

Planning and Environment Act 1987

Panel Report

Greater Geelong Planning Scheme Amendments C357 and C360

Armstrong Creek Public Acquisition Overlays

Front page

12 October 2017

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

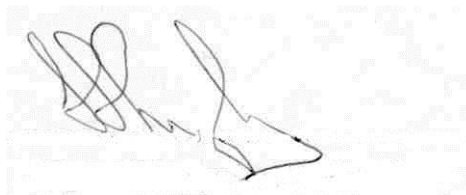
Greater Geelong Planning Scheme Amendments C357 and C360

Armstrong Creek Public Acquisition Overlays

12 October 2017



Brett Davis, Chair



Greg Sharpley, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Panel process.....	4
1.3 Procedural issues.....	5
1.4 Background to the Amendments	5
1.5 Issues dealt with in this report	7
2 Planning context	8
2.1 Policy framework.....	8
2.2 Planning scheme provisions	9
2.3 Ministerial Directions and Practice Notes	10
2.4 Discussion	10
3 Are the Public Acquisition Overlays strategically justified?	11
3.1 The issue	11
3.2 Evidence and submissions	11
3.3 Discussion	13
3.4 Conclusions.....	13
4 Drainage, Flooding and Environmental Issues	15
4.1 The issue	15
4.2 Evidence and submissions	15
4.3 Discussion	19
4.4 Conclusion	20
4.5 Recommendations.....	20

Appendix A Submitters to Amendment C357

Appendix B Submitters to Amendment C360

Appendix C Document list

List of Tables

	Page
Table 1: Amendment C357 Summary	1
Table 2: Amendment C360 Summary	3
Table 3 Parties to the Panel Hearing.....	5
Table 4 Chronology	6

List of Figures

	Page
Figure 1 The Subject site – Amendment C357	2
Figure 2 The Subject site – Amendment C360	4
Figure 3 Flooding at Harriott Road	16

List of Abbreviations

DCP	Development Contributions Plan
DELWP	Department of Environment, Land, Water and Planning
EVC	Ecological Vegetation Class
HBP	Horseshoe Bend Precinct
LAC Act	Land Acquisition and Compensation Act 1986
LPPF	Local Planning Policy Framework
NVPP	Native Vegetation Protection Plan
PAO	Public Acquisition Overlay
PSP	Precinct Structure Plan
SPPF	State Planning Policy Framework
SWMS	Storm Water Management Strategy
UGP	Armstrong Creek Urban Growth Plan

Overview

Amendment Summary	
The Amendment	Greater Geelong Planning Scheme Amendments C357 and C360
Common name	Armstrong Creek Public Acquisition Overlays
Brief description	The Amendments propose to apply the Public Acquisition Overlay to land within the Horseshoe Bend Precinct of the Armstrong Creek Urban Growth Area to facilitate the construction and commissioning of stormwater management infrastructure.
Subject sites	<p>Amendment C357:</p> <ul style="list-style-type: none"> - 109 – 215 Sparrovale Road, Charlemont - 1 – 87 Groves Road, Armstrong Creek (Cold Winds) <p>Amendment C360:</p> <ul style="list-style-type: none"> - 661 – 669 Barwon Heads Road, Charlemont - 619 – 639 Boundary Road, Charlemont - 641 – 655 Boundary Road, Charlemont - 657 – 669 Boundary Road, Charlemont
Planning Authority	Greater Geelong City Council
Authorisation	Authorisations for the Amendments were issued by the Minister for Planning on 17 October 2016. The Authorisations were not subject to any conditions.
Exhibition	12 December 2016 – 15 February 2017
Submissions	<p>Amendment C357: 9 submissions</p> <p>Amendment C360: 8 submissions</p>

Panel Process	
The Panel	Brett Davis (Chair) and Greg Sharpley
Directions Hearing	Greater Geelong offices, 25 July 2017
Panel Hearing	Geelong Conference Centre, 6 – 7 September 2017
Site Inspections	Unaccompanied, 6 September 2017
Appearances	See Table 3
Date of this Report	12 October 2017

Executive Summary

(i) Summary

Greater Geelong Planning Scheme Amendments C357 and C360 (the Amendments) propose to apply the Public Acquisition Overlay (PAO) to land within the Horseshoe Bend Precinct (HBP) of the Armstrong Creek Urban Growth Area, to facilitate the construction and commissioning of stormwater management infrastructure. Key issues raised in submissions included:

- strategic justification for the proposed PAO
- amount of land proposed to be acquired
- alignment of the proposed PAO boundary and alternative options
- flooding
- safety due to future public access in the area to be acquired.

There were several supporting submissions in respect of the Amendments. Supporting submissions were received from landowners in the HBP as well as the Department of Environment, Land, Water and Planning.

Council submitted it is critical that the Amendment sites be acquired in order that development may continue. Council submitted that development within the relevant parcels of the HBP is nearing the development 'ceiling' identified in the Storm Water Management Strategy (SWMS). Without the PAO and commissioning of the wetlands, then future development would be restricted.

It is clear to the Panel that the Sparrovale Wetland is an inextricable part of the drainage scheme for the HBP. It is enshrined in previously approved Amendment processes in a Precinct Structure Plan and Development Contributions Plan.

Council is to be commended on bringing to fruition 10 years of robust strategic planning for the Horseshoe Bend Precinct. The Panel accepts the evidence presented and concludes that the extent of the PAO is justified given the particular topography and hydrology of both the proposed overland flow path and the Sparrovale and Cold Winds properties.

The adopted drainage strategy and application of the PAO will protect the ecological conditions of the Hospital Swamps and Sparrovale Farm wetlands. Evidence presented outlined how this would benefit the adjacent Ramsar wetland.

Submitters raised issues relating to acquisition impacts. The Panel agrees with the submissions of Council that the objectives in acquiring the sites is clearly sound. The Panel concludes whichever property Council chooses, the submission will always be that the owner will not be able to achieve the prospective development potential of their land.

