

Planning and Environment Act 1987

Panel Report

**Greater Geelong Planning Scheme Amendment C367 and
Permit Application PP1463/2016**

2-120 Mollers Lane and 10 Willows Place, Leopold

22 January 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Greater Geelong Planning Scheme Amendment C367 and Permit Application PP1463/2016

2-120 Mollers Lane and 10 Willows Place, Leopold

22 January 2019



Sarah Carlisle, Chair



Gabby McMillan, Member

Contents

	Page
1 Introduction.....	1
1.1 The proposal.....	1
1.2 Background.....	5
1.3 Procedural issues.....	6
1.4 Summary of issues raised in submissions	8
1.5 The Panel’s approach	8
2 Planning context	10
2.1 Planning policy framework.....	10
2.2 Other relevant planning strategies and policies	12
2.3 Planning scheme provisions	16
2.4 Relevant Amendments	17
2.5 Ministerial Directions and Practice Notes.....	17
3 Strategic justification	19
3.1 The issues	19
3.2 Overall strategic justification	19
3.3 Changing the settlement boundary	21
3.4 Removing the Significant Landscape Overlay	24
4 Stormwater management	28
4.1 The issues	28
4.2 Context	28
4.3 Relevant policies, strategies and studies	28
4.4 Proposed on-site drainage works.....	29
4.5 Impacts on downstream private properties	32
4.6 Impacts on Lake Connewarre	34
4.7 Recommendations.....	37
5 Open Space.....	38
5.1 The issues	38
5.2 Context	38
5.3 Relevant policies, strategies and studies	38
5.4 Encumbered versus unencumbered open space	40
5.5 The amount of open space.....	42
5.6 The local park	44
5.7 The south-west wedge	45
6 Other matters	48
6.1 Vegetation removal.....	48
6.2 Biodiversity impacts	51
6.3 Traffic and transport impacts.....	53
6.4 Integration with the Ash Road East land.....	56

6.5	Impact of (and on) duck hunting activities.....	57
6.6	The need for further assessment of contamination	59
6.7	Impacts on surrounding character	60
6.8	Infrastructure	61
7	Form and content of the Amendment	64
7.1	The issues	64
7.2	Context	64
7.3	The Design and Development Overlay.....	64
7.4	The Framework Plan.....	66
7.5	Conclusions and recommendations	68
8	The planning permit.....	69
8.1	Relevant considerations	69
8.2	Evidence and submissions.....	69
8.3	Overall assessment of the permit application	70
8.4	Further notice of the amended ODP.....	73
8.5	Conclusion and recommendations.....	73

Appendix A Submitters to the Amendment

Appendix B Parties to the Panel Hearing

Appendix C Document list

Appendix D Panel preferred version of the permit PP1463/2016

List of Tables

	Page
Table 1	Reasons for changes to permit conditions..... 71

List of Figures

	Page	
Figure 1	The subject land	1
Figure 2	Subject land in context.....	2
Figure 3	Exhibited Overall Development Plan.....	4
Figure 4	Amended Overall Development Plan.....	5
Figure 5	Current Leopold Structure Plan map, showing proposed change to settlement boundary.....	15
Figure 6	Map from the South East Leopold Framework Plan	16
Figure 7	Typical cross section of topography south of the subject land.....	26

Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
amended ODP	Overall Development Plan Version Y2
CCMA	Corangamite Catchment Management Authority
CHMP	Cultural Heritage Management Plan
Council	Greater Geelong City Council
DDO43	Design and Development Overlay Schedule 43
DELWP	Department of Environment, Land, Water and Planning
Environmental Assessment	<i>Environmental Assessment 2 – 120 Mollers Lane, Leopold, Environmental Site Assessments Pty Ltd, August 2016</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
exhibited ODP	Overall Development Plan Version U
Framework Plan	<i>South East Leopold Framework Plan 2016</i>
GRZ1	General Residential Zone Schedule 1
Infrastructure Assessment	<i>Infrastructure and Servicing Assessment, TGM Group Pty Ltd, October 2016</i>
Localised Planning Statement	<i>Bellarine Peninsula Localised Planning Statement</i>
MSS	Municipal Strategic Statement
Native Vegetation Assessment	Report titled <i>Vegetation Assessment and Native Vegetation Removal</i> , Mark Trengrove Ecological Services, November 2018
ODP	Overall Development Plan
permit land	2-120 Mollers Lane, Leopold
PPF	Planning Policy Framework
Settlement Strategy	<i>City of Greater Geelong Settlement Strategy, October 2018</i>
SLO10	Significant Landscape Overlay Schedule 10
South-west wedge	that part of the subject land to the south of the southern open space corridor
Stormwater Assessment	<i>Site Stormwater Management Plan and Flood Impact Assessment, TGM Group, January 2018</i>
Structure Plan	<i>Leopold Structure Plan, September 2011 amended in January 2013</i>
subject land	2-120 Mollers Lane and 10 Willows Place, Leopold

TfV

Transport for Victoria

WSUD

Water Sensitive Urban Design

Overview

Amendment summary

The Amendment	Greater Geelong Planning Scheme Amendment C367 and Permit Application PP1463/2016
Common name	2-120 Mollers Lane and 10 Willows Place, Leopold
Brief description	Combined amendment and permit to facilitate the residential subdivision of land in Mollers Lane, Leopold
Subject land	<ul style="list-style-type: none"> - 2-20 Mollers Lane - 22-30 Mollers Lane - 32-40 and 32A Mollers Lane - 42-90 Mollers Lane - 92-120 Mollers Lane - 10 Willows Place
The Proponent	<ul style="list-style-type: none"> - Mollers Lane Developments Pty Ltd (2-20, 22-30 and 42-90 Mollers Lane) - HB Parker Pharmacy Superannuation Fund (92-120 Mollers Lane)
Planning Authority	Greater Geelong City Council
Authorisation	20 April 2018
Exhibition	17 May – 18 June 2018
Submissions	Number of Submissions: 16 Opposed/seeking changes: 14 Submitters are listed in Appendix A

Panel process

The Panel	Sarah Carlisle and Gabby McMillan
Directions Hearing	Geelong, 7 November 2018
Panel Hearing	Geelong, 3-5 December 2018
Site inspections	Accompanied and unaccompanied, 5 December 2018
Appearances	Refer to Appendix B
Citation	Greater Geelong PSA C367 [2019] PPV
Date of this Report	22 January 2019

Executive summary

(i) Summary

Greater Geelong Planning Scheme Amendment C367 and Permit Application PP1463/2016 seek to facilitate the residential subdivision of land at 2-120 Mollers Lane and 10 Willows Place, Leopold, generally in accordance with the *South East Leopold Framework Plan 2016* (the Framework Plan). The Framework Plan applies to the subject land, and to the land to the immediate west (referred to in this Report as the Ash Road East land).

The land is on the southern outskirts of Leopold, and is mostly within the current settlement boundary shown on the map in the Leopold Structure Plan and in the local policy framework. Land to the north and west is already developed for residential purposes. Land to the east and south is used for farming. Lake Connewarre, a declared Ramsar wetland and designated State Game Reserve, is roughly 900 metres to the south.

The Amendment proposes to:

- rezone the Mollers Lane land from Farming Zone to General Residential Zone Schedule 1 (10 Willows Place is already zoned General Residential Zone Schedule 1)
- apply a new Schedule 43 to the Design and Development Overlay (DDO43) to the land
- delete the Significant Landscape Overlay Schedule 10 (SLO10) from the southern part of the land
- make changes to Clause 21.14 (Bellarine Peninsula) in Council's Municipal Strategic Statement, to:
 - extend the settlement boundary on the Leopold Structure Plan map to align with the southern boundary of the subject land
 - refer to the Framework Plan.

The permit application proposes to allow, subject to extensive conditions:

- the staged multi-lot subdivision of the land
- removal of native vegetation
- removal of easements
- alteration of access and subdivision of land adjacent to a Road Zone Category 1.

Key issues raised in submissions included:

- changes to the settlement boundary and the impact this would have on the Bellarine Peninsula
- impacts on the ecology of and duck hunting activities on Lake Connewarre
- downstream stormwater impacts
- open space provision
- the use of the land south of the southern waterway (whether this should be as open space, or for residential development)
- vegetation removal
- transport infrastructure
- impacts on the character of the surrounding area
- integration with the Ash Road East land

- the form of the Amendment and the permit.

The Amendment

The Amendment is well founded and strategically justified, and should proceed with some changes. The land is identified for future residential development in an adopted Structure Plan which generally aligns with the Planning Policy Framework, including policy to direct future growth to Leopold and within the settlement boundary. This will, in turn, help to protect the highly valued rural and coastal areas of the Peninsula from the pressure of urban expansion, consistent with the objectives of the Bellarine Peninsula Localised Planning Statement.

The Planning Policy Framework includes several policy objectives directed at protecting and enhancing waterways, appropriately managing stormwater runoff, and protecting and enhancing significant environmental values, including those of Lake Connewarre. While the Panel is satisfied that these issues can broadly be managed to acceptable levels, it makes some specific recommendations directed at improving environmental outcomes.

The Panel does not support including the Framework Plan as a reference document in the Planning Scheme. In the Panel's view, the preferable approach is to include the substantive elements of the Framework Plan into the Planning Scheme. It appears that this has largely been done via the proposed DDO43, although Council should consider what, if any, additional elements of the Framework Plan need to be translated into Clause 21.14 and/or DDO43.

The Panel considers that it is premature to apply the Framework Plan, or its principles, to the Ash Road East land. While there are several technical reports and studies that broadly confirm the appropriateness of the Framework Plan's treatment of the subject land, the same cannot be said for the Ash Road East land. Council should therefore be very cautious about including elements of the Framework Plan in the Planning Scheme that relate to the Ash Road East land at this stage.

The permit application

Broadly speaking, the proposed subdivision will deliver an accessible, diverse and sustainable neighbourhood that provides integrated and sustainable transport solutions and a suitable open space network. The draft section 173 agreement exhibited with the Amendment and draft permit appropriately deals with the Proponent's obligations to deliver infrastructure necessitated by the development, and make contributions toward shared community infrastructure in the area. The permit should issue, but with some changes to both the exhibited Outline Development Plan (Version U) and the exhibited permit conditions.

The following aspects of the proposed development require further consideration. These matters can be dealt with by way of permit conditions, and the Panel has included appropriate conditions in Appendix D:

- Given the sensitivities associated with the outfall to Lake Connewarre, the design and access arrangements for the off-site drainage works must be resolved to Council's satisfaction, in consultation with the Department of Environment, Land, Water and Planning, prior to the commencement of the development.

- The proposed conditions regarding the monitoring of water quality entering Lake Connewarre are impractical, and need to be replaced with a condition requiring independent peer review of the drainage design, to ensure that it represents best practice and can meet the requirements of the permit, including water quality requirements.
- The Panel supports the residential development of the land south of the southern drainage and open space corridor, subject to resolving access arrangements to Council's satisfaction.
- The Panel considers that the local park adjacent to the northern retarding basin is required, and should be retained.
- Additional efforts should be made to avoid the removal of native vegetation and integrate this into the detailed design of the subdivision.
- While the Panel generally supports the proposed transport network, it agrees with Transport for Victoria that signalisation of the Bellarine Highway/Mollers Lane intersection should be brought forward. Shared paths should be constructed at a width of 2.5 metres.
- The requirement for a peer review of the Environmental Assessment that has already been prepared for the land is disproportionate to the level of contamination risk that has been assessed, and is not justified.

Many of these issues can be resolved with a more integrated approach to drainage, native vegetation and environmental outcomes. Accordingly, the Panel has recommended a condition requiring an Integrated Drainage, Vegetation and Open Space Framework Plan to be prepared.

The Panel sees some merit in the subdivision layout shown in the amended Outline Development Plan circulated by the Proponent prior to the Hearing (Version Y2). That said, the amended Outline Development Plan was provided late in the process, and has not been subject to public consultation or detailed consideration by Council or relevant government agencies. The Panel considers that further notice should be given of the amended Outline Development Plan under section 96H(2) of the Act before a permit issues. This will allow potentially affected parties to make formal submissions and have those submissions considered by a panel.

(ii) Recommendations in relation to the Amendment and permit application

The Amendment

Based on the reasons set out in this Report, the Panel recommends that Greater Geelong Planning Scheme Amendment C367 and Permit Application PP1463/2016 be adopted as exhibited subject to the following changes:

- 1. Amend the proposed Clause 21.14 to:**
 - a) delete the proposed strategy that reads "Support the implementation of the land use recommendations of the South East Leopold Framework Plan"**
 - b) delete the South East Leopold Framework Plan 2016 from the list of reference documents at the end of the clause.**
- 2. Amend the Design and Development Overlay Schedule 43 as follows:**

- a) in Clause 1.0, in the first design objective, delete “generally implement the South East Leopold Framework Plan as attached to this schedule and”
 - b) in Clause 3.0 under the heading ‘General’, in the second dot point, delete “generally in accordance with the South East Leopold Structure Plan that forms part of this schedule” and replace it with “the map in this schedule”
 - c) in Clause 3.0 under the heading ‘Public Open Space’, delete the third dot point and replace it with “Subdivision should provide for linear open space corridors and parks located generally as shown in the map in this schedule”
 - d) in Clause 5.0, remove the decision guideline that reads “Whether the subdivision design is generally in accordance with the South East Leopold Framework Plan 2016”
 - e) amend the map so that it only relates to the subject land, and not to the Ash Road East land.
3. Translate into Clause 21.14 and the Design and Development Overlay Schedule 43 additional elements from the South East Leopold Framework Plan (if any) that may be required to properly guide the use and development of the subject land, and the consideration of permit applications in relation to the subject land.

The permit application

Based on the reasons set out in this Report, the Panel recommends that permit application PP1463/2016 be granted, with the following changes to the exhibited conditions (condition numbers in the following recommendations refer to the Panel’s recommended permit in Appendix D, except where explicitly described as ‘exhibited condition’):

Drainage conditions

4. Include condition 4 in Appendix D requiring an Integrated Drainage, Vegetation and Open Space Framework Plan that includes (among other things):
 - a) a concept drainage design for on-site and off-site drainage works that includes Water Sensitive Urban Design features that achieve environmental best practice, stormwater retardation measures and water quality standards specified in the permit
 - b) a footprint showing the extent of drainage works and associated Water Sensitive Urban Design features
 - c) access and management arrangements and responsibilities for on-site and off-site drainage works and Water Sensitive Urban Design features.
5. Include condition 5 in Appendix D requiring all plans prepared in accordance with the conditions on the permit to be consistent with the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan.
6. Include conditions 12 and 13 in Appendix D, requiring easements to be secured for on-site and off-site drainage works prior to certification of a plan of subdivision.
7. Replace exhibited conditions 22 to 27, relating to monitoring and remediating where necessary water quality entering Lake Connewarre, with condition 4(d) in Appendix D requiring the Integrated Drainage, Vegetation and Open Space Framework Plan to be peer reviewed by an independent, suitably qualified and experienced consultant to confirm that the concept design, mitigation measures and ongoing management arrangements meet best practice

environmental standards and the requirements of the permit (including water quality requirements).

- 8. Restructure the exhibited conditions as shown in Appendix D, so that all drainage design and Water Sensitive Urban Design conditions (including conditions from other statutory authorities) are grouped together.**

Open space conditions

- 9. Include condition 1(c) in Appendix D requiring the local park adjacent to the northern retarding basin to be retained.**
- 10. Amend condition 1 to refer to Version Y2 of the Outline Development Plan dated 31 October 2018 instead of Version U dated 14 December 2017, so as to allow the residential development of the land to the south of the southern waterway and open space corridor.**

Conditions relating to native and non-native vegetation

- 11. Include condition 4(b) in Appendix D, that requires the Integrated Drainage, Vegetation and Open Space Framework Plan to demonstrate how impacts on native vegetation have been avoided and minimised with the subdivision layout, and how retained native vegetation and any offset areas will be integrated into and protected in any open space areas.**
- 12. Replace exhibited conditions 57 to 59 with conditions 54 to 55 in Appendix D, to refer to offset obligations under Clause 52.17 and the 2017 Native Vegetation Guidelines, after seeking further advice from DELWP.**

Conditions relating to protection of fauna

- 13. Delete exhibited conditions 69 and 70, requiring targeted surveys for, and salvage and relocation of, Growling Grass Frog. Include conditions 4(b)(iii) and 6(d) requiring design and landscaping features that provide suitable habitat for fauna including Growling Grass Frog.**

Transport and traffic conditions

- 14. Amend conditions 100(a) and 107(b) to (d) to reflect the agreed position in relation to the timing of the signalisation of the Mollers Lane/Bellarine Highway intersection, and the width of shared paths.**
- 15. Otherwise amend conditions 107 to 113 to reflect the agreed conditions set out in Transport for Victoria's submission dated 27 November 2018 (Document 13).**
- 16. Include condition 21 in Appendix D requiring access to the land south of the southern waterway and open space corridor to be designed and constructed to the satisfaction of Council prior to development of that part of the land commencing.**

Contamination conditions

- 17. Delete exhibited condition 34 requiring a peer review of the Environmental Assessment.**

Based on the reasons set out in this Report, the Panel makes the following additional recommendation in relation to Permit Application PP1463/2016:

- 18. Inform the Minister for Planning that before a permit is issued, further notice should be given of the amended Outline Development Plan (Version Y2) under section 96H(2) of the Act.**

The section 173 agreement

Based on the reasons set out in this Report, the Panel recommends that the draft section 173 agreement exhibited with the Amendment and draft permit be amended as follows:

- 19. Delete clause 5 requiring an environmental audit of any land transferred to Council.**
- 20. Amend schedule 3 to:**
 - a) refer to the infrastructure projects more generally, rather than by reference to very specific plans**
 - b) reflect the agreed position in relation to the timing of the signalisation of the Mollers Lane/Bellarine Highway intersection, and the width of shared paths, consistent with amended permit conditions 100(a) and 107(d) to (d).**

(iii) Further recommendations

The Panel makes the following further recommendations:

- 21. Should the Amendment be approved in a form that shifts the settlement boundary, Council should consider resolving the consequential inconsistencies between the revised settlement boundary and the Leopold Structure Plan in the next 5 yearly review of the Structure Plan.**

1 Introduction

1.1 The proposal

(i) The subject land

The subject land is at 2-120 Mollers Lane and 10 Willows Place, Leopold, on the western side of Mollers Lane. The Amendment relates to all of the subject land, but the permit application only relates to 2-120 Mollers Lane (the permit land), shown in yellow in Figure 1.

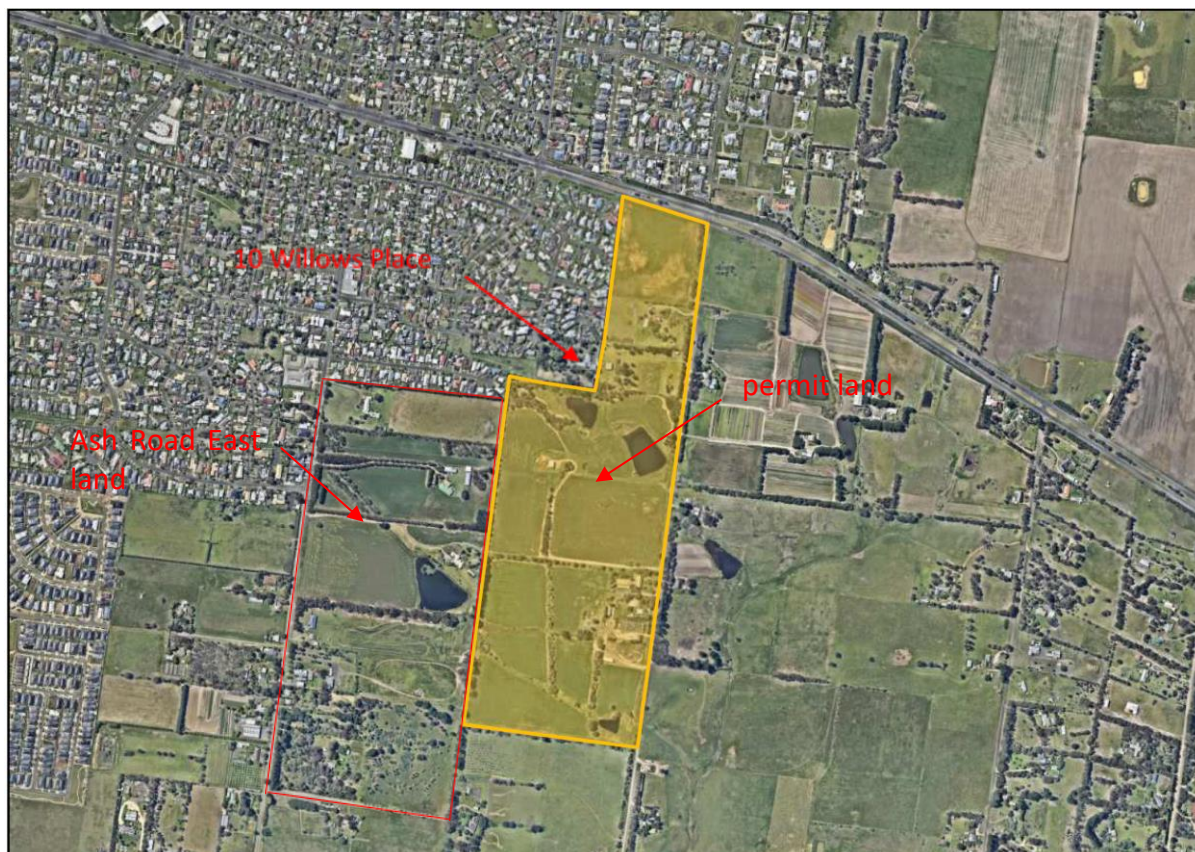


Figure 1 The subject land

Source: Permit application materials, with the Panel's annotations

Most of the subject land is currently used for farming purposes. It contains some dwellings and some disused buildings and sheds associated with a former nursery that was located on the subject land. 32A Mollers Lane is owned by the Lutheran Church, and accommodates a church, a hall, associated outbuildings and some carparking.

Two waterways traverse the subject land, which are shown on Figures 3 and 4 below (the exhibited and amended Outline Development Plans). They are referred to in this Report as the northern and southern waterways. Both waterways eventually drain to Lake Connewarre, via privately owned land on the eastern side of Mollers Lane.

(ii) The surrounding area

Leopold is located on the Bellarine Peninsula, 90 kilometres from Melbourne and 12 kilometres east of Geelong. It traverses the Bellarine Highway and is bound to the north by the Portarlington Road and to the south by Lake Connewarre. Leopold has a shopping centre, two small retail shopping strips, a recreation park (netball, tennis, cricket and football), primary school, kindergartens and a neighbourhood centre. Geelong provides higher end services to the Leopold community.

To the west of the subject land is the Ash Road East land, the Ash Road West land and the Estuary Estate, as shown in Figure 2 below. All of this land is designated for residential development. The Estuary Estate is now largely developed. The Ash Road West land has been rezoned for residential development, but is not yet developed. The Ash Road East land and the subject land remain in the Farming Zone at this stage.

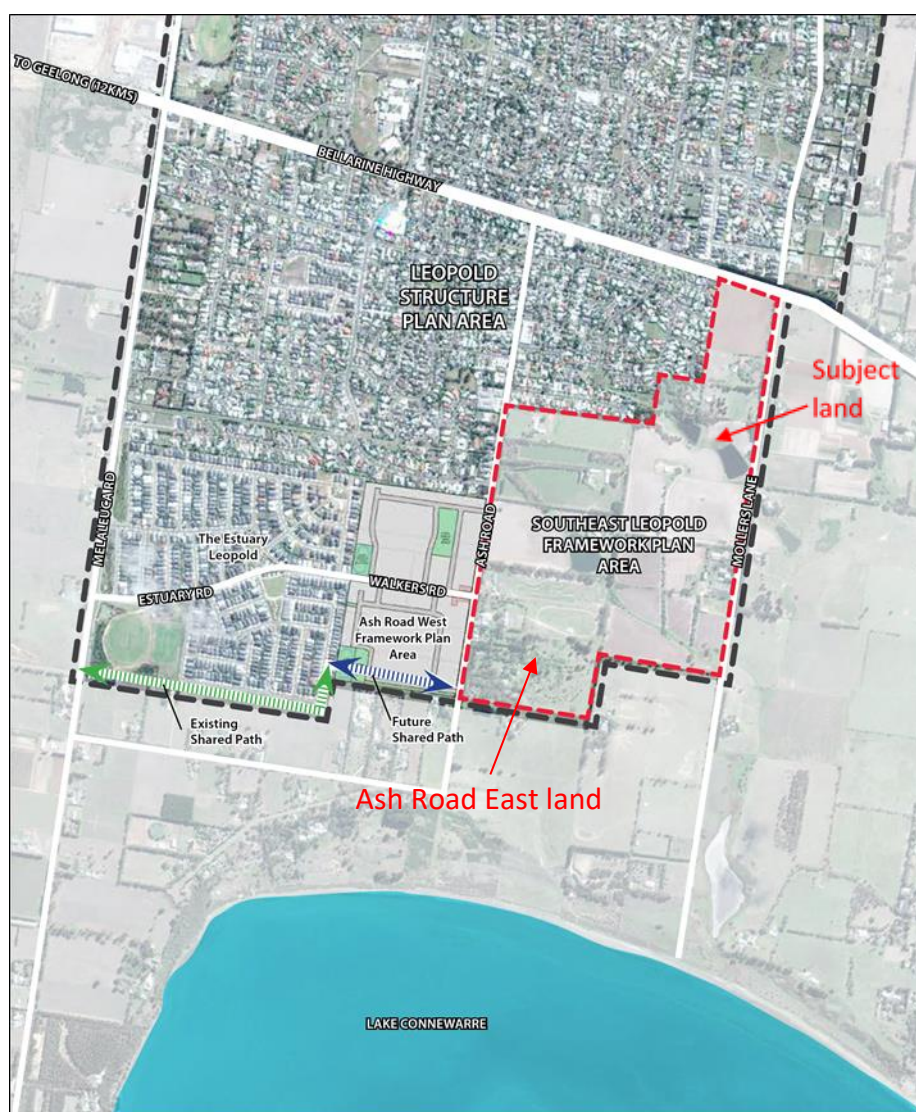


Figure 2 Subject land in context

Source: South East Leopold Framework Plan 2016, Panel's annotations

Lake Connewarre is located roughly 930 metres south of the subject land. It is part of a declared Ramsar wetland, and provides habitat to a variety of water birds and migratory species. The lake is a State Game Reserve listed under the Wildlife (Game) Regulations 2012, on which regulated duck hunting is permitted. Parks Victoria manages Lake Connewarre.

(iii) The Amendment

The Amendment seeks to facilitate the residential subdivision of the subject land. Specifically, the Amendment proposes to:

- rezone the permit land from Farming Zone to General Residential Zone Schedule 1 (GRZ1) (10 Willows Place is already zoned GRZ1)
- apply a new Schedule 43 to the Design and Development Overlay (DDO43) to the subject land
- delete the Significant Landscape Overlay Schedule 10 (SLO10) from the southern part of the permit land
- make changes to Clause 21.14 (Bellarine Peninsula) in Council's Municipal Strategic Statement, to:
 - extend the settlement boundary on the Leopold Structure Plan Map to the south, to align with the southern boundary of the subject land
 - refer to the *South East Leopold Framework Plan 2016* (the Framework Plan).

(iv) The permit application

The Amendment is accompanied by a draft planning permit for a staged subdivision, native vegetation removal, removal of easements and access to a Road Zone Category 1. The Amendment and draft permit were exhibited together with a draft agreement under section 173 of the *Planning and Environment Act 1987* (the Act) to require the Proponent to undertake infrastructure works and to pay development contributions for community projects in Leopold. The draft permit and the draft section 173 agreement only apply to the permit land.

(v) The Overall Development Plan

The draft permit was exhibited with an Overall Development Plan Version U (the exhibited ODP) which indicated the intended layout of the subdivision. Version U contemplated a yield of 494 lots.

