

**Greater Geelong Planning Scheme Amendment C387ggee
Jetty Road Urban Growth Area (Stage 2)**

Correction to the Panel Report

Planning and Environment Act 1987

5 August 2024

Planning and Environment Act 1987

Correction to the Panel Report pursuant to section 25 of the PE Act

Greater Geelong Planning Scheme Amendment C387ggee

Jetty Road Urban Growth Area (Stage 2)

5 August 2024



Sarah Raso, Chair



Geoff Glynn, Member



George Borg, Member

Contents

	Page
1 Correction	1
1.1 Issues raised	1
1.2 Panel response.....	1
1.3 Revisions	1
1.4 Notice to submitters.....	1
 Appendix A Letter from Council	
Appendix B Letter from Submitter 52	

Overview

Amendment summary

Amendment	Greater Geelong Planning Scheme Amendment C387ggee
Common name	Jetty Road Urban Growth Area (Stage 2)
Brief description	Proposes to: <ul style="list-style-type: none"> - rezone the subject land from Farming Zone and Rural Living Zone to General Residential Zone - apply the Development Contribution Overlay and Development Plan Overlay to the subject land - apply the Environmental Audit Overlay to some land parcels
Subject land	Jetty Road Urban Growth Area (Stage 2)
Proponent	Stockland (Stockland Land Lease Management Pty Ltd), SOHO Living (Curlewis Bellarine Pty Ltd) and APD Projects (Curlewis Land Pty Ltd)
Planning Authority	Greater Geelong City Council
Authorisation	25 October 2023
Exhibition	10 November to 18 December 2023
Submissions	Number of Submissions: 58

Panel process

The Panel	Sarah Raso (Chair), Geoff Glynn and George Borg
Supported by	Gabrielle Trowse, Project Officer, Planning Panels Victoria
Directions Hearing	By video, 13 March 2024
Panel Hearing	In person and by video conference at Planning Panels Victoria, 1 Spring Street, Melbourne, 22, 23, 24, 29 and 30 April and 1, 2, 3, 6 and 9 May 2024
Site inspections	Unaccompanied, 16 April 2024
Citation	Greater Geelong PSA C387ggee [2024] PPV
Date of Panel Report	15 July 2024
Date of Corrected Panel Report	5 August 2024

1 Correction

This report is to be read in conjunction with the Greater Geelong C387ggee Panel Report dated 15 July 2024.

1.1 Issues raised

Planning Panels Victoria received an email from Greater Geelong City Council on 30 July 2024, which is provided in Appendix A. In this email, Council identified what it considered to be errors in the Panel Report.

Planning Panels Victoria received an email Tract Consultants on behalf of Submitter 52 which identified a matter which it considered had not been addressed by the Panel.

1.2 Panel response

The Panel appointed to consider Greater Geelong Planning Scheme Amendment C387ggee has reviewed these items and provides the following response to the matters raised by Council:

- The Panel accepts “*inappropriate*” should be corrected to “*appropriate*”.
- The Panel accepts “*Property 16*” should be corrected to “*Property 15*”.
- The Panel accepts Council’s comment in relation to the key difference between Interface 2 and 3. The sentence should be revised to clarify that the key difference between the two interfaces is the alignment of the shared user path, which in Interface 2 curves away from the western perimeter of the subject land to accommodate a wider landscape treatment that retains existing trees. This does not alter the Panel’s conclusions or recommendations at Chapter 4.5.
- The Panel accepts the sentence identified at page 57 is inconsistent and unclear. The sentence should be revised to clarify that the shared path should be located within the McDermott Road reserve alongside all properties that have a western frontage with McDermott Road, including Properties 11 (part), 12, 13 and 14. This does not alter the Panel’s conclusions or recommendations at Chapter 4.5.
- The Panel accepts Peter and Anne Kuc were not parties to the Hearing.
- The Panel’s recommended changes proposed to Map 1 of the DPO46 in Appendix E contain a duplication which requires correction.

The Panel reviewed the item raised by Tract Consultants and considers the matter identified was mistakenly omitted from the Panel’s Report. The Panel’s findings on this matter do not alter any of the Panel’s conclusions or recommendations.

1.3 Revisions

Having considered the above, the Panel recommends that the Panel Report dated 15 July 2024 be amended as follows:

1. **Revision 1**
 - a) **In the paragraph under the heading ‘Timing and delivery of the Children’s and Community Hub’ in the Executive Summary on page 11 the word “*inappropriate*” should be amended to “*appropriate*”.**

2. **Revision 2**

- a) In the first dot point under the heading 'New issues' on page 24 "*Property 16*" should be amended to "*Property 15*".

3. **Revision 3**

- a) The last paragraph in Chapter 4.1 should be amended to:

The key difference between the two interfaces is the alignment of the shared user path, which in Interface 2 curves away from the western perimeter of the subject land to accommodate a wider landscape treatment that retains existing trees.

4. **Revision 4**

- a) The 8th paragraph of Chapter 4.4 should be amended to:

The Panel considers it appropriate that the shared path be located within the McDermott Road reserve alongside all properties that have a western frontage with McDermott Road, including Properties 11 (part), 12, 13 and 14.

5. **Revision 5**

- a) The Panel's recommended changes proposed to Map 1 of the DPO46 in Appendix E should be amended to:

The Rural Interface Vegetation Treatment including Shared Path to be located within the eastern McDermott Road reserve and not within Properties 11, 12, 13 and 14.

East west shared user path shown south of District Park, on Property 13 to be deleted.

Amend legend by deleting the words "including Share Path" in "Rural Interface Vegetation Treatment including Share Path".

Change location of Indicative Key Local Street on Property 13 to wrap around the District Park.

Amend "Portarlington Road Interface Treatment" to make it clear that access to non-residential uses from Portarlington Road can be considered.

6. **Revision 6**

- a) The following text should be added to end of Chapter 10 (iv):

Submitter 52, the owner of Property 27, took issue with the 'Portarlington Road Vegetation Interface Treatment' as shown on the Framework Plan. Submitter 52 accepted the premise that a vegetation interface to Portarlington Road is warranted, however questioned whether the 10 metre width was necessary and if so, submitted the land should count towards to site's public open space contribution and be excluded from the site's net developable area for the purposes of calculating the DCP fees.

The Panel supports the Vegetation Interface Treatment along the Southern Residential Area of the Framework Plan. It is not necessary to identify the exact width of the interface area and in any event Submitter 32 did not suggest an alternative. Neither is it appropriate to remove the area from the site's net developable area. The setback is akin to an environmental constraint which remains the responsibility of the landowner to address. Equally, the Panel does not consider this land should be credited as part of the public open space requirement. The Panel does not agree with Submitter 52 that the proposed interface is akin to the tree reserves in Property 11 which have been included as public open space. The tree reserve area in Property 11 contains remnant native vegetation and has been identified in both the Framework Plan and Background Landscape Report as being part of the wider open space network in the form of

linkages between areas. This differs from the vegetation interface proposed for Portarlington Road.

The Panel has prepared the Greater Geelong C387ggee (Corrected) Panel Report dated 2 August 2024 that incorporates these changes.

1.4 Notice to submitters

As Council has made the Greater Geelong C387ggee Panel Report dated 15 July 2024 available to the Public, it is to write to all submitters and advise them of the Greater Geelong C387ggee (Corrected) Panel Report dated 5 August 2024.

Appendix A Letter from Council

Hi Adrian,

C387ggee Panel Report – errors for review:

PDF page 11

There is a demand and need for the Children's and Community Hub. However, the indicative project timing for the construction of the Children's and Community Hub as provided for in the Stage 2 DCP is **inappropriate** given the timing for the infrastructure is influenced by various considerations and not need alone.

Change to 'appropriate'.

PDF page 24

The Framework Plan identifies a 'Rural Interface Vegetation Treatment Including Shared Path' along the west of the subject land, as shown in Figure 6. By letter dated 4 April 2024² the Proponent raised two new issues, not raised in its submission to the Amendment, that:

- the shared footpath along the western boundary of Property **16** should be located on the eastern side of the road reserve, rather than the western side
- this land should be credited to the developer of Property 15 as unencumbered public open space.

Change to '15'.

PDF page 54

The key difference between the two interfaces is the alignment of the shared user path, which curves away from the western perimeter of the subject land, includes a wider landscape treatment and positions the path alongside the proposed new internal loop road in Interface 2.

This is not the key difference. The key difference is that interface 2 shows existing trees along the western boundary within the private land, therefore requiring a wider landscape treatment and differer

PDF page 57

The Panel considers it appropriate that the shared path be located within all properties that have a western frontage with McDermott Road, including Properties 11 (part), 12, 13 and 14.

This sentence is inconsistent/ confusing with the subsequent panel finding to locate the path within McDermott Road reserve.

PDF page 116

Peter and Anne Kuc

Not a party to the panel hearing

PDF page 142

The following changes are proposed to MAP 1:
Indicative Key Local Street shown on Property 13 to be located to the perimeter of District Park.
The Rural Interface Vegetation Treatment including Shared Path to be located within the eastern McDermott Road reserve and not within Properties 11, 12, 13 and 14.
East west shared user path shown south of District Park on Property 13 to be deleted.
Amend legend by deleting the words "including Share Path" in "Rural Interface Vegetation Treatment including Share Path".
Change location of Indicative key local street for Property 13 to wrap around district park in accordance with evidence of Walsh and Murphy.
Amend "Portarlington Road Interface Treatment" to make it clear that access to non-residential uses from Portarlington Road can be considered.

Duplicate recommended changes

Appendix B Letter from Submitter 52

Dear Panel Coordinator

The City of Greater Geelong has now released a copy of the Panel Report.

As per our attached memo dated 15 April 2024 (provided at the direction of the Panel), as well as our attached submission slides dated 24 April 2024, we raised four matters.

1. DR-02 - Costings
 - The appropriateness of its inclusion of this item within the DCP for Stage 2.
 - **The Panel agreed that DR-02 should not be included in the DCP as it is an existing piece of infrastructure.**
2. DR-04L – Land Valuation
 - The accuracy of the land valuation given that a significant portion of the land was an encumbered water way.
 - **The Panel agreed that the encumbered waterway should be removed from the land valuation.**
 - **The Panel recommended that the land valuation should be based on \$2.4m a hectare, not \$1.8m a hectare.**
3. DR-04 - Costings
 - The accuracy of the detailed costings.
 - **The Panel disagreed with the evidence of Mr Isaac Clarey from Loetis and supported the position of Council and the proponent.**
4. Portarlington Road Vegetation Interface Treatment
 - The reasonableness of the 'gifting' of an approximate 10m vegetation reserve fronting Portarlington Road.
 - **Other than an acknowledgement in Section 1.6 (pages 24/25) that the Panel would consider this matter, I cannot locate any further commentary by the Panel.**

We would appreciate it if you could confirm with the Panel Chair whether it was a mistake or intention to specifically exclude any commentary in relation to the fourth matter above?

Thanks in advance and please call to discuss as required.

Kind regards

**Greater Geelong Planning Scheme Amendment C387ggee
Jetty Road Urban Growth Area (Stage 2)**

Corrected Panel Report

Planning and Environment Act 1987

5 August 2024

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval. The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Corrected Panel Report pursuant to section 25 of the PE Act

Greater Geelong Planning Scheme Amendment C387ggee

Jetty Road Urban Growth Area (Stage 2)

5 August 2024



Sarah Raso, Chair



Geoff Glynn, Member



George Borg, Member

Contents

	Page
Executive summary	9
1 Introduction	16
1.1 The Panel	16
1.2 The Amendment.....	16
1.3 Background	22
1.4 Expert evidence	23
1.5 Documents relied upon	24
1.6 Procedural issues.....	24
1.7 The Panel’s approach	27
1.8 Limitations	28
2 Strategic issues	29
2.1 Planning context	29
2.2 Strategic justification.....	32
3 Development Plan issues	34
3.1 Affordable housing	34
3.2 Environmentally Sustainable Design	39
3.3 Residential and retirement village requirements	41
3.4 Small Lot Housing Code	47
3.5 1425-1429 Portarlington Road.....	49
4 McDermott Road (western) interface	51
4.1 Background	51
4.2 The issues	54
4.3 Evidence and submissions.....	54
4.4 Discussion	56
4.5 Conclusions and recommendation.....	58
5 Inclusion of the Stage 2 Drain in the Stage 2 DCP	60
5.1 Background	60
5.2 Threshold question.....	61
5.3 Evidence and submissions.....	62
5.4 Discussion	66
5.5 Conclusions and recommendation.....	69
6 Timing of delivery of the Childrens and Community Hub	70
6.1 Background	70
6.2 The issues	71
6.3 Evidence and submissions.....	71
6.4 Discussion	72
6.5 Conclusions.....	73
7 Traffic issues	74
7.1 Delivery of Coriyule Road (west of McDermott Road).....	74
7.2 Tivoli Drive and Greenvale Drive – timing of upgrade works	76

7.3	Tivoli Drive and Greenvale Drive – design and safety issues	80
7.4	East-west pedestrian link through Property 13	83
7.5	Extension of Oceania Drive.....	85
7.6	Broader transport network	86
7.7	Suitable carriageway width of roads	87
8	The Southern Wetland	88
8.1	Reduction in the land area	88
8.2	Designated waterway encumbrance	92
8.3	Land valuation methodology for Property 16	93
8.4	Construction costs	94
8.5	Inclusion of DR-05 in the Stage 2 DCP	96
9	Other Development Contributions Plan issues.....	99
9.1	Financing costs for early delivery.....	99
9.2	Coriyule Road	102
9.3	Tivoli Drive and Greenvale Drive.....	104
9.4	Apportionment of the costs of DR-04	106
9.5	Right turn lanes to access to Property 30	107
9.6	Shared user path – south of Coriyule Road	108
9.7	Other DCP issues.....	109
10	Other issues raised by submitters.....	110
11	Drafting issues	114
Appendix A	Submitters to the Amendment	116
Appendix B	Parties to the Panel Hearing.....	117
Appendix C	Document list.....	118
Appendix D	Planning context.....	123
D:1	Planning policy framework.....	123
D:2	Other relevant planning strategies and policies	125
D:3	Planning scheme provisions	126
D:4	Ministerial Directions, Planning Practice Notes and guides	127
Appendix E	Panel preferred version of Development Plan Overlay Schedule 46.....	128

List of Tables

	Page	
Table 1	Chronology of events	22
Table 2	Summary of experts	23
Table 3	Planning context	29
Table 4	Delivery timing for RD-03 and RD-04	77
Table 5	Infrastructure Items	99

List of Figures

	Page
Figure 1	Urban Growth Plan..... 17
Figure 2	Map 1 to Exhibited DPO46 – Framework Plan..... 18
Figure 3	Jetty Road Urban Growth Area Stage 2 land – subject land..... 19
Figure 4	Proponent land ownership..... 20
Figure 5	Stage 2 DCP main catchment area 21
Figure 6	Western interface..... 24
Figure 7	Clause 11.03-6L-01 31
Figure 8	Map 1 of Framework Plan – Properties 13 and 14 and District Park Location 41
Figure 9	Proposed village layout..... 42
Figure 10	Council proposed restriction on residential and retirement village development..... 44
Figure 11	Residential/retirement village interface example 45
Figure 12	Submitter 42 land 51
Figure 13	Coriyule Mansion..... 51
Figure 14	McDermott Road proposed interface treatments 52
Figure 15	McDermott Road cross section – Interface 2..... 53
Figure 16	McDermott Road cross section – Interface 3..... 53
Figure 17	Murphy cross-section of proposed McDermott Road interface..... 55
Figure 18	Coriyule Road drainage outfall works 60
Figure 19	Algo land (red), Council land (green)..... 70
Figure 20	Proposed traffic calming measure..... 74
Figure 21	Tivoli Drive and Greenvale Drive..... 77
Figure 22	Revised Rail Trail crossing 82
Figure 23	East-west pedestrian link..... 83
Figure 24	The Southern Wetland– DR-04 and DR-04-L..... 88
Figure 25	Proposed new DCP Project DR-05 97
Figure 26	Charge Area 3..... 100
Figure 27	Access arrangements sought for Property 30..... 107

Glossary and abbreviations

1992 Structure Plan	Drysdale Clifton Springs Structure Plan 1992
2010 Structure Plan	Drysdale Clifton Springs Structure Plan 2010
Algo	Algo Properties Pty Ltd
Algo land	79–83 and 90 Greenvale Drive, 13–19 Sealark Way and 103 Centennial Boulevard, Curlewis
Background Landscape Report	Development Plan Overlay Schedule Background Landscape Report , the City of Greater Geelong, November 2022)
BPSPP	Bellarine Peninsula Statement of Planning Policy
CCH	CF-01 Children and Community Hub
Council	Greater Geelong City Council
DCP	Development Contributions Plan
DCP Guidelines	<i>Development Contribution Guidelines</i> , June 2003, as amended 2007
DPO46	Development Plan Overlay Schedule 46
DTP	Department of Transport and Planning
EAO	Environmental Audit Overlay
ESD	Environmentally Sustainable Design
Framework Plan	Jetty Road Stage 2 Urban Growth Area Framework Plan
Growth Area	Jetty Road Urban Growth Area
GRZ1	General Residential Zone Schedule 1
IDM	Infrastructure Design Manual
IWMP	Integrated Water Management Plan
Maddocks DCP Advice	Jetty Road DCP Advice, Maddocks, 5 December 2022
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Greater Geelong Planning Scheme
PPF	Planning Policy Framework
Proponent	Stockland (Stockland Land Lease Management Pty Ltd), SOHO Living (Curlewis Bellarine Pty Ltd) and APD Projects (Curlewis Land Pty Ltd), referred to in the Proponent’s submissions as ‘the Developer Group’
Rail Trail	Bellarine Rail Trail
RLZ	Rural Living Zone
SCO	Specific Controls Overlay

Section 173 agreements	three draft agreements under section 173 of the PE Act to enable the duplication of Tivoli Drive and Greenvale Drive
SLHC	Small Lot Housing Code
Southern Wetland	proposed waterway and linear wetland proposed through properties to the south of the Rail Trail
Stage 1 DCP	Jetty Road Urban Growth Area Stage 1 Development Contributions Plan, December 2023
Stage 1 Jetty Road	Stage 1 Jetty Road Urban Growth Area
Stage 2 DCP	Jetty Road Urban Growth Area Stage 2 Development Contributions Plan, October 2023
Stage 2 Drain	Stage 2 of the Coriyule Road drain
subject land	Jetty Road Urban Growth Area (Stage 2)
SWMS Report	Jetty Road Rezoning – Stage 2 Storm Water Management System, Water Technology, Version 07, 6 September 2023
Traffic Report	Traffic Engineering Assessment, Future Residential Subdivisions Report, Traffix Group, November 2022
Urban Growth Plan	Jetty Road Urban Growth Plan, adopted 26 June 2007, amended 23 September 2008
VPP	Victoria Planning Provisions
Westlink Report	Jetty Road Stage 2 DCP Valuations Report, Westlink Consulting, March 2023

Overview

Amendment summary

Amendment	Greater Geelong Planning Scheme Amendment C387ggee
Common name	Jetty Road Urban Growth Area (Stage 2)
Brief description	Proposes to: <ul style="list-style-type: none"> - rezone the subject land from Farming Zone and Rural Living Zone to General Residential Zone - apply the Development Contribution Overlay and Development Plan Overlay to the subject land - apply the Environmental Audit Overlay to some land parcels.
Subject land	Jetty Road Urban Growth Area (Stage 2)
Proponent	Stockland (Stockland Land Lease Management Pty Ltd), SOHO Living (Curlewis Bellarine Pty Ltd) and APD Projects (Curlewis Land Pty Ltd)
Planning Authority	Greater Geelong City Council
Authorisation	25 October 2023
Exhibition	10 November to 18 December 2023
Submissions	Number of Submissions: 58

Panel process

The Panel	Sarah Raso (Chair), Geoff Glynn and George Borg
Supported by	Gabrielle Trowse, Project Officer, Planning Panels Victoria
Directions Hearing	By video, 13 March 2024
Panel Hearing	In person and by video conference at Planning Panels Victoria, 1 Spring Street, Melbourne, 22, 23, 24, 29 and 30 April and 1, 2, 3, 6 and 9 May 2024
Site inspections	Unaccompanied, 16 April 2024
Parties to the Hearing	See Appendix B
Citation	Greater Geelong PSA C387ggee [2024] PPV
Date of this report	15 July 2024

Executive summary

Greater Geelong Planning Scheme Amendment C387ggee (the Amendment) affects land on the western edge of the Drysdale Clifton Springs township, known as the Jetty Road Urban Growth Area (Stage 2) (subject land).

The Amendment seeks to facilitate the growth and development of the subject land by:

- rezoning the land from Farming Zone and Rural Living Zone to General Residential Zone Schedule 1
- applying the Development Plan Overlay Schedule 46 (DPO46) and Development Contributions Plan Overlay Schedule 9
- applying the Environmental Audit Overlay to part of the subject land
- incorporating the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023) (Stage 2 DCP) into the Planning Scheme.

Council exhibited the Amendment from 10 November to 18 December 2023 and received 58 submissions. Key issues raised included:

- whether Stage 2 of the Coriyule Road drain (the Stage 2 Drain), which has already been constructed, should be included in the Stage 2 DCP
- drafting of the DPO46, including matters relating to affordable housing, environmentally sustainable design, the location of shared paths, internal roads, vegetation interfaces and use of the small lot housing code
- timing of the Children's and Community Hub and whether it should be delivered earlier
- changes to the Stage 2 DCP including the inclusion or exclusion of various items, land valuation methodology, financing costs and timing of items
- traffic issues including the alignment of key local streets and path connections and the duplication of Tivoli Drive and Greenvale Drive
- landscape and drainage design
- whether the western interface of the subject land has been appropriately considered and reflected through the DPO46 provisions.

Strategic justification

The Panel is satisfied that overall, the Amendment is strategically justified. The strategic planning for the Growth Area is long standing and the area has for several decades been identified as an area of managed and planned growth.

The proposed planning provisions achieve the right balance between establishing clear objectives to respond to the site specific requirements for future development and broader policy. The DPO46 will allow a degree of flexibility that should foster design innovation whilst also establishing a clear vision for the land and ensuring the community understands what broad development outcomes are to be achieved.

The Panel is satisfied that subject to its recommendations, the proposed development to be facilitated by the Amendment can co-exist next to the established residential area to its east and the more traditional farming land to its west, and that the new housing opportunities will be a positive outcome.

Development Plan Overlay Schedule 46

Much of the hearing was spent on specific issues relating to the drafting of the DPO46.

Affordable housing

The provision of affordable housing is a significant net community benefit and how the allocation of it is realised is a matter for the land owners/developers. The affordable housing provision is better incorporated as a percentage of all housing as the 'Primary Obligation', with flexibility in the way the obligation is delivered. The quantum of the affordable housing contribution and the market discount specified in the Primary Obligation should be amended to a rate of five per cent of the total number of serviced lots at a 20 per cent market discount.

Environmentally sustainable design

The delivery of environmentally sustainable design is important and should form part of the design and delivery of urban and suburban areas, however the exhibited provisions provided overly prescriptive guidance and should be replaced with a set of clear principles and goals to be addressed.

Residential and retirement village requirements

Part of the subject land is proposed to be developed as a residential and retirement village. The DPO46 included a provision preventing this use being located within 100 metres of the boundary of a proposed district park. This restriction is inappropriate and should be deleted and further refinement to the DPO46 is warranted to ensure any proposed retirement or residential village is able to function appropriate to its needs.

Small Lot Housing Code

While use of the Small Lot Housing Code will benefit the development of the subject land, it should be introduced through a special purpose zone which is beyond the scope of the Amendment.

1425-1429 Portarlington Road

The 'Potential Non Residential Uses' designation and the proposed use of the General Residential Zone will sufficiently allow the consideration of non-residential land uses. However the DPO46 should be refined to provide better guidance for the consideration of non-residential uses, including access requirements.

Western interface

The shared user footpath should be located on the eastern side of the McDermott Road reserve and not within the subject land. This location will still ensure that that a rural / urban interface is achieved, while also increasing the amount of valuable urban land available for future development consistent with state and local policy direction.

A sensitive transition and interface can be achieved through careful, considered and detailed design and the use of appropriate materials. Some refinement to the DPO46 will assist in achieving this transition, including the addition of specific provisions which seek to protect and enhance the rural character of the western boundary of the subject land.

Inclusion of the Stage 2 Drain in the Stage 2 DCP

Stage 2 of the Coriyule Road drain has been constructed and paid for by Council. Council is seeking to use the Stage 2 DCP as a mechanism to recover the costs of the infrastructure that has already

been provided, and already funded. This was a complex issue considered by the Panel in detail and required the consideration of whether:

- a development contributions plan can charge for existing infrastructure
- the Stage 2 Drain should be removed from the Stage 2 DCP.

Following careful analysis, the Panel concluded there is no basis to suggest that Part 3B of the *Planning and Environment Act 1987* permits a development contributions plan to be used to repay a Council for works already funded, and already constructed.

Timing and delivery of the Children's and Community Hub

There is a demand and need for the Children's and Community Hub. However, the indicative project timing for the construction of the Children's and Community Hub as provided for in the Stage 2 DCP is appropriate given the timing for the infrastructure is influenced by various considerations and not need alone.

The Southern Wetland

Landscape design – batter slopes

Specifying the batter slopes for the Southern Wetland in the DPO46 is too prescriptive for the general function of a Development Plan Overlay. That said, varying batter slopes would result in a positive outcome and the DPO46 should be amended to allow a degree of additional flexibility in approach to design.

Designated water encumbrance

The Stage 2 DCP should be updated to reflect the revised calculations of the unencumbered land required for the Southern Wetland.

Valuation methodology for land require for the Southern Wetland

The Stage 2 DCP land valuation for the area of land to be acquired for DR-04-L should be updated to \$2.4 million per hectare once the land area is known.

Construction costs

The Stage 2 DCP should be amended to include the updated cost of \$15,621,027.39 for the Southern Wetland. The updated estimate of costs is acceptable, well considered, and consistent with what would be reasonably expected for a project of this scale.

Inclusion of DR-05 in the Stage 2 wetland DCP

DR-05 should be included in the Stage 2 DCP. It was omitted in error when the Amendment was prepared.

Traffic issues

Delivery of Coriyule Road (west of McDermott Road)

It is appropriate that Coriyule Road, west of McDermott Road, remains unsealed. The proposed traffic calming measures will discourage vehicles using the length of Coriyule Road as a thoroughfare to and from the wider network.

Tivoli Drive and Greenvale Drive – timing of upgrade works

Some level of development could occur on land to the south of the Bellarine Rail Trail (the Rail Trail), before the section of Tivoli Drive between Portarlington Road and the Rail Trail is upgraded.

It is appropriate to tie the upgrade of the Greenvale Drive/Centennial Boulevard roundabout to a signalised intersection to the development of 500 lots immediately west of the activity centre. This effectively retains the current overall trigger but more closely links it to the anticipated pedestrian demands that generate the need for the upgrade.

Tivoli Drive and Greenvale Drive – design and safety issues

The proposed arrangements for the duplication of Tivoli Drive and Greendale Drive are appropriate and will provide a safe and acceptable outcome. It is appropriate that the design of the Rail Trail where it crosses Tivoli Drive is reviewed and a road safety audit be undertaken to inform its detailed design.

East-west pedestrian link through Property 13

The east-west pedestrian pathway through Property 13 is not required and should be removed from the Framework Plan (Map 1 to the DPO46). The provision of the east-west pathways at Coriyule Road and Oceania Drive should cater for the expected east-west movement without the need for the connection through Property 13.

Extension of Oceania Drive

The proposed east west extension of Oceania Drive through the subject land is appropriate. The construction of the east west road will not need to occur until Property 12 is developed for residential purposes.

Redesign of Tivoli Drive at Portarlinton Road

It is not appropriate or justified to redesign the southern section of Tivoli Drive to include right turn lanes into Property 30. It is premature to consider access arrangements at this point in the process. Access will depend on a whole range of factors and should be coordinated with Properties 13 and 14.

Other Development contributions plan issues

Financing costs

The Southern Wetland is enabling infrastructure without which other landowners in Charge Area 3 will not be able to commence development and as such financing costs to support its early delivery should be included in the Stage 2 DCP. However, it is not appropriate to include forward financing costs associated with the delivery of Tivoli Drive. Some level of development can occur in Charge Area 3 without the need for the Tivoli Road duplication. Similarly, it is not appropriate to include forward financing costs associated with the delivery Southern Precinct Park. It is not enabling infrastructure and landowners will be able to commence development before it is constructed.

