

**IN PLANNING PANELS VICTORIA****IN THE MATTER OF AMENDMENT C393 TO THE GREATER GEELONG PLANNING SCHEME****PART C SUBMISSION  
ON BEHALF OF  
GREATER GEELONG CITY COUNCIL****INTRODUCTION**

1. This Part C submission is made on behalf of Greater Geelong City Council (**Council**), the proponent for Amendment C393 (**Amendment**) and Planning Authority for the Greater Geelong Planning Scheme (**Scheme**).
2. It follows Council's Part A Submission dated 14 October 2019 which set out:
  - 2.1. The background to the Amendment including a chronology of events.
  - 2.2. The strategic context for and assessment of the Amendment.
  - 2.3. The key issues raised in and Council's response to the public submissions received by Council in response to public exhibition of the Amendment and referred to this independent Planning Panel (**Panel**) for consideration
  - 2.4. The changes proposed to the Amendment by Council following further consideration of and discussions with submitters following referral of all public submissions to the Panel.
3. It also follows Council's Part B Submission dated 28 October 2019.
4. This Part C Submission would usually detail Council's final position on the Amendment as required by Direction 14d. However, given the number of issues the Panel directed Council to consider on 1 November 2019 and their gravity, this Part C submission is confined to an overview response and a response to the various issues raised by the Panel, to the extent Council is able to

**OVERVIEW**

5. Notwithstanding the various issues raised by the Panel about the Amendment during the course of the hearing, there are certain aspects of the Amendment that have not been criticized either by submitters or experts.
6. Most significantly, nobody has challenged the retail centre hierarchy depicted in the proposed Clause 21.19-5. In respect of the forty-five retail centres identified in the hierarchy, not one submitter has challenged their proposed type or classification, their level or role within the hierarchy or the indicative retail floor space range.

7. No one has challenged the policy objectives in the proposed Clause 21.19-5 relating to activity centres. For the most part, nor have they challenged the various related strategies intended to achieve the policy objectives relating to activity centres. Rather, it is the content in the key issues and influences section of the policy that has been most contentious. In the circumstances, there is simply no call or justification for abandoning this part of the Amendment.
8. There are also certain aspects of the proposed Clause 22.03 which have been uncontentious. Again, the proposed policy objectives have remained largely uncontentious. The only controversial aspect of the policy objectives has been that it calls for high impact applications to demonstrate a net community benefit. The criticism from submitters in this regard has been that demonstrating net community benefit is something the Planning Scheme calls for in all cases. In other words, the policy objective is superfluous. Additionally, the proposed policy in relation to out of centre retail proposals and buildings and works for retail uses has not been criticized.
9. Rather, the key criticisms of submitters at the hearing in relation to Clause 22.03 related to:
  - 9.1. The proposed broad application of the requirement for an Economic Impact Assessment (**EIA**) to all “shop” uses where the shop floor space cap for a centre is breached and a permit requirement triggered;
  - 9.2. The very detailed components required for an EIA and net community benefit assessment;
  - 9.3. Uncertainty about what “base case” means for the purpose of a net community benefit assessment.
10. It is also fair to say that submitters have largely been concerned with how Clause 22.03 would apply in the context of a shop floor space application rather than a planning scheme amendment.
11. The other key issues ventilated by submitters at the hearing related to:
  - 11.1. Whether “soft” shop floor space caps should be pursued at all?
  - 11.2. If shop floor space caps are pursued, whether the cap proposed for Kingston Downs is appropriate?
  - 11.3. Whether Council has got the boundaries of the Kingston Downs, Leopold and Waurin Ponds retail centres right?
12. The key criticisms and issues raised by submitters and the Panel are all significant issues. Council humbly requests it be given additional time to reflect and obtain further advice on the evidence and submissions put at the Panel hearing and to propose further changes to the Amendment to address the key issues in contention and also improve the drafting of the proposed Amendment documents.
13. Amongst other things, the Panel has also directed Council to explain why it undertook a Retail Strategy rather than a broad-based Activity Centre Strategy. Responding to this question seems to be a good place to start.