On 16 November 2018 the Proponent circulated a revised Overall Development Plan Version Y2 (the amended ODP). The Proponent explained the key changes as:

- the area of land to the south of the southern drainage and open space corridor (the south-west wedge) is shown as developable land and subdivided, rather than 'encumbered open space'
- the Church site is shown as subdivided, creating three additional lots
- the density of lots is slightly increased
- Mollers Lane is shown as sealed from the Bellarine Highway to the last east-west road connection.

Consequently:

- the number of lots proposed has increased from 493 to 541
- the net developable area has increased from 35.33 hectares to 37.6 hectares
- the development density has increased from 13.98 lots per developable hectare to 14.5 lots per developable hectare.

The exhibited ODP is shown in Figure 3, and the amended ODP is shown in Figure 4.

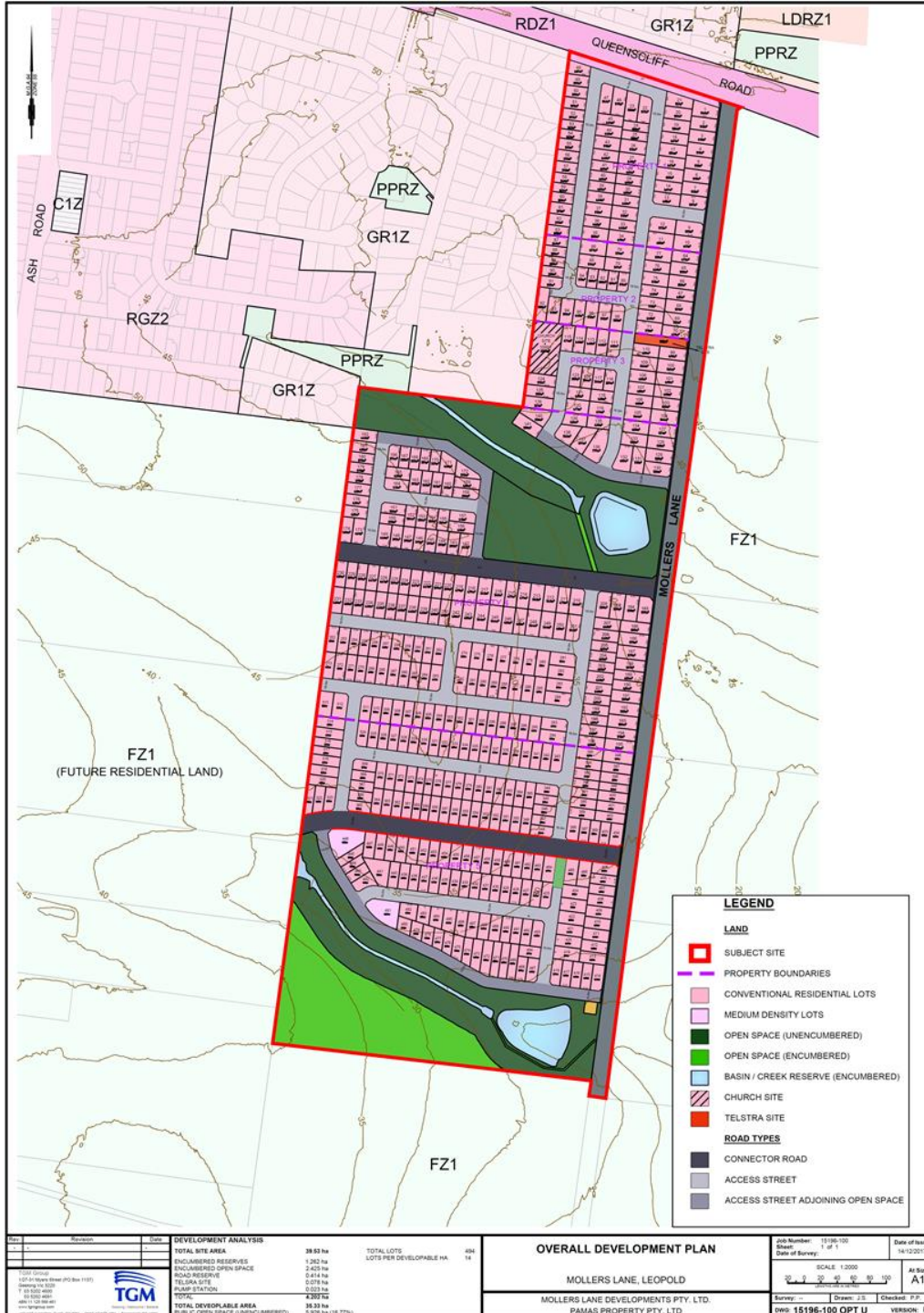


Figure 3 Exhibited Overall Development Plan

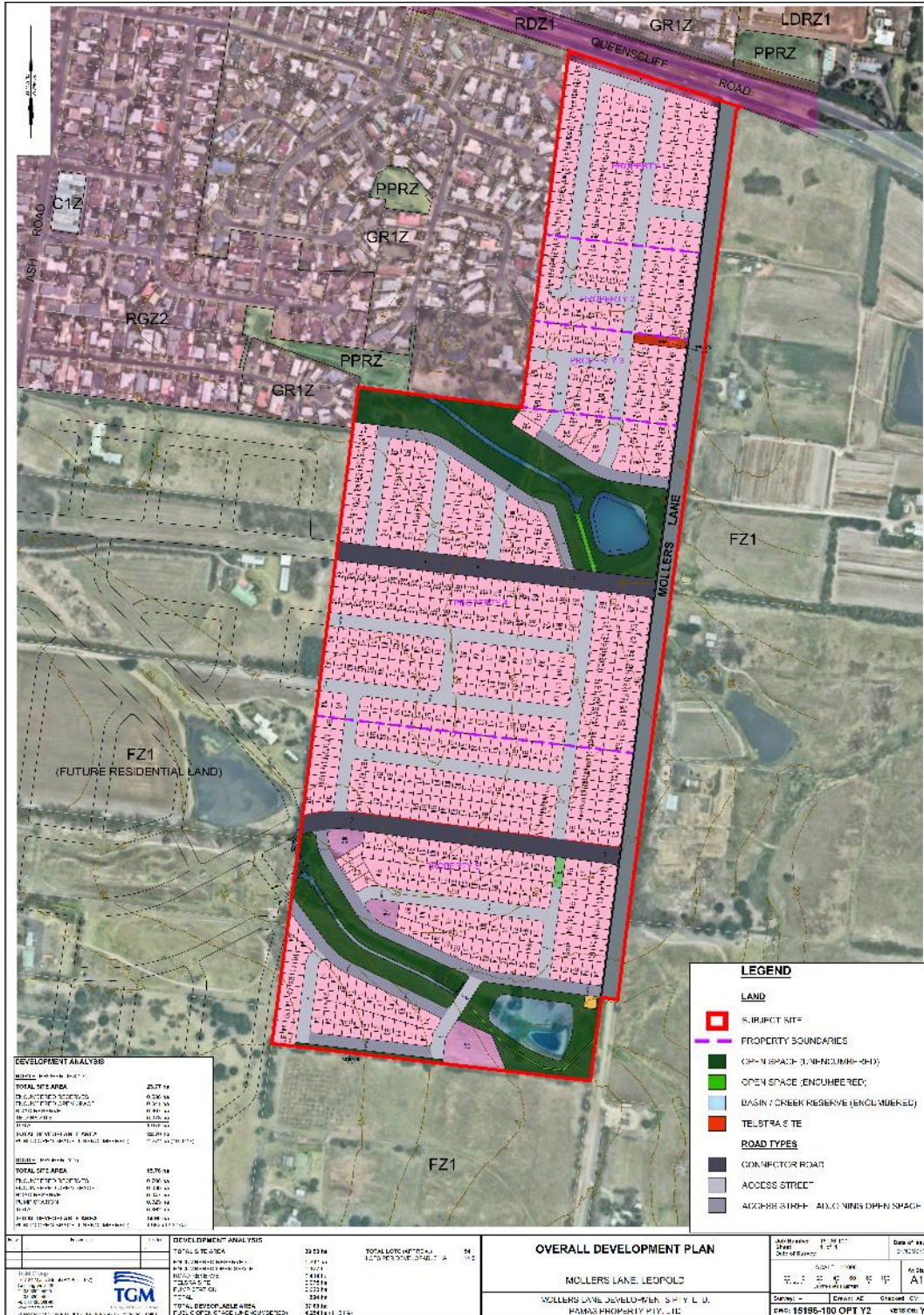


Figure 4 Amended Overall Development Plan

1.2 Background

The Leopold Structure Plan, originally prepared in September 2011 and amended in January 2013 (the Structure Plan), provides guidance for the development of the Leopold township. It establishes a settlement boundary around the township which includes the bulk of the

subject land (excluding the southern portion of the lot at 92-120 Mollers Lane), the Ash Road East land, the Ash Road West land and the Estuary Estate. The Structure Plan is described in more detail in Chapter 2.2(iv).

Amendment C280, approved in March 2015, rezoned the Ash Road West land to GRZ1. After Amendment C280 took effect, parties with an interest in the subject land and the Ash Road East land approached Council about rezoning the land for residential development. Council officers considered that a strategy should be developed to address the subject land and the Ash Road East land (which together represents around 67 hectares) holistically before entertaining rezoning proposals.

Council engaged Tract Consultants in December 2015 to prepare the Framework Plan, which was finalised in 2016. Following finalisation of the Framework Plan, the Proponent lodged an application pursuant to section 96A of the Act for a combined planning scheme amendment and planning permit application. Council referred the initial application to various internal and external agencies for preliminary advice, following which the Proponent lodged a revised and updated application, along with a number of supporting reports, on 29 January 2018. Council exhibited the January 2018 version of the Amendment and permit application.

1.3 Procedural issues

(i) The amended ODP – process and notice

The Proponent does not intend the amended ODP to be a formal amendment to the permit application. It noted that section 96G of the Act empowers a planning authority to recommend to the Minister that a permit be granted with or without changes, and that the changes proposed *“fit squarely within the ambit of change which may be recommended by a planning panel and or a planning authority”*. It submitted that section 96H(2) of the Act allows the Minister to decide that further notice of the permit should be given, and that notice of the amended ODP *“is not a matter which the panel is required to concern itself with. We submit that, having regard to the changes and council being the relevant contradictor, further notice is unlikely”*.

The Act does not prescribe a process for amending a permit application that is part of a combined amendment and permit. In particular, the process under section 57A for amending a regular permit application does not apply. Any amendments to the proposed permit would therefore have to be recommended by Council under section 96G, after considering the Panel’s report.

The Act does not prescribe the nature or extent of changes to a proposed permit that may be recommended by a planning authority under section 96G. The Supreme Court case of *Addicoat v Fox (No 2)* [1979] VR 347 provides some guidance¹. That case decided that changes to an application were permissible *“provided that the difference is not so radical as to enable it to be said, viewing the matter broadly and fairly, that to grant a permit on the*

¹ *Addicoat v Fox* was decided at a time when there was no statutory power to amend a regular permit application.

supposed conditions would not be to grant the permit applied for with modifications, but to grant a different permit". This test is often referred to as the 'transformation' test.

The changes represented in the amended ODP do not, in the Panel's view, represent a transformation of the proposal shown in the exhibited ODP. Rather, they represent a modification of the exhibited ODP. On that basis, the Panel agrees with the Proponent that the changes are within the scope of changes that a planning authority could recommend under section 96G.

This raises two questions:

- Should the changes be supported?
- Should further notice be given in respect of the amended ODP?

The Panel has addressed these questions in this Report to help inform any recommendations Council may make about the permit under section 96G. The Panel's findings and recommendations are consolidated in Chapter 8.

(ii) Cultural Heritage Management Plan

Cultural Heritage Management Plan (CHMP) No 14185 was approved for the proposal on 9 January 2017. The approved CHMP was based on an earlier proposed subdivision layout (Version F of the ODP), that predated both the exhibited ODP and the amended ODP. While it is beyond the scope of this Report to make recommendations about the CHMP, the Panel observes that there are some substantial differences between the Version F ODP on which the approved CHMP is based, and the amended ODP, including the residential development of the south-west wedge. There are also some differences between Version F and the exhibited version (Version U), although these are less significant. Council and the Proponent will need to consider whether the CHMP should be amended prior to the permit being issued.

(iii) Alignment with EPBC Act referral

The Proponent indicated that the proposal could have an impact on matters of national environmental significance that are protected under the *Environment Protection and Biodiversity Conservation Act 1998* (Cth) (EPBC Act). It indicated that it would refer the proposal to the Commonwealth Minister under Part 9 of the EPBC Act for a determination as to whether the proposal constituted a controlled action. The Panel has discussed the alignment between the State and Commonwealth processes in Chapter 4.6.

(iv) Easements for off-site drainage works

As discussed in Chapter 4, off-site drainage works are likely to be required on privately owned land downstream of the subject land. Easements will be required to provide access for the establishment and maintenance of the works.

The Proponent submitted that Council should either acquire the easement (as the drainage authority), or enable the Proponent to acquire the easement under section 36 of the *Subdivision Act 1988*. In order for the process under section 36 to be used, Council must state in writing that:

- it considers that the economical and efficient subdivision or servicing of the subject land requires the Proponent to acquire an easement over the downstream land, and
- the acquisition will not result in unreasonable amenity in the area affected by the acquisition.

The extent of downstream works and maintenance obligations are unknown at this stage. Mr Chapman (one of the affected landowners) has raised concerns about the impact of works on his land. Council informed the Panel that in the circumstances, it was unwilling either to make the statement to trigger the process under section 36 of the *Subdivision Act 1988* or acquire the easement itself. The Panel understands Council's reluctance, and considers that the only remaining option is for negotiation between the parties in relation to the creation of a suitable easement. Further detailed design of the drainage system will need to be completed before the exact location and extent of the required works are known.

The easement arrangements are beyond the scope of the Panel's remit. That said, the Panel considers that the downstream works are likely to be an integral part of the drainage solution (as discussed in more detail in Chapter 4), and it will be essential for the Proponent to ensure the necessary easements or other access arrangements are in place before development of the subject land commences.

1.4 Summary of issues raised in submissions

The key issues are:

- changes to the settlement boundary and the impact this would have on the Bellarine Peninsula
- impacts on the ecology of and duck hunting activities on Lake Connewarre
- downstream stormwater impacts
- open space provision
- the use of the land south of the southern waterway (whether this should be as open space, or for residential development)
- vegetation removal
- transport infrastructure
- impacts on the character of the surrounding area
- integration with the Ash Road East land
- the form of the Amendment and the permit.

1.5 The Panel's approach

The Panel has assessed the Amendment and the permit application against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and 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
- Strategic justification
- Stormwater management
- Open space
- Other matters
- Form and content of the Amendment
- The planning permit.

2 Planning context

2.1 Planning policy framework

Council submitted that the combined Amendment and permit are supported by the Planning Policy Framework (PPF) as set out below (summarised by the Panel).

Victorian planning objectives

The combined Amendment and permit will assist in implementing policy objectives set out in section 4 of the Act by providing for the rezoning and subdivision of land to achieve an orderly, well planned outcome consistent with the strategic direction of Leopold.

Clause 11 (Settlement)

The combined Amendment and permit support Clause 11 by:

- providing an average overall residential density in the order of 15 lots per net development hectare (11.03-2S)
- providing for development contributions for community infrastructure through the proposed section 173 agreement (11.02-3S)
- reducing the number of sewerage pumping stations required to service the residential development (11.02-3S).

Clause 12 (Environmental and landscape values)

The combined Amendment and permit support Clause 12 by:

- ensuring minimal impact on Lake Connewarre, with Water Sensitive Urban Design (WSUD) measures to treat stormwater discharged from the site (12.01-1S)
- requiring (via permit conditions) further avoidance and offset planting for vegetation being removed, to ensure no net loss of biodiversity (12.01-2S)
- designing the subdivision around the two waterways, including them as landscape features, providing buffers and requiring their reinstatement with vegetation planting (12.03-1S)
- retaining and enhancing the waterways as features of the landscape (12.05-2S).

Clause 13.02 (Bushfire planning)

The combined Amendment and permit are supported by Clause 13.02-1S because:

- although the land is within a designated bushfire prone area, minimum construction standards will apply to the dwellings built on the land to address fire risk
- the grassland and dispersed vegetation surrounding Leopold poses only a minor bushfire risk
- development of the land will minimise the bushfire risk as grassland will be gradually removed and reticulated water and other forms of infrastructure will be provided as the land is developed
- conditions from the Country Fire Authority have been included in the permit.

Clause 13.04 (Potentially contaminated land)

The combined Amendment and permit support Clause 13.04-1S because its supporting environmental assessment identified no contamination issues on the subject land, allowing development to proceed.

Clause 14.02-1S Catchment planning and management

This clause specifies a number of detailed strategies to assist in the protection of catchments and water bodies. Clause 14.02-1S is addressed in detail in Chapter 4.

Clause 15 (Built environment and heritage)

The combined Amendment and permit support Clause 15 because:

- the proposed development will
 - deliver an attractive, safe, accessible, diverse and sustainable neighbourhood, with a range of lot sizes to meet the needs of different groups in the Leopold housing market (15.01-3S)
 - reduce car dependency by providing bus capable connector roads, shared paths for cycling and walking, and connectivity to established and developing areas of Leopold (15.01-3S)
 - make it easy for people to engage in physical activity by providing connected walking and cycling networks, accessibly located public transport stops and conveniently located public spaces for active recreation and leisure (15.01-4S)
- the Framework Plan ensures an integrated urban form and vegetated green spaces, with retention of mature trees (15.02-1S)
- a Cultural Heritage Management Plan has been prepared and approved (15.03-2S).

Clause 16 (Housing)

The combined Amendment and permit support Clause 16 by rezoning land in accordance with Leopold's designation as a growth location, and supplementing the supply of residential land in the market (16.01-2S and 16.01-4S).

Clause 18 (Transport)

The combined Amendment and permit support Clause 18 by:

- developing integrated and accessible transport networks through active transport networks that provide accessibility to public transport (18.01-1S)
- providing cycling connections to the Bellarine Rail Trail, and new bus stops and bus capable roads (18.01-2R and 18.02-2S)
- incorporating active transport in the subdivision design (18.02-1S).

Clause 19 (Infrastructure)

The combined Amendment and permit support Clause 19 by:

- requiring development contributions towards social infrastructure projects within the Leopold area, consistent with the strategy of ensuring early delivery in the development process (19.02-4S and 19.03-1S)
- taking an integrated approach to the planning and engineering design of new subdivisions, though the Framework Plan (19.03-2S)

- ensuring stormwater will be managed through on-site detention and treatment, incorporating the waterways as features of the subdivision, providing for a sewerage pumping station and managing flows to minimise impacts on downstream properties and Lake Connewarre (19.03-3S).

Clause 19.02-6 (Open space)

Clause 19.02-6S specifies detailed policies and strategies in relation to open space. Clause 19.02-6S is addressed in detail in Chapter 5.

Clause 21 (the Municipal Strategic Statement)

The Municipal Strategic Statement identifies Leopold as a potential sub-regional centre, which would see retail services expanded to a level which would serve the Bellarine Peninsula. The combined Amendment and permit support the MSS by:

- retaining development within defined urban growth areas and providing a mix of housing suited to the needs of a diverse range of household types (21.06-2 Urban growth)
- enhancing and protecting waterways by the appropriate management of stormwater runoff through permit conditions (21.05-2 Waterways)
- protecting floodplains and minimising the risk of flood damage through permit conditions (21.05-7 Flooding)
- consolidating existing urban areas in a managed way, providing an appropriate range of development densities and improving accessibility to urban services (21.06-3 Urban Consolidation)
- ensuring that the development will positively respond to the established urban character of the area by providing connections into adjoining Ash Road East land, noting that the subject land is a greenfield site which will have its own character (21.06-4 Neighbourhood character)
- encouraging development to proceed in a contiguous manner which maximises the use of development and community infrastructure, by requiring infrastructure to be provided and community infrastructure contributions to be paid through the section 173 agreement (21.08-3 Development Contributions)
- providing adequate amounts of open space largely bound on most sides by roads (21.08-5 Accessibility)
- implementing the urban growth policies for Leopold and protecting waterways including Lake Connewarre (21.14 Bellarine Peninsula).

Clause 22 (local planning policies)

Council submitted that there were no relevant local planning policies within Clause 22.

2.2 Other relevant planning strategies and policies

(i) Bellarine Peninsula Localised Planning Statement

Localised planning statements are State policies for protecting and enhancing distinctive areas with State significant geographic and physical features, biodiversity, natural resources, cultural and tourism values, productive rural land and regional and national infrastructure

assets. Localised planning statements have been approved for the Bellarine Peninsula, the Mornington Peninsula and the Yarra Ranges, and a localised planning statement is being prepared for the Macedon Ranges. They are reference documents in Clause 11.03-5S of the PPF, and Ministerial Direction No 17 requires any planning scheme amendments affecting these areas to have regard to the localised planning statement.

The Bellarine Peninsula Localised Planning Statement (Localised Planning Statement) acknowledges that the Bellarine Peninsula is increasingly coming under pressure for growth and change, due to its attractiveness, accessibility and proximity to Melbourne. It indicates that:

... considerable strategic planning has been undertaken to provide for the managed expansion of urban areas on the Bellarine Peninsula, and townships have been planned on the basis of clear settlement boundaries. Ongoing population and employment growth within the Greater Geelong area, combined with the unique and high quality rural and coastal landscapes is contributing to increasing development pressures in rural areas of the Bellarine Peninsula. Managing growth and development is therefore critical to protecting and enhancing the significant values of the Bellarine Peninsula.

Leopold is one of three designated growth locations, characterised as a predominantly residential township and an 'urban island' within the rural setting of the Peninsula. Policy objective 5 in the Localised Planning Statement is to facilitate the planned residential growth of Leopold (as well as Drysdale/Clifton Springs and Ocean Grove), consistent with adopted Structure Plans and as service hubs for the Bellarine Peninsula. Strategies to achieve this include:

- direct the bulk of residential growth and retail development to Leopold, Drysdale/Clifton Springs, and Ocean Grove
- ensure land use and development proceeds generally in accordance with the Structure Plan maps.

(ii) G21 Regional Growth Plan

The G21 Regional Growth Plan provides broad direction for land use and development across the Geelong region. It is reflected in Clause 11.01-1R Settlement – Geelong G21 of the PPF, which includes the following strategies:

- Support the growth of Bannockburn, Colac, Drysdale/Clifton Springs, Lara, Leopold, Ocean Grove and Torquay/Jan Juc as district towns by building on existing and planned infrastructure and focusing growth along key road and rail networks.
- Require a settlement boundary for all towns.

Council submitted that the Amendment is consistent with the G21 Regional Growth Plan and Clause 11.01-1R as it proposes the addition of approximately 40 hectares of residentially zoned land largely within the existing settlement boundary.

(iii) City of Greater Geelong Settlement Strategy

The City of Greater Geelong Settlement Strategy, October 2018 (the Settlement Strategy) was adopted by Council in October 2018, following community consultation. Council advised that the Settlement Strategy largely represents existing housing and growth policy

positions for Leopold. Council intends to implement the Settlement Strategy by a planning scheme amendment in 2019.

The Settlement Strategy seeks to contain growth within identified locations across the municipality. It indicates that Council will pursue permanent settlement boundaries based generally on existing urban areas and areas already identified in policy, subject to a consultation process to review the appropriateness of the boundaries and deal with any significant anomalies or logical inclusions.

The Housing Framework Plan in the Settlement Strategy identifies Leopold as a “*district town – moderate housing (within existing settlement boundaries)*”.

(iv) Leopold Structure Plan

The Structure Plan, which was implemented into the Scheme by Amendment C254, includes principles and directions for each of the following themes:

- Urban Growth
- Settlement and Housing
- Economic Development and Employment
- Infrastructure
- Natural Environment
- Rural Areas.

It includes a map, which is extracted in Clause 21.14 of the Planning Scheme, and in Figure 5 on the following page. The map shows a settlement boundary around Leopold. Currently, the settlement boundary bisects the southern lot on the subject land (at 92-120 Mollers Lane). The Amendment proposes to move the settlement boundary south to align with the title boundary of this lot (as shown on Figure 6), and to designate the whole parcel as ‘Rezone Residential 1’.

The Structure Plan recognises that the take-up of land and redevelopment within Leopold needs to be regularly monitored, and that the Structure Plan needs to be reviewed every five years. Council indicated that the next review will need to consider the Settlement Strategy, the G21 Regional Growth Plan and whether the settlement boundary needs to further expand to accommodate residential growth.

The Framework Plan map is extracted in Figure 6. The Framework Plan map is included in the proposed DDO43.



Figure 6 Map from the South East Leopold Framework Plan

Council advised that Tract and Council officers engaged with the affected landowners and relevant authorities, including Barwon Water and the Corangamite Catchment Management Authority (CCMA), in the course of preparing the Framework Plan. The Framework Plan has not been the subject of a broader public consultation exercise, and has not yet been formally adopted by Council.

2.3 Planning scheme provisions

The permit land is currently zoned Farming Zone, and is proposed to be rezoned to GRZ1. The land at 10 Willows Place is already zoned GRZ1. The purposes of the GRZ are:

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

The southern portion of the permit land is subject to the SLO10, which applies to the Lake Connewarre escarpment. The Amendment proposes to remove the SLO10 from the permit land.

2.4 Relevant Amendments

(i) Amendment VC148

Amendment VC148 was gazetted on 31 July 2018, after the Amendment and draft permit were exhibited. VC148 made substantial changes to the structure and content of the planning policy framework, as well as other provisions in the Planning Scheme. Council submitted that Amendment VC148 did not result in any significant changes to the planning policy framework that would alter the assessment of the proposal.

The Panel notes that Amendment VC148 introduced the ability for application requirements to be specified in a schedule to the Design and Development Overlay. Council should review the Amendment documentation carefully prior to adoption to ensure that it is consistent with the changes introduced by Amendment VC148.

(ii) Amendment VC154

Amendment VC154 was gazetted on 26 October 2018, after the Amendment and draft permit were exhibited. The explanatory report states:

Amendment VC154 implements initiatives from *Plan Melbourne 2017-2050 and Water for Victoria – Water Plan* to enable the planning system to better manage water, stormwater and drainage in urban development. This will provide for improved water quality and a reduction in overall nutrient quantities in the water cycle, ultimately benefiting Victorian waterways.

Amendment VC154 implements these initiatives by modifying the Planning Policy Framework (PPF) to reflect integrated water management objectives and by introducing a new particular provision for stormwater management in urban development.

According to Council, Amendment VC154 has strengthened the importance of successfully addressing the impacts of urban development on waterways and associated systems. It submitted that the permit application (which was initially assessed prior to VC154 taking effect) was assessed by Council “*with caution*” due to the vicinity and eventual outfall of stormwater to Lake Connewarre, and that a “*high benchmark*” has been set via the draft permit conditions which are supported by the revised policy.

2.5 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of *Ministerial Direction No 11 Strategic Assessment of Amendments* and *Planning Practice Note 46: Strategic Assessment Guidelines*, June 2015 (PPN46). That discussion is not repeated here.

Ministerial Direction No 1 Potentially contaminated land states that where land has been previously used for industry, mining, or chemical storage, and is to be used for a sensitive use such as residential, an audit is required. The Potentially Contaminated Land General Practice Note (DSE, June 2005) recommends that an environmental audit should be required unless the proponent can demonstrate to the satisfaction of the responsible authority that the site has never been used for a potentially contaminating activity, or that other strategies or programs are in place to effectively manage any contamination.

Planning Practice notes that are relevant to a specific issue are referenced in the relevant chapter.

3 Strategic justification

3.1 The issues

The issues are:

- Is the proposal strategically justified in a general sense?
- Is the change to the settlement boundary strategically justified?
- Is the removal of the SLO10 strategically justified?

