited to:

- a) Pits and pipe sizes;
- b) Finished surface and existing surface levels;
- c) Creation of appropriate easements, including creation of new easements as required to the Legal Point of Discharge (LPOD) via the northern boundary of adjoining properties;
- d) Connection to the existing Council drainage network (LPOD), being the 600mm diameter drain running along the western boundary of No. 34 Geelong Road, via a newly constructed junction pit. The capacity of the outlet from the newly constructed junction pit will need to be assessed and upgraded by the developer if required;
- e) Vehicular crossings in accordance with the requirements and standards of the City of Greater Geelong;
- f) Removal of any redundant vehicular crossings, and reinstatement with kerb and channel, footpath and nature strip to match existing construction in the street.

all to the satisfaction of the Responsible Authority.

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### Stormwater Quality/Management

**97.** The site stormwater system must be designed and installed such that:

- a) The site stormwater discharge is not increased by the proposed development. An appropriate on site detention system designed in accordance with the Infrastructure Design Manual may be required; which is recommended to incorporate re-use tanks for toilet flushing and irrigation purposes;
- b) Runoff is to be treated to achieve current best practice pollutant removal targets by connection to an appropriate Water Treatment Facility, with capacity to treat at least a 3 month ARI storm event, unless approved otherwise by the Responsible Authority. The Water Treatment Facility must be maintained to the satisfaction of the Responsible Authority.

all to the satisfaction of the Responsible Authority.

### Completion of Engineering Works

**108.** Unless otherwise approved in writing by the Responsible Authority, prior to the commencement of use or Statement of Compliance, the developer must:

- a) construct the site stormwater system in accordance with the endorsed drainage plans;
- b) construct vehicular crossings in accordance with the requirements and standards of the City of Greater Geelong;
- c) remove any redundant vehicular crossings and reinstate with kerb and channel, footpath and nature strip area reinstated to match existing construction in the street;
- d) construct the car park including accessways, surface with an all-weather sealed coat and linemark the car and accessways in accordance with the endorsed plans;

all to the satisfaction of the Responsible Authority.

### Landscaping

**119.** Unless otherwise approved in writing by the Responsible Authority, prior to the commencement of development, three (3) copies of a landscape plan prepared by a suitably qualified or experienced person, to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and show:

- a) Details of surface finishes of pathways and driveways;

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- b) A planting schedule of all proposed trees, shrubs and ground covers including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant; ~~and~~
- c) Landscaping and planting within all open areas of the site; ~~and~~
- d) Appropriate lighting of public areas.

When approved, the plan will be endorsed and form part of the permit, all to the satisfaction of the Responsible Authority.

**Completion and Maintenance of Landscape Works**

~~120.~~ Unless otherwise approved in writing by the Responsible Authority, Prior to commencement of use or Statement of Compliance, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority.

**Waste Management Plan**

~~134.~~ Unless otherwise approved in writing by the Responsible Authority, Prior to the commencement of development, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The plan must provide details of a regular garbage collection service to each of the uses on the subject land, including information regarding the type of refuse bins, type/size of trucks, means of accessing bins and frequency of refuse collection, to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority.

~~142.~~ Upon commencement of use, the approved Waste Management Plan must be implemented to the satisfaction of the Responsible Authority.

~~153.~~ Unless otherwise approved in writing by the Responsible Authority, in the event that the approved Waste Management Plan states that residential rubbish collection for the site will be via a private collection arrangement, prior to commencement of use or Statement of Compliance, the developer must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

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- a) That rubbish collection for the site will be via a private collection arrangement which will be paid for by individual property owners, rather than by Council.
- b) Acknowledgement that a Residential Waste Charge is a mandatory charge applied to all residential properties which cannot be waived even if a private contractor is engaged to provide recycling and waste services.

Prior to commencement of use of the dwellings, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land.

**Section 173 Agreement – Public Access to Reserve**

164. Unless otherwise approved in writing by the Responsible Authority, prior to the occupation of the development, the applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- a) That public access through the site from Geelong Road to the Portarlington Recreation Reserve will be available at all times, in the form of the pedestrian path shown on the endorsed plans.
- b) That the path will be maintained in a safe and traversable state, including the installation of signage indicating access through to the Recreation Reserve and provision of lighting.

The agreement will be registered on Title in accordance with Section 181 of the Planning and Environment Act 1987.

**Section 173 Agreement – Statement of Environmental Audit**

17. Unless otherwise approved in writing by the Responsible Authority, where a Statement of Environmental Audit is issued for the land and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, prior to the commencement of the development the permit holder must enter into an Agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987. All costs associated with setting up the Agreement must be borne by the owner. The Agreement must be registered on Title and run with the land, and must provide to the satisfaction of the Responsible Authority:

- a) That the registered proprietor will undertake all required maintenance and/or monitoring in accordance with the Statement.
- b) Prior to the development commencing, application must be made to the Registrar of Titles to Register the Section 173 Agreement on the title to the land under Section 181 of the Planning and Environment Act 1987.