Coriyule Road

The costs of the construction of Coriyule Road, including traffic calming measures, between Tivoli Drive and McDermott Road, should not be included in the Stage 2 DCP. The cost of its construction should sit with the two adjoining property owners given it is a local road that will primarily benefit both adjoining properties.

Tivoli Drive and Greenvale Drive works

It is appropriate and justified to include the Tivoli Drive and Greenvale Drive duplication works and land acquisition costs in the Stage 2 DCP. There is a clear nexus between the need for the upgrade and the development of the subject land as a whole.

Apportionment of Costs of DR-04

It is not appropriate that costs for DR-04 (which includes extensive drainage infrastructure) should be reduced or changed to include Charge Area 2. No evidence was presented to establish the justification for an alternative form of apportionment.

Right turn lanes into Property 30

It is not appropriate or justified to redesign the southern section of Tivoli Drive (RD-03) to include right turn lanes into Property 30.

Shared user path – south of Coriyule Road

The shared footpath within the road reserve should not be credited to the developer of Property 15 as unencumbered public open space.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Geelong Planning Scheme Amendment C387ggee be adopted as exhibited subject to the following:

- 1. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:**
 - a) Express the Primary Obligation as a requirement to deliver a percentage of all housing as affordable, with flexibility in the way the obligation is delivered.**
 - b) Specify the quantum of the affordable housing contribution and the market discount in the Primary Obligation as five per cent of the total number of serviced lots at a 20 per cent market discount.**
 - c) Delete all reference to how the affordable housing is to be provided across the subject land, including the references to the distribution, mix and design presentation of the affordable housing.**
 - d) Delete the provisions dealing with Environmentally Sustainable Design and replace them with a set of clear principles and goals to be addressed.**
 - e) Delete the provision which restricts the use and development of land within 100 metres of the District Park boundary for a residential or retirement village.**
 - f) Ensure an appropriate design response for the interface between a residential or retirement village and the District Park.**
 - g) Ensure any proposed retirement or residential village can be designed to function appropriate to its needs.**
 - h) Provide better guidance for the consideration of access requirements for non-residential uses on Property 30.**
 - i) Amend the Framework Plan to make it clear that access to non-residential uses from Portarlington Road can be considered.**
 - j) Ensure the Framework Plan clearly indicates that the shared user path along the western frontages of the subject land (where it abuts McDermott Road) will be located within the existing McDermott Road reserve.**
 - k) Include a provision requiring a section 173 agreement which requires the shared user path to be delivered as developer works.**
 - l) Strengthen the provisions which seek to protect and enhance the rural character of the western interface of the subject land.**
 - m) Require a minimum four-metre deep 'no build zone' inside the western boundary of the subject land within which no buildings of any kind can be constructed, to achieve bushfire defendable space requirements.**

- n) Allow for the development of up to 211 lots with direct access from Hackwill Place to occur on land to the south of the Rail Trail before Tivoli Drive, between Portarlington Road and the Bellarine Rail Trail, is upgraded.
- o) Encourage the consideration of a variety of batter slopes without specifying specific batter gradients.
- p) Remove the east-west pedestrian link through Property 13 shown in the Framework Plan.
2. Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan* (October 2023) to:
- a) Delete DR-02.
 - b) Update the land budget to reflect the revised calculations of unencumbered land required for DR-04L.
 - c) Amend the Stage 2 DCP land cost for the area of land to be acquired for DR-04-L to \$2.4 million per hectare, once the land area is known.
 - d) Update the construction costs for DR-04 to \$15,621,027.39.
 - e) Include new project DR-05 to Properties 23 and 24 as detailed in the Updated Log of Proposed Changes to the Stage 2 Development Contributions Plan (Document 90).
 - f) Amend the indicative project timing for RD-04 to *“prior to the delivery of 500 lots within 32-70 McDermott Road or 72-100 McDermott Road”*.
 - g) Include forward financing costs as a separate project for works associated with the early delivery of the DR-04.
 - h) Update labels of the cost sheets for DR-01, DR-02 and DR-03 in Appendix E as follows:
 - 21 (D-03) Drainage Works – Pipeline (Property 11) amended to 21 (D-~~03~~01) Drainage Works – Pipeline (Property 11).
 - 14 (D-02) Drainage Works – Pipeline (Property 15) amended to 14 (D-~~02~~03) Drainage Works – Pipeline (Property 15)
 - 13 (D-01) Detention and WSUD Basin and Constructed Waterway amended to 13 (D-~~01~~04) Detention and WSUD Basin and Constructed Waterway.
 - i) Replace the text in ‘Section 4.3 Open Space’ with:

PUBLIC OPEN SPACE CONTRIBUTIONS

The Greater Geelong Planning Scheme (at Clause 53.01 and in DPO Schedule 46) requires a public open space contribution to be made.

This DCP does not include any public open space land items – all land is to be provided through Clause 53.01 or under DPO Schedule 46. Improvements projects to open space are included in this DCP. Unencumbered land to be used for open space equates to 5.76% of the Net Developable Area of the Precinct. Public open space must be provided in accordance with the Framework Plan and the areas set out in Table 12.

Where the proportion of land shown in the Framework Plan and Table 12 as to be provided for public open space exceeds 10% of the net developable land (unencumbered) that landowner will be compensated by Council for the provision in excess of 10% of the net developable land (unencumbered).

Where the proportion of a land parcel which is being provided as public open space is zero or less than 10% of the net developable land (unencumbered), the landowner must pay the open space contribution up to 10% of the net developable land (unencumbered).

- j) Capture any further consequential changes as a result of recommendations 2a) to i) as reflected in the Updated Log of Proposed Changes to the Stage 2 Development Contributions Plan (Document 90).**

1 Introduction

1.1 The Panel

The Panel was appointed under delegation from the Minister for Planning on 16 February 2024 under the provisions of Section 153 and 155 of the *Planning and Environment Act 1987* (PE Act). The Panel is to consider the Amendment and to hear submissions and evidence in relation to them.

The members of the Panel are:

- Sarah Raso, Chair
- Geoff Glynn, Member
- George Borg, Member.

The Panel was assisted by Gabrielle Trowse, Project Officer of Planning Panels Victoria.

1.2 The Amendment

(i) Amendment description

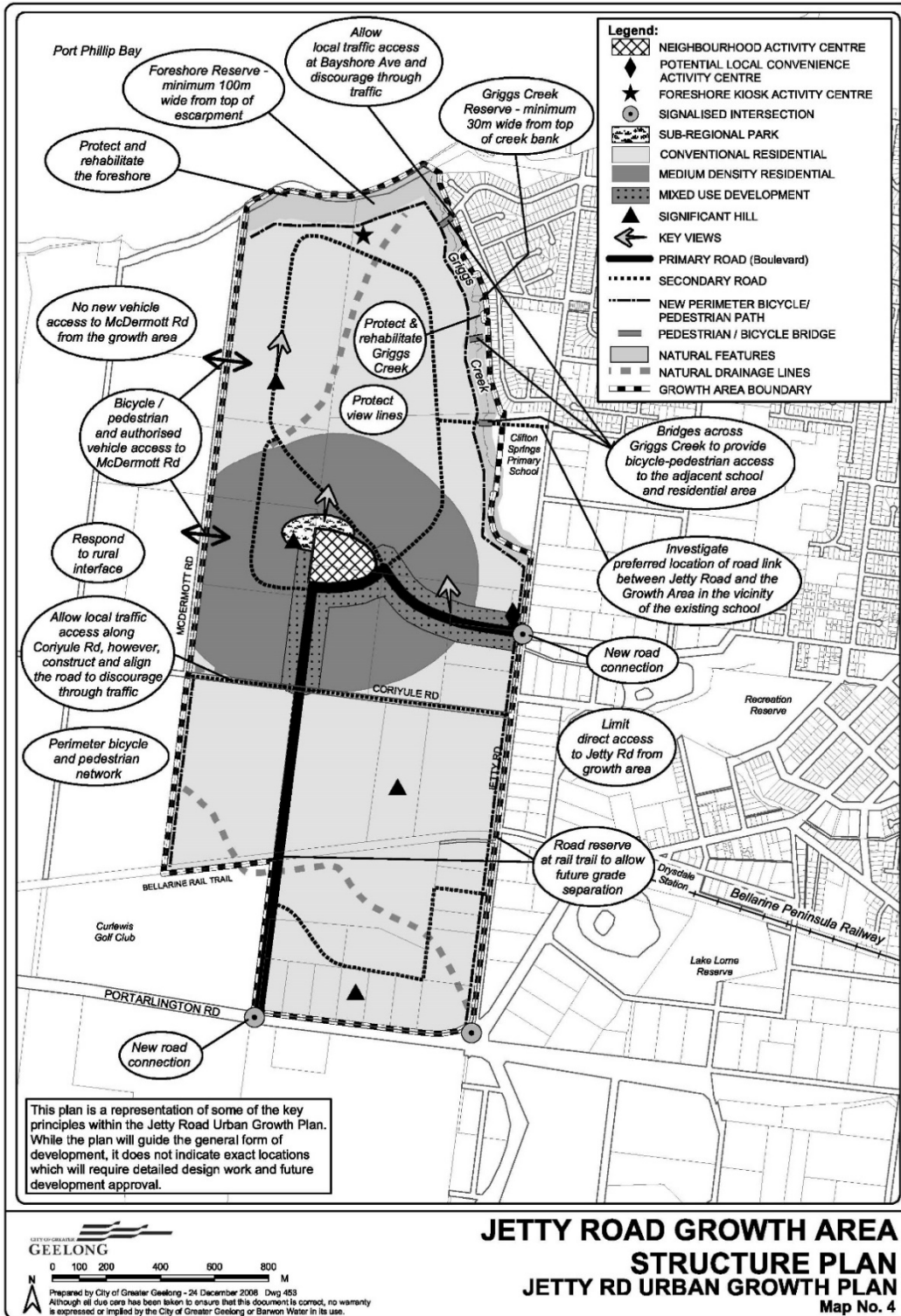
Greater Geelong City Council (Council) is the Planning Authority for Amendment C387ggee (Amendment) to the Greater Geelong Planning Scheme (Planning Scheme). The Amendment has been prepared by Council at the request of SOHO Living (Curlewis Bellarine Pty Ltd), Stockland (Stockland and Land Lease Management Pty Ltd) and APD Projects (Curlewis Land Pty Ltd) (collectively the Proponent), the majority landowners in the area affected by the Amendment.

The Amendment applies to land referred to as Stage 2 of the Jetty Road Urban Growth Area in Curlewis (subject land). It seeks to facilitate the growth and development of the subject land by:

- rezoning the subject land from Farming Zone and Rural Living Zone (RLZ) to General Residential Zone Schedule 1 (GRZ1)
- applying the Development Plan Overlay Schedule 46 (DPO46) and Development Contributions Plan Overlay Schedule 9 (DCPO9) to the subject land
- applying the Environmental Audit Overlay (EAO) to part of the subject land
- incorporating the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan* (October 2023) (Stage 2 DCP) into the Planning Scheme.

These changes seek to facilitate the development of the subject land in accordance with the Drysdale – Clifton Springs Structure Plan (adopted September 2010) and the Jetty Road Urban Growth Plan (adopted 26 June 2007, amended 23 September 2008) (Urban Growth Plan) (see Figure 1).

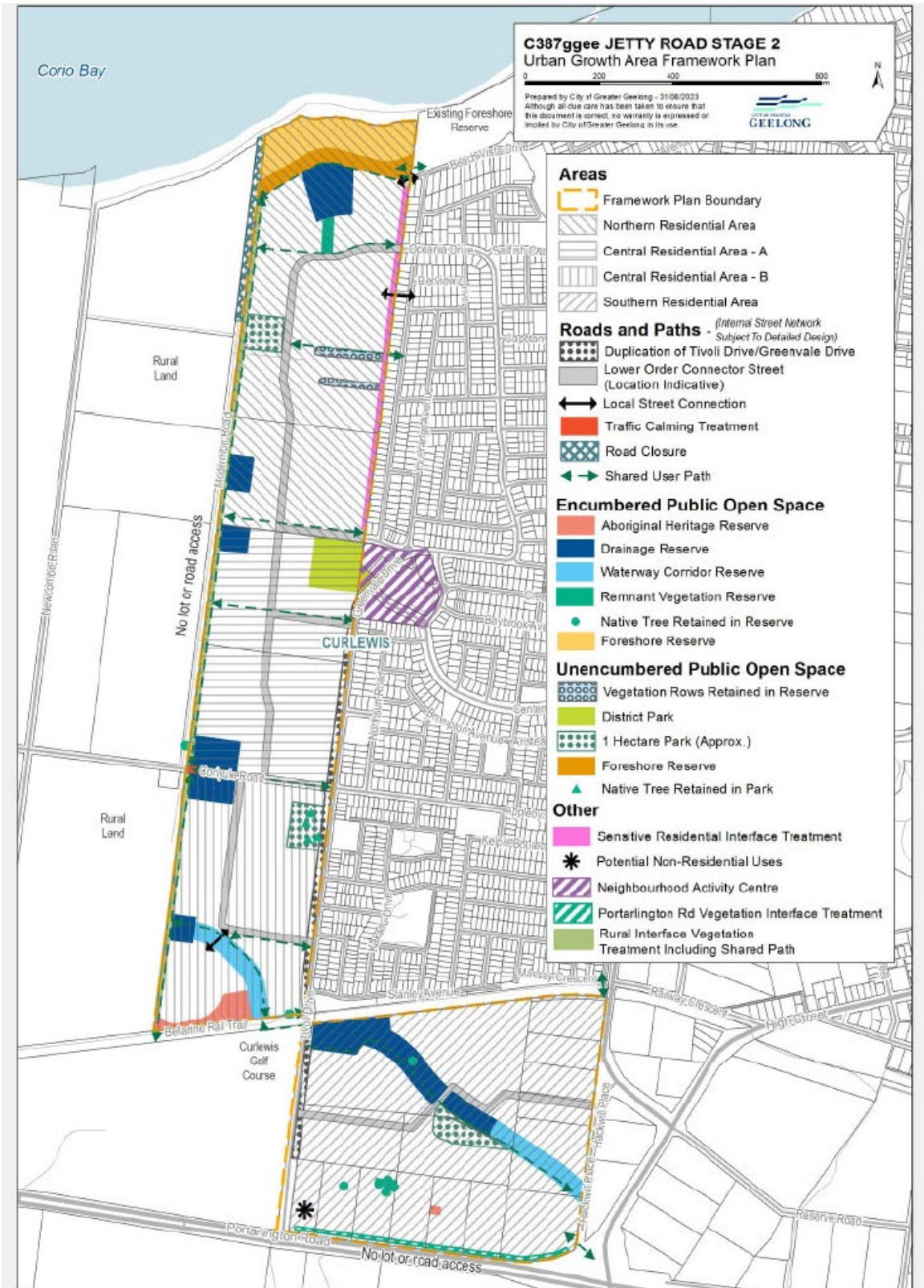
Figure 1 Urban Growth Plan



Source: Clause 11.03-6L-01 (Bellarine Peninsula) of the Planning Scheme

The DPO46 contains the Jetty Road Stage 2 Urban Growth Area Framework Plan (Framework Plan) at Map 1, which provides the framework for the development envisaged by the Amendment. See Figure 2.

Figure 2 Map 1 to Exhibited DPO46 – Framework Plan



Source: D1ad

(ii) The subject land

The Amendment applies to the subject land which makes up half of the Urban Growth area (see Figure 3).

Figure 3 Jetty Road Urban Growth Area Stage 2 land – subject land

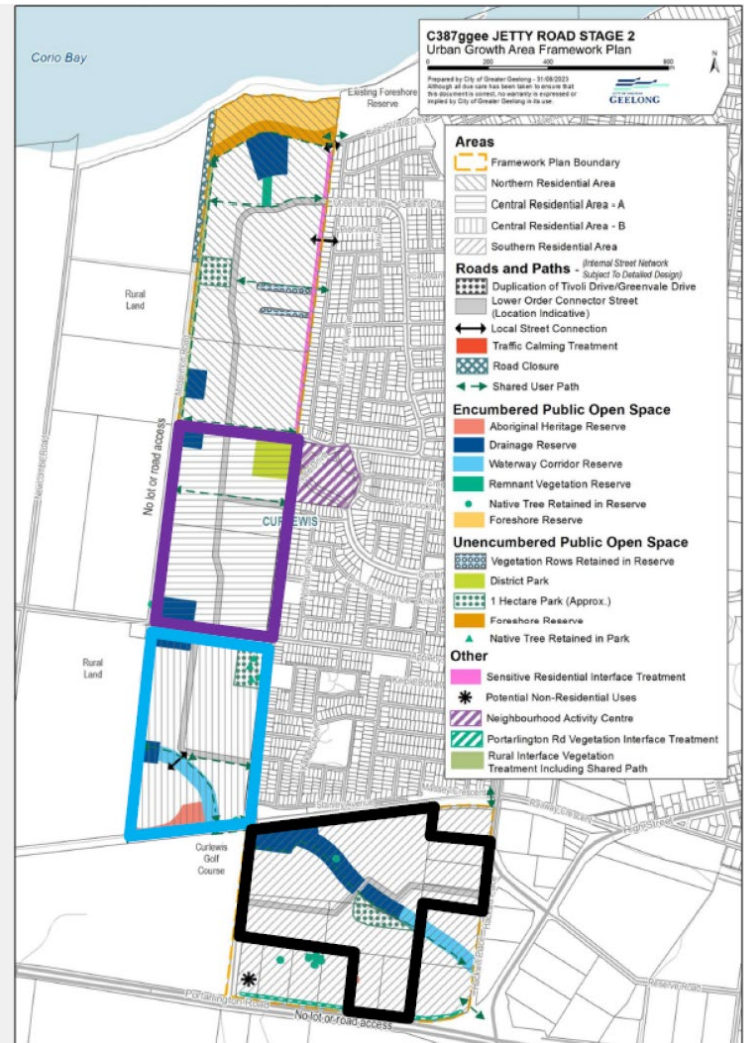


The subject land contains 20 land titles and is approximately 150 hectares. It is primarily bounded by McDermott Road to the west, Portarlington Road to the south, and Port Phillip Bay to the north.

To the east is Stage 1 of the Growth Area. This area was rezoned in 2009 and has delivered over 1,700 lots and associated infrastructure. Stage 1 is currently zoned GRZ1, except for the Curlewis Neighbourhood Activity Centre which is in the Commercial 1 Zone.

Figure 4 shows the Stockland land marked in purple, the SOHO Living land marked in blue and the APD Projects land marked in black.

Figure 4 Proponent land ownership

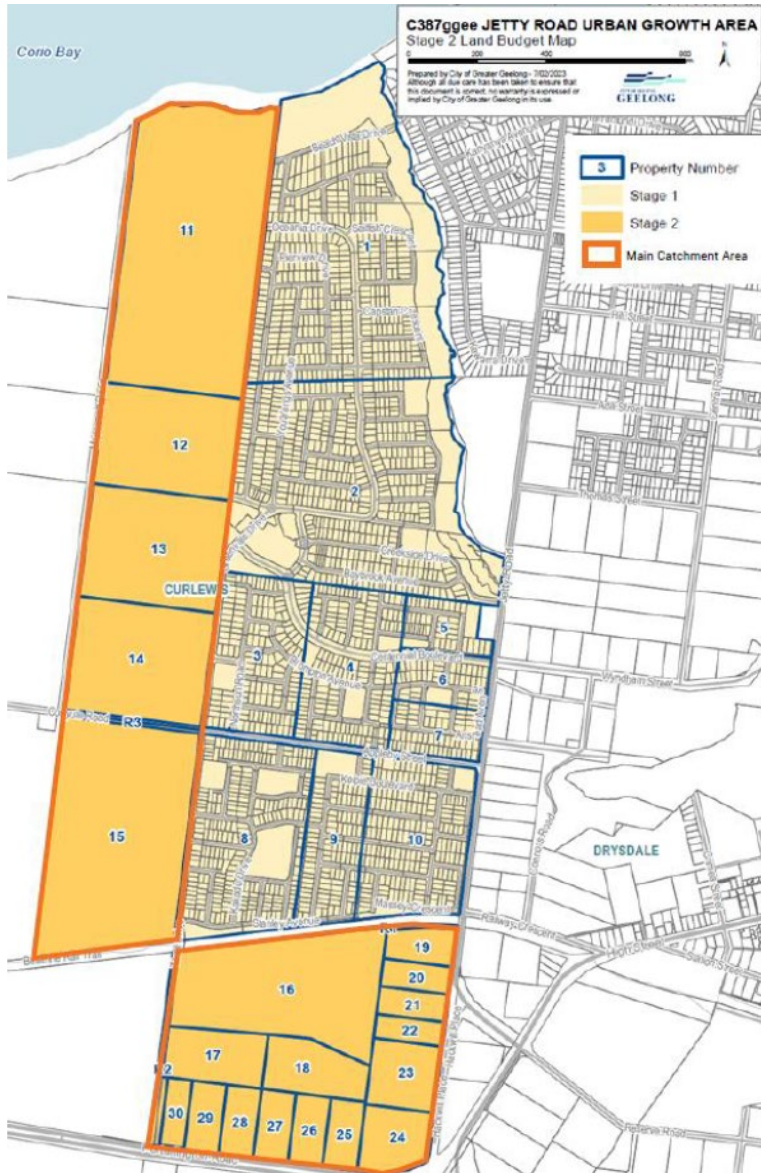


Source: Submission 7

More broadly, the subject land is within the defined settlement boundary of the Drysdale-Clifton Springs township and is located 98 kilometres south west of Melbourne and 22 kilometres east of Geelong.

The subject land is the main catchment area for the Stage 2 DCP with the boundaries and property numbers shown in Figure 5.

Figure 5 Stage 2 DCP main catchment area



(iii) Tivoli Drive and Greenvale Drive section 173 agreements

Tivoli Drive and Greenvale Drive are identified in the Urban Growth Plan as the primary north-south access roads to the Growth Area. Half of each road has been constructed as part of Stage 1 and the roads require duplication as part of the development of the subject land in accordance with the Stage 2 DCP.¹

In preparing the Amendment, Council and the Proponent agreed it was necessary to deliver the ultimate (duplicated) Tivoli Drive and Greenvale Drive early on in the development of the subject land. This has been provided for in the Stage 2 DCP and the DPO46.

In addition to the provisions in the Stage 2 DCP and the DPO46, three draft agreements under section 173 of the PE Act (section 173 agreements) were exhibited with the Amendment. These agreements were prepared between Council and the Proponent and are intended to guarantee

¹ See projects RD-01, RD-02, RD-03 and RD-05, RD-01-L and RD-02-L

the early provision of the land to enable the Tivoli Drive and Greenvale Drive duplication works. It is intended the agreements will be executed before the Amendment is adopted by Council.

1.3 Background

Council provided a detailed background to the Amendment in its Part A submission, including a chronology of events which the Panel has summarised in Table 1.

Table 1 Chronology of events

Date	Event
March 1992	<p>Drysdale Clifton Springs Structure Plan (1992 Structure Plan) adopted by the former Geelong Regional Commission</p> <p>The 1992 Structure Plan identified two large areas for residential growth:</p> <ul style="list-style-type: none"> - the rural land in between Drysdale and Clifton Springs, with an intent to link the two suburbs - the land west of Jetty Road <p>The 1992 Structure Plan guided land use and development in Drysdale and Clifton Springs until 2010 when the plan was reviewed and amended</p>
26 June 2007	Council adopted Urban Growth Plan
23 September 2008	Urban Growth Plan amended through Amendment C129ggee. Amendment C129ggee sought to implement the recommendations of the Municipal Strategic Statement Review, which included updates to the Local Planning Policy Framework based off various studies, including the Urban Growth Plan
December 2009	Stage 1 of the Growth Area was rezoned by Amendment C152ggee in accordance with the Urban Growth Plan
9 February 2012	A Development Contributions Plan Overlay was applied to the Stage 1 area by Amendment C230ggee and implemented the Jetty Road Urban Growth Area Stage 1 Development Contributions Plan (Stage 1 DCP). It delivered over 1,700 lots and associated infrastructure, the Bayview Central Shopping Centre and new Greeks Creek and foreshore public open space
September 2010	Council adopted the Drysdale – Clifton Springs Structure Plan 2010 (2010 Structure Plan)
Amendment	
September 2020	<p>Landowners within the RLZ (part of the Proponent group) lodged an application to Council seeking a planning scheme amendment to rezone the RLZ precinct to GRZ</p> <p>Council accepted the application but noted its progression was dependent on joint consideration of the Farming Zone precinct, which also formed part of Stage 2 of the Growth Area</p>
June 2021	<p>Landowners within the Farming Zone (part of the Proponent group) precinct lodged an application to Council seeking a planning scheme amendment to rezone all the Farming Zone land north of the Rail Trail</p> <p>The combined request from the Proponent was supported by various technical reports in relation to service infrastructure, flooding and stormwater drainage, public open space, traffic engineering, bushfire hazard, land contamination, native vegetation, planted trees, Aboriginal cultural heritage and housing needs</p>

Date	Event
24 May 2022	Council resolved to request authorisation from the Minister for Planning to prepare and exhibit the Amendment Following this: <ul style="list-style-type: none"> - Council and the Proponent group worked together to prepare technical reports to inform the Stage 2 DCP and the section 173 agreements - Council sought the views of the Environment Protection Authority (EPA) in accordance with the Ministerial Direction 19 – Amendments that may result in impacts on the environment, amenity and human health. Following advice from the EPA and the Department of Transport and Planning (DTP), Council agreed to apply the EAO to part of the subject land through the Amendment
9 October 2023	Council requested Ministerial authorisation to exhibit the Amendment
25 October 2023	Minister authorised the preparation of the Amendment subject to conditions
10 November to 18 December 2023	Exhibition of the Amendment
13 February 2024	Council resolved to appoint a Planning Panel
Panel Process	
13 March 2024	Directions Hearing
22, 23, 24, 29 and 30 April, 1 2, 3, 6 and 9 May 2024	Panel Hearing

1.4 Expert evidence

The Panel had the benefit of evidence from eleven experts as shown in Table 2.

Table 2 Summary of experts

Party	Expert	Field	Firm
Proponent	Ms Sophie Jordan	Planning	Contour Consultants
	Mr Barry Murphy	Landscape design	Murphy Consulting
	Mr Jonathon McLean	Drainage	Alluvium
	Mr Jason Walsh	Traffic	Traffix Group
	Mr Chris McNeill	Development contributions	Ethos Urban
	Mr Claudio Petrocco	Valuation	Charter Keck Cramer
	Mr Stephen Watters	Civil engineering and quantity surveying	SMEC
Council	Mr Matt Ainsaar	Development contributions	Urban Enterprise
	Mr Chris Beardshaw	Drainage	Afflux Consulting
Various owners of 1451-1459 Portarlington Road, Curlewis	Mr Isaac Clarey	Civil engineering and quantity surveying	Loetis
Algo Properties Pty Ltd	Ms Kate Kerkin	Social planning	K2 Planning

1.5 Documents relied upon

The Amendment documentation, in particular the DPO46, has evolved since exhibition and there were several iterations tabled during the Panel process. The Panel has based its preferred drafting of the DPO46 on the exhibited version.

1.6 Procedural issues

(i) New issues

The Framework Plan identifies a 'Rural Interface Vegetation Treatment Including Shared Path' along the west of the subject land, as shown in Figure 6. By letter dated 4 April 2024² the Proponent raised two new issues, not raised in its submission to the Amendment, that:

- the shared footpath along the western boundary of Property 15 should be located on the eastern side of the road reserve, rather than the western side
- this land should be credited to the developer of Property 15 as unencumbered public open space.

Figure 6 Western interface



On 5 April 2023³ Submitter 52 raised an issue relating to the proposed 'Portarlington Road Vegetation Interface Treatment' as shown in the Framework Plan. Submitter 52 said the proposed interface treatment is unreasonable and that a number of alternative arrangements should be considered.

Council responded on 8 April 2024⁴ and submitted:

- submitters do not have any automatic entitlement to raise new issues before the Panel
- the Panel is only required to consider the submissions that have been referred to it by Council

² D7

³ D12

⁴ D13

- where Council has not considered a submission, the Panel is not required to and may not consider that submission
- the Panel's ability to inform itself on any matter only extends to matters that are properly before it
- a party wishing to make a further submission on a new matter should lodge that with Council and Council will determine whether or not to consider (and refer) the late submission.