3.2 Overall strategic justification

(i) Evidence and submissions

Council submitted that the Amendment is consistent with the objectives and strategies of the PPF outlined in Chapter 2, including the residential growth objective. It noted that the PPF, including the Localised Planning Statement, directs the bulk of residential growth to Leopold and the two other designated growth locations on the Peninsula (Drysdale/Clifton Springs, and Ocean Grove). Council submitted that the proposed development generally accords with the map in the Structure Plan (Figure5), though with the small settlement boundary extension.

The Proponent submitted that the Amendment has a “*sound strategic basis*” in that it seeks to rezone land previously identified for future urban growth, and implements the planned expansion of Leopold as envisaged in the Structure Plan. It noted that the panel considering Amendment C254 found² that the Structure Plan:

- provides the strategic building blocks for the next phase of Leopold’s development
- is based on conservative, yet realistic population projections
- allocates sufficient land for residential and commercial expansion within the next review period.

The Proponent called Ms Ring to give expert planning evidence. Her evidence was that the Amendment has a sound strategic basis consistent with the need outlined in the G21 Regional Growth Plan and the Localised Planning Statement to manage expansion of the region’s urban areas and maintain non-urban breaks between settlements. She noted that Leopold is one of three towns designated in these documents, and in Clause 21.14, as locations where growth is anticipated to proceed generally in accordance with relevant structure plans.

Her evidence was that the proposal is responsive to coastal policies which aim to plan and manage population growth in a way that is responsive to the natural qualities of the landscape. It would help protect sensitive ocean, bay and estuary environments by directing growth away from these areas. Further, the proposal does not threaten the desirability and importance of settlement town breaks to maintain their unique identities, and will not threaten an area important for food production.

² Greater Geelong C254 (PSA) [2012] PPV 143 at page 22.

(ii) Discussion

The combined Amendment and permit seek to address a tension between policies that seek urban consolidation in defined growth areas on the Bellarine Peninsula, and those seeking to protect environmental values.

No submission persuaded the Panel that there is any reason to question the overall policy support or strategic basis for the proposal. The Amendment rezones land that is already identified for future residential development in an adopted Structure Plan. The Structure Plan generally aligns with the PPF, including policy to direct future growth to Leopold as one of three defined growth locations. This will, in turn, help to protect the highly valued rural and coastal areas of the Peninsula from the pressure of urban expansion, consistent with the objectives of the Localised Planning Statement.

The proposal will deliver additional supply of residential land with a range of lot sizes and an average overall residential density in the order of (although slightly below) 15 lots per net development hectare. This is consistent with policy objectives in Clauses 11.03-2S, 15.01-3S, 16.01-2S and 16.01-4S of the Planning Scheme, and Council's MSS, which support residential land supply, housing affordability and housing diversity. The Panel considers that a lot density slightly lower than that sought under Clause 11.03-2S is appropriate, given the subject land is located on the outskirts of Leopold.

The Panel accepts Ms Ring's evidence that, broadly speaking, the proposed subdivision represents an accessible, diverse and sustainable neighbourhood that provides integrated and connected transport solutions and will encourage more sustainable transport modes including walking, cycling and public transport, consistent with the policy objectives in Clause 18 of the Planning Scheme. Key components are the dedicated and shared footpaths and bike paths, the cycling connections to the Bellarine Rail Trail, and new bus stops and bus capable roads. The proposal includes a requirement for developer contributions to be paid toward other shared community infrastructure, consistent with the objectives of Clause 19.

Although the subject land is within a designated bushfire prone area, the Panel is satisfied that the proposal is consistent with Clause 13.02-1S as the bushfire risk surrounding Leopold is relatively low. Minimum construction standards will apply under the building system to the dwellings built on the land to address fire risk. The Panel accepts that the residential development of the subject land may in fact reduce the fire risk in the area, with the removal of grassland and the supply of reticulated water and fire-fighting infrastructure as the land is developed. It also notes that the Country Fire Authority did not object to the proposal, and its conditions have been included in the permit.

The PPF includes several policy objectives directed at protecting and enhancing waterways, appropriately managing stormwater runoff, and protecting and enhancing significant environmental values, including those of Lake Connewarre. While the Panel is satisfied that these issues can broadly be managed to acceptable levels, it makes some specific recommendations directed at improving environmental outcomes in Chapters 4 and 6.1. It also makes some specific recommendations in Chapter 5 regarding open space.

Subject to the resolution of these issues, the Panel considers that the Amendment appropriately addresses the PPF and strikes an appropriate balance between the competing policy objectives, to achieve a net community benefit.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

(iii) Conclusion and recommendation

The Panel concludes:

- The Amendment should proceed, subject to addressing the more specific issues discussed in the following chapters.

The Panel recommends:

Adopt Amendment C367 to the Greater Geelong Planning Scheme with the changes recommended in this Report.

3.3 Changing the settlement boundary

(i) Relevant policy

The Bellarine Peninsula Localised Planning Statement

Policy objective 1 of the Localised Planning Statement aims to protect and enhance the rural and coastal environment on the Bellarine Peninsula, and maintain non-urban breaks between settlements, by:

- protecting rural and coastal environments from inappropriate urban encroachment and development
- protecting the scenic qualities of key landscape features
- ensuring development outside of settlement boundaries does not compromise the rural, environmental and landscape values of the non-urban breaks, significant views or longer term growth opportunities.

These policy objectives are consistent with those reflected in the G21 Regional Growth Plan, the Settlement Strategy and the MSS.

The Leopold Structure Plan

The Structure Plan states on pages 11 and 12 (with the Panel's emphasis):

Given the current lot supply, the need to consolidate development within settlement boundaries, the need to protect rural land and the need to protect the rural landscape and township identities on the Bellarine Peninsula, land outside the settlement boundary is unlikely to be supported for residential development as part of this Structure Plan.

...

The current southern extent of the township boundary should not be expanded any further. This area is adjacent to Lake Connewarre, which is environmentally sensitive. This area is also covered by Significant Landscape Overlay 10 – Lake Connewarre

Escarpment, which aims to maintain the largely unbuilt and partially vegetated character of the area.

...

As part of the next Structure Plan review, if it determined Leopold is to continue to provide for growth, land east of the settlement boundary, particularly north of the Bellarine Highway could be investigated for future residential growth. Land in this area is not constrained by the issues affecting land to the south, north and west. At this time, the focus of residential development should occur within the settlement boundary where as part of this Structure Plan additional 'increased housing diversity areas' have been nominated. The current lot supply for the town is around 23 years (based on average growth) and there is considered to be no need to further extend the settlement boundary at this time.

The South East Leopold Framework Plan

The Framework Plan contemplates the extension of the southern settlement boundary to align with the title boundary of the lot at 92-120 Mollers Lane, and states (on page 3):

This additional area has been included to better reflect drainage catchments and to facilitate drainage and sewer servicing. Council will need to amend the Structure Plan's settlement boundary to reflect this.

This is further explained in Appendix 1 to the Framework Plan, which attaches advice from Barwon Water dated 20 November 2015. The advice notes:

The final boundary of this growth area will also have an impact on the number of pump stations. The current boundary ... has a low point of approximately 29m AHD. Barwon Water notes this splits a property at 92-120 Mollers Lane. Should this entire lot be included in the future urban growth boundary it would result in a new low point of 18m AHD. This could mean that pump station 2 and pump station 3 catchments could be combined and a single pump station installed at the low point on Mollers Lane. This needs to be considered as part of this process.

(ii) The C254 Panel

The Panel considering Amendment C254 specifically addressed whether the northern section of the lot at 92-110 Mollers Lane should be included in the settlement boundary.³ The Panel noted at page 43 that the owner of the land (who is still the current owner) only proposed including the northern section, and that the southern portion could be used for public open space or community purposes. Council endorsed the inclusion of the northern section within the settlement boundary, but advised the Panel that the issue of the southern section, and whether it should be vested in Council, will have to be resolved at a later time.

The C254 Panel supported including the northern section in the settlement boundary. It stated (at page 45):

The Panel inspected all of the sites on 4 October 2012. With respect to 92-110 Mollers Lane, the Panel noted the landscaped character of the area, the views toward Lake Connewarre, the connection of the site with land to the north and west. This adjacent land is proposed to be included within the extended settlement boundary for the provision of future residential development in the longer term. The northern area of the subject site is easily identified by the location of the buildings on site and the fall of the land.

³ Greater Geelong C254 (PSA) [2012] PPV 143 at pages 42 to 45.

The Panel agrees with Council and the submitter that the northern part of the site has long term potential for residential development. The northern part hosts a number of buildings previously used for a nursery. These buildings are in disrepair and they do not make a positive contribution to the landscape character of the area.

The Panel also agrees with Council and Mr Payne that further strategic work would be required to ensure any future development would provide adequate drainage and a landscape strategy that would protect views to and from Lake Connemara. These same requirements would apply to the land to the west, which in the longer term will also be developed for housing.

The Panel therefore supports the settlement boundary being extended to include the northern part of the subject land in the Leopold Structure Plan.

The C254 Panel made no specific findings about either including or excluding the southern portion from the settlement boundary, or in relation to its future use.

(iii) Evidence and submissions

Some submissions, including that of Geelong Environment Council, objected to the proposed extension of the settlement boundary. Geelong Environment Council considered that the extension of residential development beyond the current settlement boundary would threaten the landscape and tourism values of the area, and submitted that the Localised Planning Statement indicates that settlement boundaries should be adhered to.

Council submitted that the proposed extension is *“a logical inclusion that ‘nestles down’ into the landscape of Mollers Lane”*. It submitted that extending the settlement boundary to include the southern portion of 92-120 Mollers Lane would *“better reflect drainage catchments, waterway reinstatement and to facilitate drainage and sewer servicing”*.

Ms Ring’s evidence (for the Proponent) was that including the southern portion of the lot at 92-120 Mollers Lane would be logical and sensible, because not including it would leave an isolated 8 hectare parcel of land in the Farming Zone that is of limited agricultural utility, and that is too small (being less than 40 hectares) to get a permit for a dwelling.

(iv) Discussion

State and regional planning policies support containing townships on the Bellarine Peninsula within settlement boundaries. The Structure Plan discourages residential development outside of the settlement boundary, and discourages any southern expansion of the current settlement boundary. The Settlement Strategy contemplates permanent settlement boundaries around Peninsula townships in future, subject to a consultation process to review the appropriateness of the boundaries and deal with any significant anomalies or logical inclusions.

That said, no current policy refers to the existing Leopold settlement boundary as a permanent boundary.

Nothing was put to this Panel to suggest that the settlement boundary needed to be extended to address any municipal residential land supply issue. Notwithstanding, the Panel does not consider that an extension should be restricted if extending the boundary can continue to achieve the aspirations sought through the Structure Plan, and meet the outcomes sought through the PPF to protect significant landscape and environmental

values, and the valued rural and coastal character of the Bellarine Peninsula between townships.

The Panel accepts Council's submission that it is logical to align the settlement boundary with title boundaries. It accepts the advice of Barwon Water that extending the settlement boundary would allow for a reduction in the total number of pump stations required to service the new development. It also accepts Ms Ring's evidence that not extending the settlement boundary would result in the southern portion of 92-120 Mollers Lane being an isolated parcel of low value farming land too small to get a permit for a dwelling (although the Panel notes that there appear to be other lots smaller than 40 hectares in the Farming Zone near the subject land that may also be too small for a dwelling).

As Ms Ring pointed out, planning in the Greater Geelong region is heading toward permanent settlement boundaries, and the Panel accepts that opportunities for logical inclusions should not be squandered without a good reason.

The Panel does not consider that the settlement boundary needs to be maintained in its current position to protect significant landscapes, for the reasons discussed in the following chapter. It does not consider that extending the settlement boundary a few hundred metres will significantly impact on the environmental values of Lake Connewarre, provided that the matters outlined in Chapter 4 are appropriately addressed.

The Panel is therefore persuaded that the settlement boundary should be shifted south, to align with the title boundary of the lot at 92-120 Mollers Lane.

As a result, the Leopold structure plan map in Clause 21.14 will be inconsistent with the map contained in the 2013 Structure Plan. There are also inconsistencies between the revised settlement boundary and the statements in the Structure Plan extracted in Chapter 3.3(i) above. These inconsistencies are not ideal, given the Structure Plan is to remain a reference document in Clause 21.14. Council may wish to consider resolving these inconsistencies in the next 5 yearly review of the Structure Plan.

(v) Conclusion and recommendation

The Panel concludes:

- The settlement boundary should be shifted south, to align with the title boundary of the lot at 92-120 Mollers Lane.

The Panel makes the following recommendation for further work:

Should the Amendment be approved in a form that shifts the settlement boundary, Council should consider resolving the consequential inconsistencies between the revised settlement boundary and the Structure Plan in the next 5 yearly review of the Structure Plan.

3.4 Removing the Significant Landscape Overlay

Schedule 10 to the Significant Landscape Overlay (SLO10) protects views to and from the Lake Connewarre escarpment. It affects roughly the southern third of the permit land. The Amendment proposes to remove the SLO10 from the permit land.

(i) Relevant policy

The Significant Landscape Overlay

The purposes of the SLO are to identify, conserve and enhance the character of significant landscapes. The landscape character objectives set out in the SLO10 are (as relevant):

- To protect locally significant views and vistas that contribute to the landscape, including extensive and scenic outviews across waterbodies from main roads and settlements.
- To ensure that the prominent slopes above Lake Connewarre retain a largely unbuilt and partially vegetated character, free from intrusive built development.
- To minimise the visual impact of infrastructure and signage throughout the landscape.
- To maintain and improve indigenous vegetation throughout the landscape, particularly at roadsides, in riparian strips and on lake escarpments.
- To protect cultural vegetation elements that positively contribute to the character of the landscape, including exotic wind breaks and feature planting around homesteads.
- To recognise and protect the continuation of the land as a working farmed landscape.

Clause 12.03-S (River corridors, waterways, lakes and wetlands)

The objective of Clause 12.03-S is to protect and enhance water bodies, including lakes and wetlands. Strategies include protecting the landscape values of water bodies, ensuring development is sensitively designed and sited to maintain and enhance significant views and landscapes adjacent to lakes and wetlands.

Clause 12.05-2S (Landscapes)

The objective of Clause 12.05-2S is to protect and enhance significant landscapes that contribute to character, identity and sustainable environments. Strategies include ensuring significant landscape areas are protected, ensuring development does not detract from the natural qualities of significant landscape areas, and improving the landscape qualities in significant landscapes and open spaces.

The Leopold Structure Plan

The Structure Plan recognises that the rural hinterland surrounding Leopold is a key component to its landscape setting and character. It notes that land to the north east of Lake Connewarre is covered by the SLO10 which aims to maintain the largely unbuilt and partially vegetated character of the area, and to maintain the landscape values of the area. One of the principles of the Structure Plan is to ensure that the surrounding rural landscape and setting of Leopold is preserved.

The South East Leopold Framework Plan

The Framework Plan notes that Council is reviewing the application of the SLO10 to the south eastern portion of the subject land given it is being proposed for development.

(ii) Evidence and submissions

The Proponent commissioned Allan Wyatt of XUrban to assess whether the extent of the SLO10 could be reduced over the subject land, and continue to protect views to and from the escarpment of Lake Connewarre. His assessment concluded that the extent of the

SLO10 could be substantially reduced without compromising the locally significant views and vistas around Lake Connewarre, given the topographical features of the area.

The Proponent called Mr Wyatt to present landscape and visual impact evidence at the Hearing. His evidence included Figure 7 below, which shows a typical cross section of the topography between the Lake and the southern boundary of the subject land. His evidence was that the cross section demonstrates that a residential property on the subject land would be visually screened from the edge of Lake Connewarre by the escarpment face.

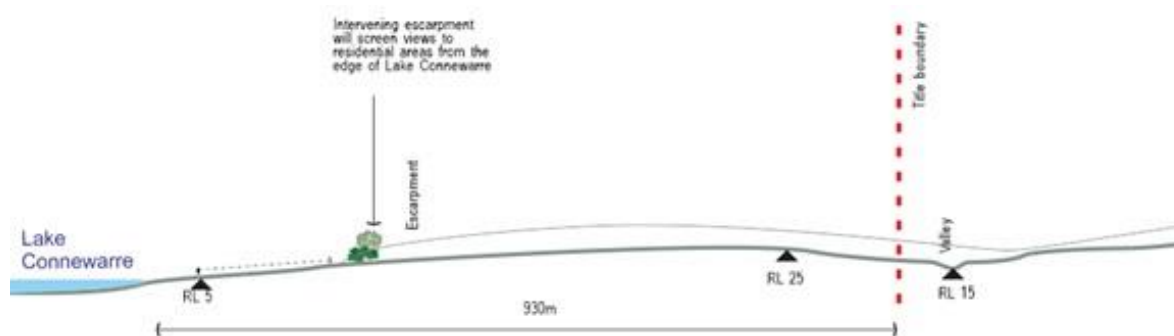


Figure 7 Typical cross section of topography south of the subject land

Mr Wyatt assessed the visual impacts of the proposed development from various viewpoints, including views from several viewpoints along Barwon Heads Road (to the south of Lake Connewarre) across the lake towards the subject land, which are among the views sought to be protected by the SLO10. His evidence was that, due to a combination of factors including distance, screening from roadside and other vegetation and intervening topography, houses on the subject land would not be visible from these viewpoints, or (where they could be seen) would be “*barely noticeable*”.

Mr Wyatt’s initial assessment was that the SLO10 should be reduced to generally align with the 25 metre land contour, resulting in a small area in the south east corner of the subject land remaining within the SLO10. Council decided to exhibit the Amendment in a form which aligned the SLO10 boundaries with title boundaries, effectively removing the SLO10 from the subject land altogether. Mr Wyatt addressed this in his expert evidence, and concluded that the gentle ridgeline further south of the subject land effectively blocks views to the south east corner, as demonstrated in Figure 7. He was satisfied that the further contraction of the SLO10 proposed by Council would not impact on the landscape values sought to be protected under the SLO10.

Ms Ring’s evidence was that the application of the SLO10 conflicts with Leopold’s designation in regional and local policy as a town that will accommodate growth in the form of conventional residential development. She said that Council’s decision to delete the SLO10 from the whole of land was legitimate and consistent with good contemporary planning practice. Further, the effect would be ‘moot’, as the exhibited and amended ODPs shows that the south-east corner of the land will not be developed for housing, but will instead accommodate a new drainage basin in a restored, informal landscape setting (generally consistent with the Framework Plan).

(iii) Discussion

The Panel accepts the evidence that removing the SLO10 from the subject land will have no significant impacts on the landscape values sought to be protected by the SLO10.

(iv) Conclusion

The Panel concludes:

- Based on the evidence, removing the SLO10 from the subject land is appropriate and strategically justified.

4 Stormwater management

4.1 The issues

The issues are:

- Are the proposed on-site drainage works adequate?
- Are the impacts on downstream private properties acceptable?
- Are the impacts on Lake Connewarre acceptable?

4.2 Context

Drainage works are proposed both within the subject land (on-site) and on land to the east and south east (off-site). Some of the drainage infrastructure proposed is purely functional, directing the flow of water across the subject land through pipes and culverts. Other drainage infrastructure, such as WSUD features, serve a partly environmental function, improving water quality and slowing the flow rate.

The extent of land required to accommodate the on-site drainage infrastructure is reasonably well defined. Concept drainage designs have been prepared and modelling has been completed by the Proponent for different development scenarios. The major drainage works, including retarding basins, are proposed along the southern and northern waterways that follow the contours on the land. Other minor drainage infrastructure will be required across the subject land to direct flows to the two main drainage corridors. The ODPs (Figure 3 and 4) show the concept design of the proposed on-site drainage works.

The footprint and design of the off-site drainage works is less defined. The Proponent submitted that works are likely to be required on privately-owned land to the east and south east, and in the Mollers Lane road reserve. Broadly these works would occur within the natural watercourse that flows to Lake Connewarre through a private dam located to the south east of the subject land.

At this stage, the Proponent does not have an interest in the privately owned land where off-site drainage works are proposed, nor are there any easements in favour of a drainage authority. There was an expectation among parties at the Hearing that an easement would need to be created and management responsibilities assigned for off-site drainage infrastructure at some point.

4.3 Relevant policies, strategies and studies

(i) Clause 56.07 (Integrated Water Management)

Amendment VC154 introduced a new Clause 56.07 (Integrated Water Management) into all planning schemes. Of particular relevance to the Amendment and permit application is Clause 56.07-4 (Stormwater management objectives), the objectives of which are (as relevant):

To minimise damage to properties and inconvenience to residents from stormwater.

To minimise increases in stormwater and protect the environmental values and physical characteristics of receiving waters from degradation by stormwater.

To encourage stormwater management that maximises the retention and reuse of stormwater.

To encourage stormwater management that contributes to cooling, local habitat improvements and provision of attractive and enjoyable spaces.

Clause 56.07-4 includes a new Standard C25, which requires a stormwater management system to be designed to:

- meet the requirements of the drainage authority (in this case, Council)
- meet the best practice performance objectives for stormwater quality in the *Urban Stormwater - Best Practice Environmental Management Guidelines* (Victorian Stormwater Committee, 1999) (the Stormwater Guidelines)
- ensure that flows downstream of the subdivision are restricted to pre-development levels unless increased flows are approved by the relevant drainage authority and there are no detrimental downstream impacts
- include WSUD features to manage stormwater in streets and public open space. Where WSUD is proposed, an application must describe the maintenance responsibilities, requirements and costs.

(ii) The Bellarine Peninsula Localised Planning Statement

Policy Objective 3 in the Localised Planning Statement is to preserve and maintain the ecology of the Peninsula's environmentally significant coastal, wetland and vegetated areas. Strategies include ensuring appropriate stormwater management measures are in place to avoid adverse impacts on marine waters, lakes, wetlands and waterways.

(iii) The Leopold Structure Plan

The Structure Plan states:

It is important that new residential development incorporates best practice water sensitive urban design principles to manage stormwater, drainage and flood mitigation to ensure polluted runoff or contaminants are not permitted to enter waterways. This is particularly important in Leopold where stormwater and urban development could affect the Connewarre Lake system and Port Phillip Bay.

4.4 Proposed on-site drainage works

(i) Evidence and submissions

The Proponent provided copies of reports titled *Site Stormwater Management Plan and Flood Impact Assessment*, TGM Group, January 2018 (Stormwater Assessment) and *Infrastructure and Servicing Assessment*, TGM Group, October 2016 (Infrastructure Assessment) in support of the combined Amendment and permit application. The assessments were based on the exhibited ODP (Version U).

The assessments broadly concluded that it was possible to manage peak stormwater flows to pre-development rates but that there would be an increase in the total volume of stormwater leaving the subject land and flowing downstream.

The Proponent relied on the evidence of Dr Jempson and Mr Lloyd, who reviewed aspects of the Stormwater Assessment and Infrastructure Assessment based on the subdivision layout

shown in the amended ODP (Version Y2). Dr Jempson and Mr Lloyd focussed their attention on the downstream (or off-site) impacts of stormwater flows. Dr Jempson's evidence was that the peak stormwater flow rates could be managed, but the mean monthly flow volumes to Lake Connewarre would be increased. Mr Lloyd's evidence focussed on the ecological impacts of an increase in stormwater flows to Lake Connewarre, which are dealt with in Chapter 4.6.

Council submitted that the concept drainage design for the subdivision layout shown in the exhibited ODP was acceptable from an engineering perspective, subject to conditions. Council indicated that it had not had time to comprehensively review the amended ODP. Council advised the Panel that the relevant referral authorities, including Barwon Water, found the proposed on-site drainage works to be acceptable subject to conditions (which are included in the exhibited draft permit). The statutory referral authorities have not commented on the amended ODP.

DELWP submitted that Lake Connewarre is a saline environment which is sensitive to freshwater inflows, including cumulative impacts from development. DELWP's submission included the views of Parks Victoria, which manages Lake Connewarre. It submitted that additional WSUD should be considered on-site and that ongoing management arrangements for off-site drainage works were required.

In a late submission on behalf of Eastern Ash, a developer in the Ash Road East area, Tract raised concerns regarding the integration of drainage infrastructure with the Ash Road East land (submission 16). Tract submitted that the land at 73-85 Ash Road needs to drain to the east (to the subject land) as well as to the south, due to topographic constraints. Tract was concerned that the proposed subdivision layout and draft permit conditions do not allow for this.

Echelon Planning made a submission on behalf of Gaage Developments Pty Ltd, which has an interest in part of the Ash Road East land. The submission raised concerns in relation to the Framework Plan which was instrumental in guiding the drainage design for the Amendment and permit. It submitted that many issues, including the flood impact assessment, had not been resolved and that further technical inputs were required before the Framework Plan was locked in. Gaage Developments did not make specific submissions regarding the capacity to drain the subject land but submitted that further work was required.

Barwon Water controls a pipeline which traverses the subject land. Council and the Proponent submitted that the pipeline had been appropriately dealt with in the drainage design and subdivision layout. Barwon Water submitted that some of the assessment in the Infrastructure Assessment was slightly out of date. It submitted that the Bellarine Transfer Main was of critical importance to Barwon Water and that easement access would be required. Barwon Water did not oppose the proposal, subject to the inclusion of appropriate conditions.

(ii) Discussion

Council is the drainage authority for the subject land. Other authorities, such as Barwon Water, DELWP and Parks Victoria have an interest in related drainage matters.

Council and the relevant authorities agree that the subdivision layout shown in the exhibited ODP (Version U) can be adequately drained, and that WSUD measures can be feasibly integrated on the subject land. Council and the relevant authorities did not have an opportunity to review and assess the amended ODP prior to the Hearing.

The Panel notes the evidence of Dr Jempson and Mr Lloyd that the rate of stormwater flows can be managed for the layout shown in the amended ODP (Version Y2), but that the total volume of stormwater will increase as compared with the exhibited version. Dr Jempson's evidence was that a number of factors influence the total volume of stormwater leaving the permit land, including the density of development and extent of open space available on the subject land.

DELWP recommended that additional on-site WSUD features should be considered. This is consistent with the policy objectives at Clause 56.07. This requirement is included in the proposed permit conditions (at condition 123 of the draft permit included in Council's Part A(3) submission), however the condition is a non-prescriptive condition that does not properly integrate with the other drainage design conditions.

The Panel accepts that, broadly speaking, a suitable engineering solution can be found within the boundaries of the subject land to manage the peak flow rates of stormwater. The Panel considers that the policy objectives at Clause 56.07 can be achieved within the subject land, subject to some tidying up and restructuring of the permit conditions. Given the environmental sensitivities downstream (addressed in Chapters 4.5 and 4.6), the Panel accepts the recommendations from DELWP that additional WSUD should be considered on the subject land as this, in combination with off-site works, will minimise impacts on Lake Connewarre in line with policy objective 3 in the Localised Planning Statement.

The Panel agrees in principle with the submission from Gaage Developments. A more traditional structure planning process may have allowed some of the detailed questions around integrated drainage across the subject land and the Ash Road East land to have been resolved. That said, the Panel is satisfied on the basis of the evidence that the subject land can be appropriately drained and that permit conditions can control the detailed design process.

The Panel considers that the concerns raised by Tract can be addressed by permit conditions relating to the detailed design.

The Panel accepts that the Bellarine Transfer Main can be appropriately managed through subdivision layout and permit conditions.

The proposed permit conditions included in Council's Part A(3) submission address the on-site drainage requirements and authority conditions. However, the Panel considers that the conditions should be restructured to ensure an integrated approach to the consideration of the on-site and off-site drainage works. For example, DELWP's conditions which call for additional WSUD features on-site should be grouped with the conditions requiring the detailed drainage design for the whole system.

(iii) Conclusions

The Panel concludes that:

- The on-site drainage infrastructure can be designed to adequately mitigate stormwater peak flow rates to pre-development rates for the proposal.
- The proposed permit conditions relating to detailed drainage design are not particularly well integrated or structured, which may lead to components being missed at the preliminary design stage. The permit conditions should be restructured as shown in Appendix D.