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**Screening Plan**

1845. Unless otherwise approved in writing by the Responsible Authority, Prior to the commencement of development, a Screening Plan must be submitted to and approved by the Responsible Authority. The plan must provide details (location, size, height) of screening devices to be constructed to protect surrounding properties from unreasonable overlooking, to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority.

**Maintenance of Screening Devices**

189. Screening devices shown on the endorsed plans that limit overlooking to adjoining properties must be maintained to the satisfaction of the Responsible Authority.

**Development at Lockup Stage prior to Statement of Compliance**

4207. Unless otherwise approved in writing by the Responsible Authority, prior to the issue of the Statement of Compliance the development approved by Planning Permit 1234/2014 must be substantially completed (eg. lockup stage as a minimum) in accordance with the endorsed plans forming part of that Planning Permit (or any amendment to that permit) to the satisfaction of the Responsible Authority. Evidence must be submitted which demonstrates that the development is substantially completed to the satisfaction of the Responsible Authority.

**Creation of Easements**

218. The Plan of Subdivision submitted for certification must include all easements deemed necessary to protect existing or future drainage lines within the subject site, and any easements required between the subject site and the nominated legal point of discharge must be created to the satisfaction of the Responsible Authority.

**Public Open Space Contribution**

22. The owner of the subject land must pay to the Council a sum equivalent to 10 per cent of the site value of all of the land in the subdivision as a Public Open Space contribution pursuant to Clause 52.02 of the Greater Geelong Planning Scheme. The contribution will be payable prior to the issue of a Statement of Compliance.

**Telecommunications**

2319. The owner of the land must enter into an agreement with:

- a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and

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- b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- ~~240~~. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

**BARWON WATER CONDITIONS**

General

- ~~254~~. The certified plan must create implied easements under Section 12 (2) of the Subdivision Act, over all proposed existing water and sewerage works within the subdivision.
- ~~262~~. The plan of subdivision must be referred to Barwon Water in accordance with the Subdivision Act 1988 and any subsequent amendments to the plan provided to Barwon Water.
- ~~273~~. The creation of an Owners Corporation to encumber all lots within the subdivision.
- ~~284~~. Trade Waste Agreements are to be entered into where applicable. The developer is to apply to the Barwon Water Trade Department for approval.

Water

- ~~295~~. The provision and installation of individual water services to all lots in the subdivision in accordance with Barwon Water's requirements and Victorian Plumbing Regulations.
- ~~302B~~. The provision of a master meter and sub meters are required to service to all lots in the subdivision in accordance with Barwon Water's requirements and Victorian Plumbing Regulations. An 'Application to fit meters' is required to be completed and submitted by the licensed plumber who will be undertaking these works. This application must include a dimensioned plan indicating the location of all meters relative to existing and proposed allotment boundaries. These sub-meters will be installed by Barwon Water after the plumber has advised of completion of these preparatory plumbing works and that the meters can be installed. This application form can be downloaded via

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www.barwonwater.vic.gov.au – Business Customers- Property Connections. Work must not commence until written approval has been issued and all fees paid.

- 3127.** The payment of New Customer Contributions for each additional lot created and/or each additional metered connection for water supply within the subdivision.
- 3228.** An additional tapping(s) is to be supplied to service the proposed development. Note that tapplings and services are not to be located under existing or proposed driveways. The tapping size is to be determined by the developer.
- 3329.** The existing water main is a cracked asbestos water pipe. Please contact Barwon Water for specific requirements at least 5 business days prior to undertaking any works in its vicinity.
- 340.** Barwon Water's records indicate that an existing water service and meter is located on this property. A dimensioned plan showing the location of existing meters, and the location of the meter relative to the existing boundaries, and its number, is to be submitted. Private water service pipes are not permitted to cross allotment boundaries and must be plugged and abandoned at the boundaries of such allotments.
- 354.** The two existing 20mm diameter tapplings located onsite are to be cut and sealed at the water main as they are no longer required for use.

Sewer

- 362.** The provision of sewerage services to all lots in the subdivision in accordance with Barwon Water's requirements and Victorian Plumbing Regulations. Individual allotment house connection drains are to be provided for and extend into each allotment. Note that if any common drain or drain from another allotment crosses under a proposed dwelling, a "modification to consent" is to be obtained from the Victorian Building Association and presented to Barwon Water with the required drainage plan. It should be noted that the property service sewer drain remains the responsibility of the property owners.
- 373.** The payment of New Customer Contributions for sewer for each additional lot created and/or each additional metered connection within the subdivision.
- 384.** The provision of a separate sewer connection branch to all lots within the subdivision. Due to the size of the existing sewer main (300mm in diameter) a manhole will be required to be constructed with the connection point extending from this in accordance with Barwon Water's requirements, Victorian Plumbing Regulations, and all relative statutory regulations. Note that sewer connection branches are to be provided by a Barwon Water approved confined space plumber and the manhole constructed by an approved Barwon Water plumbing services contractor. A list of both approved plumbers/ contractors can be provided upon request.
- 395.** The two existing sewer points are to be decommissioned in accordance with Barwon Water policy as they are no longer required for use.

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**DOWNER CONDITIONS**

~~4036~~. The plan of subdivision submitted for certification must be referred to AusNet (Gas) in accordance with Section 8 of the Subdivision Act 1988.