On matters of compensation the Panel notes that the owners will be compensated according to the community standards set out in the relevant legislation. It is beyond the scope of this Panel to comment on obligations and procedures under the *Land Compensation and Acquisition Act 1986*.

Submitters raised alternative options during the Hearing such as realignment of boundaries and more underground piping. Other than Council, no other parties called expert evidence

on this aspect. It is not the Panel's role to interrogate alternatives. The Panel is appointed to determine the strategic merit of the proposed application of the PAO before it, and whether it can deliver the drainage and environmental initiatives proposed by Council.

Several submitters raised concerns with the effects of downstream flooding on their properties due to the interim works that had taken place. Council acknowledged these issues and reiterated the need to implement the full scheme under the PAO would assist in mitigating these issues.

The Panel concludes that Council has provided more than adequate strategic and practical justification for the application of the PAO and the Amendments. To the extent that there may be some question about the precise area of land which is ultimately required, the Panel agrees there are more detailed designs to follow, and the extent of land may be reduced. Council submitted it may be possible to make some adjustments to the ultimate boundary.

The Amendment is sound and should be supported as exhibited.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Geelong Planning Scheme Amendments C357 and C360 be adopted as exhibited.

(iii) Further recommendations

The Panel makes the following further recommendations:

- **The alignment of the waterway through properties affected by C360 should be designed within the affected properties to generally follow the alignment of the existing property boundaries and the extent of any land ultimately required should be minimised.**
- **The Council and the developers of the Horseshoe Bend Precinct should implement appropriate interim measures to minimise flooding risks for the downstream properties while the final stormwater infrastructure is being constructed.**

1 Introduction

1.1 The Amendment

(i) Amendment Description

Greater Geelong Planning Scheme Amendments C357 and C360 (the Amendments) propose to apply the Public Acquisition Overlay (PAO) to land within the Horseshoe Bend Precinct (HBP) of the Armstrong Creek Urban Growth Area, to facilitate the construction and commissioning of stormwater management infrastructure.

Amendment C357

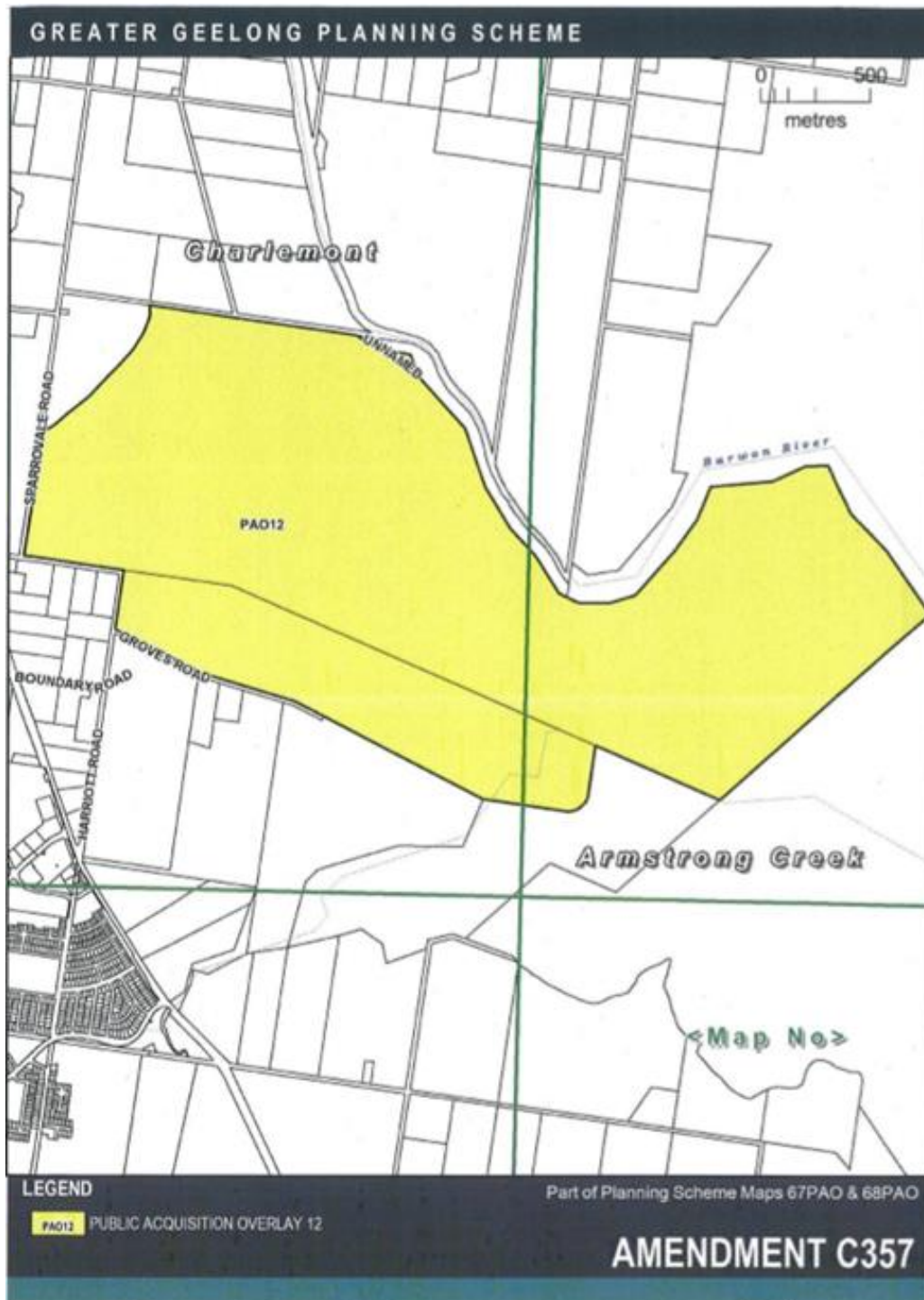
Amendment C357 applies to approximately 510 hectares of land within the following sites:

Table 1: Amendment C357 Summary

Land	Total site area	Area of proposed PAO	Existing zones and overlays	Existing use and development
109 – 215 Sparrovale Road, Charlemont (Sparrovale)	436 hectares	423 hectares (97%)	Farming Zone - majority of site Urban Growth Zone, Schedule 4 (UGZ4) - 12 hectares fronting Sparrovale Road which is also affected by a Development Contributions Plan Overlay, Schedule 5 (DCPO5) Floodway Overlay Environment Significance Overlay, Schedule 2 – High Value Wetlands and Associated Habitat Protection (ESO2) Vegetation Protection Overlay, Schedule 1 – Areas of Flora and Fauna Habitat and of Geological and Natural Interest (VPO1)	Parts of the PAO area are used for cattle grazing. The remainder of the PAO area is vacant and unused due to inundation and / or access issues (particularly the area to the east of the existing levee on the site). The north-west section of the Sparrovale site (not subject to the PAO) is developed with dwellings, sheds and associated outbuildings.
1 – 87 Groves Road, Armstrong Creek (Cold Winds)	87 hectares	87 hectares (100%)	Farming Zone Floodway Overlay ESO2	Cattle grazing

Figure 1 outlines the Amendment C357 area.

Figure 1 The Subject site – Amendment C357



[Planning Mapping Services]
[Planning Information Services]
[Planning]



Amendment C360

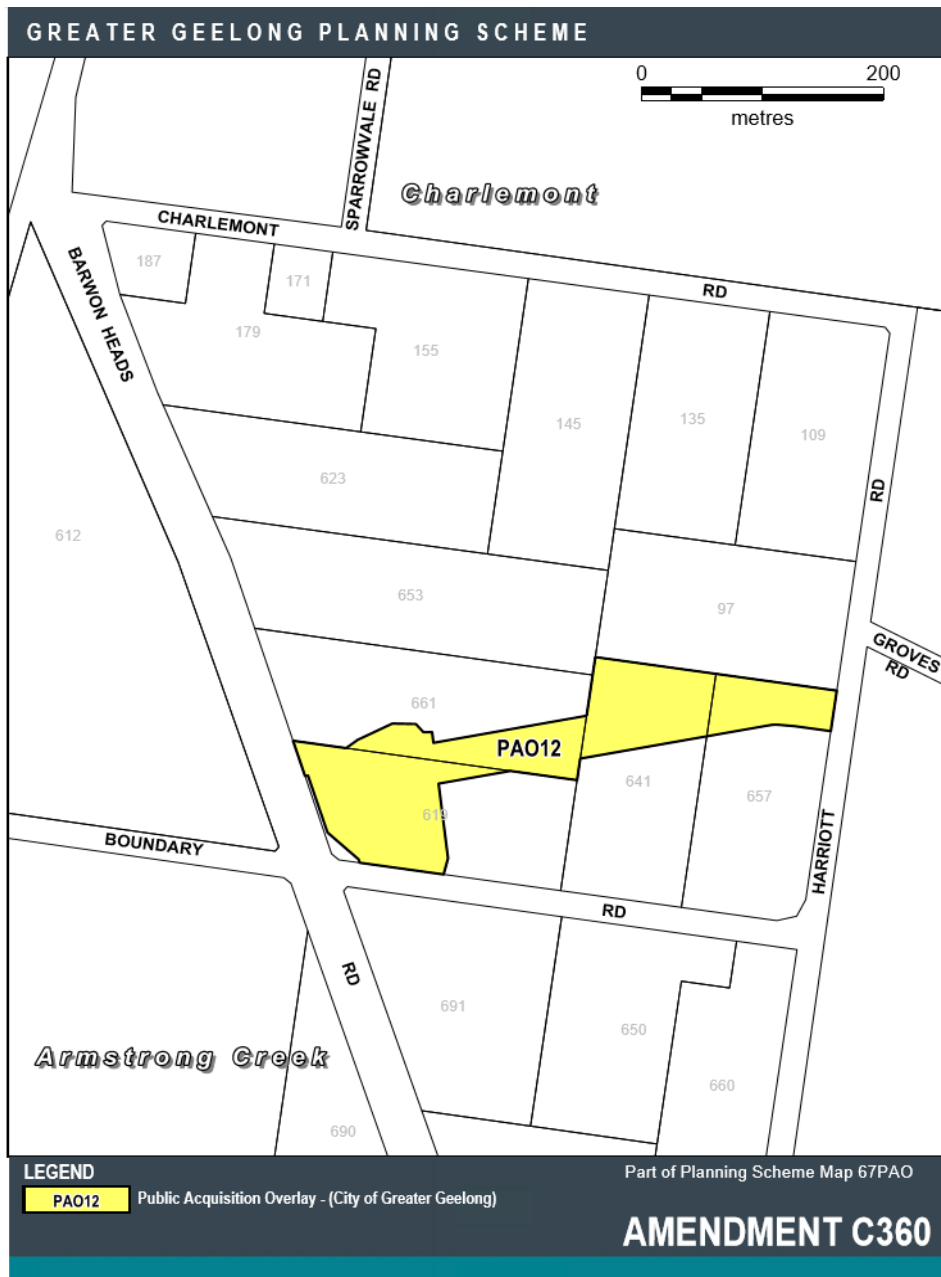
Amendment C360 applies to approximately 2.153 hectares of land within the following sites:

Table 2: Amendment C360 Summary

Land	Total site area	Approximate area of proposed PAO	Existing zones and overlays	Existing use and development
661 – 669 Barwon Heads Road, Charlemont	2.35 hectares	0.56 hectares (24%)	UGZ4 DCPO5 PAO3 – for the widening of Barwon Heads Road	Used and developed for the purposes of a dwelling and associated shedding in the north-west corner of the site with property access via a driveway off Barwon Heads Road.
619 – 639 Boundary Road, Charlemont	2.03 hectares	1 hectare (50%)	UGZ4 DCPO5 PAO3	Used and developed for the purposes of a dwelling in the south-east corner of the site with property access via a driveway off Boundary Road.
641 – 655 Boundary Road, Charlemont	2.02 hectares	0.7 hectares (35%)	UGZ4 DCPO5 Floodway Overlay	Used and developed for the purposes of a dwelling and associated outbuildings in the south-west corner of the site with property access via a driveway off Boundary Road.
657 – 669 Boundary Road, Charlemont	2.01 hectares	0.4 hectares (20%)	UGZ4 DCPO5 Floodway Overlay	Used and developed for the purposes of a dwelling and associated outbuildings in the south-west corner of the site with property access via a driveway off Boundary Road.