## WHY A RETAIL STRATEGY?

14. Undertaking Activity Centre Structure Planning for increased housing diversity areas and reviewing the existing *City of Greater Geelong Retail Strategy 2006* were amongst the further work and key strategic planning priorities identified for the City of Greater Geelong to undertake in respect of urban Geelong (including Armstrong Creek) in the *G21 Regional Growth Plan 2013*.<sup>1</sup> The *Growth Plan* was a joint project of the Geelong Regional Alliance (Colac Otway, Golden Plains, Surf Coast, Queenscliffe and Greater Geelong) and the State Government.
15. For the Bellarine Peninsula, key strategic planning priorities included preparing Urban Design Frameworks for the Ocean Grove and Drysdale/Clifton Springs town centres and reviewing district town Structure Plans as a priority consistent with the Growth Plan directions.<sup>2</sup> District towns on the Bellarine within the City of Greater Geelong comprise Leopold, Drysdale/Clifton Springs and Ocean Grove.
16. The *G21 Regional Growth Plan 2013* was one of eight regional growth plans prepared to provide direction for land use and development across regional Victoria. The objectives and strategies of the respective regional growth plans were incorporated into the State Planning Policy Framework via [Amendment VC106](#) to the Planning Scheme. The Scheme continues to support implementation of the Plan and requires planning consider the Plan as relevant.
17. The intent of undertaking the Retail Strategy was to understand the likely future retail demand within the City of Greater Geelong and ensure that the local planning framework supports the provision of additional retail floor space to respond to the predicted demand in a way that supports or implements relevant State and local planning policies including in relation to activity centres.
18. Of course, retail use is just one of the uses State planning policy supports concentrating in activity centres. It also supports concentrating residential, commercial, administrative, entertainment and cultural uses concentrating in activity centres that are highly accessible to the community. Recognising this, the Amendment proposes to include a new local policy (Clause 21.19) on Activity Centres. While many of the objectives of the Activity Centre policy are concerned with retail use and development and the retail centre hierarchy, they also seek to ensure a diversity of uses in all centres and to encourage retail centres to become activity centres over time.
19. This latter policy objective reflects a key challenge for activity centre planning in Greater Geelong, being that many retail centres in Greater Geelong are shopping mall style privately owned centres in single ownership with limited non-retail uses. Most centres are also surrounded by conventional density housing with poor or limited public transport connections. Council has already identified increased housing diversity areas around activity centres to accommodate residential growth and increased housing diversity. The areas of increased housing diversity are identified in Clause 22.63 of the Planning Scheme. A next step will be for Council to undertake activity centre structure planning for these increased housing diversity areas to the extent this has not already occurred.

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<sup>1</sup> See pages 44 and 49.

<sup>2</sup> Page 48.

## FURTHER PROPOSED CHANGES TO THE RETAIL STRATEGY

20. The Panel has directed Council to explain the further changes to the Retail Strategy it believes are necessary to make it suitable to be included in the Scheme as a reference document. A list of the changes Council considers it is necessary to make to the Retail Strategy are included as Appendix 1 to this submission.
21. The role of background documents in the planning scheme is set out in [Planning Practice Note 13, September 2013](#) where they are described as providing information to assist in understanding the context within which a particular policy or provision has been framed.<sup>3</sup> The Practice Note makes clear that there is no need to include a document as a background document where the substantive elements of the document have been included in the planning scheme, unless it contains additional useful information.<sup>4</sup>
22. While it is proposed that the majority of the substantive elements of the Retail Strategy be included in the planning scheme, one key element that is not proposed to be included in the planning scheme, being the identified boundaries of the various activity centres. Council is concerned that including the boundaries of the activity centres in the planning scheme would be impractical given the number of the centres. Additionally, Council considers the extensive technical information in the Strategy including regarding existing floorspace supply and projected floor space demand provides useful background information that will assist permit applicants or planning scheme proponents in understanding the basis for the proposed planning scheme provisions.
23. In Council's submission, given the purpose of including the Retail Strategy in the Planning Scheme as a background document it is important that any significant errors or inconsistencies that might confuse the interpretation of relevant planning scheme provisions be corrected. This is consistent with the approach taken by the Panel appointed to consider submissions in respect of Amendment C151 to the Ballarat Planning Scheme.<sup>5</sup>
24. In that proceeding, advocates agreed that consistency between the Scheme and the proposed reference document was beneficial and, consequently, the reference document should be corrected for clarity, but not to make more fundamental changes to the findings such as adding in activity centres. The Panel acknowledged that this was arguably a different approach to that adopted by Colac Otway C55 Panel where it said:  
  
*Given our view about the role of Reference Documents, we do not believe that it is necessary or appropriate to recommend that they be modified so that they are consistent with the planning scheme provisions.*
25. However, the Colac Otway C55 Panel also observed potential complications where there are inconsistencies and added:  
  
*Where a Reference Document contains numerous and/or significant errors or inconsistencies that might confuse the interpretation of the relevant planning scheme provisions, an option is to delete the Reference Document rather than selectively edit or correct it.*

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<sup>3</sup> Page 2.