4.5 Impacts on downstream private properties

(i) Evidence and submissions

Hydraulic modelling in the Stormwater Assessment and Infrastructure Assessment demonstrate that the natural flow path for stormwater leaving the subject land is over private land to the south east, and then to Lake Connewarre. The drainage lines traversing the subject land connect into a large private dam that is located partly on the property of Mr Chapman, and partly on land to his immediate north. Water flows from the private dam into Lake Connewarre via the foreshore area located on Mr Chapman's property.

The Proponent submitted that off-site drainage works on privately owned land to the south east were "*preferred but not essential*". The Stormwater Assessment and Infrastructure Assessment did not contain any concept design for off-site works or indicative footprint indicating where off-site works may be required.

In oral submissions, the Proponent indicated that there were alternative engineering solutions that did not rely on works on private land. It submitted that there may be an engineering solution that involved works in the Mollers Lane road reserve that could address water quality and the increase in volumes. However, in his evidence to the Panel Mr Lloyd indicated that off-site drainage works on private land would be required in order to reasonably manage impacts to Lake Connewarre.

Several submitters, including Council and DELWP, supported off-site drainage works to manage the additional volumes of stormwater and to maintain water quality. The need for off-site drainage works is closely related to the need to manage flows into Lake Connewarre. DELWP made the following comments:

DELWP notes that stormwater flows from this large scale development will feed into the dam on adjoining privately owned land, but that ongoing management arrangements for the dam are unknown. DELWP recommends that Council formalise ongoing land management responsibilities on the adjoining land and ensure water treatment design measures are incorporated within the dam.

Mr Chapman submitted that control measures would be required to regulate the volumes of water in the private dam on his land and the land to the north. He was concerned that increased water volumes in the dam could result in an increase in the breeding populations of ducks on his land. He told the Panel that he had experienced gun shots over his land in the past, and was concerned that there would be an increased risk of gun shots if more ducks breed in his dam. Mr Chapman was supportive of an additional outlet control on the dam which would allow him to manage dam levels and flows over the foreshore area

between the dam and Lake Connewarre, but submitted that any works or ongoing maintenance of any new outlet should not be at his cost.

The Proponent provided a preliminary design for outlet controls works on Mr Chapman's land at the end of the Hearing (Document 23). There was insufficient time for affected parties (or the Panel) to fully consider the design, but Mr Chapman appeared to support the design in principle. Regulators such as the DELWP did not have the opportunity to review the design of these plans or consider the implications for the Lake Connewarre.

The Proponent submitted that there were different mechanisms available to create an easement over private land, including:

- Council acquires the easement in its capacity as the drainage authority
- Council makes a statement to enable the Proponent to acquire the easement under section 36 of the *Subdivision Act 1988*
- through negotiation with relevant property owners.

Council submitted that it was not willing to acquire the easement or trigger the process under section 36 of the *Subdivision Act 1988* at this stage. This is discussed in more detail in Chapter 1.3 of this report.

(ii) Discussion

It was apparent during the Hearing that the extent and design of off-site drainage works has not been resolved. Regulators including Council (the responsible drainage authority) and DELWP have indicated that off-site drainage works are required to acceptably manage the impacts of the proposed development. While the Panel notes that engineering solutions may be available which avoid the need for drainage works on privately owned land, based on the submissions of Council and DELWP (and the evidence of Mr Lloyd), the Panel considers that off-site drainage works on privately owned land are likely to be required.

A level of uncertainty regarding drainage concept design may be acceptable in a normal permit application process. However, given the likelihood of the need for off-site works on privately owned land and the sensitivities associated with Lake Connewarre, the Panel found it surprising that a preliminary design (or at least indicative footprint for off-site drainage works) were not further resolved.

The Panel understands that there may be an engineering solution to control water levels within the private dam on Mr Chapman's land and the land to the north via new outlet. However, no design was formally circulated or presented to Dr Jempson or Mr Lloyd for comment on the broader implication for drainage flows and potential impacts on the ecology of Lake Connewarre.

Further design work is clearly required to address the regulators' concerns. Ownership and access arrangements, such as easements, also need to be resolved. Only one of the landowners who was likely to be directly affected by off-site drainage works was present at the Hearing (Mr Chapman). The views of other affected landowners in relation to easements or works occurring on their land are unknown.

The Panel considers that the design, extent and management arrangements and responsibilities for off-site drainage need to be resolved before the subdivision can proceed.

The design of the off-site drainage works will be integrated with and influenced by the final design of on-site drainage works. A key issue is the need to create an easement over private land. Council could acquire an easement or the Proponent could rely on the process under section 36 of the *Subdivision Act 1988* (neither option is currently supported by Council at this stage). A permit condition should be included that requires these matters to be resolved prior to certification of the subdivision.

(iii) Conclusions

The Panel concludes:

- Off-site drainage works will be required to acceptably manage the impacts of the proposed development. It is likely that works will be required on privately owned land.
- Given the sensitivities associated with the outfall to Lake Connewarre, it is not acceptable to completely defer the design of the off-site works and easements to an unspecified later stage. The permit should include a condition requiring the extent of off-site works and easement arrangements to be resolved before the development proceeds.

4.6 Impacts on Lake Connewarre

(i) Evidence and submissions

As noted above, stormwater from the development ultimately discharges to Lake Connewarre, which is a Ramsar site supporting migratory bird populations, via privately owned land to the south east of the subject site including Mr Chapman's property. Mr Chapman's property includes an area of lake foreshore.

Several submitters raised concerns about the impacts of additional people, poor quality of run-off and additional water volumes on Lake Connewarre, including Mr Lipshut. While this was a common theme among submissions, some submitters raised these concerns in the context of environmental values and others raised concerns in the context of the duck breeding and shooting activities and public safety on the lake. Potential conflicts with duck hunting activities are dealt with in Chapter 6.5.

Council submitted that:

At a broader strategic level, the impact of further urban growth in Leopold in proximity to Lake Connewarre was a matter considered when the Leopold Structure Plan designated this area for future development. There are repeated directions in the Leopold Structure Plan to limiting nutrient and sediment-laden water runoff into the waterways that flow into Lake Connewarre.

Ecological values of the lake are dependent on its water quality and hydrological regimes. Stormwater exiting the site is proposed to be mitigated to meet best-practice: two on-site detention/wetland areas are proposed to match peak flow to pre-development levels and to filter pollutant load, and have been designed to meet best practice for flow control and treatment. We submit that the inclusion of these proposed storm water quality management and WSUD measures into the subdivision will satisfactorily manage water quality and the flow of stormwater entering into the Lake system.

Relying on expert evidence from Mr Lloyd, the Proponent submitted that ecological impacts on Lake Connewarre would not be significant and could be mitigated through appropriate WSUD. Mr Lloyd summarised the ecological impacts as follows, based on the revised subdivision layout in the amended ODP (Version Y2):

The outfall of the creek system into Lake Connewarre potentially affects about 150m of shoreline and approximately 0.6ha in area. The habitats within this zone consist of samphire and lignum swamp adjacent to the sandy shoreline which includes exposed sandflats and mudflats with little aquatic vegetation. The zone naturally receives minimal freshwater flows from the drainage line and is an active shoreline with sand and sediment movement with waves and tides (that is moving sands and silt make it hard for aquatic vegetation to establish).

The current condition of samphire and lignum swamp is poor in the potentially affected zone due to clearance, grazing and weeds (as it is private land). Despite the vegetation already being made up of tolerant species it may change further, or be lost entirely, with increased flows.

These flow changes are likely to lead to changes to water quality (reduction in salinity) or geomorphology of the Foreshore Site. That said, nutrient and sediment changes into this section of Lake Connewarre, if not mitigated, would have only localised impacts. Given the very small area of the Ramsar Site affected, even under extreme changes and whatever the impacts are, there is low risk to the overall Ramsar values. However, the loss of this vegetation community in the foreshore zone itself would still need to be assessed under Commonwealth law and this assessment would identify any mitigating measures that might be required.

The Proponent submitted that the exhibited draft permit conditions (conditions 21 to 27) were unreasonable and impractical. It submitted that practically it would be difficult to isolate the cause of poor water quality (within a large catchment) or amend the drainage design once construction had been completed. In his evidence, Dr Jempson agreed that a 'lower level' condition could be included which required a peer review of the design by a suitably qualified consultant to ensure the design met appropriate environmental guidelines.

(ii) Discussion

Lake Connewarre is recognised under Commonwealth and State legislation and policy as environmentally significant and requiring protection. As a Ramsar wetland, the lake is a matter of national environmental significance under the EPBC Act. Any action that may have a significant impact on a matter of national environmental significance is a controlled action and requires Commonwealth approval under the EPBC Act.

The protection of Lake Connewarre is also an objective in the Planning Scheme. It is therefore appropriate to address impacts of the proposal on Lake Connewarre through the Panel process.

Most submitters agree that there will be some impact on Lake Connewarre as a result of the development. It appears that the contention relates to:

- the extent of environmental uncertainty around the capacity to implement off-site drainage works and WSUD on private land
- the process to resolve that environmental uncertainty and relationship with other approvals.

In relation to the extent of impacts, the Panel accepts the evidence of Mr Lloyd. He concluded that subject to the implementation of WSUD (on-site and off-site) the environmental impacts on Lake Connewarre are not likely to be significant. However, there are a number of assumptions that underlie Mr Lloyd's conclusions about the environmental acceptability of the proposal. For instance, he has assumed that off-site WSUD measures can be practically implemented and maintained on privately owned land, and that outfall from the private dam to the south east of the subject land would be controlled in a manner to reflect the natural seasonal patterns.

The assumptions underpinning Mr Lloyd's evidence are consistent with DELWP's views on the proposal, and in particular its recommendation that Council should formalise the ongoing land management arrangements for the water treatment on private land and consider additional WSUD features.

The Proponent indicated that it would submit a referral under the EPBC Act to determine whether the proposal is a controlled action and whether it requires assessment. It indicated that the scope of the project presented in any referral would depend on the recommendations of this Panel, and presumably whether the Panel supports the exhibited ODP or the amended ODP.

The timing around the EPBC Act referral is unfortunate as there is no opportunity to align the State and Commonwealth assessment processes. If the Commonwealth determines that the proposal (in whatever form) is a controlled action or decides that it is not a controlled action if it is done in a particular manner, it would be difficult to integrate with State approvals process (for example if a permit had already been issued).

While there is a degree of environmental uncertainty, the Panel accepts the evidence of Dr Jempson and Mr Lloyd that an environmentally acceptable drainage solution is technically possible. The Panel finds that subject to the implementation of appropriate environmental mitigation measures, the impacts on Lake Connewarre will be acceptable and consistent with the objectives in the PPF. Given the sensitivity of the downstream environment, the Panel finds that the scope and ongoing management arrangements for the mitigation measures need to be resolved before development can proceed. The Panel considers that this can be addressed through a permit condition.

(iii) Conclusions

The Panel concludes:

- It is technically possible to implement environmental mitigation measures to protect Lake Connewarre.
- Given the sensitivities associated with the outfall to Lake Connewarre, it is not acceptable to completely defer the design of the off-site works and resolve the easement to an unspecified later stage. The extent of off-site works and easement arrangements need to be resolved before development proceeds. A suitable condition to this effect needs to be included on the permit.

4.7 Recommendations

The Panel recommends (condition numbers refer to the Panel's recommended permit in Appendix D):

Include condition 4 in Appendix D requiring an Integrated Drainage, Vegetation and Open Space Framework Plan that includes (among other things):

- a) a concept drainage design for on-site and off-site drainage works that includes Water Sensitive Urban Design features that achieve environmental best practice, stormwater retardation measures and water quality standards specified in the permit**
- b) a footprint showing the extent of drainage works and associated Water Sensitive Urban Design features**
- c) access and management arrangements and responsibilities for on-site and off-site drainage works and Water Sensitive Urban Design features.**

Include condition 5 in Appendix D requiring all plans prepared in accordance with the conditions on the permit to be consistent with the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan.

Include conditions 12 and 13 in Appendix D, requiring easements to be secured for on-site and off-site drainage works prior to certification of a plan of subdivision.

Replace exhibited conditions 22 to 27, relating to monitoring and remediating where necessary water quality entering Lake Connewarre, with condition 4(d) in Appendix D requiring the Integrated Drainage, Vegetation and Open Space Framework Plan to be peer reviewed by an independent suitably qualified and experienced consultant to confirm that the concept design, mitigation measures and ongoing management arrangements meet best practice environmental standards and the requirements of the permit (including water quality requirements).

Restructure the exhibited conditions as shown in Appendix D, so that all drainage design and Water Sensitive Urban Design conditions (including conditions from other statutory authorities) are grouped together.

5 Open Space

5.1 The issues

The issues are:

- What should be regarded as encumbered open space, and what is unencumbered?
- How much open space should be provided?
- Is the local park adjacent to the northern retarding basin justified?
- Is open space in the south-west wedge justified?

5.2 Context

The exhibited ODP (extracted as Figure 3) shows:

- two proposed linear open space corridors of roughly 24 to 26 metres in width along the two waterways traversing the subject land
- a centrally located local park of approximately 1 hectare, adjacent to the northern retarding basin
- open space covering the whole of the south-west wedge.

The amended ODP (extracted as Figure 4) removes the local park and the south-west wedge and replaces them with residential lots.

The linear open space will be transferred to Council and retained in public ownership.

5.3 Relevant policies, strategies and studies

(i) Clause 19.02-6S (Open space)

The objective of Clause 19.02-6S is to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community. Strategies include:

- ensure open space networks:
 - are linked, including through walking and cycling trails
 - are integrated with open space from abutting subdivisions
 - provide links between major parks and activity areas, along waterways and natural drainage corridors
- ensure land is set aside in residential areas for local recreational use and to create pedestrian and bicycle links to commercial and community facilities
- improve the quality and distribution of open space and protect it long-term
- ensure that open space provides for nature conservation, recreation and play, sport, social interaction, opportunities to connect with nature and peace and solitude
- plan open space areas for multiple uses, such as community gardens, sports and recreation, active transport routes, wildlife corridors and flood storage basins.

(ii) Clause 14.02-1S (Catchment planning and management)

One of the strategies in Clause 14.02-1S is to retain natural drainage corridors with vegetated buffer zones at least 30 metres wide along each side of a waterway, to maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, minimise erosion of stream banks and verges, and reduce polluted surface runoff from adjacent land uses.

(iii) Clause 53.01 (Public open space contribution and subdivision)

Clause 53.01 requires a 10 per cent open space contribution for subdivisions of 10 or more lots in the municipality (with some exceptions that are not relevant for present purposes).

(iv) ResCode Standard C13

Standard C13 establishes objectives for the provision of public open space in residential subdivisions. It states that local parks should be provided within 400 metres safe walking distance of at least 95 per cent of all dwellings. Local parks without active open space should generally be 1 hectare in area.

(v) The Leopold Structure Plan

One of the principles of the Structure Plan is to provide public open space within existing and proposed residential areas to cater for the passive and active recreation needs of the community. The Structure Plan contemplates developers providing a minimum of 10 per cent unencumbered land as public open space in connection with any rezoning applications unless otherwise negotiated⁴, and encourages new subdivision and open space design to maximise stormwater re-use opportunities, walkability and passive surveillance⁵.

(vi) The South East Leopold Framework Plan

Consistent with the Structure Plan, the Framework Plan states on page 10 “*ensure an open space contribution of 10 per cent of the developable land area (unencumbered) as either land, cash-in-lieu of land, or a combination of both*”. The Framework Plan map (extracted in Figure 6) includes general locations of proposed open space, consisting of:

- the two linear open space corridors along the waterways (encumbered)
- the south-west wedge (encumbered)
- two local parks, one adjacent to the northern linear open space corridor and one adjacent to the southern retarding basin (unencumbered).

The Framework Plan encourages locating encumbered open space along the drainage corridors together with unencumbered open space, to maximise open space opportunities. It also encourages utilising the linear open space corridors for an off road shared path network. It seeks some flat open space suitable for informal ball games, and contemplates continuing a “*buffer and shared path treatment*” along the southern boundary of the subject

⁴ At pages 22 and 31.

⁵ At page 31.

land and the Ash Road East land, to connect into an existing shared path along the southern boundary of the Estuary Estate.

5.4 Encumbered versus unencumbered open space

There was some disagreement between Council and the Proponent as to what should be considered encumbered land, and what should be considered unencumbered. This is relevant to the issues of how much unencumbered land should be provided as open space, and whether the south-west wedge is in fact encumbered, or whether it is suitable for residential development.

Council and the Proponent agreed that the following land is encumbered:

- land within the 1 in 100 year flood zone
- land required for the drainage retarding basins.

They disagreed as to whether the following should be regarded as encumbered:

- the linear open space corridors (outside the 1 in 100 year flood zone)
- the south-west wedge.

(i) Evidence and submissions

The linear open space corridors

Council's position on the linear open space corridors was somewhat inconsistent.

Council's Part A submission included a Statutory Assessment Report of the permit application, which indicated that land within 30 metres either side of the top of the banks of a waterway is encumbered land. It noted that this land is intended primarily for drainage, habitat and water quality purposes, not open space or recreation purposes, and therefore should not be counted in the Proponent's open space contribution.⁶ Council submitted that this was consistent with Clause 14.02-1S (which refers to a 30 metre buffer to waterways), and with the Framework Plan, which identifies land within 30 metres of the waterways as encumbered.⁷

Council's Part B submission appears to concede that the linear open space corridors should be considered unencumbered. It states (at paragraph 28):

To reiterate - we have already made concessions by allowing the buffers along the drainage corridors to be less than 30 metres and we have allowed them to be included as unencumbered open space despite there being an argument that they are encumbered due to their ecological and drainage role ...

The Proponent submitted that there was no justification for regarding the linear open space corridors as encumbered, apart from the 4 to 6 metre wide strip that is within the 1 in 100 year flood zone. It submitted that the waterways will be narrow or non-existent for much of the year, and their drainage function will not affect the usability of the land.

⁶ Comments from Council's Recreation and Open Space Unit in the Statutory Assessment Report attached to Council's Part A submission.

⁷ At pages 9 and 10.

Council described its ultimate position as follows:

Ultimately it was decided that we should work out what land is required for open space and drainage across the growth area and the issue of whether it is more than 10% or whether certain land is encumbered or unencumbered was a secondary matter. Noting that Clause 56.05 has an objective to provide adequate unencumbered land for public open space and integrate any encumbered land with the open space network. We were also very aware that the adjoining established parts of Leopold are lacking in adequate open space. We can't rely on new residents in the growth area using existing established parks for recreation. In effect we are building a new open space network from scratch and relating it to topography and drainage.

The south-west wedge

The Framework Plan identifies the south-west wedge as encumbered open space, describing it as *“steep sloped land (revegetate or keep as open, grassy backdrop)”* on the map on page 9. The Statutory Assessment Report attached to Council's Part A submission indicated that *“steep slopes are not considered fit for open space purposes as they are unsuitable for many recreational pursuits and can be prohibitively difficult and expensive to maintain in a safe condition”*.

The Proponent submitted that the Framework Plan's description of the south-west wedge as steep sloped land has no valid basis. It submitted that its topography is not dissimilar to other parts of the subject land, such as the area directly to the north of the southern creek and open space corridor, that have not been identified as encumbered.

(ii) Discussion

The Proponent referred the Panel to the Precinct Structure Planning Guidelines issued by the Victorian Planning Authority (PSP Guidelines), which define encumbered land as land constrained for development purposes, including easements for drainage purposes, retarding basins, landfills, and conservation and heritage areas⁸. While the PSP Guidelines are not directly applicable to the proposal (which is not within a Precinct Structure Plan area), they provide useful direction.

Based on the PSP Guidelines, the Panel agrees that the retarding basins and land within the 1 in 100 year flood zone should be regarded as encumbered. This was not in dispute between Council and the Proponent.

The Panel is not persuaded that the linear open space corridors should be regarded as encumbered, other than the land within the corridors that is affected by the 1 in 100 year flood zone.

The Panel considers that the south-west wedge should not be characterised as encumbered due to its slope. The Panel observed on its site inspection that the slope of the south-west wedge does not appear to be any greater than the slope in other developable parts of the subject land.

⁸ At page 56.

(iii) Conclusion

The Panel concludes:

- The linear open spaces (other than the land within the 1 in 100 year flood zone) and the south-west wedge should be regarded as unencumbered land.

5.5 The amount of open space

Council calculated that the exhibited ODP included an open space contribution of roughly 12 per cent unencumbered land, assuming the south-west wedge is encumbered⁹. The Proponent calculated a contribution of roughly 23 per cent based on the exhibited ODP, and 15 per cent based on the amended ODP¹⁰. The Proponent's calculations appear to include encumbered and unencumbered land.

(i) Evidence and submissions

Council supported the amount of open space shown on the exhibited ODP, but submitted that the amended ODP (which deleted the south-west wedge and the local park) provided insufficient open space. It submitted that the deletion of the local park and the south-west wedge is inconsistent with the Framework Plan, and noted that the amended ODP had been provided *"very late in the process, has not been properly review by Council or referral authorities, was not placed on public exhibition and may require further notification if it were to be entertained"*.

Council submitted that both the Structure Plan and the Framework Plan indicate that a minimum open space contribution of 10 per cent of unencumbered land is required. It submitted that while the exhibited ODP includes a little more than 10 per cent, *"it gives amenity and landscape value to the future subdivision"*. Council pointed to the fact that it had already accepted reduced buffers along the waterways, and a 0.75 hectare local park (less than the standard 1 hectare referred to in Standard C13 and usually provided for residential subdivisions).

Ms Ring's evidence was that the exhibited ODP proposes in the order of 17 per cent of unencumbered land for open space purposes which is significantly more than the 10 per cent required under Clause 53.01. Her evidence was that there is no justification for requiring open space at a percentage higher than would typically apply.

The Proponent submitted that the contribution contemplated under the amended ODP is more than the 10 per cent required under Clause 53.01, and is consistent with what has previously been considered appropriate in growth areas in Geelong such as Armstrong Creek and the Estuary Estate. It referred the Panel to the panel report for Amendment C214 which relates to the Armstrong Creek growth area, which states:

Council has consistently maintained that the amount of unencumbered open space required in the [Armstrong Creek growth area] is 10% of net developable area and that

⁹ Paragraph 27 of Council's Part B submission.

¹⁰ Document 19.

it is to be secured through the public open space contribution under Clause 52.01 [now 53.01].¹¹

Council responded that the Clause 53.01 rate is not relevant for a combined Amendment and permit. It submitted that Council can require more than 10 per cent as part of a planning scheme amendment *“to achieve net community benefit and to implement a broader strategic plan for the area”*.

Tract made a submission on behalf of Eastern Ash, a developer of land in the Ash Road East area. Tract submitted that the 10 per cent open space should be considered across the entirety of the area subject to the Framework Plan, and that only 2.074 hectares of unencumbered land (or 5 per cent) open space should be provided in the Ash Road East area.

Council responded that the principle of each site providing the required 10 per cent contribution applies. *“If more is provided on one development front then that is responding to a localised issue or circumstance and should not be interpreted to obviate the need for the other development front to reduce its provision”*.

(ii) Discussion

The Panel agrees with Council that the rate in Clause 53.01 is not applicable to a combined Amendment and permit. For a combined Amendment and permit, the open space requirement should be considered in terms of the strategic planning framework for the area and local needs.

Council submitted that in the municipality’s growth areas, public open space contributions normally range from about 20 to 35 per cent (combined encumbered and unencumbered) land. The Panel asked Council to provide some documentation supporting this claim. Council provided a memorandum dated 5 December 2018 (Document 25) that indicated contributions of:

- 20 per cent total (12.2 per cent unencumbered) in the Estuary Estate
- 42 per cent total (10 per cent unencumbered) in Armstrong Creek East
- 24 per cent total (10.7 per cent unencumbered) in Armstrong Creek West
- 16.5 per cent total (10 per cent unencumbered) in the Horseshoe Bend precinct
- 22 per cent total (13.7 per cent unencumbered) in Fyansford West
- 13 per cent total in the Kingston Downs Estate in Ocean Grove
- 25 per cent total (10.4 per cent unencumbered) in the St Leonards growth area.

While the Panel finds these comparisons useful, they do not establish that there is a particular need in this location for a total open space contribution of up to 23 per cent (using the Proponent’s calculations, which the Panel assumes to include both encumbered and unencumbered land). The Panel notes Council’s submissions that there is a lack of open space in the Leopold area, but Council did not point the Panel to any particular assessment or study which bears this out.

¹¹ Greater Geelong Planning Scheme Amendment C214 Panel Report, page 37.

The Panel is not persuaded that a contribution of more than 10 to 12 per cent of unencumbered land is justified, or would necessarily deliver a net community benefit. While on one view large amounts of open space are inherently of benefit to the community, this needs to be balanced against other policy considerations such as the efficient use of residential land, and maximising opportunities to accommodate future growth within settlement boundaries. The Panel considers that a contribution in the range of 10 to 12 per cent unencumbered land (which is broadly consistent with the range of contributions made in other growth areas) achieves an appropriate balance.

(iii) Conclusion

The Panel concludes:

- A public open space contribution in the range of 10 to 12 per cent unencumbered land is appropriate in this case.

5.6 The local park

(i) Evidence and submissions

Council submitted that the local park adjacent to the northern retarding basin should be retained. It noted that the Structure Plan seeks the provision of a 2 hectare local park in the broader area, which the Framework Plan has split into two 1 hectare parks across the two development fronts (Ash Road and Mollers Lane). Council pointed to the objectives and standards in Clause 56.05-2 that require local parks of at least 1 hectare in size to be provided within 400 metres safe walking distance of at least 95 percent of all dwellings. It submitted that if the local park is not provided, lots in the north of the subdivision will not be within walking distance access to a park, reducing the overall recreation opportunities for new residents.

The Proponent submitted that the local park is not needed, as the linear open spaces satisfy the open space needs of the subdivision. Relying on evidence from Mr Wyatt, the Proponent submitted that the linear open spaces provide attractive and usable recreational areas which are central to the subdivision, delivering an open landscaped character and linking the subdivision to the existing open space corridors to their west. It submitted that there is no need to vegetate the open space corridors because the retarding basins will provide the necessary stormwater treatment. It submitted:

Mr Wyatt's evidence is that the open space corridors provide for exactly the type of public open space that is expected for a development of this type, in circumstances where the land has not been required to provide a formal open space facility such as a sporting oval.

The Proponent submitted that the Structure Plan shows no park on the subject land, and while the Framework Plan shows the local park, the development is not required to accord with the Framework Plan. It submitted that the Framework Plan does not form part of the Planning Scheme, and is only intended (as described by Council) as a high level plan to guide the future rezoning and development of the area.

(ii) Discussion

The Panel agrees with Council that the local park should be provided. Providing a local park adjacent to a drainage corridor maximises open space opportunities, and offers a more diverse open space network and more varied local recreational use than the linear open space corridors alone, consistent with the objectives and strategies in Clause 19.20-6S. The park is well located, and provides open space within 400 metres safe walking distance of most of the lots in the subdivision, including those in the north. It is accessible by road and a shared path, and passively surveillance is available from the proposed residential development on two sides of the park. This is consistent with the objectives of the PPF, including the Structure Plan.

(iii) Conclusion and recommendation

The Panel concludes:

- The local park adjacent to the northern retarding basin is justified and should be retained.

The Panel recommends:

Include condition 1(c) in Appendix D requiring the local park adjacent to the northern retarding basin to be retained.

5.7 The south-west wedge

(i) Evidence and submissions

Council submitted that the south-west wedge should be retained as open space as contemplated in the exhibited ODP. It did not support the residential development of this land as shown in the amended ODP. Council submitted that this would be inconsistent with the Framework Plan, and that open space in this area would provide a buffer to the rural land to the south, between the subject land and Lake Connewarre. It noted that the Estuary Estate contains a similar buffer along its southern boundary.