**POWERCOR CONDITIONS**

~~4137~~. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to Powercor Australia Ltd in accordance with Section 8 of that Act.

~~4238~~. The applicant shall provide an electricity supply to all lots in the subdivision in accordance with Powercor's requirements and standards, including the extension, augmentation or re-arrangement of any existing electricity supply system, as required by Powercor. (A payment to cover the cost of such work will be required). In the event that a supply is not provided the applicant shall provide a written undertaking to Powercor Australia Ltd that prospective purchasers will be so informed.

~~4339~~. The applicant shall, where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, they shall be brought into compliance with the Service and Installation Rules issued by the Victorian Electricity Supply Industry. You shall arrange compliance through a Registered Electrical Contractor.

~~440~~. Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.

~~451~~. Any construction work must comply with Energy Safe Victoria's "No Go Zone" rules.

~~462~~. The applicant shall set aside on the plan of subdivision for the use of Powercor Australia Ltd reserves and/or easements satisfactory to Powercor Australia Ltd where any electric substation (other than a pole mounted type) is required to service the subdivision. Alternatively, at the discretion of Powercor Australia Ltd a lease(s) of the site(s) and for easements for associated powerlines, cables and access ways shall be provided. Such a lease shall be for a period of 30 years at a nominal rental with a right to extend the lease for a further 30 years. Powercor Australia Ltd will register such leases on the title by way of a caveat prior to the registration of the plan of subdivision.

~~473~~. The applicant shall provide easements satisfactory to Powercor Australia Ltd, where easements have not been otherwise provided, for all existing Powercor Australia Ltd electric lines on the land and for any new powerlines required to service the lots and adjoining land, save for lines located, or to be located, on public roads set out on the plan. These easements shall show on the plan an easement(s) in favour of Powercor Australia Ltd for 'Powerline Purposes' pursuant to Section 88 of the Electricity Industry Act 2000.

~~484~~. The applicant shall obtain for the use of Powercor Australia Ltd any other easement external to the subdivision required to service the lots.

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- ~~495~~. The applicant shall adjust the position of any existing easement(s) for powerlines to accord with the position of the line(s) as determined by survey.
- ~~5046~~. The applicant shall obtain Powercor Australia Ltd's approval for a lot boundaries within any area affected by an easement for a powerline and for the construction of any works in such an area.
- ~~5147~~. The applicant shall provide to Powercor Australia Ltd, a copy of the version of the plan of subdivision submitted for certification, which shows any amendments which have been required.

**VICROADS CONDITIONS**

- ~~5248~~. Before the commencement of works, a parking design and allocation plan must be submitted to the satisfaction of VicRoads. Amended plans must be submitted to and approved by VicRoads. When approved by VicRoads, the plans may be endorsed by the Responsible Authority and will form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans date stamped 25 September 2015 and annotated (as but modified) to show:
- a) Depict line marking and a no standing zone to demonstrate safe access and egress to and from the development site to the Geelong Portarlington Road.
  - b) Undertake road widening to accommodate a right turn lane on the Geelong Portarlington Road at the entrance of the proposed development.
- ~~5349~~. The applicant must enter a formal agreement with VicRoads regarding processes and fees associated with all works within the declared road reserve of the Geelong Road.

**Expiry**

- ~~540~~. This permit as it relates to the development of buildings will expire if one of the following circumstances applies:
- a) The development of the building(s) hereby approved has not commenced within two (2) years of the date of this permit.
  - b) The development of the building(s) hereby approved is not completed within four (4) years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires; or

- a) Within six (6) months after the permit expires where the use or development has not yet started; or

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- b) Within twelve (12) months after the permit expires, where the development allowed by the permit has lawfully commenced before the permit expiry.

~~554~~. This permit as it relates to subdivision will expire if one of the following circumstances applies:

- a) The plan of subdivision has not been certified within two (2) years of the date of this permit.
- b) A statement of compliance is not issued within five (5) years of the date of certification.

The Responsible Authority may extend the periods referred to at (a) if a request is made in writing before the permit expires or within six (6) months afterwards.

**Notes**

1. Construction of the site stormwater connection/s is to be inspected by Council Representative at various stages. An appropriate fee equivalent to 3.25% of total cost of civil works, excluding GST (a minimum fee of \$100 applies if the 3.25% amount is less than \$100), is to be paid to Council for inspection. Relevant evidential documentation of the cost is to be provided.
2. All internal property drainage must be designed and constructed to satisfy AS/NZS 3500.
3. A Vehicle Crossing Permit must be obtained prior to commencement of works.

Barwon Water

4. The developer is to apply to Barwon Water for details relating to costs and conditions required for the provision of water supply and sewerage services to the subdivision.

It would be appreciated if all communication between the developer/agent and Barwon Water quote Barwon Water reference number L012545.

Downer

5. Should gas be required to be either connected or disconnected to the existing or future properties please contact your local gas retailer.

Date Issued:

Date Permit comes into operation:  
(or if no date is specified, the permit comes into operation on the same day as the amendment, to which the permit applies, comes into operation)

Signature for the Responsible Authority