<sup>4</sup> Page 3.

<sup>5</sup> Page 45.

26. After considering the benefits and issues that emerged with editing or not editing the propose reference document there, the Ballarat C151 Panel decided the document should be corrected for clarity but did not support substantive changes to the findings of the Strategy such as nomination of additional neighbourhood activity centres.<sup>6</sup>
27. The broad changes Council proposes to make to the Retail Strategy as detailed in Appendix 1 to this submission are in the nature of corrections necessary for clarity, rather than substantive changes to the findings of the Strategy.
28. However, Council requires further time to provide the detailed changes and commentary on the same.

### **BENEFITS OF THE PROPOSED FLOOR SPACE CAPS**

29. The Panel has directed Council to review the proposed shop floor space caps and provide a statement of benefits that might accrue to the retail centre, investors, communities and Council in having such caps.
30. The core benefits of the proposed shop floor space caps as perceived by Council are as follows:
  - 30.1. A shop floor space cap can facilitate diversification of uses and development within an activity centre by enabling Council to consider if, once a cap is exceeded, the grant of a permit for additional shop use will prejudice the opportunity to achieve a diverse activity centre having regard to quantum of remaining commercial zoned land. A diverse activity centre is one that provides a community with access to a wide range of goods and services and provide local employment and support local economies. Supporting diversification of activity centres to this end is consistent with State planning policy at Clause 11.03-1S. Achieving this is of also great benefit to the community an activity centre is to serve. It is also ultimately of benefit to the relevant retail centre and investors because a diverse centre which serves its community well is likely to be a vibrant and successful centre in the long term.

Achieving this policy objective is particularly relevant to the Greater Geelong context where many retail centres in are shopping mall style privately owned centres in single ownership with limited non-retail uses.

Achieving a diverse activity centre should also result in a reduced number of private motorized trips the local community is required to make in order to access goods and services, also consistent with State planning policy and relevant to the Greater Geelong context where there is likely to be a higher reliance on private motor vehicles.
  - 30.2. A shop floor space cap provides clear direction on preferred locations for investment having regard to the location and quantum of the caps consistent with State planning policy in relation to activity centres at Clause 11.03-1S. This provides a level of certainty for retail centres, investors and local communities;
  - 30.3. A shop floor space cap can support the role and function of centres in the context of their classification in the retail hierarchy and policies for housing intensification. They can do this by enabling Council to consider if, once a cap

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<sup>6</sup> At 7.1.

is exceeded, the grant of a permit for additional shop use will impact on the role or function either of the centre in which the use is proposed to locate or in another centre and whether this is acceptable. For example, having regard to regard to strategic planning policy including for housing intensification and diversity and timing and quantum of projected population growth. Supporting the identified role and function of centres provides certainty for investors in the centre and surrounding area, for tenants of the centre and for the community the centre is intended to serve.

- 30.4. A shop floor space cap can also be used as a tool to protect the viability of existing centres. They can do this by enabling Council to consider if, once a cap is exceeded, the grant of a permit for an additional shop use within one centre will impact on the viability of another centre contrary to State planning policy which seeks to supports the role and function of centres in the context of their classification. Allowing the viability of a centre to be jeopardized would also be contrary to State planning policy which seeks to improve the social, economic and environmental performance and amenity of activity centres. Avoiding the demise of a centre is of benefit both to investors in the centre, tenants of the centre and the community the centre is intended to serve.