Council informed the Panel that the agreement to extend the settlement boundary and to remove the SLO10 from the subject land was always on the proviso that the south-west wedge would not be available for development. It submitted that since the original proposal was put to Council in December 2016, the extent and density of residential development on 92-120 Mollers Lane (which includes the south-west wedge) has increased, and the southern waterway and retarding basin have moved further south, providing more residential development opportunities.

These factors combined have already added to the development opportunity provided north of the southern waterway. We don't oppose maximising the development opportunity on this site north of the creek, but do oppose it south of the creek.

Council indicated that it would support retaining the south-west wedge as a single lot in private ownership as an alternative to public open space, provided access was not provided across the southern waterway. Access issues are discussed in Chapter 6.3.

The Proponent submitted that there was no proper planning basis for requiring the south-west wedge to be provided for public use, or retained as a 2.3 hectare balance lot of

residentially zoned land. It submitted that the south-west wedge is unencumbered developable land, and allowing residential development in this area will make efficient use of the southern drainage corridor. It submitted that the residential development of this land has sound planning merit, because:

- due to its topography, it faces 'inward' towards the remainder of the subject land and will naturally look and feel like part of the subdivision
- the lots will have a northerly aspect, which is preferable for solar gain and energy efficiency
- it will not extend residential development further south or closer to Lake Connewarre, because the Ash Road East land (which is within the current settlement boundary) is already further south
- strategic planning policy imperatives support the efficient use of land and increasing housing supply in urban environments.

Relying on evidence from Mr Wyatt, the Proponent submitted that the south-west wedge is not well located as open space, which should be centrally located to maximise accessibility to residents. It submitted that there is no justification for the use of the land as a buffer to the rural land to the south. It submitted that the open space along the southern boundary of the Estuary Estate serves a drainage function, not a buffer function. Mr Wyatt's evidence was that rural land functions as a buffer in its own right, and that street tree planting would be sufficient to physically distinguish the two land uses.

The Proponent conceded that residential development of the south-west wedge would be inconsistent with the Framework Plan, but submitted that there is no reason why the gazetted Framework Plan might not vary from the current version.

Tract submitted on behalf of Eastern Ash that the south-west wedge *"should be considered to accommodate additional drainage/retarding infrastructure and therefore minimise the extent of land required to be set aside for drainage/retarding purposes in the land fronting Ash Road"*.

(ii) Discussion

The Panel accepts that the south-west wedge does not appear to be subject to any physical constraints such as slope that would prevent its development for residential purposes.

The Panel considers that the south-west wedge is not required to provide an appropriate quantum of open space in the development (as discussed in Chapter 5.5). It accepts the evidence of Mr Wyatt that it is not well located as open space, and not required to perform a buffer function to the rural land to the south.

The Panel is cognisant of Ms Ring's evidence regarding the importance of not wasting opportunities to efficiently use urban land, and that opportunities to develop land within settlement boundaries should be maximised, particularly given the indication that settlement boundaries in the municipality are likely to become permanent in the not too distant future.

Accordingly, the Panel agrees with the Proponent that the south-west wedge is not required as open space, and should be made available for conventional residential development.

(iii) Conclusion and recommendation

The Panel concludes:

- The south-west wedge is not required as open space, and should be made available for conventional residential development.

The Panel recommends:

Amend condition 1 to refer to Version Y2 of the Outline Development Plan dated 31 October 2018 instead of Version U dated 14 December 2017, so as to allow the residential development of the land to the south of the southern waterway and open space corridor.

Include condition 21 in Appendix D requiring access to the land south of the southern waterway and open space corridor to be designed and constructed to the satisfaction of Council prior to development of that part of the land commencing.

6 Other matters

6.1 Vegetation removal

(i) The issues

The issues are:

- Does the permit application appropriately avoid, minimise and offsets impacts on native vegetation?
- Are impacts on non-native vegetation acceptable?

(ii) Context

The exhibited draft permit includes conditions 40 and 41 which require a detailed Tree Retention and Removal Plan to be approved, and an arborist report for all trees proposed for retention. Conditions 42 to 53 contain detailed requirements in relation to landscape planting and maintenance.

Conditions 57 to 67 deal with offsets required for the removal of native vegetation. The offset conditions are out of date and do not refer to the current offsetting requirements in the *Guidelines for the removal, destruction or lopping of native vegetation, DELWP, 2017* (2017 Native Vegetation Guidelines).

(iii) Relevant policies, strategies and studies

Clause 12.01-2S (Native Vegetation Management) seeks to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. Strategies include:

Ensure decisions that involve, or will lead to, the removal, destruction or lopping of native vegetation, apply the three-step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017):

- Avoid the removal, destruction or lopping of native vegetation.
- Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
- Provide an offset to compensate for the biodiversity impact from the removal, destruction or lopping of native vegetation.

The Structure Plan seeks to retain environmental values, including native vegetation within Leopold's growth areas.

(iv) Evidence and submissions

The Amendment and permit application were supported by a Vegetation Assessment and Native Vegetation Removal report prepared by Mark Trengrove Ecological Services. An updated version of this report was circulated following the Directions Hearing and before the Hearing (the Native Vegetation Assessment). The Proponent also circulated an arborist report prepared by Galbraith and Associates dated 16 November 2018 prior to the Hearing (the Arborist Report).

The Proponent submitted that it proposes to remove all existing vegetation from the subject land. It noted that the Arborist Report identified no high value vegetation on the subject land, and that the Native Vegetation Assessment concludes that removal of native vegetation cannot be avoided or minimised. It submitted that DELWP's permit conditions to deal with offsets for native vegetation removal are unopposed, and the Proponent has already made arrangements to secure native vegetation offsets for the development.

The Arborist Report assessed the type and health of existing vegetation in three areas on the subject land, located along the western boundary (Area 1), at the western end of the northern waterway (Area 2) and around a dam further to the east along the northern waterway which is proposed to be removed (Area 3). The report concluded:

- Area 1 contains non-native Monterey Pines that are 70 or more years old and have started to decline in health and structural integrity. The retention value of these trees is low.
- Area 2 contains a planting of about 147 indigenous, native and non-native trees which are about 20 years old. Most are in fair to poor condition. A few individuals of different species have a moderate worth for retention. No trees are of high value for retention.
- Area 3 contains a range of planted and self-seeded trees. Galbraith and Associates did not investigate this area thoroughly, because Council did not propose to require any tree retention in this area. Several of the trees, particularly the Monterey Pines and the more mature specimens, are in fair to poor condition.

The Native Vegetation Assessment commented that:

The removal of native vegetation cannot be avoided or minimised as:

- Mollers Lane is proposed to be widened and thus trees within the reserve will be removed.
- Existing Dams will be removed as they are not suitable to be retained in the public realm.
- Remaining scattered trees do not form a continuous area able to practically be retained in a reserve within the subdivision.

Relying on these reports, the Proponent submitted that:

Retaining existing low grade and exotic vegetation, such as the over mature Monterey pines adjacent to the western boundary, would constrain the landscape design, preventing higher grade and more contextually appropriate species from being planted, and ultimately result in a worse outcome in the long term.

On the basis that there is no existing vegetation on the Subject Land which is of a high value and the best landscape outcome for the Subject Land will be achieved through the implementation of a detailed landscape master plan which is contextually appropriate to the proposed subdivision, it is submitted that in the circumstances of this application it is appropriate for all existing vegetation to be removed from the Subject Land.

Council submitted that condition 40 should be retained, noting that it only requires assessment of the trees and does not, of itself, require their retention. It submitted that:

... seeking to retain vegetation of good health and longevity in appropriate locations within the subdivision is desirable with regard to visual amenity, minimising urban heat island issues, for habitat for birds and possums, softening that urban landscape, water quality runoff improvements as well as providing opportunity for mature canopy to add to open space areas.

Council noted that the Arborist Report is limited in scope, and does not assess trees across the whole site. Further, there has been insufficient time for Council's internal referral units to review the report. Council's submissions did not raise any particular concern regarding native vegetation removal.

DELWP raised concerns regarding the Native Vegetation Assessment. It was concerned that the proposal had been assessed under the former native vegetation policy framework, which was amended in December 2017. DELWP recommended that a revised native vegetation assessment be submitted along with a statement explaining how impact on biodiversity and native vegetation had been avoided and minimised.

Tract submitted that the Framework Plan identified four areas where mature stands of vegetation existed. It submitted that native vegetation had a value, but that it should only be retained (specifically the vegetation on the western boundary of 92-120 Mollers Lane) where it could be demonstrated that it did not impact on the functionality of the proposed drainage corridor.

(v) Discussion

The native vegetation requirements in the Planning Scheme (including Clause 12 and Clause 52.17) have been amended since the proposal was first conceived. The transitional provisions that apply to regular planning permits do not appear to apply to a combined Amendment and permit application. It is the Panel's view that the requirements at Clause 52.17 and the 2017 Native Vegetation Guidelines apply to the proposal.

Clause 12.02 calls for proponents to firstly avoid and then minimise and offset any native vegetation impacts. The loss of any native vegetation and appropriate offsets need to be determined in accordance with Clause 52.17 and the 2017 Native Vegetation Guidelines.

It does not appear that there has been any genuine effort to avoid impacts on native vegetation. The Native Vegetation Assessment refers to practical issues associated with retaining native vegetation within the reserve, however it is not clear why some native vegetation cannot be retained. It is common practice for patches of native vegetation to be retained within parts of open space networks as part of a structure planning process.

The Panel does not agree with the submission of Tract that native vegetation should only be retained when it does not affect the functionality of the drainage corridor. This view is inconsistent with Clause 12 and Clause 52.17.

In the Panel's view, additional efforts should be made to avoid the removal of native vegetation and integrate this into the subdivision design through detailed design. On a site of this scale at this stage of the process, there is greater flexibility and the Proponent should avoid and minimise impacts on native vegetation through the detailed design process. This may involve alterations to the drainage design or open space corridors to accommodate existing native vegetation. This can be dealt with by way of permit conditions. The permit conditions requiring offsets should also be updated to reflect the current requirements. Further advice may be required from DELWP in this regard.

In relation to the non-native trees, the Panel agrees with Council that existing healthy trees in appropriate locations can contribute to the visual amenity of the development and

provide other benefits as outlined in Council's submission. While the Panel has no reason to doubt the findings in the Arborist Report, its scope was limited, and the Panel considers that there is value in retaining conditions 40 and 41 in the exhibited draft permit.

Condition 40 includes a sentence that reads "*Clarification must be provided regarding the large mature trees along the common western boundary of Property Nos. 7, 8 & 9*". It is not clear that this refers to, but if it is to the Monterey Pines in Area 1 identified in the Arborist Report, this sentence should be deleted as the information has already been provided.

(vi) Conclusions and recommendations

The Panel concludes:

- Additional efforts should be made to avoid the removal of native vegetation and integrate this into the subdivision layout.
- Exhibited conditions 40 and 41 (conditions 37 and 38 in Appendix D), requiring a detailed Tree Retention and Removal Plan to be approved, and an arborist report for all trees proposed for retention, should be retained.
- Exhibited conditions 57 to 67 (conditions 54 to 63 in Appendix D) need to be updated to reflect the current offsetting requirements. Further advice should be sought from DELWP in this regard.

The Panel recommends:

Include condition 4(b) in Appendix D that requires the Integrated Drainage, Vegetation and Open Space Framework Plan to demonstrate how impacts on native vegetation have been avoided and minimised with the subdivision layout, and how retained native vegetation and any offset areas will be integrated into and protected in any open space areas.

Replace exhibited conditions 57 to 59 with conditions 54 to 55 in Appendix D, to refer to offset obligations under Clause 52.17 and the 2017 Native Vegetation Guidelines, after seeking further advice from DELWP.

6.2 Biodiversity impacts

(i) The issue

The issue is:

- The potential impacts of the proposal on protected fauna species.

(ii) Relevant policies, strategies and studies

Clause 12.01-1S of the Planning Scheme seeks to protect biodiversity in a number of ways, including by reducing fragmentation of habitat and controlling threats to populations.

The *Guidelines for the removal, destruction or lopping of native vegetation*, DELWP 2017 provide policy guidance in relation to native vegetation that provides habitat.

The Structure Plan recognises the need to protect biodiversity values within Leopold.

(iii) Evidence and submissions

Council did not raise any particular concerns regarding biodiversity values.

Ms Hart raised concerns that the removal of the dams would result in a loss of vegetation and habitat for wildlife. The Geelong Environmental Council submitted that the increased population density would increase threats to protected species, including migratory birds.

The Native Vegetation Assessment, which is discussed in more detail in Chapter 6.1, touched on the risks to fauna species and identified that there was a low risk of impact on Growling Grass Frogs as a result of the proposal. The Panel understands that DELWP did not review the updated assessment. Relying on the Native Vegetation Assessment, the Proponent opposed conditions 69 and 70 that require targeted surveys for, and salvage and relocation of, Growling Grass Frogs that may be inhabiting the private dams to be removed on the subject land.

(iv) Discussion

Increased population density can increase the threats to fauna species. The Panel notes the Native Vegetation Assessment which concluded there was a low risk of an impact on the Growling Grass Frog. Upon inspection of the subject land, it appeared that the subject land had been farmed for many years and remnant habitat was limited.

In the absence of any specific advice from DELWP or Council, the Panel accepts that the risk to biodiversity on-site is relatively low. The Panel considers that the greater biodiversity threat is likely to occur off-site. The impacts on Lake Connewarre are discussed further in Chapter 4.6.

The Panel accepts that, on the basis of the Native Vegetation Assessment, there appears to be no evidence of Growling Grass Frog on the subject land. Exhibited conditions 69 and 70 may therefore not be an appropriate or proportionate response. DELWP has recommended that additional WSUD features be incorporated into the on-site drainage design, and that the subdivision include design and landscaping features that provide suitable habitat for fauna including the Growling Grass Frog. The Panel prefers this approach, and has recommended suitable conditions be included in its preferred version of the permit in Appendix D.

The Panel considers that subject to a more integrated drainage design (which is also recommended in Chapters 4 and 6.1 for other environmental reasons), impacts on biodiversity can be managed.

(v) Conclusion and recommendation

The Panel concludes:

- A more integrated approach to drainage design, which considers environmental avoidance and mitigation, would suitably protect biodiversity values.
- In the absence of any evidence that Growling Grass Frogs are present on the subject land, exhibited conditions 69 and 70 should be deleted. Instead, conditions should be included requiring the subdivision and drainage design to include features which provide suitable habitat for fauna including the Growling Grass Frog.

The Panel recommends:

Delete exhibited conditions 69 and 70, requiring targeted surveys for, and salvage and relocation of, Growling Grass Frog. Include conditions 4(b)(iii) and 6(d) requiring design and landscaping features that provide suitable habitat for fauna including Growling Grass Frog.

6.3 Traffic and transport impacts

(i) The issues

The issues are:

- Are the proposed active transport networks appropriate?
- When should the Bellarine Highway/Mollers Lane intersection be signalised?
- How much of Mollers Lane should be sealed?
- How should the south-west wedge be accessed?

(ii) Context

Transport for Victoria (TfV) provided recommended permit conditions, which were included in the exhibited draft permit.

The Proponent called traffic evidence from Mr Walsh, who based his assessment on the amended ODP (which represents a more intensive development than the exhibited ODP). His evidence was that modelling demonstrated that the broader road network is capable of accommodating a development of up to 560 dwellings on the subject land, subject to external traffic works including signalising (providing traffic lights) the Bellarine Highway/Mollers Lane intersection, and providing a left turn lane on Bellarine Highway into Mollers Lane.

His evidence was that the proposed development provides a connective road network, allows for future connections to development to the Ash Road East land and through to Ash Road, and is broadly consistent with the Framework Plan. The proposed road reservations and cross sections are appropriate to accommodate traffic, parking, footpaths and services, and all relevant vehicles will be able to adequately access the proposed internal road network, including service and emergency vehicles. These matters were largely undisputed.

(iii) Evidence and submissions

Active transport networks

Council supported the proposed integration of public transport capacity and cycling and pedestrian infrastructure in the development, noting that this is consistent with the Framework Plan. It was satisfied that active transport network connections can be achieved through shared paths along both linear open space corridors, and both east west connector roads, and that these would provide active transport connections to Ash Road and Melaluka Road and encourage active transport trips to the primary school and shopping centre.

TfV supported the transport and traffic-related design objectives in the proposed DDO43, but submitted that more active transport infrastructure was required, including widening

the proposed shared paths to 3 or 3.5 metres. Council submitted that this is excessive, noting that the Infrastructure Design Manual provides for 2.5 metre wide shared paths. *“Based on experience across the municipality, we do not consider there to be a critical mass to justify this big increase in service provision”*.

Council continued discussions with TfV leading up the Hearing, and on 27 November 2018 TfV circulated a revised submission (Document 13) agreeing that a 2.5 metre wide shared path on one side of each of the east west connector roads and along Mollers Lane, with a dedicated footpath on the other side, would be appropriate. Council indicated that this could be achieved within the proposed road reservations. The Proponent accepted this position.

Signalisation of the Bellarine Highway/Mollers Lane intersection

Council explained that VicRoads (in its capacity as a determining referral authority for the permit application) had indicated that the intersection should be signalised when the 160th lot is developed, which is earlier than proposed by the Proponent. Council supported VicRoads’ timing, and the Proponent agreed to this.

VicRoads provided Council with amended permit conditions on 12 November 2018, which clarified some of its requirements. These conditions were reflected in Council’s Part A(3) submission.

Sealing of Mollers Lane

Mr Lipshut submitted that Mollers Lane should be sealed to the Lane’s end. He submitted that the residents of the development are likely to want to access Lake Connewarre at the end of Mollers Lane, justifying sealing the lane for the full extent.

Council opposed this request, submitting that there is no modelling to show that there will be such a substantial increase in vehicles using Mollers Lane to justify requiring the Proponent to construct and seal the road beyond the southern extent of the subject land. It noted that Mollers Lane is a no through road, with no established facilities such as car parking or boat launching along the foreshore for people to readily enjoy. It submitted that the interpretive installation and lookout near the southern end of Ash Road is a more suitable location for lake access.

Access to the south-west wedge

Council opposed access to the south-west wedge via a bridge crossing of the southern waterway and open space corridor, as shown in the amended ODP. It submitted that, based on the proposed number of lots on the south-west wedge and Mr Walsh’s traffic generation rates, more than 340 movements across the open space would be generated per day, excluding further traffic from the proposed medium density site. Council submitted that this would interrupt the open space enjoyment of the waterway and corridor.

Mr Walsh expressed no concern with the Proponent’s proposed access to the south-west wedge from a traffic capacity or management perspective.

(iv) Discussion

The Panel accepts Mr Walsh's evidence that the broader road network can comfortably accommodate the additional traffic generated by the development. It agrees with Mr Walsh and Council that there is no justification for the sealing of Mollers Lane beyond the southern extent of the subject land.

The Panel is satisfied that the proposed transport network on the subject land is appropriate, and meets policy objectives in Clause 18 of providing integrated and accessible transport networks through active transport networks that provide accessibility to public and active transport connections to the immediately adjoining land and beyond. It accepts Mr Walsh's evidence that the proposed road reservations and cross sections are appropriate and sufficiently wide to accommodate traffic, parking, footpaths and services.

The Panel acknowledges the efforts of Council in seeking to reach agreement with TfV and the Proponent in relation to outstanding matters prior to the Hearing. The Panel supports the agreed positions reached in relation to the width of the shared paths (at 2.5 metres), and the timing of the signalisation of the Bellarine Highway/Mollers Lane intersection (at the development of the 160th lot). There may be a need to amend the draft section 173 agreement exhibited together with the Amendment and draft permit to reflect these changes.

The Panel acknowledges that Mr Walsh has no concerns from a traffic perspective about the proposed connection to the south-west wedge. However it shares Council's concerns about the impact of a road crossing on the drainage and recreation functions of the southern waterway and open space corridor. It is not satisfied that this issue has been adequately considered. This issue requires further consideration, but this can occur after the permit is granted (by way of a secondary consent condition).

(v) Conclusions and recommendations

The Panel concludes:

- The proposed transport network shown on the amended ODP is appropriate, subject to signalisation of the Bellarine Highway/Mollers Lane intersection at development of the 160th lot.
- There is no justification for the sealing of Mollers Lane to the lane's end.
- The connection to the south west wedge requires further consideration.

The Panel recommends:

Amend conditions 100(a) and 107(b) to (d) to reflect the agreed position in relation to the timing of the signalisation of the Mollers Lane/Bellarine Highway intersection, and the width of shared paths.

Update the draft section 173 agreement to reflect the agreed position in relation to the timing of the signalisation of the Mollers Lane/Bellarine Highway intersection, and the width of shared paths, as reflected in amended permit conditions 100(a) and 107(b) to (d).

Otherwise amend conditions 107 to 113 to reflect the agreed conditions set out in Transport for Victoria's submission dated 27 November 2018 (Document 13).

6.4 Integration with the Ash Road East land

(i) The issues

The issue is:

- Does the proposal appropriately integrate with the Ash Road East land?

(ii) Evidence and submissions

Several submitters raised concerns regarding the integration between the subject land and their own land in the Ash Road East area.

Tract on behalf of Eastern Ash noted that it did not have any specific concerns with the proposed subdivision layout, but submitted that Council should carefully consider whether the proposed layout (in particular the east west connector roads and open space corridors) may prejudice the logical subdivision of the Ash Road land holdings. It raised a concern regarding drainage outfall from 73-85 Ash Road towards the subject land, and whether a connection was allowed for. This issue is dealt with in Chapter 4.4.

Echelon for Gaage Developments raised concerns regarding the inclusion of the Framework Plan in the Planning Scheme. It submitted that the technical work which would normally underpin an equivalent structure plan in the Planning Scheme had not been completed. It submitted that without proper groundwork it was not possible to know if all technical and practical issues were addressed in the Framework, including how the subject land integrated with Ash Road East land.

Council submitted that the Framework Plan “*did the work*” of a development plan or structure planning process and therefore addressed matters of integration with the Ash Road East land. The Proponent submitted that the subdivision layout shown on both the exhibited and amended ODPs appropriately integrated with the Ash Road East land.

(iii) Discussion

The Framework Plan provides guidance in relation to the integration between the subject land and the Ash Road East land, at least in a practical sense. The process undertaken to prepare the Framework Plan is unusual in that the plan was not subject to broad consultation, and has not been formally adopted by Council.

The Framework Plan is quite explicit that further studies and assessments would be required to resolve aspects of the Framework, several of which could affect the integration between the subject land and surrounding properties (including the Ash Road East land and presumably the land to the east of Mollers Lane discussed in Chapter 4.5).

In response to the integration issues raised in the Tract and Echelon submissions, the Panel observes that these issues are somewhat unavoidable. The development of one area will inevitably influence the way in which neighbouring areas are laid out and developed, and it is inevitable that the first area to develop will set the parameters for neighbouring areas, particularly in relation to the location of connecting infrastructure such as roads and open space or drainage corridors. The Panel observes that the proposed subdivision layout, including the location of the connector roads and the open space corridors, is generally in

accordance with the Framework Plan, and notes that the submissions raised no specific concerns or obvious problems with the future development of the Ash Road East land.

(iv) Conclusion

The Panel concludes:

- The subject land integrates with the Ash Road East land to the extent practicable, given the sequencing of development within the precinct.

6.5 Impact of (and on) duck hunting activities

(i) The issue

The issue is:

- Will the proposed development create land use conflict issues with the duck hunting activities that take place on Lake Connewarre?

(ii) Evidence and submissions

Several submitters raised concerns in relation to the possible conflicts between duck hunting activities on Lake Connewarre and the residential development. Mr Lipshut submitted that the lake is an attractive place to walk and explore, leading to a “*recipe for disaster*” during duck hunting season. He submitted that the small exclusion zone on the foreshore, which currently extends 100 meters either side of the end of Mollers lane, should be expanded. Mr Chapman and Ms Hart raised similar concerns.

Geelong Field and Game Inc and the Sporting Shooters Association of Australian Victoria Ltd were opposed to any development that could lead to the loss of hunting opportunities for its members. Duck hunting activities bring many benefits to members and to Victoria more broadly, including the preservation and enhancement of wetlands, and a significant contribution to the State economy. They submitted that duck hunting opportunities are limited in the region and any loss of hunting areas has the potential to severely impact on licensed hunters.

They submitted that the proposed development should not directly impact hunting on Lake Connewarre, as the distance is great enough to eliminate any possibility of shot fallout. Their concerns related to complaints from the new residents of the development:

The sound of firearms can be disconcerting to those uneducated in their use and function. A lack of understanding can lead to unnecessary and unfounded concerns about safety. The rezoning of farmland to General Residential Zone will bring many more people into hearing distance of shooting activity.

They submitted that purchasers should be informed that duck hunting occurs, and that they are likely to hear varying levels of shooting activity throughout the season. They submitted that Council should not take any action in relation to noise complaints from legal shooting activities, and that any complaints based on perceived safety risks would be subject to rigorous, objective scrutiny before any restrictions on hunting were considered. They submitted:

If noise or potential safety issues from legal shooting activity during the duck season are likely to be detrimental to future residents then planning permission should not be given.

Council responded that the proposal is unlikely to have any impact on the hunting activities at Lake Connewarre. It noted that the southern boundary of the subject land is 900 metres from the lake shore, and the intervening land undulates. It submitted that the exhibited ODP shows the south-west wedge as open space, which would (along with the linear open space corridor and the southern retarding basin) provide a further separation distance between the residential development and duck hunting activities.

Council did not support a requirement to notify prospective purchasers of the duck hunting activities, noting that the planning approvals for the nearby Estuary and Allure Estates (both of which are closer to the shoreline) haven't included this requirement. Council submitted that if someone was to build or move into a residence in the vicinity of established duck hunting activities it would not be reasonable for a resident to expect that activity to cease.

Council submitted that changes to the exclusion zone were beyond the scope of the Amendment and draft permit, and were matters for DELWP as the Crown Land manager. Council noted that DELWP has not advised of any proposed changes to the exclusion zone, and noted that the draft Site Management Plan Strategy for the Lake Connewarre State Game Reserve (a copy of which was not provided to the Panel) contains no strategy or management initiative to change the extent of the exclusion zone.

(iii) Discussion

The Panel notes the concerns of Geelong Field and Game and the Sporting Shooters Association, and those of the residents, in relation to the potential for land use conflicts between duck hunting activities and the increase of residents in the area. However no evidence was presented to the Panel that persuaded it that the potential for conflict was so significant as to warrant recommending against the Amendment and permit.

Nor was the Panel persuaded that new residents of the proposed development should be informed of duck hunting activities. A requirement to notify new residents would be administratively burdensome for the Proponent, potentially difficult for Council to enforce, and may have limited practical effect. Nothing was presented to the Panel that persuaded it that such a requirement is justified. On the contrary, Council indicated in response to questions from the Panel that it had not received many, if any, complaints about duck hunting activities from residents in the established areas that are located closer to the lake shore than the subject land.

The Panel agrees that the matter of the exclusion zone at the end of Mollers Lane is beyond the scope of the Amendment and permit, and is a matter for Parks Victoria as the manager of the State Game Reserve.

(iv) Conclusions

The Panel concludes:

- The potential for land use conflicts between the proposed development and duck hunting activities is not sufficient to justify recommending against the Amendment or the permit.
- There is no justification for a requirement to notify prospective purchasers of duck hunting activities.

6.6 The need for further assessment of contamination

(i) The issue

The issue is:

- Is further assessment of contamination risk warranted?

(ii) Evidence and submissions

The Proponent submitted *Environmental Assessment 2 – 120 Mollers Lane, Leopold* (August 2016) prepared by Environmental Site Assessments Pty Ltd in support of the combined Amendment and permit application (the Environmental Assessment). The Environmental Assessment concluded that there was a low risk of contamination on the permit land. The Environmental Assessment did not address 10 Willows Place, which has already been rezoned and developed for residential purposes.

The Environmental Assessment was referred to EPA for comment. EPA did not provide particularly clear advice about whether it agreed with the conclusions of the Environment Assessment. EPA supported the inclusion of a permit condition that required a further peer review, which could trigger an environmental audit process if contamination was identified.