Figure 2 outlines the Amendment C360 area.

Figure 2 The Subject site – Amendment C360



Council submitted that the dwellings and associated outbuildings on the Amendment C360 sites would sit outside the extent of the proposed PAO, however, some sheds on the 619 – 639 Boundary Road site would be within the PAO. The existing access arrangements for these properties would not be disturbed.

1.2 Panel process

Council and the Panel discussed the grouping of the Amendments and agreement was reached that the Panel hear and consider both Amendments as part of one Hearing process.

Further, that one report be prepared in relation to both matters. References to State and Local Policy refer to both Amendments.

Those in attendance at the Panel Hearing are listed in Table 1.

Table 3 Parties to the Panel Hearing

Submitter	Represented by
Greater Geelong City Council	Briana Eastaugh of Maddocks, with Dinah O'Brien (Senior Strategic Planner) who called the following expert witnesses: <ul style="list-style-type: none"> - Andrew MacMahon of Ecology Australia, in flora and fauna - Andrew McCowan of Water Technology, in drainage and flooding
DELWP	Mr Geoff Brooks
S O'Hara	In person
L Lim	In person
Charlemont Rise	Sarah Wright, Spiire
L and C Devlin ¹	In person
Dennis Family Corporation	Alex Gelber, HWL Ebsworth
ID Land	Mark Bartley, HWL Ebsworth

1.3 Procedural issues

On 21 August 2017 Council referred late submissions to the Panel on behalf of ID Land, for both Amendments.

On 1 September 2017 parties Robertson and Perkins (submissions 6 and 7) withdrew their submissions, and requests to be heard. This affected the timetable and version 3 was issued accordingly. On 5 September 2017 Robertson and Perkins confirmed they did not wish the Panel to consider their written submissions.

Council submitted in its Part B statement (Document 2) *"While these submissions have been withdrawn, Council's response is set out below for the avoidance of any doubt, and for the benefit of those parties who may be unfamiliar with the compulsory acquisition process."*

While the Council referred extensively to responding to these submissions in its Part B submission on the matters of compensation, as they were withdrawn the Panel does not refer to or respond to these submissions. Broader issues relating to compensation matters, raised by other submitters, are discussed in Chapter 3.

1.4 Background to the Amendments

In its Part A Statement, Council provided a historical planning context and detailed chronology providing background to the Amendments. This is shown in Table 2 below.

¹ L and C Devlin were scheduled to appear and informed the Panel on the day of the Hearing they were unable to attend. They supplied a further written submission via email. (Document 9a)

Table 4 Chronology

Date	Event / Document
1988	Directions – The Geelong Region Development Strategy 1988 – 1998 prepared by the Geelong Regional Commission
February 2006	Armstrong Creek Urban Growth Area Flooding and Drainage Technical Report prepared by Water Technology and Fauna Technical Report prepared by Ecology Australia
28 November 2006	Council adopted the <i>Armstrong Creek Urban Growth Plan (UGP)</i> and resolved to prepare and exhibit Amendment C138 to the Scheme.
May 2008	The UGP is finalised (subsequently amended in May 2010 and September 2012) through future planning scheme amendment processes
4 December 2008	Amendment C138 (UGP) was gazetted
10 March 2009	Council adopted the Armstrong Creek Integrated Infrastructure Delivery Plan (IIDP)
3 June 2010	Amendment C206 (Armstrong Creek East Precinct PSP and NVPP) was gazetted
31 October 2011-12 February 2012	First and second Discussion Papers completed by Neil Craigie in respect of the HBP Stormwater Management Strategy
12 July 2012	Amendment C214 (Armstrong Creek East Precinct DCP) was gazetted
7 March 2013	Amendment C240 (Armstrong Creek West Precinct PSP, DCP and NVPP) was gazetted
October 2013	Storm Water Management Strategy (SWMS) completed by Neil Craigie
August 2014	Barwon River Interface with the Armstrong Creek Growth Area Background Issues and Opportunities Discussion Paper completed by Thompson Berrill Landscape Design
September 2014	Horseshoe Bend PSP and DCP and NVPP completed
23 October 2014	Amendment C267 (Town Centre Precinct PSP, DCP and NVPP) was gazetted
27 November 2014	Amendment C259 (Horseshoe Bend Precinct PSP, DCP and NVPP) was gazetted
27 September 2016	Council resolved to prepare and exhibit the Amendments
9 March 2017	Amendment C301 (South Precinct PSP) was gazetted
2 June 2017	Council Delegate considered the submissions to the Amendments and resolved to refer them to a Panel

Council submitted by way of background:

Since the preparation of these earlier strategic documents, a raft of detailed strategic planning and technical analysis has confirmed the Growth Area as the principal area designated for broad hectare urban development within the City of Greater Geelong.

The Growth Area is anticipated to provide housing for some 54,000 people, together with a major (sub-regional) town centre, a number of neighbourhood and local activity centres and two substantial employment areas.

An overview of how planning for the Growth Area has been progressed and implemented into the Scheme is outlined below, with a particular focus on the key issues as they relate to the matters before this Panel.

1.5 Issues dealt with in this report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions, evidence and other material presented to it during the Hearing, and observations from site visits.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

This report deals with the issues under the following headings:

- Planning context
- Are the PAOs strategically justified?
- Drainage, flooding and environmental issues.

2 Planning context

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

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

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 11.02-1 (Supply of Urban Land) is relevant in that the Amendments will ensure that the HBP continues to provide residential, commercial, retail, recreational and community land to meet supply requirements for an estimated 25 years.

Clause 11.02-4 (Sequencing of development), is relevant in that the Amendments will assist in the timely provision of key infrastructure for the management of stormwater for the HBP area.