Council indicated:

- it did not oppose the issue raised by Submitter 52 because it was included in the submitter's original submission
- the issues raised by the Proponent are new, have not been referred to the Panel and should be "*ignored*" by the Panel.

The Panel invited a further response from the Proponent⁵ who responded on 9 April 2023⁶ and submitted:

- pursuant to section 168 of the PE Act "*a Panel may take into account any matter it thinks relevant in making its report and recommendations*"
- the Panel is not restricted to only considering issues raised in submissions
- the Panel can, and should, consider all relevant matters brought to its attention by parties to a Panel hearing
- this may include the evidence of independent experts engaged by submitters (or councils) as well as new information
- there is no proper basis for the Panel to ignore the new issues or for the Panel to conclude that it cannot consider those matters.

On 10 April 2024 the Panel responded⁷ and:

- determined to hear submissions and/or evidence with respect to both new issues raised
- indicated that should any party take issue with this approach submissions can be made at the commencement of the Hearing
- noting Council's evidence had already been filed, afforded Council an opportunity to file any supplementary statements dealing with the new issues only.

No party choose to make any further submissions with respect to this matter at the commencement of the Hearing and both new issues have been considered by the Panel.

(ii) Stage 2 Drain issue

In its letter of 4 April 2024⁸ the Proponent:

- referenced the Afflux Consulting Pty Ltd report⁹ commissioned by Council to review the Jetty Road Urban Growth Plan and associated drainage matters
- noted it included a list of documents which were provided by Council to Afflux Consulting for review

⁵ D24

⁶ D25

⁷ D85

⁸ D7

⁹ D1at

- sought urgent discovery of one of those documents, being the Jetty Road DCP Advice, Maddocks, 5 December 2022 (Maddocks DCP advice).

By email on 5 April 2024¹⁰ Council indicated it had no objection to providing the Maddocks DCP Advice¹¹ and circulated it, along with the emails¹² referred to in the advice, to all parties. Council also asked the Panel to request the Proponent to indicate whether it will persist with this aspect of their submissions (that is the inclusion of the cost of the Stage 2 Drain in the Stage 2 DCP).

On 8 April 2024 the Panel sought this clarification from the Proponent¹³ and the Proponent advised by letter on 9 April 2023:¹⁴

- it would continue to maintain the inclusion of the cost of the Stage 2 Drain would be unlawful, and contrary to the relevant provisions of the PE Act that deal with development contributions
- if the Panel does not accept it would be unlawful to include the costs in the DCP, the Proponent maintains it would be unreasonable and inappropriate to do so, and contrary to policy (specifically Clause 19.03-1S of the Geelong Planning Scheme) which requires regard to be had to (among other things) the *Development Contributions Guidelines* (Department of Sustainability and Environment, 2003 as amended 2007)
- if the Panel does not accept these points, the Proponent will maintain the contribution sought in the Stage 2 DCP is neither fair nor equitable, and an alternative approach to determining that contribution should be adopted.

The Proponent also:

- noted the Maddocks DCP advice referred to contrary advice by PE Law as to the legality of using a DCP to recover the costs of the Stage 2 Drain
- asked the Panel to direct that the PE Law advice be produced by the Council immediately.

The Panel agreed the PE Law advice should be produced¹⁵ and Council provided it on 10 April 2024.¹⁶

(iii) Council's Part C closing submission

Council, in its Part C closing submission:¹⁷

- asked the Panel to decline to consider a legal argument in relation to whether a DCP can charge for existing infrastructure (this issue related to whether the costs of the Stage 2 Drain could be included in the Stage 2 DCP and was heavily ventilated at the Hearing)
- raised what the Panel considered to be a new issue (that is, one that was not raised in its Part A or Part B submissions) in relation to a bushfire setback along the western interface of the subject land.

¹⁰ D9

¹¹ D10a

¹² D10b-d

¹³ D24

¹⁴ D85

¹⁵ D27

¹⁶ D28

¹⁷ D82, filed and presented on 6 May 2024

The Panel considered both matters and by letter on 7 May 2023¹⁸ determined it would benefit from affording the Proponent an opportunity to respond in writing to two issues raised. It allowed the Proponent until 4pm on Thursday, 9 May 2024 to file further written submissions on these two issues.

Further written submissions were filed by the Proponent on 9 May 2024.¹⁹

The Panel was, in particular, concerned by Council's submission as follows:

If the Panel were to accept the proponent's submissions as to legality, it would require Council to initiate proceedings under either section 39 of the Act or judicial review in the Court, arguing that the Panel misconstrued the Act. That pathway would likely significantly delay the amendment pending resolution of the issue.

At the commencement of the final hearing day, the Panel addressed Council on this aspect of its submission noting its concerns and disappointment with the position taken. The Panel noted:

- it is very much aware of the functions of section 39 of the PE Act and judicial review mechanisms
- a Panel is entitled to make whatever recommendation it sees fit and express whatever opinion it considers appropriate
- it will not be influenced or deterred from doing so because of threats of legal proceedings.

This matter is addressed further in Chapter 4.

1.7 The Panel's approach

Key issues raised in submissions were:

- whether the Stage 2 Drain, which has already been constructed, should be included in the Stage 2 DCP
- drafting of the DPO46, including matters relating to affordable housing, environmentally sustainable design, the location of shared paths, internal roads, and vegetation interfaces
- timing of the Children's and Community Hub as shown in the Stage 2 DCP and whether it should be delivered earlier
- changes to the Stage 2 DCP including the inclusion or exclusions of various items, land valuation methodology, financing costs and timing of items
- traffic issues including the alignment of key local streets and path connections and the duplication of Tivoli Drive and Greenvale Drive
- landscape and drainage design
- whether the western interface has been appropriately considered and reflected through the DPO46 provisions.

The Panel has assessed the Amendment 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

¹⁸ D84

¹⁹ D85.

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:

- Strategic issues
- Development Plan issues
- McDermott Road (western) interface
- Inclusion of Coriyule Road Drain in the Stage 2 DCP
- Timing of delivery of the Childrens and Community Hub
- The Southern Wetland
- Other Development Contributions Plan issues
- Traffic issues
- Other issues raised by submitters
- Resolution of the Development Plan Overlay Schedule 46.

1.8 Limitations

The Panel was advised:

- cultural heritage assessments confirmed that Cultural Heritage Management Plans will be required when the subject land is subdivided (and are not triggered by the Amendment)
- the Wadawurrung Traditional Owners Aboriginal Corporation will be actively engaged in the process of preparing future open space landscape plans.

The Panel has therefore not considered matters relating to cultural heritage.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix D highlights key imperatives of relevant provisions and policies.

Table 3 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 2
Planning Policy Framework	<ul style="list-style-type: none"> - Clauses 11.01-1S (Settlement), 11.01-1R (Settlement – Greater Geelong), 11.02-1S (Managing Growth), 11.02- 2S (Structure planning, Geelong), 11.02 (Managing Growth), 11.03 (Planning for Places), 11.03-6L-01 (Bellarine Peninsula) - Clauses 12 (Environmental and Landscape Values), 12.02-1L – (Protection of coastal areas), 12.03 (Water Bodies and Wetlands), 12.03-1L (River and riparian corridors, waterways, lakes, wetlands) - Clauses 13 (Environmental Risks and Amenity) - Clauses 15.01 (Built Environment), 15.01-2S (Building design), 15.01-3S (Subdivision design) - Clauses 16 (Housing), 16.01-1S (Housing Supply), 16.01-2S (Housing affordability), 16.01-5S (Residential aged care facilities) - Clauses 18.01 (Land Use and Transport), 18.01 – 3S (Sustainable and safe transport) - Clauses 19 (Infrastructure), 19.03 (Development Infrastructure), 19.03-1S (Development and infrastructure contributions plan), 19.03-2S (Infrastructure design and provision), 19.03 – 2L (Infrastructure planning, design and construction), 19.03-3S and 3L (Integrated water management)
Other planning strategies and policies	<ul style="list-style-type: none"> - Plan Melbourne Direction 4, Policies 4.1, 4.2 - Bellarine Peninsula Statement of Planning Policy - 2010 Structure Plan - Jetty Road Urban Growth Plan (adopted 26 June 2007, amended 23 September 2008)
Planning scheme provisions	<ul style="list-style-type: none"> - General Residential Zone – Schedule 1 - Development Plan Overlay – Schedule 46 - Development Contribution Plan Overlay – Schedule 9 - Environmental Audit Overlay
Ministerial directions	<ul style="list-style-type: none"> - 11: Strategic Assessment of Amendments - 15: The Planning Scheme Amendment Process - 19: Part A: The Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health - 23: Applying the Incorporated Plan and Development Plan Overlays

Relevant references

- Ministerial Direction on the Preparation and Content of Development Contribution Plans

Planning practice notes

- 17: Localised Planning Statements
- 46: Strategic Assessment Guidelines, September 2022

(i) 2010 Structure Plan

The 2010 Structure Plan outlines a plan to guide future planning and development of Drysdale Clifton Springs for the next 10 to 15 years. It includes the following vision for Drysdale Clifton Springs:

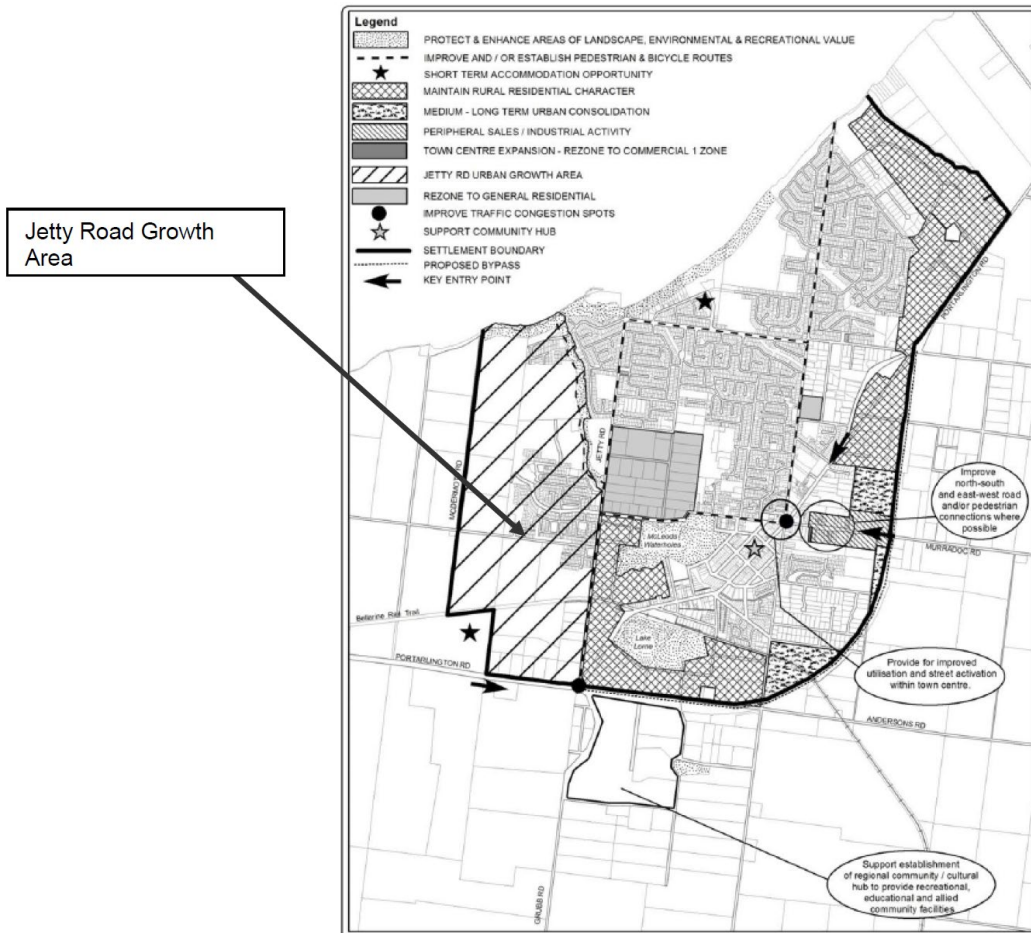
In the year 2016 Drysdale Clifton Springs will provide residents with a unique lifestyle offering comfortable and convenient urban living with bay vistas in a peaceful rural setting. It will be well serviced with education, community, sports cultural and recreation facilities, have a vibrant shopping precinct with distinct village character and a renewed focus on the foreshore with improved landscaping, facilities and access.

The purpose of the 2010 Structure Plan is to:

- identify the key strategic planning issues facing the townships, including community aspirations and needs
- articulate the preferred future directions for the townships, including the location of settlement boundaries
- identify appropriate planning controls which will protect and enhance the distinctive elements of the townships, biodiversity and landscape features.

The 2010 Structure Plan shows the Growth Area within the settlement boundary in the Structure Plan map, which is now included in the Planning Scheme at Clause 11.03-6L-01 (Bellarine Peninsula) (see Figure 7).

Figure 7 Clause 11.03-6L-01



(ii) Urban Growth Plan

The Urban Growth Plan (Figure 1) sets the strategic direction for the development of the land in the Growth Area, as well as the key planning responses that will be pursued at each stage of the planning process for the area.

The Urban Growth Plan identifies the following ‘vision’ for the Growth Area:

The Jetty Road urban growth area will be developed into a sustainable community that demonstrates best practice urban development. The relationship to the bay, connections to adjacent residential areas and the growth areas natural features will be enhanced to form a distinct urban character. By responding to the needs of the future community and managing sensitive interfaces, Jetty Road will become a highly sought after location for living, working and recreation, forming an attractive addition to Drysdale/Clifton Springs.

The Urban Growth Plan sets the long term strategic framework for the development of the Growth Area for:

- land use (such as residential development of varying densities, open space and community facilities)
- transport (such as the road network, collector roads and proposed public transport)
- the neighbourhood activity centre
- open space (passive and active), waterways and environmentally sensitive areas.

The Urban Growth Plan is included in the Planning Scheme at Clause 11.03-6L-01 (Bellarine Peninsula).

The objectives and principles of the Urban Growth Plan continue to apply to the subject land and have guided the preparation of the Amendment (subject to some changes reflecting the new policies and controls that have been developed since the Urban Growth Plan was adopted).

(iii) **Bellarine Peninsula Statement of Planning Policy**

On 29 October 2019, the Bellarine Peninsula was declared a Distinctive Area and Landscape under Part 3AAB of the PE Act. The declaration triggered a requirement to prepare a Statement of Planning Policy.

The Bellarine Peninsula Statement of Planning Policy (BPSPP) was prepared by DTP and approved on 10 August 2023, forming part of the Victorian Planning Provisions (VPP) in accordance with section 46AZ(2) of the PE Act. While Clause 11.03-5S (Distinctive areas and landscapes) still refers to the Bellarine Peninsula Localised Planning Statement (2015), the BPSPP is relevant to consider and the Minister is obliged to prepare a planning scheme amendment to give effect to the BPSPP in accordance with section 46AZB of the PE Act.

2.2 **Strategic justification**

(i) **Evidence and submissions**

No party challenged the general strategic justification for the Amendment.

Council submitted the Amendment:

- is supported by the relevant state, regional, and local planning policy framework
- is required to facilitate urban development of the subject land in accordance with the 2010 Structure Plan and the Urban Growth Plan
- achieves a net community benefit by facilitating growth in an appropriate location, within a long standing settlement boundary
- will contribute to the sustainable growth of a designated district town in the BPSPP.

Council submitted the Amendment implements key objectives of planning in Victoria as set out in section 4(1) of the PE Act by:

- aligning the zoning of the land with the strategic direction of policy as outlined in the 2010 Structure Plan, the Urban Growth Plan, and the BPSPP
- allowing the development of the subject land whilst protecting significant vegetation and waterways
- providing improved public access to the foreshore, public open space, and pedestrian and cycle networks that will contribute to a high-quality urban environment.

Council considered the Amendment makes proper use of the VPP by applying the GRZ1 and appropriate overlays which will facilitate redevelopment of the subject land for residential purposes. Council said the Amendment has been prepared accordance with the BPSPP.

The Proponent submitted the Amendment will deliver on the long standing Geelong Planning Policy Framework (PPF), and set out the background to the Amendment by summarising Ms Jordan's planning evidence (for the Proponent) as follows:

The City of Greater Geelong Urban Growth Strategy (1996) identified the Jetty Road Urban Growth Area (comprising the Stage 1 and Stage 2 Land) as an area for future urban development.

The Jetty Road Urban Growth Plan (2008) set out the strategic direction for the development of land in the Jetty Road Urban Growth Area. It identified that the development of the Jetty

Road growth area should be through staged rezoning of the land and the implementation of Development Plans for each of these stages.

The Drysdale - Clifton Springs Structure Plan (2010) was adopted by the Council in September 2010 to further guide the development of the precinct.

The local planning policy contained in the Planning Scheme at Clause 11.03-6L-01 (Bellarine Peninsula) outlines strategies to support Drysdale/Clifton Springs so that it can fulfill its role as a service hub for the Bellarine Peninsula. These strategies include to support the development of the Jetty Road Urban Growth Area and other areas identified for residential development.

(ii) Discussion

The Panel is satisfied that overall, the Amendment is strategically justified.

The strategic planning for the Growth Area is long standing and the area has for several decades been identified as an area of managed and planned growth. It has been consistently recognised that district towns play a key role in accommodating projected population growth, with the once rural farming land being consolidated and transformed for urban use and development.

Drysdale Clifton Springs is identified as one of three district towns on the Bellarine Peninsula within the City of Greater Geelong, with urban development and rural living areas clearly envisaged for the Growth Area.

The proposed zones and overlays are appropriate and generally consistent with the Jetty Road Urban Growth Area in terms of dwelling and land use mix, open space, roads, pedestrian and bicycle movement and connections, and convenient access to community and commercial uses. The Amendment appropriately provides for predominantly residential uses to cater for the anticipated population growth in the municipality.

The proposed planning controls, in particular the GRZ1 and DPO, achieve the right balance between establishing clear objectives to respond to the site specific requirements for future development and broader policy. They are not too prescriptive and allow a degree of flexibility that should foster design innovation whilst also establishing a clear vision for the land and ensuring the community understands what broad development outcomes are to be achieved.

Clause 71.02-3 of the Planning Scheme requires an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development. In this case, the Panel is satisfied that subject to its recommendations, the proposed development to be facilitated by the Amendment can co-exist with the established residential area to its east and the more traditional farming land to its west, and that the new housing opportunities will be a positive outcome.

(iii) Conclusions and recommendation

For the reasons set out in this report, the Panel concludes that:

- The Amendment is well founded and strategically justified and is supported by, and implements, the State and Local PPF and strategic imperatives.
- The subject land provides significant opportunity for development.
- The Amendment should be adopted subject to further recommendations.

The Committee recommends:

- 1. Adopt Greater Geelong Planning Scheme Amendment C387ggee as exhibited subject to specific recommendations in this report.**

3 Development Plan issues

3.1 Affordable housing

(i) Background

Clause 4.0 of the exhibited DPO46 requires Development Plan to include an Affordable Housing Delivery Strategy. It requires a 'Primary Obligation':

The provision of affordable housing comprising a transfer to the City of Greater Geelong Affordable Housing Trust or a Registered Housing Association under the *Housing Act 1983* of 5% of the total number of serviced lots proposed on the land in the application at a discount of 35% to market value as determined by an appropriately qualified expert. The serviced lots are to have an assumed area of 300 square metres. This provision is the **Primary Obligation**, or;

Clause 4.0 outlines the manner in which the Primary Obligation can be satisfied:

- A monetary contribution to the City of Greater Geelong Affordable Housing Trust or another Housing Agency nominated by Council which is of equal value (as independently assessed) to the Primary Obligation; or
- A provision of completed dwellings for nil consideration which in total have the same monetary value as the Primary Obligation as independently assessed;
- A combination of the above options; or
- Any other delivery model of the contribution which is of equal value to the Primary Obligation.

Clause 4.0 then sets out principles that guide the provision of affordable housing:

- The provision of affordable housing should be:
 - delivered within the land to which a planning permit application applies or if agreed with the responsible authority, other land in the Jetty Road Stage 2 area;
 - functionally and physically indistinguishable from other dwellings within the development; and
 - distributed across the development; and
 - a mix of lot or housing types to respond to local housing needs

The Affordable Housing Delivery Strategy in the relevant Development Plan is to be implemented through a permit condition in accordance with Clause 3.0 of the DPO46:

Unless there is already an agreement in place to provide affordable housing, a permit for subdivision, buildings or works associated with residential development should provide affordable housing in accordance with the approved Development Plan.

(ii) The issue

The issue is whether the quantum of the affordable housing contribution and the market discount specified in the Primary Obligation is appropriate.

(iii) Evidence and submissions

No parties called evidence on social and affordable housing, although Ms Jordan made comments about how the affordable housing contribution might be realised and the percentage rate to be applied in her planning evidence for the Proponent. The Proponent and Council made submissions on the subject.

The provision of affordable housing was supported by Council and the Proponent. Council and the Proponent agreed there is no legal obligation to deliver affordable housing, nor to deliver any particular quantum of affordable housing. There was also general agreement that:

- the provision of affordable housing is voluntary
- delivering more affordable housing is a responsibility shared by all levels of government and the public and private sector
- there is clear State and local policy direction around the provision of affordable housing
- the policy direction is unclear as to the appropriate level of provision of affordable housing.

The Proponent accepted that one means to deliver more affordable housing to the community is by developers incurring the private cost of offering land or houses (or both) either free of charge or at discounted prices.

Council and Proponent did not agree on the drafting of the DPO46 provisions as they relate to affordable housing, or what the quantum and discount should be for the contribution. Council sought five per cent of the total number of serviced lots proposed on the subject land at a discount of 35 per cent of market value, as determined by an appropriately qualified expert. The Proponent offered 3.5 per cent of serviced lots at a 20 per cent market discount.

Council submitted the requirement of affordable housing proposed by the DPO46 was at the lower end of the customary scale of provision. In support of its position, Council provided a document entitled *Affordable Housing in other planning schemes*²⁰ which illustrated examples where the provision of affordable housing has been included in an amendment to a planning scheme. The examples demonstrated a variation in both quantum, discount and methodology within a broad range of contexts, where contributions for affordable housing (between zero and 20 per cent) have been included as part of a planning scheme amendment.

The Proponent submitted the examples provided were not comparable to this proposal. Nevertheless, there was general agreement between the Council and the Proponent that the provision of affordable housing is becoming commonplace in planning schemes and permits.

Council also conveyed the need to retain its proposed Primary Obligation, namely the reference to affordable housing comprising a transfer to the City of Greater Geelong Affordable Housing Trust or a Registered Housing Association under the *Housing Act 1983*. Council submitted the deletion of this text would make the Primary Obligation meaningless as it would not be capable of being converted to a value to enable the other provisions in the relevant DPO clause to function. Council emphasised the Primary Obligation is not necessarily the way the affordable housing will be delivered, as the method of provision will be up to the Proponent and the housing agency.

Council tendered two documents²¹ prepared by its lawyers to provide a comparison between the differing positions on this issue, identifying, amongst other matters, that Council seeks to achieve 92 discounted serviced lots or 18 gifted dwellings, while the Proponent's offer would equate to 64 discounted serviced lots or eight gifted dwellings.

²⁰ D51

²¹ D52 and D53

Council submitted:

- the gifting of 18 dwellings would equate to approximately one per cent of dwelling stock based on the estimated yield of 1,854 dwellings as part of the proposed rezoning
- the five per cent quantum came from the recommendations contained within the *Housing & Affordability Report*²² exhibited with the Amendment.

The Proponent highlighted the voluntary nature of the affordable housing contribution and submitted:

It must also be born in mind that the provision to the community of affordable housing by a developer at no cost is not the only way in which housing can be made more affordable. The development of growth areas like this, and the significant increase in housing quantity and diversity that the approval of the Amendment would deliver to the community is, in and of itself, likely to make a significant contribution to increasing the amount of affordable housing available to the community.

This is especially so where, as is the case here, the housing that is proposed is inherently affordable. For example, the proposal by Stockland to deliver a significant quantum of new housing in the form of a residential village or retirement village (as opposed to a “*standard*” residential model) will deliver a significant amount of both affordable, and more diverse, housing product to the community.

Notwithstanding this, the Proponent submitted:

- it had agreed to support appropriate provisions in the DPO46 that require developers to deliver a reasonable quantum of affordable housing
- the identification of a fixed and quantifiable obligation is sound, provided the means by which that obligation can be met are not set in stone and remain flexible
- it did not accept the proposed Primary Obligation is appropriate
- the DPO46 should be amended to contain less prescriptive requirements in relation to affordable housing
- the provision of affordable housing should be nominated as a percentage of all housing or some other measure that would constitute the Primary Obligation, but with inherent flexibility in the way the obligation is delivered.

In terms of the specific drafting, the Proponent submitted:

- the DPO46 mandates the provision of affordable housing that is “*functionally and physically indistinguishable from other dwellings within the development*” and “*distributed across the development*”
- this outcome may or may not be appropriate depending on community needs at any given time and the most cost-effective and efficient means of delivery.

Ms Jordan recommended an approach to the delivery of affordable housing:

- Remove all reference to specific delivery models that are to form the basis of the provision of affordable housing across Stage 2. Whilst I note that the DPO46 as exhibited does provide “options”, I consider it is the role of the Strategy to identify the correct model or models to be applied without constraint and without the DPO schedule identifying what could be deemed as the preferred approach.
- Remove all reference to how the affordable housing is to be provided across the Stage 2 area, including the references to the distribution, mix and design presentation of the affordable housing. It is important that housing that will meet the needs of the local community be located, designed and varied in a manner that responds to market

²² D1aw

conditions and following advancement of the development plan in detail and for example meeting the needs of a community housing association.

- The provision of affordable housing be nominated as a percentage of all housing or some other measure that would constitute the “primary obligation”.

The Proponent, by the end of the Hearing, advised that it had offered to accept a Primary Obligation equivalent to five per cent of lots at 20 per cent discount. However, this offer was dependent on an agreed position being reached with Council as to the relevant provisions of the DPO46. In the absence of an agreed position, the Proponent maintained its position that the Primary Obligation equivalent should be 3.5 per cent at a 20 per cent discount.

(iv) Discussion

The Panel acknowledges the proposed contribution of affordable housing, whether it be at a rate of 3.5 or five per cent with a market discount, is a significant community benefit.

While the provision of affordable housing was supported by Council and the Proponent, it is important to remember there is no legal obligation on a developer to deliver affordable housing, or to deliver any particular quantum of such housing on the subject land. There is no policy direction as to what level of provision should be made, or the manner in which it should be made. However, State and local policy has raised the expectation that contributions to affordable housing are now inherent in development of land for residential purposes, particularly for land that will result in significant yield opportunities. In this context, there remains debate as to the quantum of housing and the drafting of the relevant provisions in the DPO46.

The Panel considers a Primary Obligation should be included as it would provide certainty and hopefully minimise the potential for any future debate. In this respect the Panel agrees with the Proponent and Ms Jordan that the Primary Obligation should require an affordable housing provision as a percentage of all housing, with flexibility in the way the obligation is delivered.

It is not appropriate to require the affordable housing to be transferred to the City of Greater Geelong Affordable Housing Trust or a Registered Housing Association. This would effectively require the provision of community housing, which is only one form of affordable housing (as defined in section 3AA of the PE Act).

Affordable housing will vary over time and different models may be more desirable to meet different needs. This is particularly important in this case given, for example, it is proposed that Properties 12 and 13 are developed for a retirement village. The housing may end up being rental accommodation or housing that is purchased. Likewise, it might be more efficient and responsive to community needs to deliver affordable housing that is physically distinguishable from other dwellings (such a small lots) or clustered in one location.

The Panel agrees with the evidence of Ms Jordan that flexible affordable housing provisions will enable consideration of:

- the range of housing to be delivered across the subject land and the degree to which this might meet population needs and assist with housing affordability
- a preferred model for the delivery of affordable housing and how this model will be structured across different land holdings and different stages of development
- a target for the delivery of affordable housing and how this is to be measured
- any nominated exclusions.

In terms of the appropriate metric or quantum, Council's examples of affordable housing provisions raised questions, particularly whether they are comparable to this proposal. They demonstrated a wide variation both in quantum and methodology regarding the contributions (between zero and 20 per cent). It is normal for the range to differ, given contributions are generally the result of negotiated outcomes whereby a higher contribution might be used to offset an increase in height, for example. However, when the Panel asked Council where its quantum had come from, it was not able to specify. Council later suggested the five per cent figure came from the recommendations within the exhibited *Housing & Affordability Report*. It also noted that no evidence was produced by Council to justify its proposed quantum.