Council, relying on the advice and recommendations of EPA, submitted that a condition should be included on the permit which would require further peer review and further assessment if required. The draft section 173 agreement exhibited with the combined Amendment and permit application also contains a clause (clause 5) requiring the Owner to provide Council with an environmental assessment that clearly and unequivocally states that any land transferred to Council is suitable to be used and developed for the purpose for which it is intended.

The Proponent opposed the condition requiring a peer review on the basis that a thorough environmental assessment had already been completed and concluded that there was a low risk of contamination. In her oral evidence, Ms Ring indicated that the peer review condition would be somewhat unusual but that a 'lower level' review would not be 'overly burdensome'.

(iii) Discussion

The Environmental Assessment was prepared in response to *Ministerial Direction No 1 – Potentially Contaminated Land*. It appeared to be a comprehensive assessment of the contamination risks and concluded that there was a low probability that the permit land was contaminated.

The peer review condition was included based on the advice of EPA. Council has been placed in a difficult position as a result of less than directive advice from EPA. EPA have the technical expertise to assess contamination risk and did not reach any conclusions regarding the level of risk.

Given the lack of any evidence to the contrary it appears that the peer review condition is disproportionate to the level of contamination risk that exists. There is a detailed report which concluded the risk is low. Furthermore if contamination did arise there is still a mechanism to deal with that risk through an Environmental Audit under Part 1XD of the *Environment Protection Act 1970*, regardless of what the permit conditions say.

The Panel did not receive any submissions specifically addressing clause 5 in the section 173 agreement, which requires an environmental audit of any land transferred to Council. The Panel similarly considers that there is no justification for this requirement, and it should be deleted.

(iv) Conclusions and recommendations

The Panel concludes:

- Condition 34 of the proposed permit, requiring a peer review of the Environmental Assessment that has already been prepared for the permit land, is disproportionate to the level of contamination risk that has been assessed. The peer review condition should be deleted.
- There is no justification for the obligations in Clause 5 of the section 173 agreement. The clause should be deleted.

The Panel recommends:

Delete condition 34 of the proposed permit requiring a peer review of the Environmental Audit.

Delete clause 5 of the draft section 173 agreement requiring an environmental assessment of land transferred to Council.

6.7 Impacts on surrounding character

(i) The issue

The issue is:

- Will the proposed development adversely impact on the character of the surrounding area?

(ii) Bellarine Peninsula Localised Planning Statement

The Localised Planning Statement identifies the significance of the Peninsula's visual landscape, including distinct settlements in rural settings, sweeping views across rolling hills, open farmed landscapes, and significant indigenous roadside vegetation. It identifies strong linear vegetation features including exotic windbreaks as a key feature. Policy Objective 4 in the Localised Planning Statement is to protect, preserve and enhance built heritage, cultural and urban character values and preserve the individual identity and role of townships.

(iii) Submissions

Some submissions raised concerns that the proposed development would impact on the character of the area, including through the loss of open farmland and the roadside vegetation along Mollers Lane.

Council submitted that the proposed subdivision reflects contemporary residential subdivision design, which is quite different to the established residential area to the immediate west which was developed some time previously. The proposed development reflects contemporary approaches including smaller lots, networks of open space and shared paths, integrated waterways and minimal culs-de-sac. Smaller lot sizes reflect current planning policy to provide densities of around 15 lots per hectare.

Council submitted that the established residential areas to the west are inward facing with no connectivity to the subject land. Combined with the varied topography and landscape features of the Mollers Lane area, this provides the opportunity for the creation of a new character for this southern area of Leopold.

Relying on Mr Wyatt's evidence, the Proponent submitted that the proposed development would have limited visual impact on the character of the broader area given the topography of the land. It submitted that the landscape character objectives which the SLO10 seeks to achieve, including retaining a largely unbuilt and vegetated character, improving the appearance of rural living development and recognising and protecting the continuation of the land as a working farming landscape, will become obsolete if the subject land is rezoned.

(iv) Discussion

The Panel agrees that the development of the subject land will create a new neighbourhood character, and that it is appropriate to design the subdivision to reflect contemporary standards and policies rather than seeking to recreate the character of the neighbouring established area to the west of the subject land. While the development of the land will transform it from its current open, rural character, the land is within the settlement boundary and this transformation in character of the immediate area is consistent with the policy framework and to be expected. The Panel acknowledges that the removal of vegetation along Mollers Lane, and its sealing, will have localised impacts on the character of the area, but accepts that this is required to facilitate the efficient subdivision and development of the subject land.

(v) Conclusion

The Panel concludes:

- The proposed development will not have an inappropriate impact on the character of the surrounding area.

6.8 Infrastructure

(i) The issue

The issue is:

- Is the section 173 agreement dealing with infrastructure provision appropriate?

(ii) Context

The Amendment and draft permit were exhibited together with a proposed section 173 agreement that requires the owners of the subject land to pay developer contributions at the rate of \$40,000 per net developable hectare, and to deliver the infrastructure projects described in Schedule 3. These projects include:

- upgrading the parks and open space corridors including providing playground equipment, seating, shared paths and landscaping, generally in accordance with the landscape master plans submitted with the permit application
- providing the drainage infrastructure including the retarding basins generally shown in the landscape master plans
- upgrade and widen Mollers Lane
- signalise the Mollers Lane/Bellarine Highway intersection
- provide the connector and internal roads
- provide the sewerage pumping stations in accordance with Barwon Water requirements.

(iii) Evidence and submissions

Ms Ring's evidence was that, in the absence of a Development Contributions Plan, a section 173 agreement securing obligations in relation to the provision of infrastructure is appropriate. She supported the principles in the agreement, but questioned whether the infrastructure projects listed in Schedule 3 should reference detailed plans. She pointed out that there are likely to be changes as the development moves through the detailed design phase, and that very specific references to plans in Schedule 3 will inevitably trigger the need for future updates to the agreement. Council agreed with Ms Ring.

Council submitted that the agreement would need to be finalised sooner than later and entered into prior to adoption of the Amendment rather than prior to the issue of the permit.

Tract noted that the various owners of the subject land will need to agree among themselves as to who will be responsible for delivering the infrastructure projects identified in the proposed section 173 agreement. It submitted that Council should ensure that an alternative infrastructure funding arrangement is prepared and made publicly available in case the owners cannot reach consensus and development is frozen.

(iv) Discussion

The Panel agrees with Council and Ms Ring that a section 173 agreement is an appropriate mechanism to secure the Proponent's obligations in relation to infrastructure in the absence of an approved Development Contributions Plan. There is no dispute between Council and the Proponent regarding the amount of contributions required, or the scope of infrastructure projects required to be delivered under the agreement. The Panel agrees with Ms Ring's drafting improvements to Schedule 3 of the agreement.

(v) Conclusion and recommendation

The Panel concludes:

- The proposed section 173 agreement is appropriate, subject to referring to the infrastructure projects more generally.

The Panel recommends:

Amend schedule 3 of the proposed section 173 agreement to refer to the infrastructure projects more generally, rather than by reference to very specific plans.

7 Form and content of the Amendment

7.1 The issues

The issues are:

- Is the Design and Development Overlay the appropriate tool?
- Should the Framework Plan be referenced in the policy framework?

7.2 Context

The proposed changes to Clause 21.14 include:

- inserting a new strategy “*Support the implementation of the land use recommendations of the South East Leopold Framework Plan*”
- adding a reference to applying the DDO to land designated for future residential growth on the Structure Plan map (in addition to the current reference to the DPO)
- adding the Framework Plan as a reference document.

Ms Ring’s evidence was that these changes are:

... simple, purposeful and constructive additions to policy which, in drafting terms, are consistent with the Form and Content of Planning Schemes and the two changes of substance will, in my opinion, remove any doubt as to the policy support for the whole of the affected land being suited to future, conventional residential development.

Planning Practice Note 23: Applying the Incorporated Plan and Development Plan Overlays provides guidance on this matter.

7.3 The Design and Development Overlay

(i) Context

The Structure Plan foreshadows that a Development Plan Overlay (or similar mechanism) will be used for areas identified as appropriate for residential development on the Structure Plan map. Council proposes to apply a Design and Development Overlay (DDO43) rather than a Development Plan Overlay (DPO).

Generally speaking, a DPO is more often used where some form of more detailed structure or master planning is required before a permit is issued, whereas a DDO is generally used to specify the physical parameters of development on the land. In its Directions, the Panel asked Council to provide its rationale for using a DDO instead of a DPO.

(ii) Evidence and submissions

In response to the Panel’s Directions, Council explained that it had chosen to apply a DDO site of the DPO because the Amendment is combined with a permit application which largely resolves the design and layout of the development. Council submitted that in these circumstances, the further master planning exercise required under the DPO was now redundant. Further, the Framework Plan has effectively filled the purpose of a DPO for the whole of the growth area in that it has considered the whole growth area and how development can be achieved across two development fronts. Council added:

This has enabled proponents to move to more detailed investigations for their respective area of interest and advance amendment and permit proposals with a good degree of confidence of general Council support.

Council submitted that the DDO43 would ensure that, if the permit was not acted upon, the subject land would be developed generally as envisaged in the Framework Plan.

Ms Ring's evidence was that while a DPO has been used in Leopold (specifically for the land to the west of Ash Road), in this case the Framework Plan has ostensibly "*done the work*" anticipated by a DPO:

The Panel will appreciate that the proponents have invested heavily in a comprehensive range of technical and other investigations which have confirmed the essence of the framework and enabled it to be fine-tuned. The subdivision plan has been the subject of exhibition with statutory authorities and third parties having the opportunity to comment on the plan and contribute to conditions in the draft permit.

Her evidence was that while it is likely that the permit would be acted on, she agreed with Council that this could not be guaranteed, and that there should be a mechanism which provides some certainty about a future subdivision of the land in the event the permit is not acted on or expires. She concluded that with the Framework Plan referenced in policy, the DDO is a suitably effective tool in this case.

Ms Ring generally supported the structure and drafting of the DDO43, but queried whether it was appropriate to include an open space requirement which is already set out at Clause 53.01 of the Scheme. She also queried whether the Framework Plan map should be included in the DDO43, suggesting that it would be more appropriate for the Framework Plan to be included as a reference document in local policy, rather than extracted into the DDO43.

Tract submitted that Eastern Ash does not object to the content of the proposed DDO43, but was concerned that a DDO (unlike a DPO) does not exempt third party notification and appeal rights. It submitted that exemption from third party notification and appeal rights in greenfield locations is generally the norm, and the DPO would avoid the need for Council to be "*forced to advertise permit applications that have negligible impacts on others*". It acknowledged that a DPO would require the extra step of a Development Plan to be approved prior to a permit being issued, but submitted that the content of the Development Plan would not need to go beyond the information already contained in the Framework Plan and the DDO43.

(iii) Discussion

The Panel agrees that the DDO is an appropriate tool in this case.

Planning Practice Note 23 describes the purpose of these overlays as:

Both overlays prevent the granting of permits under the zone before a plan has been approved, unless a schedule to the zone states that a permit may be granted. The purpose of this provision is to limit or allow consideration of use and development of the land until a plan has been prepared and ensure that future use and development of the land is carried out in accordance with that plan. The plan details the form and conditions that must be met by future use and development of the land.

The Panel is satisfied that, in this case, plans have already been prepared which describe how the subject land and the neighbouring Ash Road East land should be developed, and

that preparation of a further master plan as contemplated under the DPO would be unnecessary. It agrees with Council and Ms Ring that some form of control mechanism is nevertheless required to ensure that the land is appropriately developed in the (though unlikely) event that the permit is not acted on.

The Panel notes Tract's submission that the DDO does not, unlike the DPO, contain an exemption from third party notice and review rights. The Panel does not consider that this is inappropriate. If the permit the subject of the combined Amendment and permit application is not acted upon, and some other form of development is contemplated, the Panel considers it appropriate for the permit application to be advertised to potentially affected parties, and for them to have a right to input into the permit application (as they have had through the combined Amendment and permit process). This is particularly so given the Framework Plan has not gone through a full consultation process.

The use of the DDO in this case does not necessarily pre-determine that a DDO will be applied when the Ash Road East land is sought to be rezoned. Developers of the Ash Road East land may prefer to seek a DPO at the time of rezoning and undergo a master planning process before making permit applications, rather than put forward a permit application in which the layout and development of the land is largely resolved as has occurred here.

It follows that the Panel supports the insertion of the reference to a DDO in Clause 21.14.

7.4 The Framework Plan

(i) Evidence and submissions

Echelon Planning submitted that the Panel should not support reference to the Framework Plan in the local policy framework, and requested the Panel to recommend that this part of the Amendment be abandoned. Alternatively, Echelon submitted that the Framework Plan should only refer to the permit land. It submitted:

Whilst we make no comment on the adequacy of the draft Leopold Framework Plan to direct future growth within the [permit land], we consider that insufficient technical analysis has been done in relation to the [Ash Road East land] to support the proposed future urban structure shown on page 9 of this Plan.

It submitted that strategic plans must be supported by evidence and based on facts – an expectation set out in the Precinct Structure Planning Guidelines. It submitted that the Framework Plan does not appear to be supported by the necessary technical reports usually required to prepare a strategic plan directing the future use and development of land, noting that the Framework Plan itself outlined a number of tasks requiring further investigation¹². Even if the technical reports have been prepared in relation to the subject land, they have not been prepared in relation to the Ash Road East land. It submitted:

For these reasons we submit that this draft Plan is unfinished, and until such time as the future investigations referred to in the plan are properly resolved then it is inappropriate to include such a strategy in the planning scheme.

¹² At page 12 of the Framework Plan.

Echelon submitted that, separate to the merits of the Framework Plan, it does not meet the requirements of *Planning Practice Note 13: Incorporated and Reference Documents* to be referenced in the scheme.

Tract submitted that "*the Framework Plan was not prepared with substantive advice from specialist consultants and as such, is not, and should not be considered as being 100% accurate*". The Panel notes that Tract prepared the Framework Plan on behalf of Council, although clearly in a different capacity to its capacity in making a submission to the Amendment and permit application on behalf of Eastern Ash.

(ii) Discussion

Planning Practice Note 13 describes the role of a reference document. It may provide useful background information or general advice to applicants, or assist in understanding the scheme. It can explain why particular requirements are in the scheme, substantiate a specific issue, or provide background to specific decision guidelines in local policy or schedules. The Practice Note states that a document must be incorporated (rather than made a reference document) if it will be used to guide the exercise of discretion by the responsible authority.

In this case, it appears that Council is intending the Framework Plan to guide the exercise of discretion. This is contemplated by the addition of the proposed strategy in Clause 21.14, and is consistent with the extraction of the Framework Plan map into the DDO43. This raises the question of whether the Framework Plan should in fact be an incorporated document rather than a reference document.

In the Panel's view, the preferable approach is to include the substantive elements of the Framework Plan into the Planning Scheme, in which case there should be no need to make it a reference document or an incorporated document. This approach provides for greater transparency and clarity, and means that should applications for planning permits be pursued to VCAT, the potential for a dispute as to the weight that should be given to the Framework Plan is avoided.

This approach avoids the issue raised by the Echelon submission that it may be premature to include the Framework Plan in the scheme at this stage insofar as it relates to the Ash Road East land, because the necessary technical reports and studies that would usually support a structure planning process have not been prepared in relation to that land. The Panel is also mindful of the submission from Tract that the Framework Plan cannot be regarded as 100 per cent accurate, and of the fact that the Framework Plan has not been through a broader public consultation process.

For these reasons, the Panel considers that the Framework Plan should not be made a reference document. It follows that the Panel does not support inserting the proposed new strategy into Clause 21.14. Nor does it support the design objective in the DDO43 that reads "*To generally implement the South East Leopold Framework Plan as attached to this schedule and facilitate the orderly and integrated residential development of the area*", or other references to the Framework Plan in the DDO43.

Instead, Council should consider what, if any, additional elements of the Framework Plan need to be translated into Clause 21.14 and/or the DDO43. For the reasons set out in the

Echelon submission, Council should be very cautious about including elements that relate to the Ash Road East land at this stage. For the same reasons, the map included in the DDO43 should be amended to only refer to the subject land, and not to the Ash Road East land.

7.5 Conclusions and recommendations

The Panel concludes:

- The Framework Plan should not be made a reference document in Clause 21.14.
- Council should consider what, if any, additional elements of the Framework Plan that relate to the subject land need to be translated into Clause 21.14 and/or the DDO43.
- The map included in the DDO43 should be amended to only refer to the subject land, and not to the Ash Road East land.

The Panel recommends:

Amend the proposed Clause 21.14 to:

- a) delete the proposed strategy that reads “Support the implementation of the land use recommendations of the South East Leopold Framework Plan”**
- b) delete the South East Leopold Framework Plan 2016 from the list of reference documents at the end of the clause.**

Amend the Design and Development Overlay Schedule 43 as follows:

- a) in Clause 1.0, in the first design objective, delete “generally implement the South East Leopold Framework Plan as attached to this schedule and”**
- b) in Clause 3.0 under the heading ‘General’, in the second dot point, delete “generally in accordance with the South East Leopold Structure Plan that forms part of this schedule” and replace it with “the map in this schedule”**
- c) in Clause 3.0 under the heading ‘Public Open Space’, delete the third dot point and replace it with “Subdivision should provide for linear open space corridors and parks located generally as shown in the map in this Schedule”**
- d) in Clause 5.0, remove the decision guideline that reads “Whether the subdivision design is generally in accordance with the South East Leopold Framework Plan 2016”**
- e) amend the map so that it only relates to the subject land, and not to the Ash Road East land.**

Translate into Clause 21.14 and the Design and Development Overlay Schedule 43 any additional elements from the South East Leopold Framework Plan that may be required to properly guide the use and development of the subject land, and the consideration of permit applications in relation to the subject land.

8 The planning permit

8.1 Relevant considerations

Clause 65 of the Planning Scheme states:

Because a permit can be granted does not imply that a permit should or will be granted. The Responsible Authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

Clause 65.01 requires the Responsible Authority to consider, as appropriate and relevant:

- the Planning Policy Framework
- the purpose of the zone, overlay or other provision (or in this case, the proposed zone and overlay)
- the orderly planning of the area
- the effect on the amenity of the area
- factors likely to cause or contribute to a reduction in water quality
- the extent and character of native vegetation, the likelihood of its destruction, and whether it can be protected, planted or allowed to regenerate.

Other matters to be taken into account include:

- objections
- comments and decisions of referral authorities
- other matters a Responsible Authority must and may take into account under section 60 of the Act, including the Victorian planning objectives and the economic, social and environmental impacts of the proposed use and development
- adopted government policy.

Clause 71.02-3 of the Planning Scheme requires a responsible authority considering a permit application to take an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development.

8.2 Evidence and submissions

Ms Ring's evidence was that the subdivision proposal represents an orderly and integrated residential development of the area, and that the permit "*correctly addresses the affected land and encapsulates the necessary permissions*". She reviewed the Proponent's Clause 56 assessment which supported the permit application, and concluded:

I am satisfied that the proposal has been designed in accordance with its objectives and, in most instances, the standard applicable to the objective is achieved. There are some cases where the standard cannot be met due to the location of the subdivision being in a district town.

She found that the proposed subdivision:

- provides a variety in lot size to meet policy expectations and anticipated market needs
- provides good orientation for lots
- includes a suitable hierarchy of landscaped streets
- provides for the opportunity for integration with land to the west

- includes a network of public spaces that engages with roads and streets to ensure good public surveillance
- provides a network of pedestrian paths, including provision for shared paths
- provides appropriate urban services.

Ms Ring was satisfied that the permit includes a range of conditions which she considered typical, including conditions expressly required in this instance, or otherwise normally required by statutory authorities, although she recommended several changes which were incorporated into the Proponent's preferred version of the permit conditions (Document 20). The Panel has considered Ms Ring's recommendations, and the Proponent's summary of its changes in paragraphs 125 to 138 of its submission (Document 19A), in developing its preferred version of the permit conditions in Appendix D.

8.3 Overall assessment of the permit application

The permit provides for the residential development of land in an identified growth location, protecting the rural breaks between settlements and supplementing the supply of residential land in the market. This is consistent with the objectives of Clause 16 of the Planning Scheme, the Localised Planning Statement, the G21 Regional Growth Plan, the Settlement Strategy, the Structure Plan and Council's Municipal Strategic Statement.

The Panel accepts the evidence of Ms Ring to the effect that the proposed development will deliver an attractive, safe, accessible, diverse and sustainable neighbourhood that broadly meets the objectives and standards of Clause 56. This is consistent with Council's assessment of the permit application. The permit provides a variety of lot sizes at an average overall residential density of slightly less than the 15 lots per net development hectare sought by Clause 11.03. The density is appropriate given the location of the subject land on the outskirts of Leopold.

The design of the subdivision around the two waterways, including them as landscape features and open space corridors, represents an appropriate outcome in terms of the policy objectives of Clause 12 and the Municipal Strategic Statement.

Specific issues and impacts required to be considered have been discussed at length in the relevant chapters of this Report. These have been considered in the context of the amended ODP. In essence the Panel considers that:

- Impacts of stormwater runoff of the proposed development are able to be managed appropriately. Subject to resolution of the location, extent and access arrangements for off-site drainage works that will be required, impacts on the environmental values of Lake Connewarre are likely to be able to be acceptably managed. That said, a more integrated approach to drainage design which considers environmental avoidance and mitigation would more suitably protect biodiversity values.
- The amended ODP represents an appropriate outcome in terms of the open space contribution and network, subject to retaining the local park adjacent to the northern retarding basin as shown on the exhibited ODP.
- Additional efforts should be made to avoid the removal of native vegetation. This should be integrated into the detailed subdivision design. The Proponent should be

required to provide a detailed Tree Retention and Removal Plan, and an arborist report for all trees proposed for retention.

- The proposed transport network shown on the amended ODP is appropriate, subject to signalisation of the Bellarine Highway/Mollers Lane intersection at development of the 160th lot, and subject to further consideration of the connection to the south-west wedge. The transport network will deliver connectivity between the subject land and the land to the west, and will encourage alternative sustainable modes of transport through its network of shared paths and incorporation of public transport features.
- The proposed development will integrate appropriately with the land to the immediate west, and will not have an inappropriate impact on the character of the surrounding area or on the values sought to be protected under the SLO10.
- The proposed development is appropriate in terms of its contribution to local and community infrastructure. The subdivision layout represents an efficient development of the land and the required open space, transport and sewerage infrastructure. The section 173 agreement requiring the Proponent to pay developer contributions and provide infrastructure is generally appropriate, subject to some refinement of the drafting.

On balance, and subject to the Panel's specific findings and recommendations, the Panel considers that a permit should be granted. The Panel's recommended conditions are contained in Appendix D. The table below summarises the Panel's reasons for the substantive changes it has made to permit conditions. The Panel has also made some minor drafting improvements, which are not noted in the table. Condition numbers in the Table refer to the numbers in Appendix D.

Table 1 Reasons for changes to permit conditions

Condition No	Reason
1	The Panel considers that the amended ODP (Version Y2) has planning merit for the reasons discussed in Chapter 5.7, but should not be supported until further notice is given under section 96H(2) of the Act, and potentially affected parties have the opportunity to make submissions and have those submissions considered by a panel.
1(c)	Refer to Chapter 5.6. The Panel considers that the local park shown in the exhibited ODP should be retained.
4 (deleted)	The garden area requirement is contained in the General Residential Zone (and in requirements under the Building Regulations). There is no need to repeat it in a section 173 agreement.
4-5 (new)	Refer to Chapter 4. The Panel considers that a more integrated approach to drainage, vegetation retention and protection and biodiversity protection is required, and has recommended an Integrated Drainage, Vegetation and Open Space Framework Plan be required. Drainage, in particular off-site drainage, needs to be further resolved before development commences.

Condition No	Reason
6-7 (new)	DELWP requested additional conditions after the exhibition of the draft permit. These conditions were included in Council's Part A(3) submission, and were unopposed by the Proponent.
7-9 (deleted)	Replaced with conditions 12 and 13. Refer to Chapter 4.
12-13 (new)	Refer to Chapter 4. The Panel considers that access and management arrangements, including easements, for drainage works need to be resolved prior to development commencing.
14-15	Order of exhibited conditions reversed for improved readability and clarity.
21 (new)	Refer to Chapter 6.3. The Panel supports the residential development of the south-west wedge, subject to resolving access arrangements to Council's satisfaction.
18 (deleted)	Repeats condition 17.
22-27 (deleted)	Refer to Chapter 4.6. Conditions regarding water quality entering Lake Connewarre have been replaced with condition 4(d) requiring peer review of the drainage design to ensure that it can meet best practice and the requirements of the permit (including the water quality requirements in condition 11(a)), in accordance with the recommendations of Dr Jempson.
34 (deleted)	Refer to Chapter 6.6. The Panel considers that there is no justification for requiring a peer review of the Environmental Assessment.
50	Reordered for improved readability and clarity. Drafting unchanged from the exhibited version of condition 50.
Notes under condition 50	Note 2 deleted, as it repeats condition 45.
54-55	Refer to Chapter 6.1. The Panel considers that the native vegetation removal conditions (and the Biodiversity Assessment) should be updated to reflect the 2017 guidelines. Council should seek further advice from DELWP prior to finalising these conditions.
58	The Panel has added a requirement to meet the requirements of the Arborist Report(s) submitted under condition 38, to ensure the permit conditions are properly integrated. The Panel has relocated the last sentence of the condition (which is in the nature of a note) to under condition 57, as it appears to relate to that condition, not condition 58.
63	Condition amended because a mandatory requirement to retain all Eucalypts is overly onerous. Trees may not be suitable for retention because of health, etc. A more flexible approach is required.
69-70 (deleted)	Refer to Chapter 6.1. The exhibited Growling Grass Frog conditions have been replaced with conditions 4(b)(iii) and 6(d).
75 (deleted)	Repeated in condition 73.
107-113	These have been amended to reflect the agreed conditions set out in TfV's submission dated 27 November 2018 (Document 13).

8.4 Further notice of the amended ODP

As noted elsewhere in this Report, the amended ODP includes some fairly significant changes to the exhibited ODP. The amended ODP was produced by the Proponent late in the process, and has not been subject to full consideration by Council, public notification or consultation with relevant agencies and referral authorities.

Section 96H(2) allows the Minister to direct the planning authority to give more notice of the permit application if he thinks that the notice already given was inadequate (even if the planning authority complied with the notice requirements under section 96C). The Minister may allow any person affected by the changes to make a submission to the Minister. The Minister may refer any submissions to a panel, and if he does so the panel must consider those submissions and provide the submitters with a reasonable opportunity to be heard, which may require a further hearing.

While the Panel generally supports the amended ODP as representing an appropriate planning outcome, the Panel considers that section 96H(2) should be used to direct further notice of the permit application prior to the permit being issued. It is beyond the scope of the Panel's powers to make recommendations to the Minister about the use of his powers under section 96H, but this is a matter that Council should bring to the Minister's attention when submitting the combined Amendment and permit application for approval.

While it would be open to Council to conduct further informal notice of the amended ODP before adopting the Amendment and determining that a permit should issue, informal notice would not provide the affected parties with the right to make submissions, or have those submissions considered by a panel. The Panel therefore recommends formal notice under section 96H(2), rather than informal non-statutory notice prior to Council adopting the Amendment and determining that a permit should issue.

8.5 Conclusion and recommendations

The Panel concludes:

- Permit PP1463/2016 should issue, subject to the conditions contained in Appendix D.
- Council should inform the Minister of the Panel's view that further notice should be given of the amended ODP under section 96H(2) of the Act before a permit issues. This will allow potentially affected parties to make formal submissions and have those submissions considered by a panel.

The Panel recommends:

Issue planning permit PP1463/2016 for the staged multi-lot subdivision, removal of native vegetation, removal of easements and alteration of access and subdivision of land adjacent to a Road Zone Category 1, subject to the permit conditions contained in Appendix D.