### **PEER REVIEW OF RETAIL STRATEGY AND ASSOCIATED PLANNING COTROLS**

31. The Panel has directed Council to consider whether the Retail Strategy and associated Planning controls should be peer reviewed. There is no doubt a peer review of a strategic planning document can be of immense value in the context of a planning scheme amendment. However, this does not mean it is necessary. This is particularly so in the context of a planning scheme amendment such as this one where submitters are professionally represented and have themselves called independent experts to scrutinize the strategic planning document and amendment.
32. In this case, submitters have called two independent strategic planning experts and two independent retail economic experts to this end. Their evidence to the Panel has been in the nature of a peer review. They have not requested access to the gravity model on which the Retail Strategy is based. Neither have they called for further information from Council's expert, Mr Szafraniec. Additionally, it must not be forgotten that while Mr Szafraniec contributed to the development of the Retail Strategy, he provided expert evidence before the Panel on the basis that he has:
  - 32.1. a paramount duty to the Panel;
  - 32.2. an overriding duty to assist the Panel on matters relevant to the expert's expertise; and
  - 32.3. is not an advocate for a party.
33. In all the circumstances, Council does not consider a further peer review of the Retail Strategy or proposed planning controls is necessary.

### **TIMING OF RETAIL STRATEGY**

34. In response to queries from the Panel about why the Retail Strategy has taken so long to prepare, Council Officers have prepared a more detailed timeline detailing the development of the Strategy. The timeline is contained in Appendix 2 to these submissions.

7 November 2019

Kate Morris  
**HARWOOD ANDREWS**  
on behalf of  
Greater Geelong City Council

**Appendix 1 – Proposed changes to the Retail Strategy**

**Appendix 2 – Timeline for preparation of Amendment**

<b>DATE</b>	<b>EVENT/DESCRIPTION</b>	<b>OTHER COMMENTS</b>
<b>June 2014</b>	SGS engaged to undertake Retail Strategy	
<b>January 2015</b>	Retail audit and population forecasting commenced – delay in commencement due to SGS completing other projects.	Council officers worked with SGS to complete the audit including using a combination of site inspections, planning approvals, roof print data, street view, Council rates information and Council's GIS database.
<b>January to March 2015</b>	One on one meetings with key retail tenants Westfield Geelong, Market Square Geelong, Woolworths, Coles, trader groups, developers, centre management etc.	
<b>January 2015- Sep 2016</b>	Draft Strategy developed and finalised - SGS	Council officers worked with SGS to ensure the gravity model reflected the locations of planned growth across the municipality.
<b>September 2016- March 2017</b>	Council officers developed a Council version of the Retail Strategy to better reflect how the strategy was to be implemented through planning policy into the Planning Scheme.	
<b>27 March to 28 April 2017</b>	Draft Retail Strategy finalised and informal consultation undertaken	
<b>11 April 2017</b>	Stakeholder information session on draft	
<b>June 2017 - February 2018</b>	Submission were reviewed. Issues raised about population projections by submitters. Strategy put on hold awaiting release of 2016 ABS update and small area project work that was being undertaken by SGS for the State Government.	
<b>March – August 2018</b>	Gravity model updated in response to submissions, overall strategy updated to reflect model findings	
<b>August – November 2018</b>	Council officer briefings with Councillors and Senior Leadership Groups within Council	
<b>14 November 2018</b>	Letters sent to submitters via email, advising that the Retail Strategy was going to Council for a decision	
<b>27 November 2018</b>	Council resolves to adopt the City of Greater Geelong Retail Strategy and prepare and exhibit a planning scheme amendment	
<b>8 March 2019</b>	Council requests Ministerial authorisation	
<b>22 March 2019</b>	Minister's delegate authorises amendment exhibition	
<b>10 April to 20 May 2019</b>	Public Exhibition	
<b>Late June to August 2019</b>	Engagement with submitters to resolve objections where possible	
<b>25 June 2019</b>	Council requests an exemption from the need to comply with a requirement of Ministerial Direction No. 15 [Section 4(3)]	
<b>28 June 2019</b>	Minister's delegate grants exemption request	

<b>DATE</b>	<b>EVENT/DESCRIPTION</b>	<b>OTHER COMMENTS</b>
<b>22 August 2019</b>	Council considers submissions and resolves to refer to a Panel	
<b>26 August 2019</b>	CoGG writes to Planning Panels Victoria to request Panel	
<b>18 September 2019</b>	Panel Directions Hearing	
<b>19 September 2019</b>	Panel issues timetable and directions	
<b>28 October 2019</b>	Panel hearing to commence	