In the absence of expert evidence and consensus on this matter, the Panel is left to consider differing opinions regarding an appropriate provision. The Panel ultimately considers a rate of five per cent of the total number of serviced lots at a 20 per cent market discount is appropriate. This provision is a worthy compromise between the positions of Council and the Proponent. This provision will realise an appropriate amount of affordable housing to the community consistent with government direction, while helping to address this significant societal issue and contribute a net community benefit.

The Panel supports the drafting changes proposed by the Proponent, subject to adopting a rate of five per cent of the total number of serviced lots.

(v) Conclusions and recommendation

The Panel concludes:

- The provision of affordable housing is a significant net community benefit.
- How the allocation of affordable housing is realised is a matter for the Proponent and should not be prescribed in the DPO46.
- The Primary Obligation should be expressed as a requirement to deliver a percentage of all housing as affordable, with flexibility in the way the obligation is delivered.
- The quantum of the affordable housing contribution and the market discount specified in the Primary Obligation should be amended to a rate of five per cent of the total number of serviced lots at a 20 per cent market discount.

The Panel recommends:

- 2. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:**
 - a) Express the Primary Obligation as a requirement to deliver a percentage of all housing as affordable, with flexibility in the way the obligation is delivered.**
 - b) Specify the quantum of the affordable housing contribution and the market discount in the Primary Obligation as five per cent of the total number of serviced lots at a 20 per cent market discount.**
 - c) Delete all reference to how the affordable housing is to be provided across the subject land, including the references to the distribution, mix and design presentation of the affordable housing.**

3.2 Environmentally Sustainable Design

(i) The issue

The issue is whether the provisions in the exhibited DPO46 relating to Environmentally Sustainable Design (ESD) are appropriate and justified.

(ii) Evidence and submissions

The Proponent did not agree with the ESD provisions in the exhibited DPO46 and sought further revisions to the ESD requirements.

Council agreed the exhibited provisions required amendment, and circulated revised ESD requirements²³. Council submitted the revised provisions sought to reframe the content to clearly identify requirements for an ESD Action Plan and integrate content outlining what should be included in the Action Plan to ensure *“the Development Plan provides concrete objectives and requirements against which applications can be assessed”*.

Council submitted the revised ESD requirements were supported by the BPSPP. It submitted the Panel cannot, and should not, act inconsistently with the BPSPP. Council relied on Strategy 8.8 which states:

Responsible public entities are required to have regard to the following strategies to achieve the objective when performing a function or duty or exercising a power in relation to the declared area.

...

Strategy 8.8. Ensure development within settlements achieves best practice, environmentally sustainable design for the full life of the development by planning for net-zero emissions for new development and improving the energy, water and waste performance of existing development and infrastructure.

The Proponent noted the BPSPP identifies both Objectives and Strategies and submitted the Objectives are binding on Responsible Authorities while the Strategies are not. It submitted:

- a responsible public entity is only required *“to have regard to”* the above strategy because it is not expressed to be a provision that is binding
- Council’s proposed provisions go far beyond Strategy 8.8
- it cannot be said that a failure to implement them would result in any inconsistency with the relevant objective or any conflict with Strategy 8.8
- Council’s ESD provisions have no basis in any policy within the Scheme, are uncertain in their scope and effect, and incorporate jargon and undefined terminology.

Ms Jordan did not support the revised requirements proposed by Council. She considered they were overly prescriptive. She said:

- the intent of an ESD strategy at the Development Plan stage should be about setting the broad parameters for future design and development to work towards
- ESD requirements cannot or should not nominate very specific design features or outcomes, as these can only be fully understood and comprehensively assessed at the permit application stage

²³ D41

- it is very likely that planning policies and the overarching approach to ESD may change significantly over the life of the Development Plan.

For example, Ms Jordan considered the proposed dot point on conducting a “*life cycle assessment*” for embodied carbon and identifying benchmarks for reduction would be difficult to apply and assess when development is at a preliminary stage.

The Proponent submitted the exhibited ESD provisions should be deleted and replaced with the following (or substantially similar) provision:

A sustainability assessment must be prepared for any development plan. The sustainability assessment must be prepared to the satisfaction of the responsible authority and include:

- An assessment of the nature of the proposed development and the site conditions which present opportunities or constraints for achieving sustainable design outcomes.
- A framework which identifies how the development of the relevant land can achieve Environmentally Sustainable Design (ESD) outcomes in accordance with any relevant policies and strategies developed by the City of Greater Geelong and the Victorian Government.

(iii) Discussion

The delivery of ESD is important and should form part of both the design and delivery of urban and suburban areas. The Planning Scheme is committed to delivering ESD outcomes through Clause 15.01-2L and through the objectives and strategies of subdivision design (Clause 15.01-3S), building design (Clause 15.01-2S) and the delivery of healthy neighbourhoods (Clause 15.01-4S).

The purpose of ESD provisions within a DPO is to set an overarching strategy for the future delivery of the centre or precinct to ensure that ESD is a key feature at the planning approval stage in the statutory process. The Panel agrees with Ms Jordan that both the exhibited DPO46 and Council’s Day 1 version are too detailed, could give rise to uncertainty in their application and go beyond the existing policy in the Planning Scheme.

It is not the role of the DPO46 to set the standards for ESD outcomes. Instead, it should seek to ensure that a Development Plan responds to any relevant provisions of the Planning Scheme that identify ESD outcomes, objectives, or benchmarks. Council’s drafting does not do this. It departs from the existing planning policies and sets a difficult task for a developer given Council’s proposed provisions have no real context or basis upon which to assess the development’s suitability. The standards proposed, while important and meritorious, are somewhat arbitrary and undefined and difficult to implement at the Development Plan stage.

The Panel considers the exhibited ESD provisions should be simplified and replaced with the Proponent’s suggested wording. This sets out a set of clear principles or goals to be addressed and provides the necessary guidance for the issue of planning permits in the future. This approach will allow for flexibility given it is likely that planning policies and the overarching approach to ESD will change significantly over the life of the Development Plan.

(iv) Conclusion and recommendation

The Panel concludes:

- The ESD provisions in the exhibited DPO46 are overly prescriptive and stringent. They should be replaced with the Proponent’s suggested wording, which the Panel prefers to Council’s revised wording.

The Panel recommends:

3. **Revise Development Plan Overlay Schedule 46 as shown in Appendix E to delete the provisions dealing with Environmentally Sustainable Design and replace them with a set of clear principles and goals to be addressed.**

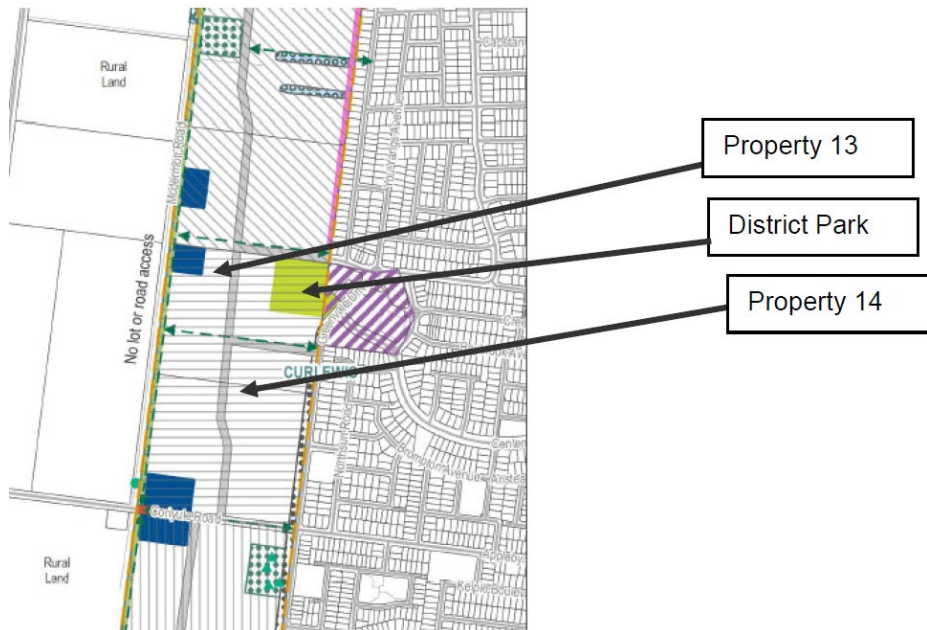
3.3 Residential and retirement village requirements

The land use terms ‘retirement village’ and ‘residential village’ were used interchangeably throughout the Hearing, although they are defined differently in the Planning Scheme. Where it is unclear whether parties or witnesses were referring to a retirement village or residential village, this report refers to a ‘village’ without specifying which type.

(i) Background

Map 1 of the Framework Plan shows a District Park on Property 13, opposite the proposed Neighbourhood Activity Centre. See Figure 8.

Figure 8 Map 1 of Framework Plan – Properties 13 and 14 and District Park Location



Source: D1ad

The Proponent proposes to develop a village on Properties 13 and 14. To assist the Panel, the Proponent produced an indicative masterplan of the proposed village layout (Figure 9) which includes a 14 metre wide access street along the south and west boundaries of the District Park.

Figure 9 Proposed village layout



Figure 5.2 - Stockland's indicative Concept Design overlaid on Post-exhibition Framework Plan

Source: D40

Clause 4.0 of the DPO46 seeks to restrict residential and retirement villages within proximity of the District Park as follows:

The use and development must not be located within 100 metres of the boundary of the district park.

More generally, the DPO46 contains specific requirements for a village that must be provided for in a Development Plan which focus on public connectivity. These include requirements relating to:

- pedestrian connectivity
- gates to remain open during daylight hours
- low transparent boundary fencing
- dwelling frontage which ensures passive surveillance and activation.

(ii) The issues

The issues are whether:

- a village should be prohibited within 100 metres of the District Park
- the DPO46 otherwise unreasonably limits the potential for a village to operate.

(iii) Evidence and submissions

Council

Council submitted that while it was entirely appropriate for a village to be developed on land within the Growth Area, the proposed restrictions in the exhibited DPO46 should be supported. It submitted the Proponent's proposed layout for the village (Figure 9) has no status and does not necessarily reflect what will be built.

Council submitted:

- without the proposed buffer:
 - the District Park could be surrounded by a village on three sides (with the Neighbourhood Activity Centre on the remaining side)
 - this could present a barrier to accessibility to the District Park given the village would be gated with no public access or permeability
 - the village will likely feature high fencing, which would detract from the amenity of the park
- the proposed 100-metre buffer would:
 - ensure different forms of housing could take advantage of the location and high amenity afforded by a District Park and Neighbourhood Activity Centre
 - facilitate access to the District Park from anyone using the shared path along the western boundary of the subject land.

Proponent

The Proponent opposed the restriction on locating a village within 100 metres of the District Park, submitting it would amount to a “*drastic*” restriction on the proposed use of its land as evidenced by Figure 10 which was produced by Council at the Panel's request.

Figure 10 Council proposed restriction on residential and retirement village development



Source: D57

As to permeability, the Proponent submitted:

- it is best dealt with at the planning permit stage and not by way of an exclusion zone
- the exclusion zone would not address the issue of allowing free public movement from east to west through the village
- there is a shared user path from east to west proposed at the top of the District Park and Coriule Road provides east-west access at the bottom Property 14, with both providing acceptable east-west permeability.

The Proponent submitted:

- a village is an important component for the Growth Area and will seek to meet an important community need
- villages need to be close to activity centres and open space networks and the proposed 100 metre buffer would be contrary to this requirement
- restricting access for residents of a village to the District Park is inappropriate
- the concept master plan for the village (Figure 9) indicates a public street as the interface with the park, which is typical of park-edge access streets used in Melbourne's growth areas and there would no monopolisation of the park by the village
- there would be no high fencing at the interface to the park.

The Proponent said its case was supported by the example in Figure 11 as to how the interface with the park would look.

Figure 11 Residential/retirement village interface example

Source: D80

Ms Jordan opposed the 100 metre restriction and also considered the specific requirements sought by the DPO46 for villages was too restrictive. She said the application of the proposed requirements would be contrary to the way a village typically operates and would unreasonably limit the potential for this form of housing to fully contribute to the township more broadly. Ms Jordan said villages were typically designed to include:

- a limited number of vehicle entry and exit points – typically a maximum of two
- a private road network
- a gate or similar barrier at the primary point of entry to manage movement into and out of the village to provide residents with a sense of security
- specific or unique requirements relating to road widths, treatment of pedestrian movement and the extent of communal spaces and facilities.

Ms Jordan considered the DPO46 drafting warranted refinement given the unique nature and key features of a village. She said the DPO46 should acknowledge the need for village to integrate appropriately with surrounding development, including with areas of public open space, and ensure any restriction on access for the public is reasonable.

In his landscape evidence for the Proponent, Mr Murphy supported a public street interface with the District Park, and said:

The degree to which any parkland would be “encased and monopolised” by surrounding land uses is significantly dependent on:

- the public realm that surrounds the park; and
- the character of the attendant built form and how it addresses the street and open space.

Mr Murphy explained:

- the type of interface proposed in the Proponent’s proposed layout for the village (Figure 9) is consistent with typical park-edge access streets used throughout Melbourne’s growth areas
- the proposed layout will have no private driveway crossings, allowing for increased parking opportunities and street planting
- the continuation of Oceania Drive to the north of the park will remove any potential sense of encasing or monopolising the park
- the intended dwelling design response in the village would create a typical park-edge whereby front doors will face the park and public road with low front fencing.

Mr Murphy suggested the public street around the District Park should be 14.5 metres (rather than 14 metres) and Mr Walsh agreed.

(iv) Discussion

The Panel accepts that a village would benefit the area. Retirement villages are designed to meet the needs of elderly residents, and residential villages typically offer, amongst other matters, diverse housing that is affordable.

The Panel accepts the importance of retirement and residential villages being located within a close walkable catchment to activity centres, services, public transport and open space networks. It is also cognisant of the special design features of retirement and residential villages and how these will interact with the proposed District Park.

The Panel is confident Council will be able to successfully negotiate an appropriate design response for any village development adjacent to the park. A hard restriction on a village within 100 metres of the park is not necessary.

Importantly, the design features of a village (for example, lack of driveways, front facing dwellings, increased opportunity for street landscaping and low fences) have the potential to create a high amenity environment adjacent to the proposed park. The interface proposed in the Proponent's concept masterplan (Figure 9) is consistent with typical park-edge access streets throughout Melbourne's growth areas.

The Panel accepts that the concept masterplan in Figure 9 may not represent what is ultimately built, and that the design and layout will not be determined until the planning permit stage. However, the DPO46 should be revised as suggested by Ms Jordan and supported by the Proponent to ensure that if the village is located adjacent to the District Park, the park will be surrounded by a 14.5 metre wide local street/road reserve which the Panel considers appropriate.

Regarding permeability, the Panel accepts the shared user path north of the District Park and Coriyule Road to the south will provide acceptable east-west permeability in this part of the Growth Area. The path to the north of the District Park will create access directly into the activity centre and will appropriately link it to both the park and the western edge of the subject land.

The Panel accepts the evidence of Ms Jordan about the typical nature of retirement villages and agrees further refinement of the DPO46 is required in this respect. The Panel has generally accepted the proposed wording suggested by Ms Jordan and the Proponent, subject to minor changes.

(v) Conclusions and recommendation

The Panel concludes:

- It is not appropriate or justified to restrict the location of a village within 100 metres of the District Park, subject to changes to the DPO46 to ensure an appropriate interface design response including a 14.5 metre wide road reserve.
- Further refinement of the DPO46 is warranted to ensure any proposed retirement or residential village is able to function appropriate to its needs.

The Panel recommends:

4. **Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:**
 - a) **Delete the provision which restricts the use and development of land within 100 metres of the District Park boundary for a residential or retirement village.**
 - b) **Ensure an appropriate design response for the interface between a residential or retirement village and the District Park.**
 - c) **Ensure any proposed retirement or residential village can be designed to function appropriate to its needs.**

3.4 Small Lot Housing Code

(i) Background

The *Small Lot Housing Code - Practice Note* (November 2019) specifies that the mechanism to activate the use of the Small Lot Housing Code (SLHC) is set out in the Schedule to the Urban Growth Zone or in another Special Purpose Zone.

Activation of the SLHC would remove the requirement for a planning permit for the construction of a single dwelling on a lot smaller than 300 square metres.

(ii) The issue

The issue is whether it is appropriate for the SLHC to apply to the subject land, and if so, how it should be implemented.

(iii) Evidence and submissions

The Proponent is seeking the application of the SLHC and submitted it could be activated by two mechanisms suggested by Ms Jordan:

- the introduction of a Specific Controls Overlay (SCO) and an Incorporated Document
- through mandatory conditions drafted into Clause 3.0 of the DPO46.

Ms Jordan explained:

- the SLHC was primarily introduced to advance the delivery of housing on smaller lots in Melbourne's growth areas and has also been used in Precinct Structure Plans and Comprehensive Development Plans
- if the standards of the SLHC are achieved, approval is provided in the form of a building permit issued by a building surveyor.

The Proponent submitted the adoption of the SLHC would support, amongst other matters, housing affordability by expediting the delivery of affordable small lot housing.

Council supported, in principle, the use of the SLHC but considered it could only be activated in special purpose zones which is beyond the scope of the Amendment.

The Proponent disagreed. It said:

- the issue of the SLHC was raised in its original submission to Council
- the Panel can make recommendations concerning the issues raised, which include the application of the SLHC

- should the Minister consider that further exhibition of the Amendment is required to introduce the SLHC, the Minister can re-exhibit the Amendment following the adoption by Council and prior to the approval by the Minister.

The Panel asked the Proponent whether the changes made to the VicSmart provisions under Amendment VC243 had any bearing on the approval pathways for lots which are less than 300 square metres, thereby removing the need for the SLHC.

The Proponent responded:

- although the VicSmart pathway applies to lots under 300 square metres, it does not assist with the delivery of houses which comply with the SLHC, because the VicSmart pathway is only available where a dwelling complies with certain standards in Clause 54 of the Planning Scheme
- there would be a significant time and cost burden incurred without the application of the SLHC
- applying the SLHC would be consistent with long standing State and local policy.

(iv) Discussion

The Panel supports, in principle, use of the SLHC. Its benefits are well recognised including being a cost and time efficient method of delivering dwellings to market, facilitating dwelling diversity and delivering an opportunity for an affordable form of housing compared with traditional detached dwellings on larger allotments.

To implement the SLHC, the Panel prefers Mr Jordan's option one (adopting the SLHC using a SCO). In the absence of the Urban Growth Zone or a special purpose zone, the SLHC is best implemented using a special purpose control rather than drafting mandatory conditions into Clause 3.0 of the DPO46.

The question remains whether it is appropriate to introduce a SCO to implement the SLHC at this stage of the amendment process. Despite the benefits of the SLHC, the Panel agrees with Council on this issue and considers the inclusion of the SLHC is arguably beyond the scope of the Amendment. If the SLHC is to be applied, it should be progressed either through further notice as part of this Amendment, or through a separate amendment process.

(v) Conclusions

The Panel concludes:

- Use of the SLHC would benefit the development of the subject land. It would support, amongst other matters, housing affordability by expediting the delivery of this model of affordable housing.
- In the absence of the Urban Growth Zone or a special purpose zone, the Specific Controls Overlay would be the appropriate mechanism to apply the SLHC to the subject land.
- The introduction of the SLHC would be a significant change to the Amendment, and is arguably beyond its scope. If it were to be progressed as part of this Amendment, the Minister may wish to consider further notice before approving the Amendment. Alternatively, it could be implemented later through a separate amendment process.

3.5 1425-1429 Portarlington Road

(i) Background

1425-1429 Portarlington Road, otherwise known as Property 30, is located within the Southern Residential Area of the Framework Plan. It enjoys direct access off Portarlington Road in the south-east corner of the site, with another existing entry on Tivoli Drive.

The legend in the Framework Plan designates the site as 'Potential Non-Residential Uses' and illustrates the site as being subject to the 'Portarlington Road Vegetation Interface Treatment' along its southern boundary.

Portarlington Road Pty Ltd, the owner of 1425-1429 Portarlington Road, is seeking to redevelop Property 30 with a service station, convenience restaurant, childcare and a medical centre.

(ii) The issues

The issues are whether:

- the designation of Property 30 as a 'potential' non-residential use should be changed to 'supported'
- the 'Portarlington Vegetation Interface Treatment' that extends along the southern boundary of the subject land should apply to non-residential interfaces
- the 'no lot or road access' restriction on Portarlington Road in the Framework Plan and corresponding requirement at Clause 4.0 of the exhibited DPO46 should apply to non-residential lots
- the DPO46 should contemplate the inclusion of a commercial signage strategy.

(iii) Submissions

Portarlington Road Pty Ltd submitted the requirements of the DPO46 are likely to frustrate the future commercial development of Property 30. It submitted:

- the Amendment should reflect the intent for commercial development on Property 30
- utilising the Commercial 1 Zone would be more appropriate for a site with the potential to be used for non-residential purposes
- the non-residential uses designation on Property 30 on the Framework Plan should be changed from 'potential' to 'supported'
- the Framework Plan should limit the extent of the Portarlington Road Vegetation Interface Treatment buffer to the edge of the land nominated for residential purposes
- left out access from the site onto Portarlington Road, and right turn access into the site from Tivoli Drive should be permitted
- the DPO46 requirements should more expressly contemplate a well-designed commercial signage strategy.

Council did not agree with the changes proposed and submitted:

- the Amendment proposes to rezone the site to GRZ1 and the Urban Growth Plan does not identify the site for anything other than residential use
- the Portarlington Road Vegetation Interface Treatment is required in response to the BPSPP
- neither Council nor the Department of Transport support direct access to Portarlington Road from Property 30

- a commercial signage strategy is not appropriate
- this matter (except the rezoning request) could be considered at the planning permit application stage.

(iv) Discussion

The Panel considers the designation of Property 30 as ‘Potential Non Residential Uses’ is appropriate. Whether the land can appropriately accommodate commercial uses can be considered at the permit application stage. The proposed zoning (GRZ1), the DPO46 and the site’s location adjoining a road in a Transport Zone 2 will not prevent consideration of non-residential uses on the site.

The Panel has included changes in the Panel preferred version of the DPO46 in Appendix E which will allow better flexibility for the consideration of access requirements for non-residential uses from Portarlington Road.

The Panel supports, in principle, the Portarlington Road Vegetation Interface Treatment along the Southern Residential Area of the Framework Plan, and along the southern boundary of Property 30. However, it considers it is more appropriate for residential uses. Given Property 30 is designated as having the potential for a non-residential use, it should be provided an opportunity, if appropriate, to gain direct access to Portarlington Road. Changes should be made to the DPO46 to accommodate this. Detailed access arrangements can be considered at the permit stage.

Signage matters can be appropriately considered at the permit application stage.

(v) Conclusions and recommendation

The Panel concludes:

- The ‘Potential Non Residential Uses’ designation and the GRZ1 are sufficient to allow the consideration of non-residential land uses on Property 30.
- The ‘Portarlington Vegetation Interface Treatment’ is more appropriate for residential interfaces. Non-residential interfaces should be provided an opportunity, if appropriate, to gain direct access to Portarlington Road.
- Signage matters can be appropriately considered at the permit application stage.
- The DPO46 should be refined to provide better guidance for the consideration of access requirements for non-residential uses.

The Panel recommends:

- 5. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:**
 - a) Provide better guidance for the consideration of access requirements for non-residential uses**
 - b) Amend the ‘Portarlington Road Interface Treatment’ on the Framework Plan to make it clear that access to non-residential uses from Portarlington Road can be considered for Property 30.**

4 McDermott Road (western) interface

4.1 Background

Submitter 42 owns land directly opposite Properties 12, 13 and 14, at 71–89 McDermott Road and 1–69 McDermott Road (see Figure 12). This land contains a significant heritage property informally referred to as Coriyule, Coriyule Homestead or Coriyule Mansion.

Figure 12 Submitter 42 land



Figure 13 Coriyule Mansion

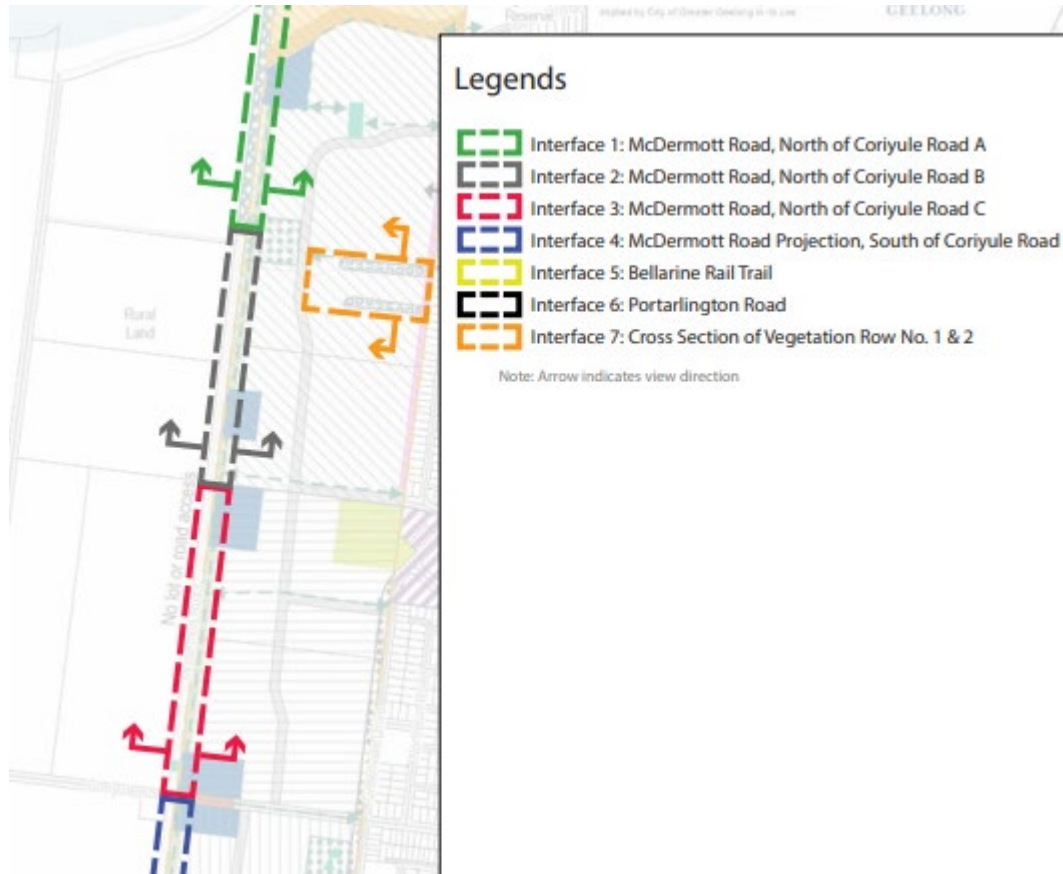


Source: D66

The Framework Plan (see Figure 2) shows a ‘Rural Interface Vegetation Treatment Including Shared Path’ along the western boundary of the subject land where it abuts McDermott Road. It is not clear from the Framework Plan whether this is intended to form part of the subject land or the McDermott Road reserve.

The Development Plan Overlay Schedule Background Landscape Report, the City of Greater Geelong, November 2022²⁴ (Background Landscape Report) shows a series of proposed interface treatments, including proposed cross-sections for different parts of McDermott Road (see Figure 14). The Background Landscape Report was prepared by Council to assist with understanding the proposed interface treatments with rural land to the west and to the south of the subject land. The DPO46 requires that the Development Plan must incorporate an Urban Design Masterplan that includes interface treatments to the rural land to the west and south which are guided by the Background Landscape Report.