Inform the Minister for Planning that before a permit is issued, further notice should be given of the amended Outline Development Plan (Version Y2) under section 96H(2) of the Act.

Appendix A Submitters to the Amendment

No	Submitter
1	A Vella (submission withdrawn)
2	Environment Protection Authority
3	G Lipshut
4	Geelong Field & Game Inc.
5	G Chapman
6	K Hart
7	R Morrell
8	Barwon Water
9	Sporting Shooters Association of Australia Victoria Ltd
10	Mollers Lane Developments Pty Ltd and HB Parker Pharmacy Superannuation Fund (the Proponent)
11 & 16	Eastern Ash
12	Department of Environment, Land, Water and Planning
13	Transport for Victoria
14	Leopold Lutheran Church
15	Geelong Environment Council Inc.
17	Gaage Developments Pty Ltd

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Greater Geelong City Council	Ms Susan Williamson, Senior Strategic Planner and Ms Leanne Stockley, Statutory Planner, assisted by various Council officers
Proponent	Mr Stuart Morris QC instructed by Jarryd Gray of Minter Ellison, who called the following expert witnesses: <ul style="list-style-type: none">- Ms Amanda Ring, Town Planner, SJB- Mr Jason Walsh, Traffic Engineer, Traffix Group- Dr Mark Jempson, Hydraulic Engineer, Venant Solutions- Mr Lance Lloyd, Ecologist, Lloyd Environmental- Mr Allan Wyatt, Landscape Architect, XUrban
Gaage Developments Pty Ltd	Mr Gerrit Prent, Principal Urban Planner, Echelon Planning
Grant Chapman	

Appendix C Document list

No	Date	Description	Provided by
1	16/11/2018	Cover letter additional documents	Minter Ellison
2	16/11/2018	Amended Outline Development Plan (ODP) version Y2, TGM Group, 31 October 2018	Minter Ellison
3	16/11/2018	Vegetation Assessment and Native Vegetation Removal report, Mark Trengrove Ecological Services, November 2018	Minter Ellison
4	16/11/2018	Arborist report, Galbraith and Associated, 16 November 2018	Minter Ellison
5	23/11/2018	Planning evidence, A Ring	Minter Ellison
6	23/11/2018	Visual impact evidence, A Wyatt	Minter Ellison
7	23/11/2018	Traffic evidence, J Walsh	Minter Ellison
8	23/11/2018	Drainage and ecology evidence, Lloyd and Jempson	Minter Ellison
9	23/11/2018	Part A(1) submission Part A(2) submission Part A(3) submission Part A(4) submission	Council
10	23/11/2018	Late submission for Gaage Developments	Echelon Planning
11	23/11/2018	Late additional submission for Eastern Ash Pty Ltd	Tract
12	23/11/2018	Council consideration of late submissions dated 21 November 2018	Council
13	27/11/2018	Transport for Victoria submission	TfV
14	3/12/2018	Part B submission	Ms Williamson and Ms Stockley
15	3/12/2018	Map of submitter locations	Ms Williamson
16	3/12/2018	Subdivision Plan (a) – December 2016 version Subdivision Plan (b) – Exhibited version U Subdivision Plan (c) – Version Y2	Ms Williamson
17	3/12/2018	Amended staging plan	Mr Morris
18	3/12/2018	Plan of Lutheran Church land (Property 3)	Mr Morris
19	3/12/2018	Submission and comparison of open space scenarios	Mr Morris
20	5/12/2018	Tracked change amendments to draft permit conditions	Mr Morris

No	Date	Description	Provided by
21	5/12/2018	Submission on behalf of Gaage Developments	Mr Prent
22	5/12/2018	Submission	Mr Chapman
23	5/12/2018	Indicative plans of drainage controls to dam (to control outfall to Lake Connewarre)	Mr Morris
24	5/12/2018	Certificates of title for subject land	Mr Morris
25	5/12/2018	Memorandum outline open space contribution comparisons	Ms Williamson

Appendix D Panel preferred version of permit PP1463/2018

Note: tracked against the exhibited version

Amended Plans

1. Before the plan of subdivision is certified, 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 Overall Development Plan and Staging Plan prepared by TGM, Version ~~UY2, 14.12.2017~~ 31.10.2018 but modified to show:
 - a) All bearings, distances, levels, street names, lot numbers, lot sizes, reserves and easements;
 - b) A reserve along the Bellarine Highway frontage of the subdivision to be in accordance with dimensions of the reserve abutting to the west, and to be allocated for vesting to City of Greater Geelong;
 - c) Reinstatement of the reserve shown adjacent to the northern retarding basin on Version U of the plan dated 14.12.2017;
 - ~~d~~e) The lot size and vehicle access point(s) for the existing telecommunications facility(s), as agreed to by the facility operator;
 - ~~e~~d) The portion of Mollers Lane (adjacent to stage 13) to be included in stage 3, extending to the south, up to the boundary with stage 4.

Endorsed Plan

2. The layout and site dimensions of the proposed subdivision as shown on the endorsed plan(s) shall 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.

Staging

3. Unless otherwise approved in writing by the Responsible Authority, the subdivision must be staged in accordance with the endorsed staging plan.

Garden Area Requirement

- ~~4. Unless otherwise approved in writing by the Responsible Authority, prior to the issue of the Statement of Compliance, the owner 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 owner 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) any future development of a lot for a dwelling or residential building must include a 'garden area' at ground level as set out at Clause 32.08-4 of the Greater Geelong Planning Scheme. 'Garden area' is defined at Clause 72 of the Greater Geelong Planning Scheme.~~

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

DRAINAGE CONDITIONS

Integrated Drainage, Vegetation and Open Space Framework Plan

4. Before the plan of subdivision for Stage 1 is certified, an Integrated Drainage, Vegetation and Open Space Framework Plan must be prepared, peer reviewed and then submitted to and approved by the Responsible Authority, in consultation with the Department of Environment, Land, Water and Planning. The plan must include the following:

- a) Concept drainage design for on-site and off-site drainage works, that includes:
 - i. water sensitive urban design (WSUD) features that achieve environmental best practice
 - ii. stormwater retardation measures that respond to the requirements of this permit including conditions 6, 11(a)-(b), 39 and 40
 - iii. a footprint showing the extent of drainage works and associated WSUD.
- b) Concept vegetation and landscape design plans for any on-site or off-site works, that:
 - i. demonstrate how impacts on native vegetation have been avoided and minimised with the subdivision layout;
 - ii. demonstrate how retained native vegetation and any offset areas will be integrated into and protected in any open space areas;
 - iii. include design and landscaping features to support and establish habitat for fauna species, such as the Growling Grass Frog; and
 - iv. responds to the requirements of conditions 39 and 40.
- c) Outline access and management arrangements and responsibilities, including:
 - i. responsibility for the implementation, operation and maintenance of any infrastructure, WSUD features and other environmental mitigation measures on-site and off-site;
 - ii. mechanisms for securing ongoing access and management arrangements, such as easements or on-title agreements;
 - iii. ongoing monitoring and reporting, including any requirements relating to on-site native vegetation offset areas.
- d) The Integrated Drainage, Vegetation and Open Space Framework Plan must be prepared by suitably qualified and experienced consultant(s). The plan must be peer reviewed by a suitably qualified, independent and experienced consultant to confirm that the concept design, mitigation measures and ongoing management arrangements meet best practice environmental standards and the requirements of this permit, prior to being submitted to the Responsible Authority. A copy of the peer review comments must be provided to the Responsible Authority.

All of the above must be to the satisfaction of the Responsible Authority.

5. All plans prepared in accordance with the conditions on this permit must be consistent with the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan, unless otherwise agreed in writing and to the satisfaction of the Responsible Authority.

Department of Environment, Land, Water and Planning conditions

6. Proposed on-site wetland areas should be designed in accord with WSUD best practice to:
 - a) Retard additional stormwater volumes and rates as close to pre-development levels as possible;
 - b) Retard additional water volumes and rates during summer months;
 - c) Meet stormwater quality requirements of the Greater Geelong Planning Scheme;
 - d) Incorporate design and landscaping features that facilitate the establishment of habitat suitable for Growling Grass Frog and other fauna species.
7. Mitigation measures should be put in place to appropriately retard water flows and volumes during construction.

Corangamite Catchment Management Authority Conditions

- ~~85.~~ The development must demonstrate that site and access safety is achieved in accordance with Australian Rainfall and Runoff Revision Project 10 Safety Criteria. Safety is defined in terms of the depth and velocity of water over the area in question during a 1% AEP flood event as follows:
 - a) Depth must be no greater than or equal to 0.3 metres; and
 - b) Velocity must be no greater than or equal to 3.0 m/s; and
 - c) The product of depth multiplied by velocity must be no greater than or equal to 0.3 m² per second.
- ~~96.~~ Any alterations to the existing waterways must result in no loss of waterway stability, no loss in floodplain storage, no increase in flood levels, depth and velocity (hazard), duration of flooding or extents on other properties (adjacent, upstream and downstream) for a range of events up to and including the 1% AEP flood event.

ENGINEERING CONDITIONS

~~Prior to Certification~~

- ~~7. 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.~~
- ~~108.~~ Prior to certification of the plan of subdivision, engineering plans for the construction of new council infrastructure must be submitted to the satisfaction of the Responsible Authority for approval.

~~Easements—Drainage~~

- ~~9. Prior to certification of the Plan of Subdivision for each stage, easements for the purpose of 'Drainage' must be set aside in favour of the City of Greater Geelong, to the satisfaction of the Responsible Authority.~~

Engineering Plans Required for Roads and Drainage

- ~~110.~~ Prior to the commencement of site works for any stage of the subdivision, the developer is required to submit detailed road and drainage construction plans for that stage to the Responsible Authority for approval. The plans shall include details of pits and pipes sizes, finished and existing surface levels, ~~creation~~ location of appropriate

easements, detention basin(s) including any required drainage reserves, water quality treatment and connection to the legal point of discharge. The Consulting Engineer must show that the design for the drainage system complies with the requirements of the Infrastructure Design Manual [\[insert reference\]](#) and any other relevant standards. ~~Site run-off shall be limited to equivalent pre-developed levels for rainfall events up to and including the critical 100 year ARI event, to the satisfaction of the Responsible Authority.~~

The plans must include, but not limited to:

- a) The stormwater drainage system on the site must be designed such that stormwater run-off exiting the land meets the current best practice performance objectives for stormwater quality as follows:
 - i. 80% retention of the typical annual load of suspended solids;
 - ii. 45% retention of the typical annual load of total phosphorous;
 - iii. 45% retention of the typical annual load of total nitrogen; and
 - iv. 70% retention of the typical annual load of gross pollutants.
- b) Site run-off shall be limited to equivalent pre-developed levels for rainfall events up to and including the critical 100 year ARI event, to the satisfaction of the Responsible Authority.
- ~~c~~b) Replacement and/or augmentation of the culverts in Mollers Lane
- ~~d~~e) Minimum finished surface levels on all lots must be 300mm above the relevant 1% AEP flood level.
- ~~e~~d) Detailed methodology for the removal of existing dams.
- ~~f~~e) Details of waterway remediation

Note:

1. Detailed Road and Drainage Design Plans for any stage that result in flood levels on existing properties being adversely affected by the proposed works will not be approved for construction.

Easements – drainage

12. Any 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 in favour of the City of Greater Geelong to the satisfaction of the Responsible Authority.
13. Before the plan of subdivision for Stage 1 is certified, an easement, or suitable equivalent arrangements, must be secured to enable off-site drainage works and any WSUD or environmental mitigation measures (as shown on the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan required under condition 4) to be implemented and managed to the satisfaction of the Responsible Authority.

Local Area Traffic Management (LATM) Plan

- ~~11~~ Unless otherwise approved in writing by the Responsible Authority, prior to lodgement of Stage 1 Construction Plans, a Local Area Traffic Management (LATM) plan must be developed for the approved subdivision with Council's Traffic Development Engineer, and submitted to and approved by the Responsible Authority.

~~The LATM treatments may include, but are not limited to, vehicle crossing locations, parking restrictions, signage, linemarking, traffic management devices and modified intersection priorities. The LATM treatments may also include items identified in Mollers Lane.~~

~~A separate street naming plan must be provided that complements the approved LATM plan, and is to assist with road naming and house numbering, and must be to the satisfaction of the Responsible Authority.~~

142. Prior to the commencement of works for each stage of the subdivision, construction plans must be submitted to and approved by the responsible authority for the full construction of roads including road reserves, design of all intersection treatments, traffic management devices, linemarking, signage, kerb and channel, vehicle crossing laybacks, road pavement and sealing and footpaths.

The plans must include the following, to the satisfaction of the Responsible Authority:

- a) Construction of Mollers Lane including concrete kerb and channel, footpath and sealed road pavement where it abuts the subject site;
- b) Footpaths on both sides of roads unless otherwise approved;
- c) All footpath treatments showing DDA compliance at all designated crossing points;
- d) Suitable road reserve cross sections to convey major drainage flows;
- e) Turning areas suitable for the safe and efficient turning of service and emergency vehicles.;

~~All to the satisfaction of the Responsible Authority~~

154. Unless otherwise approved in writing by the Responsible Authority, prior to lodgement of Stage 1 ~~c~~Construction ~~p~~Plans, a Local Area Traffic Management (LATM) plan must be developed for the approved subdivision with Council's Traffic Development Engineer, and submitted to and approved by the Responsible Authority.

The LATM treatments may include, but are not limited to, vehicle crossing locations, parking restrictions, signage, linemarking, traffic management devices and modified intersection priorities. The LATM treatments may also include items identified in Mollers Lane referred to in condition 14(a).

A separate street naming plan must be provided that complements the approved LATM plan, and is to assist with road naming and house numbering, and must be to the satisfaction of the Responsible Authority.

Construction Environmental Management Plan

163. Prior to works commencing a Construction Environmental Management Plan (CEMP) must be submitted to and approved by the Responsible Authority. When approved this ~~Construction Environmental Management Plan~~CEMP will form part of this permit. This plan must incorporate, but is not limited to, the following information:

- a) ~~The protection of~~Measures to protect all vegetation nominated to be retained and the two waterways;
- b) ~~Show a~~Access locations for construction vehicles;
- c) All appropriate control of site emissions during construction and the defects liability period;
- d) A staging plan for all construction phases including indicative dates for commencement and completion;
- e) Intended access for construction vehicles;

- f) Engineering assessment of assets that will be impacted on by construction and recommended techniques to minimise any adverse impact;
- g) Details of actions to be implemented ~~to~~ in the event of damage to abutting assets;
- h) Details of where construction personnel will park;
- i) Hours/days of construction, including deliveries, that are. ~~(Note: These hours must be consistent with applicable the~~ Environment Protection Authority (EPA) legislation/guidelines);
- j) Phone numbers of on-site personnel or other supervisory staff to be contactable in the event of issues arising on site;
- k) Details of site cleanliness and clean up regimes;
- l) Location of material storage;
- m) Dust suppression management;
- n) Details of measures to be maintained during the housing construction phase of development to prevent sediment entering downstream drainage infrastructure;

The ~~plans~~ CEMP must include measures to ensure the following requirements are met:

- a) ~~measures to be taken to ensure that n~~ No polluted water and/or sediment laden runoff is to be discharged directly or indirectly into stormwater drains or watercourses during the construction period.
- b) ~~:-N~~ No polluted stormwater runoff from the development site shall impact upon the Lake Connewarre State Game Reserve Ramsar wetland.
- c) Any construction stockpiles, fill and machinery must be placed away from those areas supporting native vegetation and drainage lines.
- d) All vehicles, earthmoving equipment and other machinery must be cleaned of soil and plant material before entering and leaving the site to prevent the spread of weeds and pathogens.
- e) Any other measures that are consistent with the following ~~Environmental Protection Authority~~ EPA publications: 'Environmental Management Guidelines for Major Construction Sites', 'Construction Techniques for Sediment and Pollution Control' and 'Doing it Right on Subdivisions'.

The CEMP must be prepared in accordance with the EPA – Guideline for Environmental Management, Doing it Right on Subdivisions, Publication 960, September 2004 and CCF Environmental Guidelines for Civil Construction, 2010.

- 174. All development and works must be carried out in accordance with the ~~Construction Environmental Management Plan~~ approved CEMP, to the satisfaction of the Responsible Authority.
- 18. All sediment and erosion measures must be fully implemented prior to the commencement of earthworks on the development site.
- 195. At the completion of the bulk earthworks and at the completion of the works for each stage, all disturbed areas must be hydro mulched with an approved seed to the satisfaction of the Responsible Authority to suppress dust and minimise erosion, unless otherwise approved by the Responsible Authority.
- 2046. During the construction phase of the development, the following conditions must be met to the satisfaction of the Responsible Authority:
 - a) only clean rainwater shall be discharged to the stormwater drainage system;
 - b) stormwater drainage system protection measures shall be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the premises enters the stormwater drainage system;
 - c) vehicle borne material from the premises shall not accumulate on the roads abutting the site;

- d) all machinery and equipment must be cleaned (if required) on site and not on adjacent footpaths or roads;
- e) fencing is to be fitted and installed so as to ensure safe access for pedestrians; and
- f) all litter must be contained on site.;

~~—— All to the satisfaction of the Responsible Authority.~~

Construction of Roadworks/ Drainage

21. Should the land to the south of the southern drainage and open space corridor be developed for residential purposes, vehicle and other access to that part of the land must be designed and constructed to the satisfaction of the Responsible Authority prior to the commencement of development of that part of the land.

22~~17.~~ Prior to the issuing of a Statement of Compliance for any stage of the subdivision, all road and drainage works, including basin(s), must be constructed for that stage in accordance with the approved plans and specifications to the satisfaction of the Responsible Authority.

~~18. All development and works must be carried out in accordance with the Construction Management Plan endorsed under this permit, all to the satisfaction of the Responsible Authority.~~

23~~19.~~ The design and construction of civil infrastructure to become council assets must be approved and supervised by council. A fee of 3.25% of the cost of the works is to be paid to council for the checking and supervision of these works.

24~~20.~~ A maintenance bond of 5% of the cost of the works is to be paid to council and will be returned after successful completion of a 12 month maintenance period for civil works.

25~~21.~~ For a period of 24 months following the issue of a Statement of Compliance ~~of~~ for the final stage of the subdivision, the constructed stormwater basins, which have been fully planted as per the endorsed landscape plans, shall be maintained by the developer, to the satisfaction of the Responsible Authority.

~~22. Prior to the commencement of the development, including any on-ground earthworks or filling, the developer shall undertake NATA accredited laboratory water sampling at the receiving water body (Lake Connemara) in at least two locations which are GPS located, to establish a water quality benchmark for Suspended Solids, Total phosphorous, Total nitrogen and litter. The results of this water sampling and the GPS locations where the samples are taken must be forwarded to the Responsible Authority for its records.~~

~~23. Up until the two constructed waterways and two stormwater treatment basins are fully completed and transferred to the Responsible Authority, in accordance with condition 21, as part of the on-going maintenance of these assets, water sampling at stormwater outfall locations from the development as agreed by the Responsible Authority, shall be undertaken twice a year by a NATA accredited laboratory. The water sampling shall assess levels of suspended solids, total phosphorus and total nitrogen and litter. Water sampling must be undertaken within 24 hours of a rainfall event and the outfall drains must be flowing. Accurate records shall be kept of all the stormwater monitoring activities undertaken and forwarded to the Responsible Authority for its records.~~

~~24. The water sampling reports must be peer reviewed, at the expense of the developer, by a suitably qualified engineering/stormwater consultant. The peer review shall compare the water quality sampling results against the benchmark water quality data for Lake Connemara and the requirements in the Urban Stormwater — Best Practice Environmental Management Guidelines~~

- ~~25. Should the water samples and advice from the peer review indicate non-compliance with the objectives outlined in Condition 10a) and as modelled in the TGM Stormwater Management Plan, remedial works must be undertaken immediately to improve the quality of the stormwater runoff to meet the required targets, to the satisfaction of the Responsible Authority.~~
- ~~26. Any recommendations within the Venant Solutions February 2017 Mollers Lane Development Lake Connewarre Impact Assessment Final Report must be fully implemented prior to the issue of Statement of Compliance for each relevant stage of the development. Unless otherwise approved in writing by the Responsible Authority, a statement of completion of recommendations shall be provided by the developer to the Responsible Authority, confirming the works carried out in accordance with the recommendations, for the relevant stage.~~
- ~~27. As part of the final handover process of the stormwater detention basins evidence shall be provided via a report to the Responsible Authority which documents that pre-development flows are being maintained east of Mollers Lane and into Lake Connewarre.~~
2628. Prior to the issue of a Statement of Compliance for the relevant stage of subdivision, relevant street sign/s must be erected to the satisfaction of the Responsible Authority.
2729. Prior to the issue of a Statement of Compliance for the relevant stage of subdivision, street lighting must be provided within the site and along external frontages in accordance with the relevant Australian Standard(s), unless otherwise agreed in writing by the Responsible Authority and unless it can be demonstrated that existing street lighting is sufficient for public safety to the satisfaction of the Responsible Authority.

Fill

2830. Excavated material shall not be carted off the site except with the written approval of the Responsible Authority.
2931. No material shall be brought onto the site for use as filling within the subject area under this Permit, unless with the written approval of the Responsible Authority. Prior to any approval being issued by the Responsible Authority for imported filling to be used on the site, the applicant must submit for approval to the Responsible Authority, samples of proposed filling, details of the source of the filling, details of proposed traffic routes to be traversed, soil testing results and reports in regard to the presence of contaminants in the filling, and the suitability of filling to be placed on site.
3032. All areas to be filled shall be stripped of vegetation and any top soil shall be removed and stockpiled for reuse over the filled areas. Only approved filling material shall be placed on the site. The filling shall be placed in maximum 150 mm layers, or as otherwise approved by the Responsible Authority, and compacted to the applicable level for filling on allotments and within future roadways in accordance with AS3798, to the satisfaction of the Responsible Authority.
3133. All works must be undertaken in accordance with the recommendations of any geotechnical reports.

Environmental Audit

- ~~34. Prior to the commencement of any works (excluding works associated with removal of potentially contaminated material, such as fuel tanks and fill, which may be undertaken prior to or concurrent with the assessment) the document (and associated due diligence reports) Environmental Assessment – 2-120 Mollers Lane, Leopold~~

~~completed by Environmental Site Assessments Pty Ltd (dated 03/08/2016) must be peer reviewed by a suitably qualified environmental professional (at the cost of the developer), to the satisfaction of the Responsible Authority. If the report and review concludes that significant levels of contamination have been found the following must be provided to the Responsible Authority, either:~~

- ~~a) — A Certificate of Environmental Audit must be issued for the land in accordance with Part 1XD of the Environment Protection Act 1970, or~~
- ~~b) — A Statement of Environmental Audit must be issued in accordance with Part 1XD of the Environment Protection Act 1970 stating that the environmental condition of the land are suitable for the sensitive use (with or without conditions on the use of the site).~~

Provisions for Waste Collection Services

~~3235.~~ Prior to the issue of a Statement of Compliance for the relevant stage of the subdivision, ~~relevant~~ street signs must be erected to the satisfaction of the Responsible Authority, ~~including any signs required~~ to prevent parking on the street on days of recycling and waste kerbside collections to allow the collection contractor to service the courts and streets.

~~3336.~~ ~~For the Staged~~ During construction of the development the waste and recycling kerbside collection trucks shall not be required to reverse a distance greater than 20 metres. Temporary Hammerhead Turnarounds must be provided in accordance with the requirements of condition 34 at the end of each temporary dead end road of each stage where the reversing distance exceeds 20 metres. The temporary dead end turnaround of each stage must be maintained by the applicant until the connecting road network is completed and the kerbside collection trucks can undertake all collections in a forward motion.

~~3437.~~ A carriageway easement must be provided over any private property that is required to create the Temporary Hammerhead Turnaround at the dead end of a street or streets. The required hammerhead length is 26.5 metres and a width of 5.5 to 6 metres. The use of private property driveways to create a hammerhead is acceptable and must be approved by the Responsible Authority unless other options are agreed to and approved by the Responsible Authority. The carriageway easement over the private property must remain in place for the duration that the temporary turnaround is required.

~~3538.~~ Where culs de sacs are to be created they must be a minimum of 21 metres from face of kerb to face of kerb with no parking signs to apply on the day of residential waste and recycling kerbside collection.

~~3639.~~ Unless otherwise agreed to in writing the developer must provide to the satisfaction of the Responsible Authority bin pads on the through street for properties which front onto a Place (a short cul de sac without a turning circle). Bin pads must also be provided for bins from the properties whose frontage is used for the bin pads.

OPEN SPACE, STREETScape AND VEGETATION PROVISIONS

Tree Retention and Removal Plan

~~3740.~~ Prior to commencement of works, a detailed Tree Retention and Removal Plan shall be submitted to and approved by the Responsible Authority which clearly documents ~~the~~ any vegetation to be retained and removed. ~~Clarification must be provided regarding the large mature trees along the common western boundary of Property Nos. 7, 8 & 9.~~

The Tree Retention and Removal Plan shall, where possible, retain trees of high arboricultural value to provide landscape, amenity and biodiversity value consistent with the objectives of the South East Leopold Framework Plan, [Tract, 2016](#).

Arborist Report Required

3844. All tree(s) proposed for retention within a road reserve or public open space (excluding conservation areas) for any stage of the development must be independently assessed by a suitably qualified Level 5 Arborist and be informed by AS4970 – 2009 Protection of Trees on Development Sites. [The assessment must be submitted to, and be to the satisfaction of, the Responsible Authority.](#) The assessment ~~shall be completed whilst having~~ [must have](#) regard to the context of tree's location and the intended setting in which it sits. ~~T,~~ the assessment report may be summarised in table format ~~to~~ [and must](#) include as a minimum:

- a) Tree number
- b) Species ~~i~~ identification
- c) Estimated ~~d~~ age (e.g. juvenile, semi-mature, mature, over mature)
- d) Useful life expectancy
- e) Health
- f) Structure
- g) Arboricultural ~~S~~ significance
- h) Hazard ranking
- i) TPZ (Tree Protection Zone)
- j) Recommendation for retention or removal
- k) Comments / ~~R~~ remedial ~~A~~ actions ~~R~~ required
- l) Recommended ~~D~~ design ~~R~~ response for surrounding areas proposed for landscaping.

The assessment must include a plan which accurately records tree locations ~~and shall be submitted to the Responsible Authority for consideration.~~

The detailed design response for the area in which the tree(s) are located must be informed by the recommendations contained within [the](#) arboricultural assessment report.

Notes

1. Trees within plantations may be assessed as a group but must be individually numbered.
2. The arborist must be provided all relevant information that will inform the inspection/assessment, i.e. their intended location, vehicle crossovers, intersections etc.

Landscape Master Plan

3942. Unless otherwise approved in writing by the Responsible Authority, prior to issue of Statement of Compliance for the first stage of the subdivision, a ~~Landscape~~ ~~Master~~ ~~Plan~~ (incorporating ~~the a s~~ Street ~~t~~ Tree ~~m~~ Master ~~p~~ Plan) for the permit area must be developed with, and submitted to the Responsible Authority for approval. When approved, the plan will be endorsed and form part of the permit. This plan must [address and be consistent with the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan,](#) be drawn to scale with dimensions and submitted

(electronically and in hard copy) and be generally in accordance with the submitted landscape master plans (Mexted Rimmer, 23/01/2018) but modified to show:

- a) The Mexted Rimmer Northern Public Open Space Landscape Masterplan and associated cross-sections dated 23.01.2018 must be amended to:
 - i. Relocate the 2.5 metre shared path further away from the southern side of the waterway, to maintain a minimum 10 metre wide riparian/ecological corridor from the edge of the 1 in 100 contour;
 - ii. Increase the narrow riparian/ecological zone on the north side of the waterway to a minimum of 10 metres from the 1 in 100 contour;
 - iii. Use local indigenous species based on those listed within Zone 3 of the City's Indigenous Plants of the Geelong Region guidelines and the relevant EVC's.
- b) The Mexted Rimmer Southern Public Open Space Landscape Masterplan and associated cross-sections dated 23.01.2018 must be amended to:
 - i. Relocate the 1.5 metre wide pathway along the northern side of the waterway to within the road reserve;
 - ii. Relocate the 2.5 metre shared path further away from the southern side of the waterway, to maintain a minimum 10 metre wide riparian/ecological corridor from the edge of the 1 in 100 contour;
 - iii. Use local indigenous species based on those listed within Zone 3 Central Bellarine Hills of the City's Indigenous Plants of the Geelong Region guidelines and the relevant EVC's.