Clause 11.09-4 (Environmental assets), which relates specifically to the Geelong G21 region, includes strategies to:

- protect, restore and enhance the quality of land and marine areas, waterways, biodiversity and soils; and
- maintain and protect the region's natural assets, including the region's parks and reserves.

Clause 12 (Environmental and Landscape Values) provides that planning should help to protect the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) and conserve areas with identified environmental and landscape values.

Clause 12.01-1 (Protection of biodiversity) provides that planning strategies should be adopted to protect the biodiversity and minimise impacts, including cumulative impacts of land use and development on Victoria's biodiversity.

Clause 13.02-1 (Floodplain management) which seeks to assist with the protection of:

- life, property and community infrastructure from flood hazard;
- the natural flood carrying capacity of rivers, streams and floodways;
- the flood storage function of floodplains and waterways;
- floodplain areas of environmental significance or of importance to river health.

Clause 13.02-1 outlines several strategies, to achieve the above listed objectives. These include avoiding the intensifying impacts of flooding through inappropriately located uses and developments. Council considered that the Amendments respond to this strategy through implementation of the SWMS, which will inform the provision of the main drainage infrastructure for the HBP.

Clause 14.02-1 (Catchment planning and management), seeks to assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater and the marine environment is also relevant.

Clause 19 (Infrastructure) is relevant in that the Amendments are costed into the HBP Development Contributions Plan and will ensure that stormwater entering wetlands and estuaries does not have a detrimental effect on the environment (Clause 19.03-3).

(ii) Local Planning Policy Framework

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

- Clause 21.05 – Natural Environment
- Clause 21.05-3 – Biodiversity
- Clause 21.08-2 – Open Space
- Clause 21.11 – Armstrong Creek Urban Growth Area

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

- Armstrong Creek Urban Growth Plan (2008)
- Barwon River Parklands Strategy (2011)
- G21 Regional Growth Implementation Plan (2013)
- Horseshoe Bend Precinct Structure Plan, Development Contribution Plan (2014)
- Horseshoe Bend Native Vegetation Protection Plan (2014)

2.2 Planning scheme provisions

(i) Zones

The land affected by the PAO falls within a combination of the Urban Growth Zone (C360 land) and Farming Zone (C357).

(ii) Overlays

The Sparrovale and Cold Winds sites are subject to the Environmental Significance Overlay Schedule 2. The ESO2 relates to 'High Value Wetlands and Associated Habitat Protection'.

Bellarine Ramsar Site

Council submitted that Amendment C357 is consistent with the statement of environmental significance set out in ESO2 and in particular noting that the sites are directly adjacent to the Bellarine Ramsar Site. ESO2 notes that the Ramsar Site:

...provide important habitat for migratory birds, waterfowl and endangered species and sustain significant proportions of the Australian populations of these species. They are also remnants of wetland types that were once much more extensive in the Geelong region and elsewhere in Victoria, contain a high diversity of plant and animal species and conserve the genetic diversity of particular species.²

² Council Part A Statement: pg. 42

(iii) Particular provisions

Clause 56.07-4 – urban runoff management objectives) to limit downstream impacts to pre-development flows is particularly relevant in justifying the application of the PAO.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

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

Ministerial Direction No 11 - Strategic Assessment of Amendments

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46 (Strategic Assessment Guidelines).

Ministerial Direction No 15 – The Planning Scheme Amendment process

The Amendment is consistent with this Ministerial Direction.

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.

2.4 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. Strategic justification of the Amendments is discussed in Chapter 3.

3 Are the Public Acquisition Overlays strategically justified?

3.1 The issue

The issue relates to whether or not the application of the PAO is strategically justified.

3.2 Evidence and submissions

Ten submissions were received in respect of Amendment C357, including 3 objections; and 9 submissions were received for Amendment C360, including 3 objections. As noted in 1.3 of this report, two of the objections for Amendment C357 have been withdrawn prior to the hearing. The remaining submission for Amendment C357 related to flooding and this is dealt with in Chapter 4.

Key issues for Amendment C360 predominately related to the amount of land to be acquired, the alignment and location of the PAO and safety concerns. At the Hearing, submitters also raised concerns with regards to compensation and acquisition issues.

Council outlined how the Amendment is strategically justified against the State and Local Planning Policy Framework in Chapter 2. In its Part B submission, Council submitted that the Amendments would realise the objectives of the *Horseshoe Bend Precinct Structure Plan (PSP) and Development Contributions Plan (DCP)* and facilitate:

- *the establishment of the Sparrovale Wetlands (C357) and the construction of associated drainage infrastructure (C357 and C360), which is critical to the continued development of the HBP; and*
- *the creation of an associated environmental biodiversity conservation area as part of the broader Barwon River Parklands (C357).*

(i) Extent of the PAO (amount of land)

Several submitters (Lim, O'Hara and Devlin) objecting to Amendment C360 questioned the extent of land required within the PAO. Council submitted that the PAO boundary across these properties *"has been dictated primarily by the retarding basin and stormwater infrastructure requirements identified by the SWMS. The detailed design of this infrastructure was explored in the Cardno concept designs prepared for the C259 Panel."*

Council submitted that Mr McCowan had looked at this issue in more detail and concluded that the land shown as subject to the Amendment C360 PAO is necessary to convey stormwater from the southern part of the HBP to the Sparrovale Wetland. He noted that the PAO alignment generally aligns with modelled overland flow paths (Water Technology, 2006).

(ii) Alignment and location of the PAO (alternative options)

Council submitted that alternative options were canvassed in detail and tested prior to the Amendment C259 panel process. It explained that the Panel was provided with a significant volume of detail that goes to this. It included evidence demonstrating that the SWMS had:

*Evolved over the course of three years of analysis and refinement, was examined and tested through the Amendment C259 process. It was placed on exhibition and all interested landowners and agencies were provided with the opportunity to comment. Further, save for concerns regarding the costs of the 10 year management plan, the Sparrovale Wetland concept was **not** challenged by any party before the C259 panel.*

Council submitted that its initial preference had then been to try and negotiate the purchase of the nominated properties, and only consider the application of the PAO if that failed.