Figure 14 McDermott Road proposed interface treatments

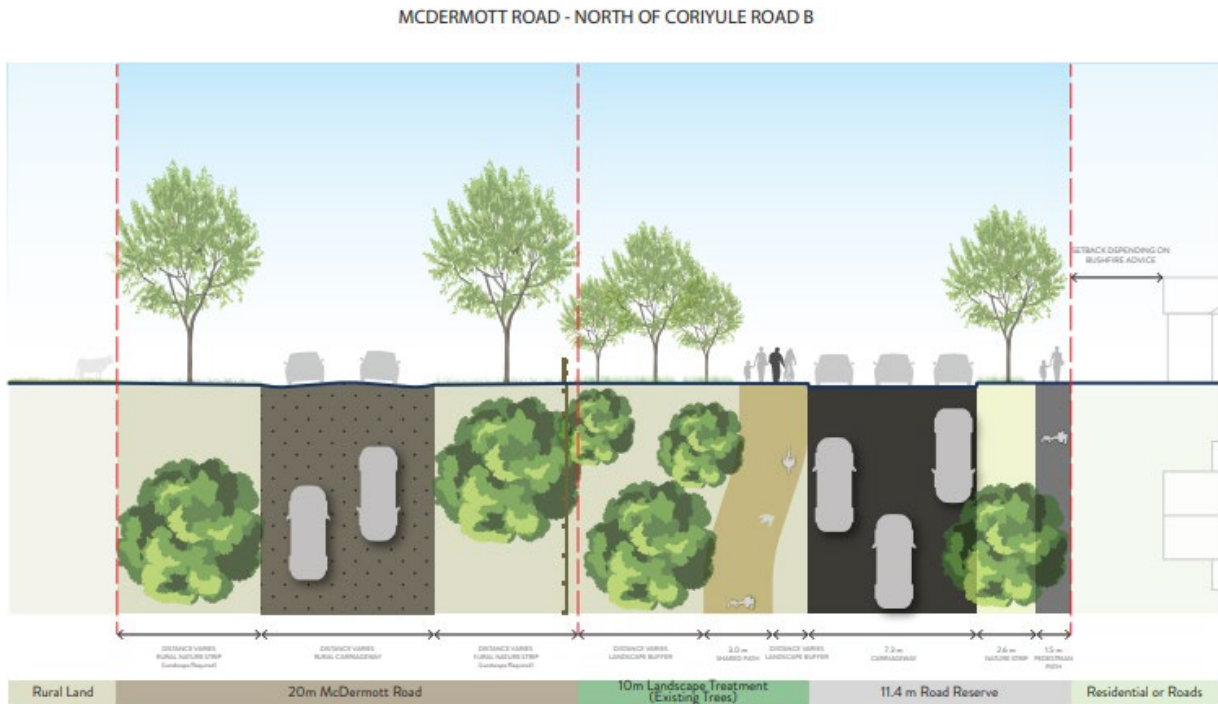


Source: D1au

Interfaces 2 and 3 relate to the section of McDermott Road that runs north of Coriyule Road, alongside Properties 11, 12, 13 and 14. See Figure 15 and Figure 16.

²⁴ D1au

Figure 15 McDermott Road cross section – Interface 2



Source: D1au

Figure 16 McDermott Road cross section – Interface 3



Figure 6.1 - Interface 3: McDermott Road, North of Coriyule Road C - proposed interface to Properties 13 & 14

Source: D1au

Both Interfaces show:

- landscaping on both sides of McDermott Road within the existing road reserve
- a proposed new internal loop road along the western perimeter of the subject land, including a nature strip on each side and a pedestrian path to its east
- a shared user path parallel to the western perimeter of the subject land

- building setbacks within the subject land from the new internal loop road.

The key difference between the two interfaces is the alignment of the shared user path, which in Interface 2 curves away from the western perimeter of the subject land to accommodate a wider landscape treatment that retains existing trees.

4.2 The issues

The issues are whether:

- the shared user path should be located within the existing McDermott Road reserve or within the subject land
- the DPO46 appropriately protects the rural character of the western interface of the subject land.

The shared path issue potentially has implications for the Stage 2 DCP.

4.3 Evidence and submissions

(i) Shared user path

The Proponent submitted the shared path should be located within the existing McDermott Road reserve. It said if the shared user path were to be provided in private land, it should be credited as unencumbered open space.

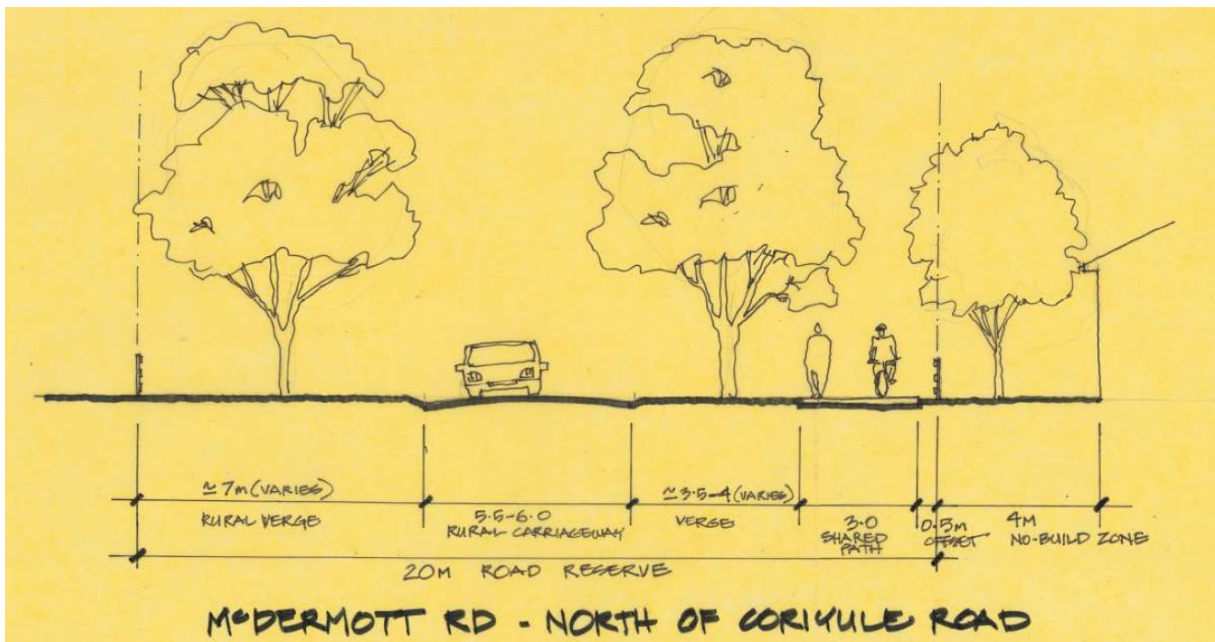
Mr Walsh gave traffic evidence for the Proponent. His view was:

- the existing verge on the eastern side of McDermott Road is more than sufficient to accommodate a shared user path
- there are no other physical reasons why the shared path should not be accommodated in the road reserve, as contemplated by the Urban Growth Plan.

Mr Murphy said the inclusion of the shared path within the existing McDermott Road reserve is appropriate from a landscape design perspective and would integrate sensitively with the rural interface. He proposed an alternative cross-section to demonstrate how this could be achieved (see Figure 17). Mr Murphy said:

A rural road interface can be readily achieved with the location of the shared path along the eastern side of the [existing] generous 20 metre McDermott Road road reserve. Incorporation of the path will still accommodate the planting of substantial trees on both sides of the road. The proposed 4m 'no build zone' will allow the further reinforcement of this rural interface with additional substantial tree planting.

Figure 17 Murphy cross-section of proposed McDermott Road interface



Source: D21

Ms Jordan said:

- the Urban Growth Plan identifies that the shared path is proposed to be accommodated within the existing McDermott Road reserve
- the path would ultimately need to be vested in Council given its planned public usage and the need for it to be well-maintained
- if the pathway was to sit within the subject land, then this should be funded by the DCP.²⁵

The Proponent took the Panel through the Urban Growth Plan, in particular objectives 19.5, 19.9, 20.11 and 24.4, and submitted:

- the Urban Growth Plan makes it clear the McDermott Road reserve was to act as the interface and buffer against the newly developed growth area land
- McDermott Road was to form a pedestrian and bicycle link in the Growth Area's open space network
- this concept was departed from in the Background Landscape Report, which depicts the shared pathway as being located within Properties 13 and 14.

The Proponent opposed the approach adopted in the Background Landscape Report because:

- it is inconsistent with the Stage 2 DCP as the DCP would have included an allowance for the acquisition of the land needed for the shared path (or credited the land as part of the open space contribution) if the path was to be located within the subject land
- locating the shared pathway within the subject land is a waste of valuable urban land.

Council submitted the Proponent's position ignores the statutory requirement at section 46ZK of the PE Act which provides that a Responsible Authority must not act inconsistently with any provision of the BPSPP that is expressed to be binding. It referenced the BPSPP which states:

²⁵ Mr Walsh and Mr McNeill supported this position.

Curlewis is characterised by contemporary, urban development, with larger houses on smaller lots. Development in the western future urban area will be designed to integrate with the surrounding, regionally significant landscape. **It will provide a sensitive urban-rural transition to adjacent rural land and the Bellarine Rail Trail.** (Council emphasis)

Council referred to Mr Murphy's proposed cross-section and submitted:

- his proposed four-metre 'no build' zone from the boundary of the Rural Zone is inconsistent with the provisions of the BPSPP
- it *"presents a completely opposite approach to how one might reasonably consider that the interface at the permanent edge of a township ought be dealt with"*
- Council will not manage McDermott Road as defendable space (from a bushfire perspective) because to do so would significantly impact the vegetation in McDermott Road – instead, it is likely to be landscaped more intensively over time to contribute to an appropriate interface.

Submitter 42 said any shared pathway associated with the subject land should be contained within the subject land and not within the existing McDermott Road reserve. Submitter 42 noted that in both Figure 15 and Figure 16, the shared path is shown within the boundary of the subject land. It said the purpose of the Background Landscape Report was to provide guidance regarding the treatment of the western boundary landscape context and it is difficult to understand why the Proponent now suggests it should be provided within the existing McDermott Road reserve rather than within the subject land.

(ii) Western interface

Submitter 42 said McDermott Road, including the road reserve, should either continue to appear as it does now (in its rural context) or be enhanced through further landscaping (within the eastern side of the road reserve) to the extent possible.

Submitter 42 sought changes to the DPO46 to incorporate a landscape plan for the McDermott Road interface showing the extent of planting, tree size and fencing details.

4.4 Discussion

(i) Shared user path

The background strategic material provides a number of potential solutions with respect to the location of the proposed shared path, and it is not clear where exactly the path was intended to sit²⁶. The Proponent took the Panel to the provisions of the Urban Growth Plan to illustrate what it said was an intention that it sit within the existing McDermott Road reserve (as it relates to Properties 12, 13 and 14).

Submitter 42 relied on the Background Landscape Report and other provisions within the Urban Growth Plan to illustrate an intention that the path was to sit within the subject land.

The Panel is unable to draw any clear conclusion from this analysis as to exactly where the path was 'intended' to sit.

²⁶ Noting that further north (Interface 1) it is clear that the shared path is to be located outside the subject land. This Interface envisages that McDermott Road will be closed to vehicles north of the 121-201 McDermott Road private access driveway.

On the basis of the evidence of both Mr Walsh and Mr Murphy, the Panel is satisfied the shared pathway can be accommodated within the existing McDermott Road reserve. Indeed, this is what is proposed south of Coriyule Road. Mr Murphy's proposed interface treatment (Figure 17) demonstrates how the shared path can be included within the road reserve and achieve an appropriate landscape design outcome. From a traffic perspective, Mr Walsh agreed the existing verge on the eastern side of McDermott Road would be more than sufficient to accommodate a shared user path and considered Mr Murphy's proposal to be a logical outcome.

The Panel considers that locating the shared path within the existing McDermott Road reserve will achieve a suitable rural/urban interface while also increasing the amount valuable urban land available in the subject land for future development, consistent with state and local policy and direction.

In considering whether Mr Murphy's proposed interface treatment represents an appropriate outcome for bushfire risk, the Panel has considered the Background Landscape Report in conjunction with the exhibited Bushfire Risk Assessment conducted by South Coast Bushfire Consultants dated 29 April 2022 (Bushfire Report).

The Bushfire Report recommends a 22-metre defendable space setback to development in the subject land. Mr Murphy's proposed interface achieves the defendable space requirements in the Bushfire Report. It shows a 20-metre road reserve (the existing McDermott Road reserve) and four-metre no build zone within the subject land. It is worth noting that the Bushfire Report assumed that the McDermott Road reserve will be utilised to manage bushfire risk. Council will need to manage the road reserve to ensure it is maintained as defendable space.

The Panel considers it appropriate that the shared path be located within the McDermott Road reserve alongside all properties that have a western frontage with McDermott Road, including Properties 11 (part), 12, 13 and 14.

(ii) Western interface

The Panel understands and appreciates the position of Submitter 42 and the desire to preserve the amenity of their property. However, the rezoning of the subject land to urban land will inevitably result in an interface and outlook that is different. While the interface can be protected to a degree, it will not continue to appear as it does now.

In any event, the role of the interface is not to protect the amenity of the Coriyule Mansion property. Rather, it is to ensure there is an acceptable visual transition between the rural and urban land. This requires an appropriate interface to be balanced against other considerations, such as ensuring urban land is developed efficiently and the long term strategic vision for the residential use of the subject land. The interface will be guided by the BPSPP, which seeks to achieve a sensitive urban-rural transition. The transition needs to be thoughtful and considered, balancing the valued rural characteristics of the area with the provision of urban land for housing.

In the Panel's view, a sensitive transition based on Mr Murphy's proposed interface can be achieved through careful, considered and detailed design and the use of appropriate materials, particularly with respect to planting, the shared path and fencing styles, consistent with the

matters raised by John Patrick in his letter of advice dated 29 April 2024²⁷ which was tendered as part of Submitter 42's written submission.

The Panel considers some refinement to the DPO46 will assist in achieving an appropriate transition, including the addition of specific provisions which seek to protect and enhance the rural character of the western boundary of the subject land (such as a requirement for rural style fencing along the western interface). These have been included in the Panel preferred version in Appendix E.

(iii) Implications for the Stage 2 DCP

For completeness:

- Given the Panel has found the shared path should be located within the existing McDermott Road reserve, there is no need for an allowance for land acquisition for the shared path in the Stage 2 DCP, as suggested by the Proponent.
- In terms of construction and costs of the path, the Panel considers the path should be delivered as developer works (each landowner/developer of land abutting the McDermotts Road reserve should construct the section of the shared path along the length of their frontage). It is not necessary to include construction costs in the DCP however the Panel has suggested the inclusion of section 173 agreement to deal with this matter in the Panel's version of the DPO46.

4.5 Conclusions and recommendation

The Panel concludes:

- The shared user path at the western interface of the subject land should be located within the existing McDermott Road reserve and not within the subject land.. The shared user path should be delivered as developer works (each landowner/developer of land abutting the McDermotts Road reserve should construct the section of the shared path along the length of their frontage).
- A suitable sensitive urban-rural transition can be achieved at the western interface within the existing McDermott Road reserve through careful and considered design.
- The Panel considers the DPO46 should be strengthened to better protect and enhance the rural character of the western interface of the subject land.

The Panel recommends:

6. **Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:**
 - a) **Ensure the Framework Plan clearly indicates that the shared user path along the western frontages of the subject land (where it abuts McDermott Road) will be located within the existing McDermott Road reserve.**
 - b) **Include a provision requiring a section 173 agreement which requires the shared user path to be delivered as developer works.**
 - c) **Strengthen the provisions which seek to protect and enhance the rural character of the western interface of the subject land.**

²⁷ D66c

- d) Require a minimum four-metre deep 'no build zone' inside the western boundary of the subject land within which no buildings of any kind can be constructed, to achieve bushfire defensible space requirements.**

5 Inclusion of the Stage 2 Drain in the Stage 2 DCP

5.1 Background

Residential subdivision in the Stage 1 Jetty Road Urban Growth Area (Stage 1 Jetty Road) commenced in 2011, however the stormwater management strategy for Stage 1 did not consider how to reduce the impact of post-development stormwater volumes on the downstream system.

As construction began, stormwater management became an issue as frequent flows from the Stage 1 land caused flooding, erosion, and sediment accumulation within downstream private properties and along the Coriyule Road reserve. To address this Council constructed and funded Stage 1 of the Coriyule Road drain (shown as a purple dashed line in Figure 18).

Figure 18 Coriyule Road drainage outfall works



Source: D17

The flooding issues continued to persist for downstream landowners after the Stage 1 drain was constructed. Council constructed an extension of drain to the Port Phillip Bay outfall (the Stage 2 Drain, shown as a red dashed line in Figure 18).

Although the Stage 2 Drain is complete, Council proposes to apportion 62.67 per cent of the construction cost to the Stage 2 DCP (with the balance treated as an 'external allowance'). The project is described as DR-02 in the Stage 2 DCP, and the cost apportioned to the DCP is \$2,470,137, apportioned to Charge Areas 2 and 3.

(i) The issues

The issues are whether:

- a DCP can charge for existing infrastructure
- it is appropriate to include the Stage 2 Drain (DR-02) in the Stage 2 DCP, and if so, what is the appropriate apportionment of the Stage 2 Drain.

5.2 Threshold question

Council asked the Panel to “*decline to consider the legal argument*”. Council submitted:

To crack a nut, the proponent is asking the Panel to use a sledge hammer. It is unnecessary and the Panel should decline because not only is the argument incorrect, but the ramifications of the Panel’s recommendations in the context where its recommendations are not legally binding.

However, acknowledging that the reports of PPV carry weight and are generally followed, the broad arguments put by the proponent if adopted have the capacity to cause significant implications on the manner in which the *Planning and Environment Act 1987* is administered in relation to the preparation of and indeed even the use of Development Contribution Plans even if the Panel’s conclusions as to legality are incorrect.

Consequently, if the Panel declined to enter into the debate on legality, and instead relied on the presumption of regularity, that is that the Minister’s authorisation of this planning scheme amendment is lawful because it can be presumed that the Minister would never have authorised an unlawful act, it would then be up to the proponent to take legal action to establish that the DCP is unlawful. That, we submit, is the more preferable approach. It ensures that any arguments about lawfulness could then be determined by a court of competent jurisdiction.

The Proponent submitted that Council’s submissions on these issues are misguided, contain numerous legal errors and should be rejected. The Proponent submitted a key obligation of a Panel is the requirement that it consider all submissions referred to it.²⁸ The Proponent took the Panel to the decision of Justice Garde in *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101 where it was identified that to consider submissions is one of the “*primary duties*” of a Panel.

The Proponent submitted:

There can be no doubt that the Panel is legally bound to consider a submission, even a legal submission. To suggest that it can choose to do otherwise is manifestly incorrect.

The Council’s position appears to proceed on the mistaken premise that, if the Panel were to consider the legal arguments or express their views about them, that it would be making a legal ruling or (as it states at [12]) “drawing legal conclusions”. This is wrong.

As explained in *Dustday* at [84] to [87], Panels do not resolve legal claims or disputes. Rather, “they are simply giving advice based on their expertise and their assessment of submissions”. (*Dustday* at [87]). In the present case, the Panel’s expertise includes expertise in law.

In relation to Council’s assertion that the Panel can rely on “*the presumption of regularity*” and assume that “*the Minister would never have authorised an unlawful act*”, the Proponent submitted “*this proposition demonstrates a misunderstanding what the ‘presumption of regularity’ means as legal concept, or the manner that it operates in legal terms*”.

²⁸ Section 24 of the PE Act

The Panel agrees with the Proponent that while Panels do not resolve legal claims or disputes, they are tasked with giving advice based on their expertise, and in this case, the Chair's expertise includes law. The Panel agrees with the findings in *Dustday* that its primary duty is to consider all submissions before it, and while it is not in a position to make a legal ruling, it is entitled to express an opinion on legal matters.

The Panel does not agree with Council's submission that the Panel can rely on "*the presumption of regularity*" and assume that "*the Minister would never have authorised an unlawful act*". The presumption of regularity is a legal principle that courts apply to presume that where legislation requires a prior act to give it legal effect, in the absence of evidence to the contrary, it is appropriate to presume the prior act has been done. The Panel does not agree with Council that the presumption operates to justify an assumption that the act of authorising a planning scheme amendment means that it has been prepared free from any legal defect.

The Panel determined to:

- consider the question on whether a DCP can include existing infrastructure
- express an opinion and make a recommendation based on its assessment of the legal submissions made.

5.3 Evidence and submissions

Council

Council submitted it is lawful for a DCP to charge for existing infrastructure as proposed by the Stage 2 DCP with respect to the Stage 2 Drain. Council took the Panel to Part 3B of the PE Act which provides the framework for including DCPs in the Planning Scheme. It highlighted section 46I which provides the legislative basis for a planning scheme to include one or more DCPs:

- 46I(1) Without limiting section 6, a planning scheme may include one or more development contributions plans for the purposes of levying contributions to fund—
- (a) the provision of works, services and facilities in relation to the development of land in the area to which the plan applies; and
 - (b) the reasonable costs and expenses incurred by the planning authority in preparing the plan and any strategic plan or precinct structure plan relating to, or required for, the preparation of the development contributions plan.

Council submitted none of the Part 3B provisions prohibit a DCP from funding existing infrastructure, and "*there is no question as to legality*".

Council referred to the *Development Contribution Guidelines* (June 2003, as amended 2007) (DCP Guidelines) which provides guidance in relation to DCPs, including the types of infrastructure that can be included in a DCP, as follows:

What infrastructure projects can be included in a DCP?

A DCP may include infrastructure to be provided by a council or State Government agency. Basic utilities, such as water supply and sewerage, provided by servicing authorities under their own legislation cannot be included in a DCP. The types of projects in a DCP can include the following:

- a new item of infrastructure
- an upgrade in the standard of provision of an existing infrastructure item
- an extension to an existing facility, or
- the total replacement of an infrastructure item after it has reached the end of its economic life.

A DCP cannot be used to fund the total replacement of an infrastructure item if the replacement is necessary as a result of poor maintenance.

It is not appropriate to include existing infrastructure in a DCP that was funded through general taxes or rates.

However, where an infrastructure project has been provided as part of a DCP calculated on a projected share of usage basis, and the intention is to recover all or part of the cost of the facility from contributions from development beyond the timeframe of the DCP, it would be fair to include such a project in a subsequent DCP.

Council submitted the DCP Guidelines state:

- it is not appropriate to include existing infrastructure funded through general taxes or rates in a DCP
- the Stage 2 Drain was financed by Council and not funded through general taxes or rates with the intention it would be included in the Stage 2 DCP²⁹
- the financing is for a period until funds are made available by the DCP for its apportioned component

even if there was an issue about the project being funded through general rates (which there was not), the DCP Guidelines are not binding.

Council referred the Panel to Amendment C110³⁰ to the Melton Planning Scheme which proposed to apply a Public Acquisition Overlay over land required for a road and to amend an existing DCP to include the cost of the land acquisition of the road. The land that was subject to the Public Acquisition Overlay was already in Council ownership. The C110 Panel considered whether the acquisition of the land required for the road, which had already been acquired, could be included in the amended DCP. The C110 Panel concluded:

- there was no statutory provision to prevent a DCP from being amended to include existing infrastructure
- part 3B of the PE Act is broad and does not impose any restriction on the inclusion of existing infrastructure in a DCP.

In relation to the DCP Guidelines, the C110 Panel concluded:

- the DCP Guidelines are not determinative but form part of the range of policies that are relevant to the Panel's consideration
- it is not relevant that Council funded the compensation payment for the land acquisition through its development contributions cash reserves – the important point was that Council paid compensation to secure the transfer of the land before it was in a position to levy funding from the precinct
- the DCP Guidelines would benefit from some clarification and update, particularly with respect to expanding the circumstances in which it is appropriate for existing infrastructure to be included in a DCP.

Council submitted:

- consistent with the C110 Panel's conclusions, it is possible for the Stage 2 DCP to include the costs of existing infrastructure, such as the Stage 2 Drain

²⁹ Council relied on internal emails from 2018-2022 which discussed the potential inclusion of the Stage 2 Drain in the Stage 2 DCP as indicating that it was intended that the Coriyule Drain be included in the Stage 2 DCP. It suggested that this means it can, or should, be included.

³⁰ Melton C110 (PSA) [2012] PPV 94

- the PE Act does not provide any barrier to this
- the DCP Guidelines have not been updated, and do not reflect the correct law on this issue nor indeed desirable practice.

Council said:

Policy ought to encourage the early delivery of infrastructure, not discourage it. While it is normal for infrastructure providers to often wait until infrastructure is pressing (or even long overdue) before it is provided (e.g. roads) certain infrastructure must be in place from day 1 and policy should avoid discouraging the early provision of infrastructure. In that regard, the Guidelines reference to existing infrastructure is too simplistic and is long overdue for review.

The construction of the drain will enable Stage 2 of Jetty Road to discharge stormwater from day 1 in a lawful manner which does not have unreasonable impacts on nearby land. It is fortunate for development in Stage 2 that DR-02 has already been constructed. It means that developers will not have to employ volumetric control stormwater measures which are difficult and costly to provide.

Proponent

The Proponent undertook a detailed statutory interpretation exercise and took the Panel to the PE Act, the Ministerial Directions for the Preparation and Content of Development Contribution Plans and the DCP Guidelines.

PE Act

The Proponent submitted that, properly construed, Part 3B of the PE Act does not allow for the funding of a completed project through a DCP. It submitted the task of statutory construction needs to focus primarily on the actual words used in the relevant section or statute.³¹ In referencing section 46I(1)(a) of the PE Act the Proponent submitted:

- the words of the section need to be read together, not in isolation
- the phrase *“for the purposes of levying contributions to fund the provision of works, services and facilities”* identifies a singular purpose for a DCP which is to fund the provision of works, services, and facilities
- the *“provision of”* refers to a future occurrence, not something that has happened in the past
- had it been intended to cover existing infrastructure, section 46I(1)(a) would have included the words *“or which have already been provided and funded”* or similar
- it is not necessary for the section to say *“and you cannot fund existing infrastructure”* – statutes do not have to expressly exclude things that are inherently excluded by the words used.

The Proponent submitted:

It follows that the singular purpose of a DCP is to levy contributions to fund the *“act of providing”* the works, services, or facilities. It is to make the *“provision of”* the works, services, or facilities possible (i.e. to fund that provision) and not recoup the costs of an act of funding that occurred in the past, and through different means.

This is made clear by the facts that it is the contributions to the DCP that must fund the provision of the works, services and facilities. That is not what would occur if the works, services and facilities have already been paid for by the Council. In such a case the contributions are being used to pay money to a Council and have no direct connection to the funding of the works, services and facilities. To pretend otherwise is an artifice.

³¹ Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (2004) 239 CLR 27 at [4] and Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355 at [69].

The Proponent went on to submit that sections 46H and 46K confirm this interpretation is correct. It explained that a “*development agency*” under section 46H is “*a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities ... for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under this Part*”. It submitted:

- the development agency cannot exist until it is “*specified in a contributions plan*”
- a Council cannot be, or act as, a development agency before a DCP comes into existence, and cannot act as development agency if it provides works, services, or facilities before the DCP exists – it is simply acting as a Council
- the words “*the provision of*” are again clearly intended to refer to the future provision of works for which a levy is payable.

The Proponent noted section 46K which sets out the requirements for a DCP and relevantly provides that a DCP must specify the area to which it applies and set out the “*works, services and facilities to be funded through the plan, including the staging of the provision of the works*” (s46K(1)(a) and (b)). It submitted the:

- words “*to be*” again confirm the works and facilities are to be funded in the future, as does the requirement to specify “*the staging of the provision of the works*”
- concept of “*estimated cost*” is inconsistent with costs already having been incurred – the words “*or actual costs already incurred*” or similar do not appear in s 46K(1)(e)
- words “*the provision of the works*” again imply future works
- words “*funded from*” further confirms that the works must be paid for with the funds levied (and not that with funds provided by a Council and which are subsequently repaid to it many years after the event).

Ministerial Directions for the preparation and content of Development Contribution Plans

Paragraph 5 provides “[t]he following works, services or facilities may be funded from a development infrastructure levy... *acquisition of land for drainage... drainage works*”. The Proponent submitted this is not language that indicates an act of repayment and the directions do not specify that works already undertaken can be funded from a levy. It said the omission is significant because had it been lawful for this to occur, one would have expected that the directions (or the DCP Guidelines) would have addressed in what circumstances this could or should occur.

DCP Guidelines

The DCP Guidelines state that a DCP should not be used to recoup the costs of existing infrastructure funded through general taxes or rates. The Proponent submitted this direction is entirely consistent with the proper interpretation of the PE Act.

Second Reading Speech to the Planning and Environment (Development Contributions) Bill

Finally, the Proponent took the Panel to the Second Reading Speech to the Planning and Environment (Development Contributions) Bill. The Bill introduced key reforms relating to development contributions, and Ms Delahunty (then Minister for Planning) on 4 November 2004 who spoke in terms of development contribution funding for proposed (that is, future) infrastructure said:

I now draw attention to the key features fundamental to the effective operation of the Victorian development contributions system, which underpin the initiatives in this bill. The

revamped system will ensure all development contribution plans satisfy the tests of need, nexus, equity and accountability.