Notes:

1. Consultation with Council's Recreation and Open Space and Environment Units during early concept design is encouraged to help facilitate efficient approval processes.

Detailed Landscape Plans

4043. Unless otherwise agreed in writing by the Responsible Authority, prior to the Statement of Compliance being issued for each applicable stage of the subdivision, a detailed landscape plan for the stage must be prepared and submitted to the Responsible Authority for approval. When approved, the plan will be endorsed and form part of the permit. The landscape plan must be drawn to scale with dimensions and submitted electronically.

The plans must address and be consistent with the [endorsed Integrated Drainage, Vegetation and Open Space Framework Plan and the endorsed Landscape Master Plan](#) applying to the site and show, but not be limited to:

- a) The ultimate 1% and 10% Annual Exceedance Probability storm event extents;
- b) Existing vegetation that is to be retained;
- c) A detailed planting schedule and proposed planting layout of all areas of and adjoining open space, including proposed trees, shrubs, groundcovers and aquatic planting if applicable (with zonation detail), and showing botanical names, common names, pot sizes, sizes at maturity, quantities and densities of each plant;
- d) The proposed layout, materials and finish of all finished surfaces, structures, fences abutting council reserves, maintenance vehicle access crossovers, maintenance access gates, play equipment, furniture and bike parking;

- e) Detailed planting and construction drawings including site contours and any proposed changes to existing levels including any structural elements such as retaining walls;
- f) Detailed planting and construction drawings of any drainage and WSUD infrastructure within public reserves;
- g) Permeable fence design details for lots abutting open space reserves and Council reserves (excluding road reserves). Fencing detail must be to the satisfaction of the Responsible Authority;
- h) Proposed fencing detail along northern, western and southern boundaries of the public open space reserves which adjoin private properties (not in the subdivision);
- i) Additional supporting information, such as certified structural designs or building forms;
- j) The removal of existing disused structures, foundations, pipelines, farm dams or stockpiles and the eradication of weeds;
- k) The proposed landscaping treatment of any road reserve abutting public open space;
- l) A detailed schedule of quantities showing accurate cost estimates of each item included in the plan.

Waterway Reinstatement Plan

4144. Prior to the issue of a Statement of Compliance for the first stage of the subdivision, a Waterway Reinstatement Plan for the two creek corridors must be submitted to and approved by the Responsible Authority. The plan must detail the specific rehabilitation and revegetation of these ecological corridors. When approved the plan will be endorsed and then form part of the permit. The plan must include:

- a) Details regarding the proposed works within the waterway and its embankments;
- b) Details of all revegetation works including the use of plants listed within the City's guidelines- Indigenous plants of the Geelong Region Zone 3 Central Bellarine Hills including plant densities, supply sizes, quantities of each plant with a note that plants must be sourced from local provenance material and site treatments;
- c) The location of any stabilisation works (if required) such as rockwork and/or jute matting;
- d) Details of all proposed weed control works; and
- e) Details of the proposed maintenance program prior to the transfer of the reserves to the City.

Completion of Landscape Works

4245. Unless otherwise approved in writing by the Responsible Authority, the landscaping works shown on the approved landscape plan for a particular stage must be completed to the satisfaction of the Responsible Authority, prior to the issue of a Statement of Compliance for that stage.

4346. Prior to the transfer to Council of the waterway corridors, all the works documented within the approved Waterway Rehabilitation Plan must be fully implemented by the developer, unless otherwise agreed in writing by the Responsible Authority. A detailed inspection shall be undertaken by Council officers upon completion of all the required on-ground works.

[4447](#). If the Responsible Authority agrees to issue [a](#) Statement of Compliance prior to the landscaping works being completed, the entire landscaping works must be bonded to the satisfaction of the Responsible Authority. The landscape works bond or bank guarantee must be 125 per cent of the estimated cost of entire landscape works as shown in the approved schedule of quantities submitted as part of the landscape plans. Unless otherwise agreed in writing by the Responsible Authority the bonded works must be completed within one year of the date of the lodgement of the bond.

[4548](#). A practical completion inspection ~~is required to satisfy this condition and~~ must be arranged by the permit holder with two weeks' notice provided for the responsible authority. The landscape works bond will be returned on award of practical completion.

[4649](#). Unless otherwise approved in writing by the Responsible Authority, prior to the issue of practical completion of landscaping works, or any other time as agreed by the Responsible Authority, the following must be provided to the Responsible Authority:

- a) Building permits and structural engineering compliance, as-built construction plans, and materials detail where necessary;
- b) Landscaping maintenance plan
- c) Schedule of Quantities showing the financial value of all hard assets
- d) As-built landscaping plans in PDF and GIS-ready AutoCAD (DXF) format.

~~50. Unless otherwise agreed in writing by the Responsible Authority, a maintenance bond must be submitted to the Responsible Authority on application for practical completion of landscaping works. The maintenance bond or bank guarantee must be 125 per cent of the estimated cost of maintenance of landscape works for a two (2) year period.~~

Maintenance of Landscaping

[4754](#). The landscaping shown on any endorsed landscape plan for a particular stage must be maintained to the satisfaction of the Responsible Authority for a period of no less than two (2) years from the date of practical completion of the landscaping unless otherwise agreed in writing by the Responsible Authority. During this period, any dead, diseased or damaged plants are to be replaced and any landscaped area and hard assets are to be repaired as required to ensure the landscaping is maintained to the same standard as when practical completion was awarded.

[4852](#). Should the permit holder default on landscape maintenance requirements which leads to a partial or full replanting, the responsible authority will consider the extension of the maintenance period as necessary to provide for establishment of replacements.

[4953](#). The developer and contractors who will construct and maintain the subject reserves and associated landscaping must obtain and maintain appropriate public liability insurance (with the responsible authority's interest noted on the certificate of insurance) over the entire reserve area for the duration of the maintenance period.

[50](#). Unless otherwise agreed in writing by the Responsible Authority, a maintenance bond must be submitted to the Responsible Authority on application for practical completion of landscaping works. The maintenance bond or bank guarantee must be 125 per cent of the estimated cost of maintenance of landscape works for a two (2) year period.

Notes:

1. Unless otherwise agreed in writing, the responsible authority will not be responsible for the reserve and its assets or public liability until a handover inspection has taken place and written acceptance of handover has been issued,

~~2. At the conclusion of the maintenance period the subject land and maintenance responsibilities will be transferred to the responsible authority. A handover inspection is required to satisfy this condition and must be organised by the permit holder with a minimum of two weeks' notice given for onsite inspections. The landscape maintenance bond will be returned on award of handover.~~

23. No handovers will be accepted during the summer months from 01 December to 28 February inclusive.

Fencing of Council Reserves

5154. Prior to the issue of Statement of Compliance for any relevant stage of the subdivision, the subdivider must erect a fence on any property boundary directly abutting a reserve (including drainage reserves, but excluding a road reserve) in accordance with the approved landscape plan to the satisfaction of the Responsible Authority and at no cost to Council. All new timber post and rail fencing shall be of a type and installed as per Council's standard drawings.

Council Reserves – Vehicle Access Barriers

5255. Prior to the issue of a Statement of Compliance for any relevant stage ~~or otherwise bonded~~, suitable vehicle access barriers ~~must be provided~~ across the entrance of any Council Reserves must be provided or otherwise bonded to the satisfaction of the Responsible Authority. ~~T~~hese must be de-mountable to allow access ~~to for~~ Council maintenance vehicles. The location of these barriers must be determined by the Responsible Authority.

No Utility Services on Public Open Space

5356. Utility service substations, kiosk sites and the like must not be located on any land identified as unencumbered open space unless otherwise agreed in writing by the Responsible Authority. Any existing or future easements affecting all land which is to be vested in Council must be clearly identified on the detailed landscape plans ~~as per the condition above.~~

REMOVAL OF NATIVE VEGETATION CONDITIONS

[Panel recommends that Council seek further advice from DELWP regarding conditions 54 and 55 – see Chapter 6.1]

5457. Before works commence, the permit holder must prepare a revised Biodiversity Assessment report ~~(or other applicable report if the transitional arrangements have expired)~~ that accounts for all native vegetation losses being approved by this permit and having regard to the endorsed Integrated Drainage, Vegetation and Open Space Framework Plan, to the satisfaction of the Responsible Authority. The revised Biodiversity Assessment report (or other document) must be submitted to and approved by the responsible authority. When approved the report will be endorsed and will then form part of the permit.

5558. Prior to the issue of a Statement of Compliance for any stage of the subdivision, evidence that the required offset for the relevant stage has been secured must be provided to the satisfaction of [insert]. Evidence is to be in the form of one or both of the following:

- a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site; and/or

- b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the Responsible Authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the Responsible Authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

~~To offset the native vegetation removal described in the endorsed Biodiversity Assessment Report (or other document), the permit holder must secure a native vegetation offset in accordance with the Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013) (or as otherwise updated or amended) and Native vegetation gain scoring manual (DEPI 2013) (or as otherwise updated or amended) as specified in the endorsed Biodiversity Assessment Report (or other document).~~

- ~~59. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the responsible authority. The offset evidence can be:~~

- ~~(a) a security agreement signed by both parties, to the required standard, for the offset site or sites, including a 10 year offset management plan and/or~~
~~b) an allocated credit extract from the Native Vegetation Credit Register.~~

~~Any credit register extract from the Native Vegetation Credit Register must be submitted to Council's Environment Unit as a formal record of the offset evidence.~~

~~A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.~~

Vegetation Protection and Removal

5660. Removal, including pruning, of native vegetation must be undertaken using a suitably qualified arborist and be carried out in accordance with AS4373 – 2007; 'Pruning of Amenity Trees to the satisfaction of the Responsible Authority'. The use of an excavator, backhoe, bulldozer blade or loader to trim branches of trees is not permitted.

5764. Prior to any vegetation removal, vegetation to be removed must be clearly marked on site and accord with the endorsed Tree Retention and Removal Plan. An inspection is required to be undertaken by the Responsible Authority prior to any removal being undertaken.

Note:

1. Please contact the City's Environment (and /or Parks) Unit to discuss inspection requirements and provide adequate notice of any request arrange an inspection.

5862. Prior to any vegetation removal, the vegetation to be retained on site shall be fully protected by Tree Protection Fencing in accordance with AS4970-2009 Protection of Trees on Development Sites. The Tree Protection Fencing must have signs attached around the fencing which clearly states - TREE PROTECTION ZONE - No Access Permitted. An inspection is required once the Tree Protection Fencing has been erected. Any requirements in the Arborist Report submitted under condition 38 must also be met.

~~Please contact the City's Environment (and /or Parks) Unit to discuss inspection requirements and provide adequate notice of any request arrange an inspection.~~

- ~~5963.~~ Water run-off must be designed to ensure that native vegetation to be protected is not compromised, to the satisfaction of the Responsible Authority.
- ~~6064.~~ All work within the drip line of any tree to be retained above or below ground must be supervised by a suitably qualified level 5 arborist to ensure that the works are done in a manner which protects and minimises damage to those trees to the satisfaction of the Responsible Authority.
- ~~6165.~~ Except with the written consent of the Responsible Authority, none of the following are permitted to occur within the fenced Tree Protection Zone:
- a) vehicular or public pedestrian access;:-
 - b) trenching or soil excavation;:-
 - c) storage or dumping of tools, equipment, soil, stone or waste is to occur;:-
 - d) construction of entry and exit pits for underground services;:- or
 - e) temporary or permanent installation of signs and utilities.

Notes

- ~~62.1.~~ All recommended remedial actions being undertaken must be carried out in accordance with AS4373-2007 *Pruning of Amenity Trees* using suitably trained / qualified arboricultural staff to the satisfaction of the Responsible Authority and maintained as part of the streetscape works for all or that particular stage of the development for a period of no less than two (2) years.

Stag Relocation Plan

- ~~6366.~~ Any Eucalypt tree that has a Diameter at Breast Height >70 centimetres, and ~~d~~ Dead stags to be removed must be used as habitat for use as part of the ecological corridor rehabilitation and/or the stormwater treatment basins to the satisfaction of the Responsible Authority. Any Eucalypt tree that has a Diameter at Breast Height >70 centimetres should be considered for retention, subject to tree health, These trees must be salvaged so that they can achieve maximum habitat value.
- ~~6467.~~ Prior to the commencement of works for any relevant stage containing trees to be removed, a Stag Relocation Plan ~~for each stage of subdivision~~ must be submitted and approved by the Responsible Authority. The plan must include the following:
- a) Identification of each tree proposed for relocation.
 - b) Species identification and size of each individual tree.
 - c) Identification of the relocation sites.
 - d) The proposed site preparation and protection measure to ensure each tree's structural integrity and protection after relocation is maximised.

Fauna Protection

- ~~6568.~~ Prior to the removal or lopping of any tree, the tree must be examined by a suitably qualified zoologist with relevant permits. If native fauna species are located, they must be salvaged and relocated to the closest suitable vegetation.
- ~~69.~~ ~~Prior to the commencement of any on-ground works that impact upon the existing dams a targeted survey for Growling Grass Frog shall be undertaken to the satisfaction of the Responsible Authority in accordance with the EPBC Act Policy Statement 3.14-~~

~~Significant impact guidelines for the vulnerable Growling Grass Frog. If this species is present the applicant will be required to comply with all the requirements of the EPBC Act and liaise with the Commonwealth Department of Environment and Energy.~~

~~70. Prior to any earthworks associated with the two stormwater treatment basins a consultant zoologist must provide a detailed report outlining the methodology as to how the frogs with the existing dams are to be salvaged or relocated as part of the dewatering process. The recommendations within the consultant zoologists report must be fully implemented to the satisfaction of the Responsible Authority.~~

STREETSCAPE WORKS

Streetscape plan

~~6674.~~ Prior to the Statement of Compliance being issued for each relevant stage of the subdivision, a detailed streetscape plan, prepared by a person suitably qualified in landscape design, must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The streetscape plan must be drawn to scale with dimensions and three hard copies provided. Where applicable, the plan must be generally in accordance to the Street Tree Master Plan forming part of the endorsed Landscaping Master Plan, and show:

- a) The layout of proposed new planting in all road reserves and traffic management devices (e.g. medians, islands, and roundabouts);
- b) Details of all other infrastructure within the road reserve (e.g. underground services, street lights, stormwater pits, fire plugs etc);
- c) A detailed planting schedule of all proposed trees and plants including botanical names, common names, pot sizes, sizes at maturity and quantities for each species, with street trees to be planted adjacent to the drainage/wetland reserves and the two waterway reserves to be local indigenous species or others as agreed by the Responsible Authority-;
- d) All proposed street tree planting using semi-advanced trees with a minimum container size of 45 litres;
- e) Tree placement on secondary lot frontages using no more than two (2) trees that grow to an estimated size at maturity of no greater than 5 x 4m;
- f) All proposed groundcover & shrub planting with a minimum container size of 150mm;
- g) The maintenance schedule for all proposed planting.

Notes [Council should consider whether notes containing requirements should in fact be conditions]

1. Streetscape plans must be submitted to the Responsible Authority for approval separately to adjoining land including Council reserves. [It is unclear to the Panel what Note 1 means].
2. Proposed entry signage must not be located on public land.
3. Landscape treatments within traffic control devices such as medians and roundabouts are subject to specific control measures.

~~4. Where applicable in multi-staged developments the Street Tree Master Plan may form part of the Landscape Master Plan~~

45. Street tree species selection within the master plan is subject to approval by Powercor in accordance with the requirements of the Distribution Construction Standard, Underground Trenching. Tree location and species type shall be determined, in consultation with CitiPower/Powercor, based on the specific site and the ability of the tree to both enhance the local amenity and co-exist with utility services infrastructure – with all trees to be identified on a ‘master services plan’ provided by the party planting the trees. The applicant must obtain and provide evidence to the Responsible Authority that Powercor has been consulted and has agreed with the proposed street tree species palette.

Completion of Streetscape Works

6772. Unless otherwise approved in writing by the Responsible Authority, prior to the issue of Statement of Compliance for a particular stage of development the subdivision, all streetscape works shown on the endorsed streetscape plans for that stage must be completed to the satisfaction of the Responsible Authority.

6873. Where streetscape works forming part of the endorsed plans are not completed to the satisfaction of the Responsible Authority prior to the applicant seeking a Statement of Compliance for all, or a particular stage of a subdivision, the developer may request the works in the approved Streetscape Plan to be appropriately bonded or covered by a bank guarantee. Estimates must be professionally costed and submitted to the Responsible Authority for approval. Once approved the bonds or bank guarantees must be submitted to the Responsible Authority separately prior to Statement of Compliance being awarded.

6974. The incomplete streetscape works bond or bank guarantee must be 125 per cent of the estimated cost of incomplete streetscape works.

~~75. The maintenance bond or bank guarantee must be 125% of the estimated cost of maintenance activities for a two (2) year period.~~

Notes

1. A practical completion is required to satisfy this condition and must be organised by the permit holder with two weeks’ notice given for onsite inspections. The incomplete works bond will be returned once practical completion has been awarded.
2. Works bonded as outstanding must be enacted within one (1) year of statement of compliance being awarded.

Maintenance of Streetscape Works

7076. All streetscape works must be maintained to the satisfaction of the Responsible Authority for a period of two (2) years from the date of practical completion. During this period, any dead, diseased or damaged plants are to be repaired or replaced as required.

~~77. Where the landscape works are bonded, the maintenance period will commence from the date that the works are awarded Practical Completion by the Responsible Authority.~~

7178. A maintenance bond to the value of 100% of the cost of works must be submitted to the Responsible Authority on application for practical completion of landscaping

works, to be retained until such time that the works have been accepted by Council for handover.

7279. Works that have achieved practical completion will be randomly inspected throughout the maintenance period. Works deemed by the Responsible Authority as being inappropriately maintained or established will not be accepted and will remain on maintenance until such time that the Responsible Authority deems it acceptable.

Notes

1. A handover inspection is required to satisfy this condition and must be organised by the permit holder with two weeks' notice given for onsite inspections. The maintenance bond will be returned on acceptance of handover.
2. No handovers will be accepted during the summer period, between 30 November and 1 March.

TELECOMMUNICATION CONDITIONS

7380. The owner of the land must enter into agreements 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
- 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 (NBN) will not be provided by optical fibre.

7481. 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 item; and
- b) a suitably qualified person that fibre ready telecommunications 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.

POWERCOR CONDITIONS

7582. 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.

7683. 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.

7784. 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.

7885. Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.

7986. Any construction work must comply with Energy Safe Victoria's "No Go Zone" rules.

8087. 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.

8188. 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 "Power Line" pursuant to Section 88 of the Electricity Industry Act 2000.

8289. The applicant shall obtain for the use of Powercor Australia Ltd any other easement external to the subdivision required to service the lots.

8390. 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.

8491. The applicant shall obtain Powercor Australia Ltd's approval for lot boundaries within any area affected by an easement for a powerline and for the construction of any works in such an area.

8592. 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.

BARWON WATER CONDITIONS

General

8693. The owner shall create easements for Pipelines or Ancillary Purposes and or reserves in favour of Barwon Region Water Corporation on the plan of subdivision in accordance with Barwon Water's Land Development Manual, without cost to Barwon Water, over existing and proposed water and sewerage infrastructure within the land. If further easements or reserves are required following design of water and sewerage infrastructure these must be added to the plan of subdivision prior to seeking Barwon Water's consent to the issue of a statement of compliance for the subdivision.

8794. 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.

8895. Existing strategic pipelines traverse the land. Barwon Water requires the location of these pipelines to be proven prior to any works. Any works proposed in the vicinity of the pipelines will only be permitted after approved civil works planned are presented to the satisfaction of Barwon Water. Through subdivision of the land these pipelines must be located within the road reserve and not private property.

Water

8996. ~~The provision and installation of~~ Individual water services must be provided and installed to all lots in the subdivision.

9097. Reticulated water mains are required to service the proposed development. This work must be designed by a Barwon Water accredited Consulting Engineer and constructed by a Barwon Water accredited Contractor following the "Developer Works" process.

9198. Additional water assets are required to service the development, which include DN225mm water mains and a Pressure Reducing Valve. Under the current Essential Services Commission ("ESC") price determination these water assets are considered "shared" assets and to be funded by Barwon Water. Confirmation of these additional water asset requirements and funding will be determined at the time an "Offer of Conditions" is issued on the development, and in accordance with the ESC price determination applicable at the time.

9299. The payment of New Customer Contributions for water for each additional connection which includes any new lot on a plan of subdivision and/ or any apartment, unit, or premises within the development that is or can be separately metered for water supply.

93400. Barwon Water's records indicate that existing water services and meters are located on land within this area. A dimensioned plan showing the location of existing meters, and the location of the meter relative to the existing boundaries, and its number, are 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.

Sewer

94101. ~~The provision of s~~ Sewerage services must be provided to all lots in the subdivision.

95102. Reticulated sewer mains are required to service the proposed development. This work must be designed by a Barwon Water accredited Consulting Engineer and constructed by a Barwon Water accredited Contractor following the "Developer Works" process.

96103. Additional sewerage assets are required to service the development, which include sewer pump-stations and rising mains. These must be designed by a Barwon Water accredited Consulting Engineer and constructed by a Barwon Water accredited Contractor following the "Developer Works" process.

97104. The payment of New Customer Contributions for sewer for each additional connection which includes any new lot on a plan of subdivision and/ or any apartment, unit, or premises within the development that is or can be separately metered (for water supply).

Note:

- 1.** 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 quote Barwon Water reference number L009993.

CFA CONDITIONS

Hydrants

98405. Prior to the issue of a Statement of Compliance under the *Subdivision Act 1988* for any stage of the subdivision, the following requirements must be met to the satisfaction of the CFA:

- a) Above or below ground operable hydrants must be provided for the relevant stage. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
- b) The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Note:

1. CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site (www.cfa.vic.gov.au)

Roads

99406. Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.

- a) The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
- b) Curves must have a minimum inner radius of 10 metres.
- c) Have a minimum trafficable width of 3.5 metres, be clear of encroachments 4 metres vertically to the satisfaction of the Responsible Authority.

VICROADS CONDITIONS

100407. Before issue of ~~a~~ statements of compliance for each stage of the subdivision, the following roadworks at the Bellarine Highway/Mollers Lane intersection must be completed at no cost to and to the satisfaction of the Roads Corporation (VicRoads):

- a) Traffic signals (to be completed prior to the issue of the statement of compliance for the stage that includes the 160th lot)
- b) Left turn deceleration lane (on Bellarine Highway) (insert required timing)
- c) Bicycle lanes (insert required timing)
- d) Bus stops (insert required timing)
- e) Street lighting (insert required timing)

1018. Prior to the roadworks commencing, the applicant must enter into a works agreement with VicRoads, confirming design plans and works approval processes, including the determination of fees and the level of VicRoads' service obligations.

1029. Prior to the certification of the plan of subdivision, a scaled functional layout plan of the Bellarine Highway Road/Mollers Road intersection must be prepared to the satisfaction of VicRoads.
10340. Direct access from the subdivisional lots to Bellarine Highway is not permitted. All subdivisional lot access shall be to the service/frontage road or internal subdivisional road.
- 10441—The service/frontage road shall be sufficiently separated from Bellarine Highway roadway to provide enough verge width to accommodate landscaping, drainage, utility services and bus stops.
- 10542—No drainage shall be discharged onto the Bellarine Highway reserve without the written approval of the Roads Corporation (VicRoads).
- 10643—The applicant must take measures to ensure that vehicles leaving the site during construction of the subdivision do not deposit mud or other material onto Bellarine Highway. If mud or debris is deposited, the applicant must clean or sweep the roadway & shoulders on Bellarine Highway when required by VicRoads.

PUBLIC TRANSPORT FOR VICTORIA CONDITIONS

- 10744—Before the certification of a plan of subdivision~~development starts~~, or other time agreed in writing with the Head, Public Transport for Victoria, an amended Integration concept pPlan to the satisfaction of the Head, Public Transport for Victoria, must be submitted to and approved by the Responsible Authority. When approved, the amended Integration concept pPlan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must be generally in accordance with the plan prepared by TGM Group Pty Ltd dated 14 January 2017 but modified to show:
- a. how the proposed development connects to the existing road network to the west of the site;
 - b. shared user path (off road) a minimum of 2.5 metres wide along Mollers Lane and the southern and northern connector roads;
 - c. shared user path (off road) a minimum of 2.5 metres wide through the northern basin creek reserve and connecting through Myuna Reserve to Myuna Street;
 - d. the shared user path in the southern basin creek reserve a minimum of 2.5 metres;
 - e. the provision of a pair of indented bus stops/shelters and associated infrastructure (on the departure sides) at the new signalised intersection of Mollers Lane and Bellarine Highway compliant with the Disability Standards for Accessible Public Transport 2002;
 - f. Road cross sections for Mollers Lane and the northern and southern connector roads and identified as bus capable roads,~~the plan submitted with the application but modified to show how the proposed development connects to the existing road network to the west of the site. Road links to Hazelwood Crescent, and pedestrian and cycling links to Ash Road must be demonstrated on the integration concept plan.~~
115. ~~Mollers Lane and the two east — west connector roads must be constructed to accommodate public transport access for buses in accordance with the Public~~

~~Transport Guidelines for Land Use and Development, to the satisfaction of Public Transport Victoria.~~

~~10816~~ Pursuant to Section 8 (1) (a) of the Subdivision Act 1988, ~~only all~~ Plans of Subdivision ~~which contain or abut a road nominated as a bus capable road within this site~~ must be referred to the Head, Public Transport for Victoria for Certification and consent to Statement of Compliance.

109 Prior to the operation of the traffic signals on Bellarine Highway, the bus stops/shelters and all associated infrastructure identified on the endorsed plans must be completed to the satisfaction of Public Transport Victoria at the full cost to the permit holder.

~~11017~~ Unless otherwise agreed to in writing with the Head, Public Transport for Victoria, prior to the Certification of a Plan of Subdivision, construction engineering plans, for any subdivision stages which contain or abut a road nominated as a bus capable road must be submitted to Public Transport Victoria for approval. The plan must be to the satisfaction of Public Transport Victoria and the Responsible Authority and must depict the road cross section to be constructed, including shared user paths (off road), to be constructed as outlined in the endorsed plans.

~~1118~~ Unless otherwise agreed to in writing with the Head, Public Transport for Victoria, prior to the issue of a Statement of Compliance for any subdivision stages that contain or abut a road nominated as bus capable, that portion of road must be constructed to accommodate public transport access for buses, ~~and~~ in accordance with its corresponding Cross Sections and shared user paths (off road). This must be constructed to the satisfaction of and at no cost to Public Transport Victoria.

~~1129~~ Any roundabouts constructed on roads designated as bus capable within the subdivision, must be designed to accommodate ultra-low floor buses, to the satisfaction of the Public Transport Victoria.

~~11320~~. Intersections, slow points, splitter islands and any other local area traffic management treatments must be designed and constructed in accordance with the *Public Transport Guidelines for Land Use and Development*. The use of speed humps, raised platforms, one-way road narrowing and 'weave points' must not be constructed on any portion of a road identified as a potential bus route.

SUBDIVISION EXPIRY

~~11421~~. This permit will expire if one of the following circumstances applies:

- a) The first stage of the plan of subdivision has not been certified within two (2) years of the date of this permit.
- b) All stages of the plan of subdivision have not been certified within ten (10) years of the date of this permit.
- c) A statement of compliance is not issued within five (5) years of the date of certification of a particular stage of subdivision.

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