Several submitters, (Lim, O'Hara and Devlin) requested that alternative locations be considered. Council argued that it was not the role of the Panel to make such considerations, as the location had been interrogated in Amendment C259, and others over a 10 year period. It noted within this context the comments of the Panel in Wyndham Amendment C127³ when considering 'alternative options'. Wyndham C127 considered the application of a PAO in favour of Melbourne Water to facilitate drainage works. The Panel concluded:

The Panel is unable to determine whether or not one scheme is better than another. The Panel needs to be satisfied that the proposed scheme is an appropriate one and that it has been adequately and conscientiously prepared by Melbourne Water.

Nothing put to the Panel suggested that this was not the case.

Similarly, the Panel in Maroondah Amendment C69⁴ noted the following when considering its role in considering 'alternatives':

In general terms, it will usually only be appropriate for the Panel to consider an amendment which has been exhibited, and the issues associated with that amendment. The Panel's role is not to consider alternative options. However if the amendment is found to be inappropriate, or if it raises fundamental planning concerns that alternatives appear not to, the Panel may recommend that other options be looked at. This is not a task that would be undertaken as part of the Panel hearing.

Council acknowledged that it may be possible to adjust the ultimate boundary of the acquired area at the detailed design stage of the process, resulting in less land being acquired than that which is subject to the PAO.

In these circumstances Council submitted that it is more appropriate to acquire the area proposed in Amendment C360 and compensate the landowners appropriately. Council submitted that in any event, there are provisions in the *Planning and Environment Act 1987* (s107) to protect owners from the implications of this.

Mr McCowan noted that the Amendment C360 PAO alignment provided opportunities to integrate remnant riparian vegetation into the design of the waterway environment.

³ Wyndham C127 (PSA) [2011] PPV 123.

⁴ Maroondah C69 (PSA) [2011] PPV 1.

(iii) Land Acquisition and Compensation Act 1986 (LAC Act)

During the course of the Hearing, several submitters raised general compensation issues. Council submitted that the role of the Panel, consistent with decisions of previous panels who have considered the application of the PAO, is to determine the strategic merit of the proposed application of the PAO and whether it can deliver the drainage and environmental initiatives being pursued by the Council.

Those panels⁵ have consistently focused their attention on the key matters relevant to their expertise and jurisdiction. That is, the strategic justification for the Amendment. They have properly noted that it is not for panels to comment on obligations and procedures under the LAC Act.

(iv) VicRoads

The Panel had directed that prior to the Hearing, Council was to make contact with VicRoads to seek their input in respect of Amendment C360. Council advised:

*A response was received on 5 September 2017. VicRoads notes the abuttal of the existing (PAO3) and proposed (PAO12) overlays but does not raise any concerns. Council is satisfied that the interface between the overlays can be resolved at the detailed design stage.*⁶

3.3 Discussion

With regard to the extent of the PAO, the Panel notes that in some places, the PAO boundary has been straightened to follow property boundaries. It agrees with the methodology of Council that this has been done in cases where following the precise alignment of the anticipated drainage infrastructure would have resulted in small, irregularly shaped residual parcels of land in private ownership that would have been severed and inaccessible from the balance of the land.

Clearly negotiations have not been able to finalise the acquisition of the properties for their intended purpose. The Panel agrees with the Council position that no alternatives to the SWMS drainage strategy have been put to this Panel, or indeed were put to the C259 panel for consideration.

The Panel commends Council in attempting to resolve this without the need for a PAO. Ultimately, the matter has now come before the Panel and it should be supported. The amount of strategic rigour and background work for the implementation of the PAO, is in the Panel's view, very good.

3.4 Conclusions

The Panel concludes:

⁵ See for example, Greater Dandenong C87 Panel Report (July 2008); Greater Shepparton C148 Panel Report (December 2011); Wangaratta C36 Panel Report (February 2012); Melton C109 Panel Report (March 2012); Casey C136, Frankston C76 and Dandenong C115 Panel Report (May 2012).

⁶ Document 4

- To the extent that there may be some question about the precise area of land which is ultimately required for a project, there are subsequent stages and milestones available whereby the area of land to be acquired can be reduced.
- There are provisions in the legislation to protect owners from the implications of this. *The Planning and Environment Act 1987* s107 enables a landowner to claim compensation for the removal of a reservation over land.
- The Panel notes that the owners will be compensated according to the community standards set out in the relevant legislation.
- It is beyond the scope of this Panel to comment on obligations and procedures under the *Land Compensation and Acquisition Act 1987*.
- Council has been careful to determine the area of land which it anticipates will be required for the public purpose.
- The application of the PAO is required, warranted and strategically justified.

4 Drainage, Flooding and Environmental Issues

4.1 The issue

Drainage, flooding and environmental issues raised by submitters primarily related to the acquisition of land rather than piped easements through their properties and the alignment of the proposed drainage channel on their properties. Objectors and submitters were concerned in relation to both current and potential future flooding issues related to the timing of upstream flood detention works and the interrelationship with the sensitive wetlands further to the east.

4.2 Evidence and submissions

Amendment C357 relates to a PAO for two large parcels of land (514 hectares) situated some distance to the east of the HBP. These two parcels are currently used as degraded grazing land. The purchase of these properties was included in the DCP, with the aim of rehabilitating them into a high-quality wetland to receive urban run-off. They are proposed to be used as a freshwater wetland and stormwater detention system (Sparrovale Wetlands) to appropriately treat the increased volume and rate of flow of stormwater from the northern portion of the HBP prior to discharge into the Barwon River.

They were identified in early hydraulic modelling (Water Technology - 2006 and Stormwater Management Strategy. Neil Craigie - 2013) undertaken as part of the overall development of the Precinct Structure Plan and are in fact an integral part of the development, which limits the amount of residential development that can be undertaken in the HBP to 25 per cent of the final development, until such time as the Sparrovale Wetlands are developed.