'Need' is the test by which the need for the proposed infrastructure must be demonstrated; 'Nexus' is the test of the connection between the new development and the infrastructure need generated; 'Equity' is the test of the fair and reasonable apportionment of the cost of providing the infrastructure;

and

'Accountability' is the test of ensuring that funds collected must be spent on the infrastructure for which they were levied, and be accounted for in an open and transparent manner.

Development contribution plans are subject to the publicly contestable planning scheme amendment process. This ensures public exhibition of the plan, consideration of submissions by an independent planning panel, and the need for final approval by the Minister for Planning.

Council reply

In response to the Proponent's submissions regarding statutory interpretation, Council submitted the starting point is *"that there is no ambiguity in the relevant enabling provision that demands an exploration of the meaning of the relevant section beyond its relatively clear words. The relevant section is broadly drafted not ambiguously drafted"*.

Council did not agree with the Proponent's approach and submission that the use of the words *"provision of works"* implies a future tense for the works, services or facilities to be provided in the future. Council said:

This requires reading words into the section which do not exist and is contrary to the first rule of construction that if the text of an Act has a clear meaning then that is the starting point and the end of it.

Council took the Panel to section 35 of the *Interpretation of Legislation Act 1984* and submitted:

- this section mandates that a purposive approach be taken
- one of the fundamental purposes of the PE Act is to *"provide for the fair, orderly, economic and sustainable use, and development of land"*
- *"given the fairness of the development paying for infrastructure that is essential to its functioning, it would be an extraordinary outcome, if the Act were construed so narrowly that infrastructure cannot be funded because it is completed even say 1 day prior to the approval of a DCP"*.

Essentially, Council submitted the purpose of Part 3B is to enable the imposition of levies to raise funds so that infrastructure can be provided in a *"fairer manner with contributions to its cost paid for by those gaining a benefit from it"*.

Other submitters

Several other submitters subject to the Stage 2 DCP levy sought to rely on the position and evidence of the Proponent to establish that the Coriyule Drain should be removed from the Stage 2 DCP.

5.4 Discussion

PE Act and statutory interpretation

Council has sought to recoup the costs of the Coriyule Drain through the Stage 2 DCP. Council submitted there is *"no specific legislative restriction"* that precludes the Coriyule Drain being funded through the Stage 2 DCP and sought to substantiate the proposition that the Part 3B

provisions of the PE Act do not prohibit a DCP from funding existing infrastructure. Council went so far as to submit there is no ambiguity in the PE Act which demands the Proponent's detailed exercise of statutory interpretation.

The Panel disagrees. Responding to a legal question invariably involves an exercise in statutory construction, which in this case demands an analysis of the words used in the relevant section of the statute, and an examination of their meaning, when read as a whole. Thus, to determine the question of what can be funded under a DCP (and what cannot) it is necessary to forensically examine the relevant parts of Part 3B of the PE Act which deals with DCPs.

The Proponent submitted the starting point is section 46I(1) which provides:

- 46I(1) Without limiting section 6, a planning scheme may include one or more development contributions plans **for the purposes of levying contributions to fund—**
- (a) **the provision of works, services and facilities** in relation to the development of land in the area to which the plan applies; and
 - (b) the reasonable costs and expenses incurred by the planning authority in preparing the plan and any strategic plan or precinct structure plan relating to, or required for, the preparation of the development contributions plan.
(Panel emphasis)

It was put that the words of this section, when read together and not in isolation, identify the purpose of a DCP is to fund the provision of works, services and facilities. The Proponent urged upon the Panel a construction which interprets the reference to "*provision of*" to a future tense, that is, works, services or facilities to be provided in the future. The Proponent differentiated the words "*provision of*" as being materially different to making "*provision for*" something because it refers to a future occurrence and not something that has happened in the past.

Council did not agree with this analysis, submitting section 45I(1)(a) enables a DCP to "*levy contributions to fund*" the provision of works where those levies are otherwise prohibited by section 6(2) of the PE Act. Council submitted the provision enables a power to impose a levy but does not explicitly require the "*provision of*" the infrastructure. This might be the case, and the Panel agrees with Council that whether a development agency will actually provide the infrastructure that is funded will depend on a range of other fiscal considerations. The Panel also agrees that the PE Act does not force the provision of the DCP project, it simply raises the funding to facilitate it.

Critically, however, it is a different purpose to levy contributions to pay money to a Council for a past act of providing works, services or facilities where the Council has used its own funds. In such a situation, the contribution would not fund the act of providing infrastructure, and arguably the contribution could not be said to be required for that purpose.

On its proper construction, the Panel agrees with the Proponent that the PE Act does not permit a DCP to be used to fund infrastructure that has already been provided and funded by a Council. The Panel agrees that the purpose of a DCP is to levy contributions to fund the 'provision' or 'act of providing' works, services or facilities, and not to recoup the costs of funding that has occurred in the past. This is the starting point of the analysis, noting the words of the section need to be read together and not in isolation. In this regard, the words "*for the purposes of levying contributions to fund the provision of works, services and facilities*" identify a singular purpose for a DCP – that is, to fund the provision of works, services, and facilities. The Panel agrees the use of the words "*provision of*" refers to a future occurrence, rather than something that has occurred already.

It is not necessary for the provision to expressly say that you cannot fund existing infrastructure, because the actual words already allow for such a construction. As the Proponent noted, legislative provisions do not have to expressly exclude things that are inherently excluded by the words used.

The Proponent's interpretation is further supported by sections 46H and 46K of the PE Act.

Section 46H defines a development agency as:

...a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities ... for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under this Part.

As the Proponent highlighted, two things are observed from this. First, the development agency cannot exist until it is specified in a DCP. Second, consistent with how those words ought be interpreted in s 46I, the words "*the provision of*" refer to the future provision of works for which a levy is payable.

Section 46K(1)(a) sets out the requirements for a DCP and provides that a plan must specify the area to which it applies and set out the "*works, services and facilities to be funded through the plan, including the staging of the provision of the works*".

The words "*to be funded*" suggest the works are to be funded in the future. The Panel agrees with the Proponent the provision does not envisage that a DCP can include works that have already been funded by means other than the DCP. Equally, the concept of "*estimated cost*" in section 46K(1)(e) is inconsistent with costs already having been incurred.

Section 46K(1)(fb) provides that the plan must:

... specify any Minister, public authority or municipal council that is to be responsible for the provision of the works, services or facilities or for the plan preparation costs for which the community infrastructure levy or development infrastructure levy or part of that levy is payable under this Part (the development agency);

Again, use of the words "*to be*" and "*for the provision of*" indicate the relevant authority is to be responsible for the provision of the future works.

Further, Council's process of seeking to recoup the costs already expended on existing infrastructure through a DCP removes the democratic process which is ordinarily afforded through a contested planning scheme amendment process. The infrastructure has been completed without the ability for a proper and open debate on issues such as nexus, whether alternative options might work, or whether the costs are reasonable. It might be true that policy should encourage the early delivery of infrastructure. It might also be true that, the drain will benefit the Stage 2 landowners and will enable the subject land to discharge stormwater from day 1. These are all positive outcomes. However, they do not trump or override the statutory regime in place for DCPs in Victoria.

DCP Guidelines

The Panel acknowledges the DCP Guidelines are not determinative, but they must be given considerable weight. The Planning Scheme clearly requires that they should be considered through Clause 19.03. The guidelines clearly state that a DCP cannot be used to fund existing infrastructure.

Council dismissed the guidelines on the basis that they are "*not binding*". Council suggested:

- the DCP Guidelines are outdated and do not reflect the correct law on this issue or desirable practice
- policy ought to encourage the early delivery of infrastructure, not discourage it
- the DCP Guidelines reference to existing infrastructure is too simplistic and is long overdue for review.

While this might be the case, this is not a matter before the Panel and does not mean the DCP Guidelines should be given no or little weight. The DCP Guidelines reflect the statutory scheme – that is, DCPs should be used to fund the provision of future works or services, and not existing infrastructure.

Amendment C110

With respect, the Panel does not agree with the reasoning of the C110 Panel referred to by Council.

The C110 Panel concluded:

- there was no statutory provision to prevent a DCP from being amended to include existing infrastructure
- Part 3B of the PE Act is broad and does not impose any restriction on the inclusion of existing infrastructure in a DCP.

The C110 Panel made these findings without any rigorous analysis of the Part 3B of the PE Act of the DCP Guidelines. It only had submissions on the matter from Council and no submissions or legal argument was presented from any other party on the issue.

5.5 Conclusions and recommendation

The Panel concludes:

- The provisions of Part 3B of the PE Act relating to the preparation of development contribution plans do not allow for the inclusion of existing infrastructure in a DCP.
- There is no basis for a construction of Part 3B that would permit the Stage 2 DCP to be used to repay a Council for works already funded, and already constructed.
- The DCP Guidelines clearly state that a DCP cannot be used to fund existing infrastructure. They are a Reference Document, and while not binding, must be given considerable weight.
- The Stage 2 Drain (DR-02) should be removed from the Stage 2 DCP.

Given the Panel's conclusion that the Stage 2 Drain should be removed from the Stage 2 DCP, consideration has not been given to the appropriate apportionment of DR-02.

The Panel recommends:

- 7. Revise the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023) to delete DR-02.**

6 Timing of delivery of the Childrens and Community Hub

6.1 Background

Algo Properties Pty Ltd (Algo) owns 79–83 Greenvale Drive, 90 Greenvale Drive, 13–19 Sealark Way and 103 Centennial Boulevard, Curlewis (Algo land). The Algo land is the final remaining land within the Curlewis Neighbourhood Activity Centre, save for the balance of land to the north-west of 79–83 Greenvale Drive which is owned by Council (see Figure 19).

Figure 19 Algo land (red), Council land (green)



Source: D54

The Council land was transferred to Council by Algo in satisfaction of Algo's development contributions and projects identified as part of Stage 1 Jetty Road and is intended to accommodate community facilities.

The Stage 2 DCP includes 'CF-01 Children and Community Hub' (CCH). The CCH is also included in the Stage 1 DCP. It would provide kindergarten facilities, day care and community spaces. The Stage 1 DCP contemplated delivery of the CCH by 2022–2023 or upon the delivery 1,800 lots. The Stage 2 DCP now contemplates delivery of the CCH by 2031 or an earlier timing subject to demand.

Algo considers the delivery horizon for this DCP item (2031) is not strategically justified, is inconsistent with the Stage 1 DCP and strategic materials which supported the same and that there is demand for the DCP item to support its delivery now.

6.2 The issues

The issues are whether:

- there is a demand and need for the CCH
- the indicative project timing for the construction of the CCH in the Stage 2 DCP is appropriate and justified.

6.3 Evidence and submissions

Council

Council conceded it has not met the Stage 1 DCP timeframe. It considered the timing for delivery of the CCH as set out in the Stage 2 DCP was appropriate, however indicated a willingness to explore the possibility of delivering the facility sooner.

Council sought advice from ASR Research³² to consider whether the current delivery trigger of 2023 was still appropriate. ASR Research reviewed the demand and supply requirements for sessional kindergarten services and community meeting spaces in the Clifton Springs, Curlewis, Drysdale and Bellarine areas, given these two functions are the primary drivers of the need for the CCH. ASR concluded the delay in the delivery of the CCH was justified until at least 2031.

Council submitted:

- ASR's assessment used the standard methodology used by the Council for the purposes of planning community facilities
- the timing for the infrastructure is influenced by various considerations, one of which is need, and there are other relevant factors including fiscal considerations
- there are other comparable and suitable kindergarten and community facilities available within the geographical area
- there are times when it is appropriate to deliver infrastructure ahead of time, particularly where there is no practical alternative and where the non-provision would restrain development from commencing, but this is not the case here
- it is not uncommon for DCP infrastructure to be delayed beyond its estimated delivery time.

Submitters

Algo provided a detailed summary of the history regarding its commitment to the CCH. Algo was concerned by the amendments to the trigger for and consequential delay in the delivery of the CCH and noted many land owners from Stage 1 expected the CCH to be delivered in line with the commitments under the Stage 1 DCP.

Many submitters supported this position. Several submitters opposed the deferral of the CCH to Stage 2, expressing the need for these services to be delivered now. Submitters also detailed their expectations that the CCH should have already been constructed and raised concerns regarding the distant location of similar facilities or difficulties getting into such facilities.

Dr Kerkin, who gave evidence which supported Algo's position, used a different catchment analysis to ASR. She said that because the CCH is a local community centre, the catchment assessment

³² D1as

should be limited to Curlewis.³³ She considered there is demand and need for the CCH now and identified that by 2024 there will be demand for a 475 square metre children's service space. She anticipated that by 2029, when 30 hours of funded kindergarten is rolled out across the Greater Geelong area, there will be a need for 734.2 square metres of children's services spaces to support the Curlewis population.

In relation to the ASR advice, Dr Kerkin said it:

- Incorrectly applies population forecasts and community infrastructure benchmarks;
- Fails to acknowledge the 2011 endorsed trigger for the construction of the facility; of
- Fails to consider private ownership, current user groups, and existing levels utilisation of existing community meeting spaces; and
- Cites location options for the Curlewis Childrens and Community Hub that are no longer under consideration

These limitations in the evidence provided by ASR, do not support the conclusion to delay the timing of the delivery of the Curlewis Early Years and Community Hub.

Dr Kerkin detailed the endeavours by Algo to progress the development of the CCH including commissioning a report by Urban Enterprise, *Curlewis Activity Centre – Market Assessment*, and the preparation of a masterplan for a proposed CCH. The masterplan and market assessment were provided to Council and Algo offered to deliver the childcare centre and the car park on the adjacent hub site, subject to various conditions.

Dr Kerkin considered there was no justification to delay construction of the CCH beyond 2024, as Council's threshold with respect to 'demand' for the proposed timing of the delivery of the CCH had been met.

Algo submitted:

With no opposing evidence called in respect of demand for the CCH, it follows that the timeframes for delivery of the CCH as set out in the exhibited Stage 2 DCP are flawed and strategically unjustified. The position of Dr Kerkin and Algo ought be preferred. There is simply no justification to further delay construction of this much needed community infrastructure.

Algo questioned whether Council has sought consent from the Minister for Planning to retain the funds it holds for the CCH following collection of contributions for the Stage 1 DCP, in accordance with section 46QB of the PE Act. Algo submitted Council was in breach of its obligations as development agency and the Stage 2 DCP should not be approved with varied timeframes for delivery of the CCH.

6.4 Discussion

The Panel acknowledges the significant history regarding the inclusion and location of the CCH in the Urban Growth Area.

Dr Kerkin's assessment is critical of the ASR advice because the ASR advice was based on a wider planning area. Dr Kerkin considered the assessment should be done on the more localised catchment of Curlewis. The different catchment analysis of the demand and supply has understandably produced different demand and supply results. While the methodology adopted by Dr Kerkin may be inconsistent with Council's model for service planning, the Panel supports her

³³ Council criticised this approach as too narrow, impractical, and illogical as other similar services are within close proximity to the CCH site but not within Curlewis.

methodology in this instance. Given the item is a local community centre, the catchment assessment should be local (Curlewis). This is consistent with the Urban Growth Plan which encourages the provision of community infrastructure to meet the needs of the local community.

Based on the evidence of Dr Kerkin, and absent any opposing evidence called in respect of demand for the CCH, the Panel accepts there is a strong local demand and need, both in the short and long term, for the delivery of the CCH.

The Panel accepts Council's position that it would need to commence the planning and design process for the CCH three or four years prior to its delivery. Realistically, the earliest the planning and design process is likely to commence would be around 2025 or 2026. This was conceded by Dr Kerkin in cross examination. Further, the timing for the construction of the infrastructure will be influenced by many factors, including fiscal considerations.

The Panel therefore considers that while there is a current demand and need for the CCH, the indicative project timing for the construction of the CCH (by 2031) in the Stage 2 DCP is appropriate.

The Panel urges Council to commence the planning and design process now with a view to delivering the CCH well before 2031, to meet the existing demand and need for this facility. Acknowledging that Council needs to act responsibly and consider various matters including the fiscal environment, Council is also encouraged to consider a more creative solution to delivering the CCH, such as Algo has attempted to initiate through its master planning process for the land.

It is not the Panel's role to determine whether Council is in breach of its obligations as development agency in accordance with section 46Q(4) of the PE Act, and the Panel has not sought enquire further or comment on this matter.

6.5 Conclusions

The Panel concludes:

- There is a current demand and need for the Children's and Community Hub.
- The indicative project timing for the construction of the Children's and Community Hub as provided for in the Stage 2 DCP is appropriate given the design work that will need to be done and given timing for the infrastructure is influenced by various considerations and not need alone.
- Council should endeavour to commence the planning and design process now with a view to delivering the Hub well before 2031.

7 Traffic issues

7.1 Delivery of Coriyule Road (west of McDermott Road)

(i) Background

Coriyule Road is a local east west road bisecting the Stage 1 Jetty Road land and the subject land, connecting to Hermsley Road at its western end. Hermsley Road then connects to a signalised intersection at Portarlington Road.

The Amendment proposes Coriyule Road will:

- be constructed between Tivoli Drive and McDermott Road
- remain unsealed west of McDermott Road
- include a traffic calming treatment measure (a slow point concept near the intersection with McDermott Road) to deter through traffic from the using the unsealed section of road (see Figure 20).

Figure 20 Proposed traffic calming measure



Source: D1ba

The treatment of Coriyule Road was clearly articulated in the Urban Growth Plan which provides:

- Coriyule Road is to maintain its status as a rural access road and as an urban link to the Hermsley rural living community
- the road network is designed to discourage traffic generated within the Urban Growth Area and/or Clifton Springs from exiting or passing through the Urban Growth Area via Coriyule Road
- a link must be maintained with the internal primary network such that the rural living community to the west in Hermsley is able to access the Drysdale town centre and the neighbourhood centre without the need to use Portarlington Road.

(ii) The issues

The issues are whether:

- Coriyule Road west of McDermott Road should be sealed and formalised as an east-west connection to the Urban Growth Area
- traffic calming will suitably divert vehicles away from Coriyule Road.

(iii) Evidence and submissions

Several submitters said Coriyule Road should be sealed because:

- it provides a convenient route to the west that is approximately half a kilometre shorter than alternative routes, avoids several intersections and will be quicker for users given it has a higher speed limit
- traffic conditions have changed since the Urban Growth Plan was prepared with the recent signalling of the Portarlington Road and Hermsley Road intersection, meaning this intersection is now safe to use
- leaving it unsealed will be unsafe, have higher maintenance costs and generate dust which will drift over the residential area, significantly reducing residential amenity and causing health concerns
- should Portarlington Road be closed due to an emergency, a sealed Coriyule Road would provide a safe alternative.

Submitter 42 submitted the proposed traffic calming measure in Coriyule Road is unclear and uncertain. It submitted the slow point should not be increased in width (from 2.5 metres to four metres) as suggested by Mr Walsh.

Mr Walsh was satisfied with the proposed outcomes for Coriyule Road because:

- McDermott Road provides a clear break between the proposed urban and rural areas in Coriyule Road and this was consistent with the rural nature of the area
- the Urban Growth Plan should not be encouraging traffic to use Coriyule Road west of McDermott Road
- the inclusion of a traffic calming device to deter the use of Coriyule Road to the west of McDermott Road is the appropriate traffic management approach.

He said that some future residents may choose to use this road, but if it was sealed it would likely attract more traffic.

Mr Walsh reviewed the Coriyule Road cross section provided in the exhibited Traffic Engineering Assessment, Future Residential Subdivisions Report, Traffix Group, November 2022 (Traffic Report)³⁴ and recommended the width of the proposed slow point be increased to four metres, rather than the 2.5 metres. He considered four metres would operate as a single lane but would comfortably provide for commercial and farm vehicles which could be up to 2.5 metres wide.

Mr Walsh was questioned on whether the increased width of the proposed slow point would still be effective in deterring through traffic. Mr Walsh considered:

- increasing the width of the slow point would not impact its effectiveness, as the intention of the slow point is to reduce the width of the road to only allow one vehicle to use it at a time, making the other approaching vehicles wait

³⁴ D1ba

- the width should be greater than 2.5 metres, as some trucks which will use the road are 2.5 metres
- he would prefer a four-metre width, but a three-metre width would also work.

Council submitted it:

- does not support Coriyule Road being sealed west of McDermott Road as it is not supported by any traffic evidence, the Urban Growth Plan or the BPSPP
- agrees with the traffic evidence provided by Mr Walsh.

(iv) Discussion

There are no policy requirements or traffic engineering evidence to support Coriyule Road west of McDermott Road becoming a higher-order traffic link. The Panel considers the proposed treatment of Coriyule Road west of McDermott Road is appropriate. McDermott Road provides a clear break between the proposed urban and rural uses in Coriyule Road. Coriyule Road should therefore remain a gravel carriageway to the west of McDermott Road, consistent with the rural nature of the area.

The Panel is satisfied the proposed traffic calming measures will discourage vehicles using the length of Coriyule Road as a thoroughfare to and from the wider network while still providing access for localised movements between the east and west side of McDermott Road.

The Panel agrees with Mr Walsh that the proposed traffic calming slow point should be increased to four metres in width, given the area to the west of the subject land is still farming land and larger trucks may need to utilise this route. Four metres will still operate as a single lane and appropriately deter traffic but will comfortably provide for commercial and farm vehicles which can be up to 2.5 metres wide. The Panel considers the increase in width of the slow point can be appropriately established during the detailed design of the road. No change is required to the Amendment, which does not specify the width of the slow point.

(v) Conclusions

The Panel concludes:

- It is appropriate that Coriyule Road west of McDermott Road remains unsealed.
- The proposed traffic calming measures will be effective in discouraging vehicles using the length of Coriyule Road as a thoroughfare to/from the wider network.
- The width of the proposed slow point on Coriyule Road should be increased to four metres, which can be considered during the detailed design of the road.

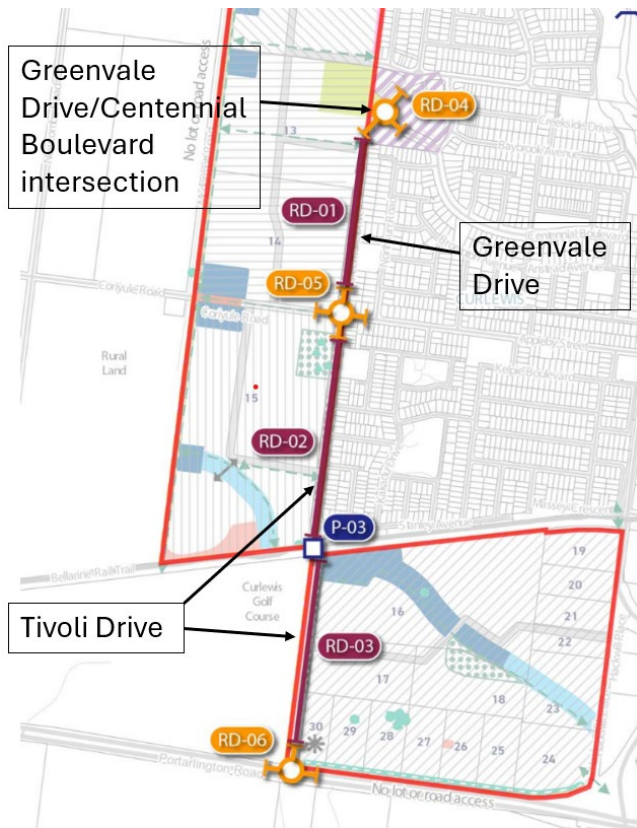
7.2 Tivoli Drive and Greenvale Drive – timing of upgrade works

(i) Background

Tivoli Drive (south of Coriyule Road) and Greenvale Drive (north of Coriyule Road) is the primary north-south access road to and through the subject land. The road was constructed to interim standard as part of Stage 1 Jetty Road and is to be duplicated as part of Stage 2. See Chapter 1.2(iii) for more detail.

The Stage 2 DCP includes several projects that involve duplication of the road (see Table 4 and Figure 21). It includes indicative timing for the various projects (see Table 4).

Figure 21 Tivoli Drive and Greenvale Drive



Source: D1ar

Table 4 Delivery timing for RD-03 and RD-04

DCP ID	Infrastructure Item	Indicative project timing
RD-01	Greenvale Drive between Centennial Boulevard and Coriyule Road Construction Greenvale Drive - Between Centennial Boulevard and Coriyule Road.	Prior to the issue of Statement of Compliance for the first Stage of the subdivision on the Subject Land
RD-01-L	Greenvale Drive between Centennial Boulevard and Coriyule Road Land for Greenvale Drive - Between Centennial Boulevard and Coriyule Road (0.740 ha).	Prior to the issue of Statement of Compliance for the first Stage of the subdivision on the Subject Land
RD-02	Tivoli Drive between Coriyule Road and Bellarine Rail Trail Construction of Tivoli Drive Construction - Between Coriyule Road and Bellarine Rail Trail.	Prior to the issue of Statement of Compliance for the first Stage of the subdivision on the Subject Land
RD-02-L	Tivoli Drive between Coriyule Road and Bellarine Rail Trail Land for Tivoli Drive Construction - Between Coriyule Road and	Prior to the issue of Statement of

DCP ID	Infrastructure Item	Indicative project timing
	Bellarine Rail Trail (0.93 ha).	Compliance for the first Stage of the subdivision on the Subject Land
RD-03	<p>Southern section of Tivoli Drive (between Portarlington Road and the Rail Trail)</p> <p>Construction of Tivoli Drive Construction - Upgrade of Tivoli Drive from Portarlington Road to northern extent of the Bellarine Rail Trail. Includes turning lane extension at Portarlington Road intersection and pedestrian crossing of the Bellarine Rail Trail</p>	Prior to the issue of Statement of Compliance for the first Stage of the subdivision on the Subject Land
RD-03-L	<p>Tivoli Drive between Portarlington Road and northern extent of Bellarine Rail Trail</p> <p>Land for Tivoli Drive Construction - Tivoli Drive from Portarlington Road to northern extent of the Bellarine Rail Trail. Includes turning lane extension at Portarlington Road intersection and pedestrian crossing of the Bellarine Rail Trail (0.596 ha).</p>	Prior to the issue of Statement of Compliance for the first Stage of the subdivision on the Subject Land
RD-04	<p>Greenvale Drive / Centennial Boulevard intersection</p> <p>Construction of signalised intersection - Greenvale Drive and Centennial Boulevard.</p>	Prior to the delivery of 2,250 lots in the Jetty Road Urban Growth Area

In the case of RD-03, the exhibited DPO46 states:

Land south of the Bellarine Rail Trail relying on access from Tivoli Drive cannot be further subdivided until Tivoli Drive is constructed to its ultimate profile from the northern boundary of the Rail Trail Reserve to Portarlington Road including the lengthening of the turn lane from Tivoli Drive into Portarlington Road including the lengthening of the turn lane from Tivoli Drive into Portarlington Road as proposed by Traffix Group and as shown in the relevant DCP scoping sheet unless otherwise agreed in writing by the Responsible Authority. Construction includes the required upgrades to/widening of the existing Pedestrian Operated Signals that are located across Tivoli Drive at the Rail Trail.

(ii) The issues

The issues are whether it is appropriate and justified to:

- delay construction of the southern section of Tivoli Drive (RD-03) until abutting development occurs
- tie the upgrade of the Greenvale Drive/Centennial Boulevard roundabout (RD-04) to the development of land parcels immediately west of the activity centre.

(iii) Evidence and submissions

Mr Walsh suggested the upgrade of the:

- southern section of Tivoli Drive (RD-03) could be delayed until abutting development occurs
- Greenvale Drive/Centennial Boulevard roundabout to a signalised intersection (RD-04) should be tied to the development of land parcels immediately west of the activity centre with a suggested trigger being the development of 500 lots within Properties 12, 13 or 14.

The Proponent supported this position.

Mr Walsh's evidence was that the southern section of Tivoli Drive currently provides an unobstructed through traffic lane in each direction with on-street parking only permitted in dedicated bays, and no residential lot access. He was therefore comfortable the upgrade could occur as the abutting development occurs, rather than before.

Mr Walsh was also satisfied that some development (up to 221 lots³⁵) of the southern part of the subject land could occur on properties with access from Hackwill Place and Jetty Road, before the southern section of Tivoli Drive is duplicated. This timing is consistent with the timing outlined in the DPO46 rather than the Stage 2 DCP.