The Sparrovale Wetlands will provide a number of environmental benefits beyond those associated with the treatment and control of storm water from the future residential areas. These include protection of the adjacent Hospital Swamp and saline Ramsar wetlands from effects of increased freshwater inputs, extension of the Barwon River Parklands, maintenance of the significant biodiversity values of the Sparrovale and Ramsar sites, etc.

Amendment C360 properties are situated between the HBP and the proposed Sparrovale Wetlands. Currently drainage from the southern portion of the HBP drains through these properties in a small drainage channel to the proposed Sparrovale Wetlands.

Due to the development of the HBP, the volume and rate of flow of stormwater through these properties will be considerably increased. As a result, without significant works being undertaken on these properties the majority, if not all of the properties will be subject to frequent inundation during storm flows.

(i) Drainage

The only objection raised in relation to C357 relates to current flooding issues associated with storm water discharges from the early stage developments of the ID Land, Watermark Estate to the north-west of the Devlin property (submitter 1) and the potential for increased flooding when full development of the HBP is undertaken.

In written submission to the Panel (document 9a), the submitter noted:

We have had a large increase into the amount of water coming from the Reserve road horseshoe bend Precinct , which is currently being pumped and dumped under the Barwon Heads Road onto farming land , down the hill again to us.

Likewise, the Boundary Road Horseshoe bend development, has insufficient holding ponds that are being pumped under horseshoe bend road on to farm land and down the hill to us as well,, currently all the drains end up within less than 100m of our property.

Figure 3 Flooding at Harriott Road⁷



In relation to the long-term flooding impacts on the Devlin's property, Council sought advice from Mr McCowan, the hydraulic modelling expert appointed to undertake a peer review of the modelling work associated with both C357 and C360. He provided the following response:

The property and wider area is at risk of flooding from both the Barwon River and stormwater runoff (refer to attached map and 2006 study). The stormwater flooding is a pre-development condition and is caused by overland flow from Barwon Heads Road and upstream catchment.

I agree that unmitigated development would increase flood risk on the property however, the implementation of the proposed SWMS will alleviate risk to their property. The proposed waterway corridor for C360 will convey the overland flow (including increased runoff from upstream development) to

⁷ Document 9A

the Sparrovale Wetland and provide a greater level of protection to their property. This should result in a significant reduction of flooding at the site.

Submitters Pohl, O'Hara and Lim (3, 5 and 7) to Amendment C360 raised concerns on the loss of land associated with the PAO and land value due to the reduction in area of their property. They submitted that in order to minimise the loss of land, all flows should be piped through their properties, and the alignment moved to follow, property boundaries, thus minimising the amount of land required.

Submitter Lim also raised concerns in relation to the presence of a storage basin being situated on their land and advised that it should be situated on the other side of the Barwon Heads Road.

Mr McCowan advised the Panel that the proposed alignment or the drainage waterway coincided with the existing drainage path through these properties. He did, however, consider that there is potential for some realignment of the proposed waterway to more closely follow the property boundaries to be undertaken as part of the detailed design phase. Ms O'Brien, on behalf of Council advised the panel that any reduced requirement for land under the PAO could be reversed by subsequent amendment.

In relation to the use of piped system through these properties Mr McCowan advised that the use of a naturalised waterway is consistent with both the management of major storm water flows elsewhere in the HBP and with current good practice which seeks to provide a more natural approach to stormwater systems. He also stated that the proposed basin on the Lim land was required to enable flows to pass over the top of a Barwon Water outfall sewer, which crosses the site.

Subsequent to his appearance at the Hearing, Mr McCowan provided the following advice through the Council:

As described in our report, the intent is to establish a "naturalised" waterway environment, wherever possible. In this respect, I note that the current alignment generally aligns with modelled overland flow paths (Water Technology, 2006). This would provide opportunities to integrate remnant riparian vegetation into the design.

The reliance on above ground drainage corridor also ensures the natural flood carrying capacity of the waterways is maintained and protected, as per Clause 13.02-01 (Floodplain management) of the State Planning Policy Framework. An underground drainage arrangement may limit the conveyance capacity of the drainage infrastructure and will reduce the flood storage function of the floodplain.

(ii) Environmental impacts / benefits

Mr McMahon, on behalf of Council, dealt with the environmental impacts related to C357. These are summarised in his statement of expert evidence as:

- *improved water quality entering the Ramsar site.*
- *Security provided to the existing on site values; enhancement of existing values through informed management;*

- *provision of a biodiversity-focused buffer to the adjoining Ramsar site; and*
- *effective increase in patch size and connectivity for the Ramsar site.*

It was his evidence that:

- *The Sparrovale scheme also has the potential to provide habitat that is currently poorly represented in the Ramsar site and vastly depleted in the broader context, namely shallow freshwater wetlands. The estimated extent of the wetland (220 ha) will represent a material contribution to this habitat type regionally.*
- *Further, as climate change threatens coastal wetlands, with many predicted to transition to marine environments (Department of Environment, Land, Water and Planning 2016), those less vulnerable and capable of maintaining freshwater to brackish conditions are likely to become increasingly important. My understanding is that this could potentially apply to the Sparrovale wetlands.*
- *In addition, these biodiversity games could have broader implications for amenity and landscape. The Barwon River Parklands Strategy (2011) provides for an open space network of parks, trails and conservation areas along the Barwon River, from Buckley Falls in Geelong to the river mouth at Barwon Heads. The Strategy currently refers to Sparrovale farm as an opportunity to expand public open space adjoining Lake Connewarra.*

Mr Geoff Brooks from DELWP appeared at the Hearing. He was also supportive of the amendments noting:

Together, the stormwater management arrangements that are proposed for the land which is the subject of this amendment and C357 will provide a positive and effective response to past DELWP advocacy in respect of stormwater drainage impacts from Armstrong Creek Growth Area precincts on the Ramsar listed Lake Connewarre complex.

The Panel notes that the full development of the Sparrovale Wetlands will also enable better protection and operational control of water flows into the adjacent Hospital Swamp to the south east of the Sparrovale site. There is also potential to use the Sparrovale site to treat storm water from areas further south from the HBP.

(iii) Timing

In relation to the current increased flooding of the land adjacent to Submitter 1 (C357) property. Mr Bartley on behalf of ID Land (submitter 10 for both Amendments) advised that they are currently in negotiation with the Council to enable temporary works to be undertaken to reduce the run-off to the Sparrovale Wetlands until such time as adjacent residentially zoned land has been developed. He advised that currently Council is unwilling to authorise temporary works; requiring the final works to be undertaken only.

As noted above, the HBP Development Plan requires the Sparrovale wetlands to be in place prior to development with in the HBP exceeding 25%. The Panel was advised by both Council and the various developers who appeared at the Hearing that this limit is either

close to or has been reached. As a result, it is considered imperative that the PAO proceed as expeditiously as possible.

4.3 Discussion

Based on the extensive strategic planning and modelling undertaken over many years, together with independent peer review of the results, the Panel is satisfied that the proposed works are both required and desirable to enable the further development of the HBP and to protect the properties affected by Amendment C360.

Amendment C357 is considered essential for the further development of the HBP and indeed the Panel acknowledges that the development of the Sparrovale wetlands will not only meet the water quality requirements of the HBP, but will also provide regional environmental improvement through the protection of the Ramsar wetlands and potential augmentation of freshwater wetlands in the Barwon area.

Based on the submissions, there appears to be a recently existing issue in relation to increase in stormwater flows to the east of the HBP due to the development of the early stages of the precinct. Once Sparrovale wetlands are developed, and prior to final development of all infrastructure associated with the various stages of development of the land, there will be an increased potential for flooding of the land between the wetlands and the HBP. This could have significant impact on the affected properties.

While noting that the land is generally covered by an existing Floodway Overlay, the Panel is of the opinion that the Council needs to work with the developers to proactively stage mitigation works to minimise the temporary risk of increased flooding.

The Panel appreciate the concerns of submitters who will lose some land due to having the drainage waterway crossing the rear of their properties. The Panel are satisfied that the location of the waterway is appropriate as it is based on the existing drainage path and has been subject to extensive modelling to verify the size and nature of the works proposed.

Based on the advice of both Mr McCowan and the Council, the Panel considers it appropriate that the route of the natural waterway be modified as part of the detailed design phase to minimise the land required to be acquired by “*meandering*” the waterway to follow the existing property boundaries where considered appropriate.

The owners of the land affected by C360 will be compensated in accordance with the LAC Act . As discussed in Chapter 3, matters of compensation are not issues for consideration by this Panel.

In relation to the use of pipes in an easement in lieu of a naturalised waterway through acquired land the Panel notes that the owners will be appropriately compensated for the land, which will be used to provide a lower risk in relation to flow capacity while potentially serving as an environmentally enhanced linear access route for the public.

Ms O’Hara (submitter 5) raised concerns in relation to potential public access along the waterway resulting in security issues along the rear of their property. The Panel considers that, as part of any land acquisition, the provision of appropriate fencing between what will become a public asset and private land is an issue for detailed design and consideration between the parties.

4.4 Conclusion

The Panel concludes that C357 and C360 are technically appropriate and urgently required to enable the further development of the Horseshoe Bend Precinct, and should be implemented as expeditiously as possible.

4.5 Recommendations

The Panel recommends that the Amendment be adopted, as exhibited.

(i) Further recommendations

- **The alignment of the waterway through properties affected by C360 should be designed within the affected properties to generally follow the alignment of the existing property boundaries and the extent of any land ultimately required should be minimised.**
- **The Council and the developers of the Horseshoe Bend Precinct should implement appropriate interim measures to minimise flooding risks for the downstream properties while the final stormwater infrastructure is being constructed.**

Appendix A Submitters to Amendment C357

No.	Submitter
1	Mr and Mrs Devlin
2	Barwon Water
3	DEDJTR
4	EPA Victoria
5	Dennis Family Corporation
6	Rennick and Gaynor on behalf of Robertson
7	Rennick and Gaynor on behalf of Perkins
8	Spiire on behalf of Gary Smith
9	DELWP (Geoff Brooks)
10	Albert Weddell, ID Land

Appendix B Submitters to Amendment C360

No.	Submitter
1	Barwon Water
2	DEDJTR
3	G and L Pohl
4	EPA Victoria
5	S O'Hara
6	Dennis Family Corporation
7	S and L Lim
8	DELWP (Geoff Brooks)
9	VicRoads
10	Albert Weddell, ID Land

Appendix C Document list

No.	Date	Description	Presented by
1	28/8/17	Part A submission. City of Greater Geelong. 2 No. folders	Briana Eastaugh
2	6/9/17	Part B Submission. City of Greater Geelong. 6/9/2017	“ ”
3	“	11 No. A3 photo maps of subject area	“ ”
4	“	VicRoads letter to the Senior Strategic Planner Council. 5/9/2017	“ ”
5	“	Letter from State Minister for the Environment to the CEO Council. 22/1/15	“ ”
6	“	Letter from Federal Dept. of Environment to the Development Manager Warralily. 7/12/15	“ ”
7	“	2010 Newspaper article and press release – 3 pages	“ ”
8	“	DELWP submission. 6/9/2017	Geoff Brooks
9	“	S O’Hara (C360) submission	Sandra O’Hara
9a	“	Further written submission L and C Devlin	L and C Devlin
10	7/9/17	Charlemont Rise submission	Sarah Wright
11	“	Dennis Family Corporation [Ashbury] submission. 7/9/2017	Alex Gelber
12	“	Horseshoe Bend Precinct, A3 Urban Structure Plan 22/9/2014	“ ”
13	“	Section 36 of subdivision act 1988	“ ”
14	“	ID Land Submission. 5/9/2017	Mark Bartley
15	“	Watermark Estate. 3 No. A3 plans of layout and sedimentation ponds	“ ”
16	“	Email from Senior Development Engineer, Council to Development Manager, ID Land. 21/8/2017	“ ”