In relation to the Greenvale Drive and Centennial Boulevard intersection upgrade, Mr Walsh considered:

- there is no traffic (vehicle) basis for the upgrade
- however, as development progresses on the subject land, the conversion of the existing roundabout to traffic signals will better and more safely facilitate pedestrian movements across Greenvale Drive to the Neighbourhood Activity Centre
- the proposed trigger for the upgrade in the Stage 2 DCP (development of 2,250 lots within the Stage 1 Jetty Road land and the subject land) should be amended to development of 500 lots within Property 12, 13 or 14.

His evidence was:

This recommended trigger effectively retains the current overall trigger (approximately 1,700-1,750 lots are currently developed in Stage 1 with an additional 500 lots in stage 2 equating to the 2,250 lot trigger) but more closely links it to the anticipated pedestrian demands that generate the need for the upgrade.

Henley Ridge Pty Ltd submitted a mechanism is needed for upgrading Tivoli Drive and Greenvale Drive, should an upgrade be required before the development of its land.

(iv) Discussion

In preparing the Amendment, Council and the Proponent agreed that it was necessary to deliver the ultimate Tivoli Drive and Greenvale Drive early on in the development of the subject land. This has been provided for in the Stage 2 DCP, DPO46 and through the exhibited Section 173 Agreements. These agreements were prepared between Council and the Proponent and are intended to be executed before the Amendment is adopted by Council. They provide for the early provision of the land needed to enable the duplication works.

Mr Walsh considered that Tivoli Drive, south of the Rail Trail, could function without an immediate upgrade to the ultimate profile. However he was not able to quantify what level of development might be appropriate, or what an acceptable trigger in the DPO46 or Stage 2 DCP might be. In this respect, the Panel is comfortable with the amendments to the DPO46 that were proposed and agreed to by the Proponent and Council. While use of the words "*or as agreed to in writing by the Responsible Authority*" and the like generally allow Council a degree of discretion to depart from the triggers in the DPO46 and the Section 173 Agreements, the minor wording changes proposed

³⁵ Mr Walsh took this figure from a traffic assessment undertaken by his office which assessed the capacity of Hackwill Place and Jetty Road to accommodate initial stages of development in the southern area of the subject land. This Assessment is contained within Appendix C of his expert evidence.

strengthen this ability for the consideration of development occurring before this section Tivoli Drive is upgraded. This includes:

- replacing the words “*cannot be further subdivided until...*” with “*is not to be further developed until...*”.

The upgrade of the Greenvale Drive and Centennial Boulevard roundabout to a signalised intersection (RD-04) is not required for traffic reasons but for pedestrian safety. The Panel considers Mr Walsh’s suggested trigger of the development of 500 lots in Properties 12, 13 or 14 is an acceptable approach. As Mr Walsh said, this effectively retains the current overall trigger but more closely links it to the anticipated pedestrian demands in Stage 2 Jetty Road that generate the need for the upgrade.

In relation to the submission of Henley Ridge Pty Ltd, the draft Section 173 Agreements ensure that delivery of the upgrade works will be undertaken to service the proposed development. The Panel considers the proposed mechanisms suitable for the early delivery of this important road infrastructure.

(v) Conclusions and recommendations

The Panel concludes:

- Some level of development could occur on land to the south of the Rail Trail before the southern section of Tivoli Drive is upgraded. The DPO46 should be amended to provide flexibility for the development to occur before that section of the road is upgraded.
- It is appropriate to tie the upgrade of the Greenvale Drive/Centennial Boulevard roundabout to the development of 500 lots immediately west of the activity.

The Panel recommends:

8. **Revise Development Plan Overlay Schedule 46 as shown in Appendix E to allow Council flexibility to consider some level of development on land to the south of the Rail Trail before Tivoli Drive, between Portarlington Road and the Bellarine Rail Trail, is upgraded.**
9. **Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023)* to amend the indicative project timing for RD-04 to “*prior to the delivery of 500 lots within 32-70 McDermott Road or 72-100 McDermott Road*”.**

7.3 Tivoli Drive and Greenvale Drive – design and safety issues

(i) The issues

The issues are whether:

- the proposed design of the ultimate road will provide a safe and acceptable outcome
- noise and speed mitigation measures are required to prevent dangerous driving.

(ii) Evidence and submissions

Several submitters raised issues in relation to:

- whether noise and speed mitigation measures are required to prevent dangerous driving
- the upgrade of the Greendale Drive and Centennial Boulevard intersection from a roundabout to signalised intersection
- safety issues at the Tivoli Drive crossing of the Rail Trail

- design changes to increase safety, which might include natural curves in the road, service lanes to provide safe access to properties, roundabouts at side entry streets and a widened central median with mounding introduced to assist with noise reduction.

Tivoli Drive and Greenvale Drive design

Mr Walsh's evidence was:

- the Tivoli Drive and Greenvale Drive concept plans align with Urban Growth Plan which shows a primary road with a boulevard treatment
- the ultimate cross-section proposed is appropriate having regard to its function as the primary north-south road serving the subject land
- inclusion of roundabouts at all local road intersections is not necessary and the indicative access strategy outlined in exhibited Traffic Report is appropriate.

Council supported the evidence of Mr Walsh that the proposed arrangements for the duplication of Tivoli Drive and Greenvale Drive are appropriate, and submitted:

- the concept plans in the exhibited Traffic Report meet current road design standards and support the intended role and function of the road
- the Traffic Report did not recommend a service road configuration or roundabouts
- specific measures to discourage dangerous driving, including speeding, can be considered at the permit application stage when functional layout plans are prepared
- illegal driving that can cause safety and noise impacts are police matters and not relevant to this process.

Greenvale Drive and Centennial Boulevard intersection

A submitter suggested that the conversion of the Greendale Drive and Centennial Boulevard intersection from a roundabout to signalised intersection is not appropriate and will be a 'downgrade' of the intersection.

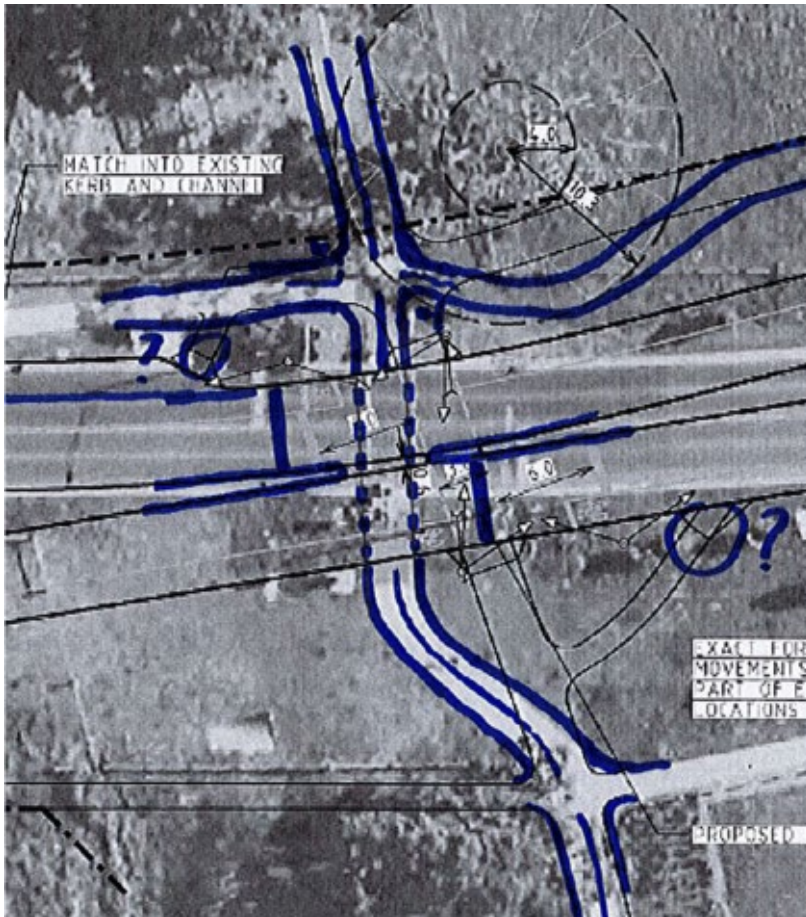
As noted in the previous chapter, Mr Walsh's evidence was that the current roundabout can accommodate the post development traffic volumes, however the intersection's signalisation will provide an improved pedestrian outcome for access to the activity centre. When questioned on the safety of a signalised intersection versus a roundabout, Mr Walsh responded that a signalised intersection was much safer for pedestrians.

Rail Trail crossing of Tivoli Drive

Several submitters raised concerns in relation to the safety of the Rail Trail where it crosses over Tivoli Drive.

Following the submission process, Council reassessed the Rail Trail approaches to the Tivoli Drive crossing and indicated that the crossing should be redesigned to improve safety for trail users. An indicative revised layout was proposed by Council to address the safety concerns (see Figure 22).

Figure 22 Revised Rail Trail crossing



Source: D23

Mr Walsh recommended a road safety audit is undertaken at the functional or detailed design stage to ensure the safety of the crossing for all users. Council supported this.

(iii) Discussion

The Traffic Report and the traffic evidence confirm the proposed ultimate design of Tivoli Drive and Greendale Drive conforms with the current road standards and will support the intended use of the role and function of the road. Council indicated specific measures to discourage dangerous driving will be considered during the permit application stage when functional layouts are prepared. This is the appropriate time to consider such matters.

The proposed conversion of the Greendale Drive and Centennial Boulevard intersection from a roundabout to signalised intersection is appropriate. The upgrade is not required for vehicle movements but to improve safety of pedestrians crossing at the intersection. The Panel agrees with Mr Walsh that the change to signals will result in a safer outcome for pedestrians.

In relation to the Rail Trail crossing of Tivoli Drive, the Panel supports Mr Walsh's recommendation for a safety audit to be undertaken at the functional or detailed design stage.

(iv) Conclusions

The Panel concludes:

- The proposed arrangements for the duplication of Tivoli Drive and Greendale Drive are appropriate from a design and safety perspective.

- It is appropriate that the design of the Rail Trail where it crosses Tivoli Drive is reviewed and a road safety audit be undertaken to inform its detailed design.

7.4 East-west pedestrian link through Property 13

(i) Background

The Framework Plan in the DPO46 illustrates a pedestrian and shared user path network that provides a north-south connection between the foreshore and Bellarine Rail Trail, as well as east-west pedestrian link between the path adjacent to McDermotts Road and Tivoli Drive and Greenvale Drive.

Figure 23 East-west pedestrian link



Source: Extract from the Framework Plan

(ii) The issue

The issue is whether the proposed east-west pedestrian link through Property 13 is appropriate and justified.

(iii) Evidence and submissions

The Proponent submitted the Framework Plan should be updated to remove the east-west pedestrian link within Property 13, which is the Proponent's proposed location for a residential or retirement village. It submitted the link is not required, as suitable alternative routes are available.

As discussed in Chapter 3.3, Ms Jordan explained that retirement villages have unique design requirements, including to ensure residents are provided with appropriate safety and security. One example is the need for a primary point of entry to manage movement in and out of a retirement village, which she considered would be difficult if a public road or path were to run through the village.

Council submitted:

- the Framework Plan should not be amended to remove the pedestrian link as this will materially impact on the permeability of the central part of the subject land

- the Framework Plan has been prepared with connectivity in mind and removing this link would hamper connectivity between the shared path running along McDermott Road and the District Park and activity centre to the east
- Strategy 4.8 of the BPSPP links the provision of walking and cycling infrastructure with sustainability objectives, further highlighting the need to think about pedestrian permeability and accessibility.

Mr Walsh was generally satisfied with the shared path network but supported the removal of the east-west pedestrian link through Property 13. When questioned on this, Mr Walsh said that there was no destination on the western side of the subject land and if people wanted to access destinations in the east from the shared path adjacent to McDermott Road, they could use Coriyule Road or Oceania Drive.

Council responded by referencing Clause 56.06 of the Planning Scheme, which provides guidance for walking and cycling networks. Council outlined that the distance between Oceania Drive and Coriyule Road was approximately 660 metres, which is much greater than the preferred distances between streets outlined in Clause 56.06. When questioned as to the importance of providing mid-block pedestrian permeability where the distance between streets is 660 metres, Mr Walsh considered this would normally be required in urban settings, but in this situation the land to the west is rural, so there would be little demand for it.

(iv) Discussion

The Panel does not consider the removal of the east-west pedestrian link through Property 13 will materially impact on permeability of this part of the subject land.

McDermott Road is the boundary between the subject land and the rural land to the west. The Panel expects the north-south shared user path along McDermott Road between the Rail Trail and the foreshore will be well used, but there will be less demand for east-west pedestrian movements. The provision of pedestrian pathways at Coriyule Road and Oceania Drive should cater for the expected east-west movements without the need for the link through Property 13.

Council took the Panel to two examples where residential villages had incorporated pedestrian links through the centre of the village.³⁶ Both examples provided connections to local parks and differ from the current situation where the east-west link seeks to connect the Rail Trail with the eastern side of the subject land. While permeability and connections through larger lots (including retirement villages) might serve an important function, this situation differs from the Council examples given the rural land to the west is not a key destination. In this particular situation, acceptable permeability can be appropriately dealt with at the permit application stage.

(v) Conclusion and recommendation

The Panel concludes:

- The east-west pedestrian link through Property 13 is not required and should be removed from the Framework Plan.

³⁶ Development Plan Overlay – Schedules 37 and 44 to the Planning Scheme.

The Panel recommends:

- 10. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to remove the east-west pedestrian link through Property 13 shown in the Framework Plan.**

7.5 Extension of Oceania Drive

(i) The issue

The issue is whether the proposed east-west connector road shown on the Framework Plan connecting Oceania Drive to a north-south road through Property 12 should be relocated to the south.

(ii) Evidence and submissions

Property 12 operates as a winery and cellar door which are located at the southern end of the property. There is a row of established cypress trees along the southern boundary of the property.

Henley Ridge Pty Ltd, the owner of Property 12, submitted the east-west connector should be moved south to:

- allow for the retention of the cypress trees
- provide a larger buffer to their current agricultural use of the land
- protect the cellar door area from construction impacts.

Henley Ridge Pty Ltd submitted this would provide a balance between developing the land to the south for residential purposes and allowing the existing use of its land to continue in the short to medium term. It submitted:

- the rows of trees along the southern and eastern boundaries of Property 12 were planted to reduce conflicts with residential properties adjoining the eastern boundary and protect the use and development of Property 12
- the east-west extension to Oceania Drive could be redesigned in a way to minimise the need to remove existing vegetation
- Henley Ridge wants the existing vegetation to remain until such time as the land is developed for residential purposes
- the Framework Plan shows residential allotments directly abutting the southern boundary of the Henley Ridge land, which will result in a limited buffer between its land and residential properties to the south while the land is used for a winery and cellar door
- realigning the road further south may assist with limiting water volumes entering Property 13 from Property 12.

Council acknowledged that while it might be appropriate to make some adjustments to facilitate existing uses, the area still needs to be planned for future residential development. Council:

- opposed realigning the east-west extension of Oceania Drive, noting it won't be built until Property 13 is developed
- submitted it is unnecessary to shift the road to the south to avoid the existing structures because, when the land is developed, it is likely that all of the existing structures will be removed.

Mr Walsh's evidence was that it was logical for the proposed east-west road to stay in its current location because:

- the indicative local street in this location aligns with the location of the existing Oceania Drive carriageway
- if the street was moved south it would straddle Properties 12 and 13, and for practical construction purposes it is better for the road to be contained in a single property.

The Proponent opposed moving the proposed east-west road south for numerous reasons including:

- there is no traffic or planning benefit that would derive from this relocation
- the relocation appears to be driven primarily by a desire to accommodate an approved, but soon to be non-conforming use (a winery)
- the trees on the southern boundary are Monterey Pine trees, which are a non-native species considered an environmental weed by the City of Greater Geelong.

(iii) Discussion

The Panel considers the proposed east-west extension of Oceania Drive is appropriate as shown on the exhibited Framework Plan. The location as shown in the Framework Plan has a logical relationship to Oceania Drive. The construction of the east-west road will not need to occur until Property 12 is developed for residential purposes. This means the existing vegetation can remain in place until such time as the winery and cellar door ceases to operate. It agrees with the Proponent that there is no apparent planning or traffic benefit in relocating the road.

(iv) Conclusion

The Panel concludes:

- The location of the proposed east-west road in Property 12 is appropriate and no changes are required to the Framework Plan.

7.6 Broader transport network

(i) The issue

The issue is whether the Amendment is justified given broader transport related matters, including a lack of public transport and inadequate road infrastructure.

(ii) Evidence and submissions

A submitter raised a series of broader issues across the Bellarine Peninsula including:

- Drysdale, Clifton Springs and other outlying communities on the Bellarine Peninsula are unsuitable as commuter towns unless improved road infrastructure and public transport to Geelong and Melbourne are provided
- unless radically improved public transport is provided that is independent of the road system, all future development on the Bellarine should only proceed as low-density residential development.

Council submitted:

- the Amendment proposes to rezone the subject land to the General Residential Zone (GRZ) which encourages a diversity of housing types and housing growth
- if the Amendment were to proceed with low-density development only a different zone would be required, which is out of scope for this Amendment

- the subject land is not identified for low-density housing in planning policy and it would be an inefficient use of the land.

Having undertaken a traffic engineering assessment of the subject land, Mr Walsh was of the opinion that the key road network upgrade works identified in the exhibited material are appropriate for the accommodation of future traffic volumes. He said that there were no traffic engineering reasons to refuse the proposed Amendment based on broader transport related issues.

(iii) Discussion

The Panel acknowledges there may be broader transport issues concerning road and public transport improvements to the Bellarine Peninsula and Geelong. These were to some degree witnessed during the Panel's site inspection. However, the Panel agrees with Mr Walsh that development of the subject land can occur with minimal impact on the surrounding road network.

The Panel agrees with Council that the proposed zoning of the land encourages a diversity of uses and limiting the land to a low-density housing would be an inefficient use.

(iv) Conclusion

The Panel concludes:

- there are no traffic engineering reasons to refuse the proposed Amendment to the Planning Scheme for the subject land.

7.7 Suitable carriageway width of roads

(i) The issue

The issue is whether a 5.5-metre carriageway is appropriate for roads where there is only residential access on one side of the road.

(ii) Evidence and submissions

Mr Walsh identified that in the Background Landscape Report the cross-sections for frontage roads along the western interface (McDermotts Road), the Bellarine Rail Trail interface with the southern part of the subject land, and the Portarlington Road interface all show a 7.3-metre-wide carriageway with single-sided residential development. Mr Walsh suggested this could be reduced to 5.5 metre carriageway width. The Proponent supported this recommendation.

(iii) Discussion

The Panel agrees with Mr Walsh. It is relatively common practice for roads with residential development on one side only to adopt a 5.5 metre carriageway width. This is properly dealt with at the detailed design stage, and no changes are required to the Amendment documentation.

(iv) Conclusion

The Panel concludes:

- A 5.5-metre carriageway is suitable where there is only residential access on one side of the street. This can be dealt with at the detailed design stage and does not require any change to the Amendment documentation.

8 The Southern Wetland

8.1 Reduction in the land area

(i) Background

The *Jetty Road Rezoning – Stage 2 Storm Water Management System, Water Technology, Version 07, 6 September 2023 (SWMS Report)*³⁷ contains the recommended stormwater management strategy for land south of the Rail Trail.

It proposes a constructed waterway and linear wetland (Southern Wetland) generally following the alignment of the existing waterway that flows from the corner of Portarlington Road/Hackwill Place north-west through the southern precinct. Three sediment ponds are proposed along the waterway corridor to provide pre-treatment of stormwater at network outfalls (piped) before entering the wetland.

The Stage 2 DCP provides for the land and construction costs for the Southern Wetland as DR-04 and DR-04-L, as shown in Figure 24.

Figure 24 The Southern Wetland– DR-04 and DR-04-L



Source: Urban Enterprise

*Drainage land item (DR-04-L) is only associated with the area shown in Figure 6 as 'drainage basin'. The construction item DR-04 extends further east to Hackwill Place.

Source: D1ar

The SWMS Report includes a concept plan for the Southern Wetland (Wetland Concept Plan), which informs the costings in the Stage 2 DCP. The Wetland Concept Plan has assumed there are no batter slopes steeper than 1:6.

In relation to the Southern Wetland, the drafting of the DPO46:

- requires the Development Plan to incorporate an Integrated Water Management Plan (IWMP) to be guided by the SWMS Report which includes a concept design that mandates batters with a minimum range of 1:5

³⁷ D1bm

- incorporates reference to the Infrastructure Design Manual³⁸ (IDM) which requires a maximum batter slope 1:5.

(ii) The issue

The issue is whether the area required for batters for the Southern Wetland can be reduced.

This has implications for the IWMP requirements in the exhibited DPO46, and the land take and construction costs of the Southern Wetland in the Stage 2 DCP.

(iii) Evidence and submissions

The Proponent submitted the land required for the Southern Wetland can, and should, be reduced based on a revised design with batters steeper than those provided for in the Wetland Concept Plan. It submitted:

Contrary to the assertions put by [Council], the proposed drafting of the DPO46 put forward by the Developer Group does not “mandate” or require any particular outcome. All it does is make it clear that alternatives to the Council’s entrenched approach can be considered. The refusal of the Council to even contemplate a variation from their entrenched position in this regard makes it imperative that the drafting identify the possibility of an alternative.

If this is not done, it is clear that the Council will simply refuse to even consider alternative designs, and that it will continue with its “computer says no” approach that it has adopted to date.

Specifically, in order to reduce the land required the Proponent sought to include the following IWMP requirement in the DPO46:

The landscape design for the waterway infrastructure should be prepared having regard to the following principles:

- A variety of batter slopes should be used where possible. Those slopes should be appropriate have regard to the efficient use of the land, the proper operation of the infrastructure, and designed for specific purposes.
- Batter slope should generally be designed as follows:
 - 1:6 (maximum grade) for grassed area.
 - 1:3 – 1:5 slopes to be fully vegetated.
 - 1:2 – 1:3 slopes to be formed of stepped rock with interplanted vegetation.
- Limited use of retaining walls (generally less than 1m high) in specific locations for landscape effect.
- Incorporation of a shared path for the full length on one or other side of a wetland or waterway and incorporation of a pedestrian path on the other side of the asset to the shared path.
- Incorporation of a range of pedestrian amenities such as seating, wetland viewing locations and appropriate signage for wayfinding and interpretation of cultural and/or natural heritage.
- Incorporation of CPTED principles in landscape design.
- The need to ensure that maintenance costs are reasonable.
- The provision of an attractive, visually interesting landscape that will form a useful recreational asset for the future community.

³⁸ The IDM is a joint initiative of Victorian rural and regional Councils to formulate a set of consistent requirements and standards for the design and development of infrastructure

The Proponent relied on the evidence of Mr Murphy which showed a revised design with smaller but steeper batters. Mr Murphy's revised design identified opportunities for reducing the waterway footprint and improving its landscape outcome by applying the following gradients:

- 1:6 grass batters
- 1:3-1:5 planted vegetated batters
- 1:2– 1:3 rock batters.

Mr Murphy provided examples in the municipality where wetlands have been developed with batter gradients ranging from 1:3 and 1:5 and said they:

- are not unusual and are working well
- demonstrate the creation of a more visually complex and appealing landscape
- offer greater habitat potential than reserves that adopt primarily 1:6 grassed batters surrounding the water-sensitive urban design asset
- represent an acceptable way of approaching wetland design in an urban setting, as long as the recommended mitigating features are included such as dense impenetrable planting on steeper banks and permanent fencing where required.

Mr McLean said while drainage reserve land budgets were generally informed by high level concept designs, if a preliminary functional design is available, it would be appropriate to consider optimisation of the batters. This, he said, would result in a design that would be easier to maintain and more visually interesting and would minimise the land take and overall drainage reserve encumbrance.

At the Direction of the Panel, a drainage conclave was held prior to commencement of the Hearing. The conclave was attended by Mr McLean and Mr Beardshaw (Council's drainage expert), following which a conclave report was tabled.³⁹ In regard to the batters and edge profiles both experts agreed:

Agreed Opinion 21: Both experts agree that given the extent of design work undertaken for the DR-04 asset, it would generally be reasonable to consider a variety of edge profiles to optimise the landscape function and drainage reserve land budget. For example this could be in the form of principals and guidance around the percentage (range) of grass batters (for example 1 in 6), densely vegetated batters (1 in 4) and rock edges (1 in 2). This guidance could be incorporated into Map of the Development Plan Overlay (DPO) Schedule.

Agreed Opinion 22: Both experts agree that the optimisation process of steepening batters could occur above the 1% AEP flood level, which would not impact or influence the primary drainage function of the wetland/retarding asset. This is subject to the appropriate safety in design criteria being met.

Mr McNeill said the batter design is outside his area of expertise, but noted the revised design would reduce the land take, decrease land acquisition costs, potentially decrease construction related costs and increase the net developable area on which additional dwellings can be constructed. On that basis (and technical matters aside), he supported the revised design.

No expert, when questioned, was able to identify any other Development Plan Overlays that specify batter slopes.

Council opposed the Proponent's alternative wetland design. It submitted the exhibited design complies with the IDM, a manual prepared by rural and regional councils across Victoria, used since 2007 and accepted in the industry as the benchmark standard for infrastructure design.

³⁹ D39

Council did not support the increased batter slopes and submitted:

- they depart from current standards in the IDM and do not accord with the adopted industry standards
- it needs to be confident the Stage 2 DCP makes adequate provision for the land required for the Southern Wetland and the exhibited design provides this assurance
- there is nothing stopping the Proponent seeking to negotiate a variation to Council's standards, including the requirements of the IDM, when the final design is approved by Council based on a specific functional design
- the Stage 2 DCP (and DPO46) contains sufficient flexibility for this negotiation, although a strong case will need to be mounted to depart from the IDM standards.

(iv) Discussion

The Panel considers the Wetland Concept Plan, which was prepared to inform the costings in the Stage 2 DCP for the land and construction of the drainage infrastructure, adopts a reasonable approach.

The Panel accepts that Mr Murphy's alternative design option for the Southern Wetland has some potential benefits. This design would result in a more land efficient design, be potentially easier to maintain and more visually interesting, and result in a reduced land requirement. The drainage expert conclave agreed that, given the extent of the design work undertaken for the Southern Wetland, it would be reasonable to consider a variety of edge profiles to optimise the landscape function and the drainage reserve land budget.

That said, the Panel was not persuaded on the information before it that Mr Murphy's proposed smaller batters with steeper gradients would be appropriate from a technical perspective.

Council needs to be confident that the Stage 2 DCP makes adequate provision for the land required for the Southern Wetland and it considers the Wetland Concept Plan provides this assurance.

Council has indicated the Proponent can negotiate a variation to Council's standards, including the batter slope requirements of the IDM, when the final detailed design is approved by Council. Mr Murphy was able to highlight other examples in the municipality that include a range of batter slopes, which provides the Panel with some comfort that Council has exercised its discretion in relation to batter slopes in other cases. Provided the detailed design of the Southern Wetland is supported by adequate technical information, there is no reason why Council should not exercise its discretion in this case as well.

The Proponent expressed concern that Council will not entertain any batter slopes steeper than 1:6, and submitted it is imperative the drafting in the DPO46 identifies the possibility for varying batters when the detailed design is undertaken.

While the Panel generally supports the approach adopted in the exhibited material and considers specifying the batter slopes for the Southern Wetland in the DPO46 is too prescriptive for the general function of a Development Plan Overlay, it agrees that varying batter slopes would result in a positive outcome. In this respect that Panel encourages Council to consider the approach adopted by Mr Murphy when assessing a detailed design for the Southern Wetland. It considers the DPO46 should be amended to allow greater flexibility in the detailed design and to encourage the consideration of varying batter slopes. It does not, however, consider it appropriate for a DPO to specify batter slope requirements at the degree of specificity suggested by the Proponent.

The Panel preferred version of the DPO46 in Appendix E includes some, but not all, of the Proponent's requested changes to allow an appropriate level of flexibility, without creating a control that is overly prescriptive.

(v) Conclusions and recommendation

The Panel concludes:

- It is not appropriate or justified to reduce the Stage 2 DCP costs for the Southern Wetland by reducing the area required for batters.
- While specifying batter slopes for the Southern Wetland in the DPO46 is too prescriptive for the general function of a Development Plan Overlay, varying batter slopes would result in a positive outcome.

11. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to:

- a) **Encourage the consideration of a variety of batter slopes without specifying specific batter gradients.**

8.2 Designated waterway encumbrance

(i) The issue

The Stage 2 DCP includes a land budget (DR-04-L) for the Southern Wetland (DR-04), to ensure the land costs for the Southern Wetland are covered in the levies.

The issue is whether the land budget in the Stage 2 DCP should be updated to reduce the unencumbered land required for DR-04L.

(ii) Evidence and submissions

The Proponent and Submitter 52 said the Southern Wetland land costs were incorrect because the allocation of the waterway encumbrance was incorrect.

Council submitted:

- the Corangamite Catchment Management Authority (CCMA) identified all of the existing waterway as a designated waterway
- the Stage 2 DCP was prepared on the basis that the land acquired for DR-04-L was unencumbered due to a misunderstanding internally at Council regarding the status of the existing waterway
- the Stage 2 DCP should be amended such that the land designated as the waterway by the CCMA is considered to be encumbered land which will result in consequential adjustments to the land budget.

Council said the CCMA did not clearly define the extent of the existing waterway encumbrance, and submitted:

- a 40-metre-wide 'post-development' waterway corridor has been used to specify the land encumbered by the existing waterway
- the 40-metre width came from the SWMS Report
- only land required for DR-04-L that is outside the 40-metre-wide encumbered area will be considered unencumbered land, and therefore funded as a land project under the Stage 2 DCP

- it follows the land budget in the Stage 2 DCP should be updated to reduce the unencumbered land required for DR-04-L once the assessment of area has been undertaken.

(iii) Discussion

It has been recognised by Council that the land budget for the DR-04-L in the Stage 2 DCP is incorrect. There was no disagreement between the parties or experts on this matter. The Panel agrees the Stage 2 DCP should be updated to reflect the revised calculations of the unencumbered land required for DR-04-L.

(iv) Conclusion and recommendation

The Panel concludes:

- The Stage 2 DCP should be updated to reduce the unencumbered land required for DR-04-L once the assessment of area has been undertaken.

The Panel recommends:

- 12. Revise the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023) to update the land budget to reflect the revised calculations of unencumbered land required for DR-04L.**

8.3 Land valuation methodology for Property 16

(i) The issue

The issue is whether the land valuation methodology for areas of Property 16 to be acquired for DR-04-L is appropriate, and if not, whether a site specific valuation should be adopted.

The issue relates to both the land area (discussed in Chapter 8.2) and land cost. The Stage 2 DCP notes the land area for DR-04-L was valued at \$1.8 million per hectare.

(ii) Evidence and submissions

Council relied on a report by Westlink Consulting, the *Jetty Road Stage 2 DCP Valuations Report, 2024* (Westlink Report)⁴⁰. The Westlink Report was not exhibited as part of the Amendment but was provided to the Proponent. The Westlink Report valued the land covered by DR-04-L at \$1.8 million per hectare.

The Proponent relied on Mr Petrocco's expert evidence which valued the land covered by DR-04-L at \$2.4 million per hectare.⁴¹ Mr Petrocco attributed a higher rate per hectare to the land encumbered by DR-04-L because he considered that part of the land is capable of residential development.

Council initially opposed Mr Petrocco's "site specific" approach but in closing advised the Panel that it supported the valuation reasoning and valuation methodology with respect to Property 16.

⁴⁰ D37

⁴¹ Mr Petrocco's evidence mistakenly referenced the Southern Wetland drainage infrastructure as DR-01 rather than DR-04-L. This has been acknowledged in this report.

(iii) Discussion

The Panel supports the agreed position adopted by Council and the Proponent, and Mr Petrocco's reasoning and valuation methodology with respect to Property 16. The Westlink Report did not appear to consider the ability of the parts of Property 16 not required for the Southern Wetland to be developed for residential purposes.

(iv) Conclusions and recommendation

The Panel concludes:

- The Stage 2 DCP land valuation for the area of land to be acquired for DR-04-L should be updated to \$2.4 million per hectare, once the land area is known (see Chapter 8.2).

The Panel recommends:

- 13. Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023)* to amend the Stage 2 DCP land cost for the area of land to be acquired for DR-04-L to \$2.4 million per hectare, once the land area is known.**

8.4 Construction costs**(i) The issue**

The issue is whether the Southern Wetland (DR-04) costings recorded in the Stage 2 DCP are accurate.

(ii) Evidence and submissions

The Stage 2 DCP included costs of \$11,332,650.71 for the construction of the Southern Wetland (DR-04). The Proponent submitted the exhibited costings were incorrect and should be raised to \$15,621,027.39⁴². Council reviewed the costings and agreed with the increase.

Mr Watters gave civil engineering and quantity surveying evidence for the Proponent. He considered the concept design for the Southern Wetland is a logical design solution, and the revised Stage 2 DCP costings were well considered and consistent with what would be reasonably expected for a wetland project of this scale. He explained the revised costs were to account for:

- increased landscape costs
- updated soil sieving costs to meet requirements under the Cultural Heritage Management Plan (CHMP)
- removal of Item 46 (detailed civil design) on the basis that this is a double-up with consultant fees allocated to Item 48 (civil design and documentation)
- updated percentage fees and contingency based on the new construction value.

Mr Watters considered additional geotechnical test pitting could be undertaken within the Southern Wetland area to provide a greater level of certainty on the likely costs of meeting the requirements of the CHMP, however considered the current level of data was reasonable for this purpose.

⁴² In accordance with a letter from SMEC dated 14 December 2023 and associated Opinion of Probable Costs from SMEC dated 10 July 2022 which was provided with the Proponent's submission.

Submitter 52, who owns Property 27, queried the accuracy of the costings, and considered them too high. It relied on the evidence of Mr Clarey, who took issue with the high cost estimates for the clay liner proposed to be used at the base of the drainage basin. His evidence was:

- there is insufficient geotechnical advice to report on clay liner requirements
- the cost estimate for the clay liner could be decreased by reducing the depth of the liner and possibly using on-site material instead.

Mr Clarey considered the CHMP sieving requirements were too onerous because:

- they adopt an overly conservative design assumption where all excavated material above a sterile layer needs to be sieved
- there is a realistic opportunity to retain excavated material on-site, thus reducing costs
- it is inappropriate to base the costing on only one 'quote' for archaeological excavation
- the adjusted costings should incorporate the cost of landscape design drawings, and include a contingency
- a determination was required on whether the wetland will incorporate a pedestrian bridge⁴³.

In response, the Proponent submitted the reuse of the topsoil will depend on:

- Council agreeing to the formulation of earth mounds within the open space area and agreement is not certain
- Melbourne Water requirements and whether topsoil can be used in waterways and wetlands
- cultural heritage considerations associated with the reuse of topsoil in private allotments.

The Proponent said given this uncertainty, the Stage 2 DCP should assume all topsoil must be disposed of offsite, and submitted:

Mr Watters' more conservative approach to costing should be adopted as it will avoid a potentially significant shortfall. This is a complex project, with a number of uncertain elements. This warrants a conservative approach to determining a DCP item cost.

If the DCP underfunds the project, then the person or body tasked to deliver it is exposed to significant risk. But if it is overfunded, the consequences are far less drastic. The PE Act allows for the return of excess DCP funds to landowners: refer to section 46QB(6).

The Proponent said sourcing an additional quote for the soil sieving (with the intention of reducing the costs) was unfounded and an unusual step at this point in the process. It said the task of sieving was highly specialised and there may not be other suitable experts available in this field.

At the Direction of the Panel, a civil engineering and quantity surveying conclave was held prior to commencement of the Hearing, attended by Mr Watters and Mr Clarey. The experts produced a conclave statement after the conclave meeting.⁴⁴ The conclave report makes it clear that both experts agreed that if Council will accept the topsoil as being suitable for reuse within the drainage reserve, then this would reduce the cost associated with sieving and disposal.

(iii) Discussion

While Council and the Proponent agree that construction costs for the Southern Wetland should be recorded in the Stage 2 DCP as \$15,621,027.39, Submitter 52 (and Mr Clarey) considered these

⁴³ Council later confirmed the pedestrian bridge was proposed to be included in the works for the Southern Wetland

⁴⁴ D38

revised costs to be too high. Mr Clarey's key concerns related to the cost identified for satisfaction of the CHMP requirements, specifically:

- CHMP sieving costs
- whether existing topsoil can be reused on site to reduce disposal costs.

Both of these items are difficult to refine at this stage in the project. As the detailed design of the project is undertaken, there may be opportunities to reuse topsoil on site, thus reducing the need for sieving and the disposal of soil offsite. The Panel agrees with the Proponent it is not necessary to obtain further quotes for the sieving at this stage. This would be an unusual and particularly onerous exercise.

Similarly, the reduction of the cost of the clay liner is reliant on either reducing the depth of the liner or finding other material on-site. Both of these options can be considered during the detailed design of the Southern Wetland, but there is insufficient information available at this stage to support an assumption that the clay liner may be able to be delivered at a lower cost.

The Southern Wetland is a complex project with a number of uncertain elements, particularly those relating to the CHMP requirements. The Panel considers it is important to avoid a potential shortfall.

The Panel considers the updated estimate of costs prepared by the Proponent and agreed by Council to be acceptable. Based on the evidence of Mr Watters the revised costs are well considered and consistent with what would be reasonably expected for a wetland project of this scale.

(iv) Conclusions and recommendation

The Panel concludes:

- The Stage 2 DCP should be amended to record construction costs of \$15,621,027.39 for the Southern Wetland (DR-04).

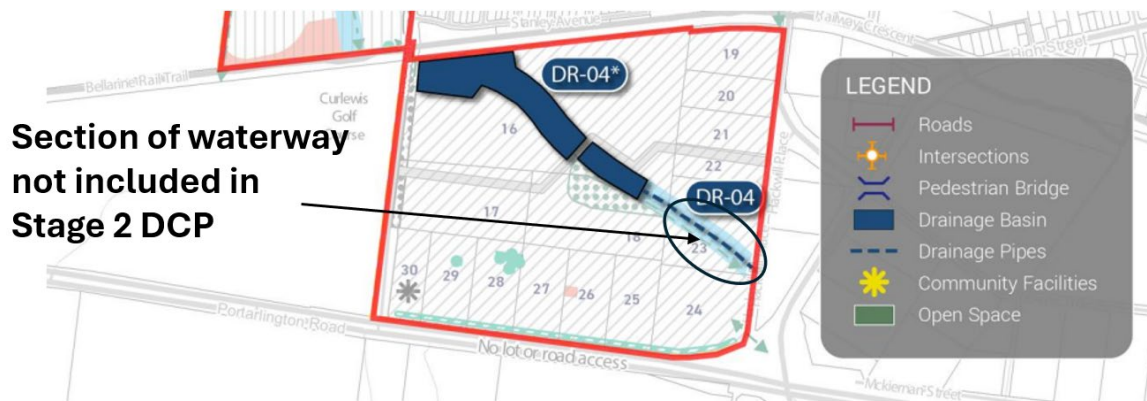
The Panel recommends:

- 14. Revise the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023) to update the construction costs for DR-04 to \$15,621,027.39.**

8.5 Inclusion of DR-05 in the Stage 2 DCP

(i) Background

The Southern Waterway extends through Properties 16, 18, 23 and 24. The Stage 2 DCP only includes the costs of constructing the waterway through Properties 16. The Stage 2 DCP excludes the costs of constructing the waterway in Properties 23 and 24 (see Figure 25).

Figure 25 Proposed new DCP Project DR-05

Source: Urban Enterprise

*Drainage land item (DR-04-L) is only associated with the area shown in Figure 6 as 'drainage basin'. The construction item DR-04 extends further east to Hackwill Place.

Source: D1ar

(ii) The issue

The issue is whether the Stage 2 DCP should include a new project DR-05, being the constructed waterway on properties 23 and 24.

(iii) Evidence and submissions

Council explained the costs of the constructed waterway on Properties 23 and 24 were omitted from the Stage 2 DCP in error, noting that DR-04 only applies to Property 16. It submitted the Stage 2 DCP should be amended to include DR-05 to cover the costs of the constructed waterway on Properties 23 and 24. Mr Watters agreed, and the Proponent supported this approach.

Mr Clarey for Submitter 52 (Property 27) said:

... it is anticipated that the suggested DR-05 would only benefit approximately 15-20% of the catchment in Charge Area 3. As such it is not deemed equitable that the whole of Charge Area 3 should be subject to contribute for construction of DR-05.

A civil engineering and quantity surveying conclave that was held prior to commencement of the Hearing, attended by Mr Watters and Mr Clarey. The experts produced a conclave statement after the conclave meeting.⁴⁵ Both experts agreed that Property 27 does not drain into DR-05, however noted the apportionment of costs to drainage charge areas was outside of their areas of expertise.

(iv) Discussion

The Panel agrees DR-05 should be included in the Stage 2 DCP. It was omitted in error when the Amendment was prepared. No expert drainage evidence has been presented against its inclusion.

The Panel acknowledges that Property 27 does not drain into DR-05. However, the construction of DR-05 is required to manage the flow of water through Charge Area 3, which is necessary and is of benefit to all the properties in that charge area. No evidence was presented to the Panel to change the apportionment methodology of DR-05.

⁴⁵ D38

(v) Conclusion and recommendation

The Panel concludes:

- DR-05 should be included in the Stage 2 DCP and apportioned across Charge Area 3.

The Panel recommends:

- 15. Revise the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023) to include new project DR-05 to Properties 23 and 24 as detailed in the updated log of proposed changes to the Stage 2 DCP (Document 90).**

9 Other Development Contributions Plan issues

9.1 Financing costs for early delivery

(i) Background

The Stage 2 DCP does not include financing costs for the early delivery of any of the DCP projects. The Proponent considered forward financing costs associated with the early delivery of Tivoli Drive (RD-03), the Southern Wetland (DR-04) and the Southern Precinct Park (OS-05) should be included.

The three infrastructure items are listed in Table 5, and a map of Charge Area 3 is shown in Figure 26.

Table 5 Infrastructure Items

DCP ID	Infrastructure Item	Catchment area
RD-03	<p>Tivoli Drive between Portarlington Road and northern extent of Bellarine Rail Trail</p> <p>Construction of Tivoli Drive Construction - Upgrade of Tivoli Drive from Portarlington Road to northern extent of the Bellarine Rail Trail. Includes turning lane extension at Portarlington Road intersection and pedestrian crossing of the Bellarine Rail Trail.</p>	Main Catchment Area
DR-04	<p>Detention and Water-sensitive urban design (WSUD) Basin (Property 16)</p> <p>Construction of a drainage detention and water-sensitive urban design basin including earthworks, sediment ponds, access tracks, rock batters and drainage works.</p>	Charge Area 3
OS-05	<p>Southern Precinct Local Park</p> <p>Improvements Enhancements to local park including basic and essential improvements such as paths, fixed furniture, play equipment and landscaping.</p>	Charge Area 3

Figure 26 Charge Area 3



Source: D1ar

(ii) The issue

The issue is whether the Stage 2 DCP should include forward financing costs for the three projects (RD-03, DR-04 and OS-05).

(iii) Evidence and submissions

The Proponent submitted:

- the three projects will require early delivery and that the financing costs associated with early delivery should be included in the DCP as an additional DCP project
- the three projects are enabling infrastructure without which Charge Area 3 will not be able to be developed
- the financing costs associated with the enabling infrastructure are estimated at \$1,312,119.25.

Mr McNeill's evidence was:

- financing costs as a DCP item usually relate to matters that can be considered a special case
- if the works are properly considered enabling infrastructure that will provide the opportunity for other landowners in the Charge Area 3 to commence development, there is merit in considering an early works package
- a separate DCP project could be included based on the financing costs associated with the early delivery of the infrastructure.

Council submitted this is not a case where financing costs for early delivery are justified. Council explained the Stage 2 DCP will be implemented through a system of works in kind credits provided to landowners where contributions are made in kind. Council said that while this may involve some element of up front financing by early developers, this is not different or out of the ordinary.

Council submitted:

- very few DCPs make an allowance for early works funding and where they do, it is the borrowing costs of the Collecting Agency that are funded, not the borrowing costs of private developers
- it does not propose to borrow funds to implement the Stage 2 DCP
- there is an opportunity for some development in Charge Area 3 ahead of the three projects identified by the Proponent, if it can be accessed via Hackwell Road to the east
- it is not possible to provide forward financing costs unless it is clear who pays and in this case it is unclear.

Mr Ainsaar's evidence was:

- it may be possible to include a financing component in the Stage 2 DCP but this would require compelling justification, for example where:
 - the infrastructure is needed to 'open up' the development area and the infrastructure benefits the entire development area
 - the landowner bearing the cost of the upfront infrastructure would be significantly in credit in relation to DCP levies for a substantial period of time
 - without the infrastructure, a large proportion of the development area may not be developed for several years.
- he was not sure whether these circumstances exist in this case, and in any event, the landowner requesting this change (the Proponent) owns the majority of the land in Charge Area 3 and would be paying the largest proportion of the financing costs.

In the development contributions conclave, Mr McNeill and Mr Ainsaar agreed that if the three projects could be accurately described as enabling infrastructure that would allow for the earlier development of other land in Charge Area 3, there would be a reasonable case to include financing costs as a DCP project.

(iv) Discussion

In considering whether forward financing costs for the three projects should be included in the DCP, a key question is whether the three projects can properly be described as enabling infrastructure that would unlock development in Charge Area 3.

Tivoli Drive

In the case of Tivoli Drive (RD-03), the exhibited DPO46 states:

Land south of the Bellarine Rail Trail relying on access from Tivoli Drive cannot be further subdivided until Tivoli Drive is constructed to its ultimate profile from the northern boundary of the Rail Trail Reserve to Portarlington Road including the lengthening of the turn lane from Tivoli Drive into Portarlington Road...

Notwithstanding the above, the Panel considers that some development can occur in Charge Area 3 before Tivoli Road is duplicated (RD-03), for the reasons set out in Chapter 7.2 of this report. It is therefore not considered to be enabling infrastructure without which other landowners in Charge Area 3 will not be able to commence development. As such, it is not appropriate for the forward financing costs associated with RD-03 to be included in the Stage 2 DCP.

The Southern Wetland

The Southern Wetland (DR-04) is an extensive and expensive drainage solution included in Charge Area 3 and is a fundamental piece of infrastructure required for development to occur. The Panel

agrees with the Proponent that without the Southern Wetland being constructed, other development in Charge Area 3 would be unable to take place. Further, all areas within Charge Area 3 will utilise the DR-04 infrastructure. On that basis, the Panel agrees with the Proponent that the Southern Wetland can be properly characterised as enabling infrastructure.

The cost of delivering the Southern Wetland is likely to exceed the levies that would otherwise be payable by any one developer in Charge Area 3. Hence, if it is delivered as works in kind, the developer would likely end up with a substantial credit. Including financing costs for the early delivery of the project in the Stage 2 DCP would make its delivery as works in kind feasible, because the developer could be reimbursed for its credits in a timely way.

The Panel acknowledges Council's position that forward financing for the three projects was not possible given it was not clear who would pay. However, the Panel disagrees. The Southern Wetland is predominantly in Property 16, so the construction of this piece of infrastructure would be undertaken by the owner/developer of Property 16. It is therefore clear who pays.

The Southern Precinct Park

The Southern Precinct Park (OS-05) is adjacent to the Southern Wetland and it would therefore make sense to construct the park at the same time as the drainage infrastructure. However, the park cannot be considered enabling infrastructure that needs to be provided in order to allow development in Charge Area 3 to proceed. It is therefore not appropriate to include forward financing costs for the Southern Precinct Park in the Stage 2 DCP.

(v) Conclusions and recommendation

The Panel concludes:

- Forward financing costs associated with the early delivery of the Southern Wetland (DR-04) should be included in the Stage 2 DCP as a separate project.
- It is not appropriate to include forward financing costs associated with the delivery of Tivoli Drive (RD-03). Some level of development can occur in Charge Area 3 without the need for the Tivoli Road duplication.
- It is not appropriate to include forward financing costs associated with the delivery Southern Precinct Park (OS-05). It is not enabling infrastructure and landowners will be able to commence development before it is constructed.

The Panel recommends:

- 16. Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023)* to include forward financing costs as a separate project for works associated with the early delivery of DR-04.**

9.2 Coriyule Road

(i) Background

The Stage 2 DCP does not include construction costs associated with the delivery of Coriyule Road, including the proposed traffic calming measures, between Tivoli Drive and McDermott Road.

(ii) The issue

The issue is whether the costs of constructing Coriyule Road, including traffic calming measures, should be included in the Stage 2 DCP and project costs apportioned 50 per cent each to Properties 14 and 15.

(iii) Evidence and submissions

The Proponent submitted:

- the construction of Coriyule Road, including traffic calming measures, should be included in the Stage 2 DCP and project costs apportioned 50 per cent each to Properties 14 and 15
- this approach would facilitate the early and complete construction of the road and avoid disjointed development or the potential for the road to be constructed in stages
- the landowners of Properties 14 and 15 have not been able to reach any agreement to construct the road, so the project should be included in the Stage 2 DCP.

Mr McNeill's evidence was:

- Coriyule Road is likely to act as an important east-west road through the subject land, including a connection east to Jetty Road
- it is likely Coriyule Road will act as a key access point for the staged development of both Properties 14 and 15
- inclusion of this project in the Stage 2 DCP would provide several advantages including:
 - the complete construction of the road at the earliest stage
 - formalising construction as part of formal planning for the precinct to avoid the road to be constructed in part or in stages.

He acknowledged, however, that it is possible a commercial agreement between the owners of Properties 14 and 15 may achieve a similar outcome.

Council did not support the construction costs for Coriyule Road being included in the Stage 2 DCP.

It submitted:

- Coriyule Road is a local road benefiting only Properties 14 and 15
- construction of a local road would not typically be included in a DCP because the adjoining land owners would generally work out the construction costs between themselves
- generally, a road like this would only be included in the DCP where land ownership is highly fragmented, which is not the case here.

Mr Ainsaar's evidence was:

- the Stage 2 DCP does not include this item on the basis that it is a local road which provides only local benefits to Properties 14 and 15
- typically this item would not be included in a DCP unless there was a compelling reason to include it, which is not the case here
- including this item and associated apportionment would have the following implications:
 - the need for the creation of a fourth charge area in the Stage 2 DCP
 - the financial obligation on Council as the Development Agency to deliver the works
 - additional administrative time and cost for Council
- he sees no reason why this item could not be included in the Stage 2 DCP and apportioned 50 per cent to Properties 14 and 15.

Mr Ainsaar recommended that if the construction costs are included in the Stage 2 DCP, a Section 173 Agreement should be prepared and executed before the Stage 2 DCP is adopted to ensure the responsibility for delivery remains solely with the owners of Properties 14 and 15.

At the developer contribution conclave Mr McNeill and Mr Ainsaar agreed:

- the construction of Coriyule Road *could* be included in the Stage 2 DCP (but not that it necessarily should be)
- a commercial agreement between the two property owners would represent a simpler outcome
- if a commercial agreement cannot be agreed between the two parties, the project could be accommodated as a Stage 2 DCP project subject to ensuring that Council is protected from any financial liability.

(iv) Discussion

Coriyule Road between Tivoli Drive and McDermott Road serves as a local road that primarily benefits Properties 14 and 15. Being a local road with limited shared benefit, the Panel finds that it should not be included in the Stage 2 DCP. The cost of its construction should sit with the two adjoining property owners. While the Proponent has indicated the landowners of Properties 14 and 15 have not been able to reach any agreement to construct the road, this is not sufficient justification to move the costs to the Stage 2 DCP.

Mr Ainsaar and Mr McNeill agreed that while Coriyule Road could be included in the Stage 2 DCP, a commercial arrangement between the two property owners would represent a simpler outcome. The Panel agrees and encourages the owners of Properties 14 and 15 to come to a commercial agreement. A commercial agreement could also facilitate the early delivery of the road.

(v) Conclusion

The Panel concludes:

- The costs of the construction of Coriyule Road between Tivoli Drive and McDermott Road, including traffic calming measures, should not be included in the Stage 2 DCP.

9.3 Tivoli Drive and Greenvale Drive

(i) Background

The Stage 2 DCP includes six projects associated with the duplication and delivery of Tivoli Drive and Greenvale Drive. The projects are listed in Table 4 in Chapter 7.2.

(ii) The issue

The issue is whether these projects should be included in the Stage 2 DCP.

(iii) Evidence and submissions

Submitter 32 did not support the inclusion of the Tivoli Drive and Greenvale Drive works in the Stage 2 DCP. It submitted:

- DCPs do not typically include standard collector roads as funded items
- Tivoli Road and Greenvale Drive should be developer funded.

Council submitted:

- the upgrade of Tivoli Drive and Greenvale Drive was included in the Stage 2 DCP on the basis that additional demand and vehicle usage from across the entire subject land would generate the need for the road to be duplicated
- inclusion in the Stage 2 DCP is required to achieve equitable funding and shared delivery, and may encourage the earlier delivery of the project.

Mr Walsh said:

- Tivoli Drive and Greenvale Drive are nominated as 'primary roads' within the Framework Plan
- typically only arterial roads would be included as DCP items, however there is a clear nexus between the need for the upgrade of Tivoli Drive and Greenvale Drive and the development of the subject land as a whole
- it is appropriate to include the projects in the Stage 2 DCP.

Mr Ainsaar referred to the DCP Guidelines and said they:

- identify the type of works, services or facilities that may be funded from a DCP, including land for roads and the construction of roads
- do not define the hierarchy of road that is allowable for funding under a DCP.

Mr Ainsaar's evidence was:

- standard collector roads can be funded through a DCP and many existing DCPs include collector roads as funded items
- the exhibited Traffic Report states that the road is likely to be of greater importance to the precinct than a typical connector boulevard, given that it is the main transport 'spine' and the major transport link between Geelong-Portarlington Road and Jetty Road
- in his view, the duplication of Tivoli Drive and Greenvale Drive has sufficient need and nexus generated by the whole of the subject land to be included in the Stage 2 DCP and apportioned across all properties.

(iv) Discussion

The Panel accepts the evidence of Mr Walsh and Mr Ainsaar that the upgrade of Tivoli Drive and Greenvale Drive are key infrastructure items for the development of the subject land. There is a clear nexus between the need for the upgrade of Tivoli Drive and Greenvale Drive and the development of the subject land as a whole. The Panel agrees with Council that the additional demand and vehicle usage from across the subject land generates the need for duplication of the roads.

The Panel finds that the inclusion of Tivoli Drive and Greenvale Drive works and land acquisition in the Stage 2 DCP is appropriate.

(v) Conclusion

The Panel concludes:

- It is appropriate and justified to include the Tivoli Drive and Greenvale Drive duplication works and land acquisition costs in the Stage 2 DCP.

9.4 Apportionment of the costs of DR-04

(i) Background

There are five drainage projects listed in the Stage 2 DCP. DR-04, which incorporates extensive drainage infrastructure, is located in the southern part of the subject land (in Charge Area 3) and is apportioned wholly to Charge Area 3.

(ii) The issue

The issue is whether it is appropriate and justified to reduce or change the apportionment of costs for DR-04.

(iii) Evidence and submissions

Portarlington Road Pty Ltd owns land in Charge Area 3. It submitted the apportionment of costs for DR-04 should be reduced or changed to include Charge Area 2. It submitted:

- the \$417,160.73 per hectare contribution toward drainage infrastructure for Charge Area 3 is significantly higher when compared to the per hectare charge for Charge Areas 1 and 2 toward drainage infrastructure (\$11,221.52 and \$31,162.16 respectively)
- the land south of the Rail Trail is undertaking significant works to capture, treat and detain water before discharging to the north-west
- drainage costs of Charge Area 3 should be apportioned over Charge Area 2 as well.

Council did not agree the costs for DR-04 should be apportioned to include Charge Area 2 and submitted:

- the Stage 2 DCP charge areas have been prepared generally in accordance with the drainage catchments identified in the exhibited SWMS Report
- DR-04 is required to service the southern catchment (Charge Area 3)
- charge Areas 1 and 2 have to provide and pay for their own drainage infrastructure requirements which are not included in the Stage 2 DCP.

Mr Ainsaar did not support apportioning the costs of DR-04 as sought by Portarlington Road Pty Ltd.

(iv) Discussion

The Panel does not consider that costs for DR-04 should be reduced or changed to include Charge Area 2. No evidence was presented to establish the justification for an alternative form of apportionment.

The Panel considers that there is a clear nexus of benefit to Charge Area 3 for the construction of the DR-04. The main argument put to the Panel was that the overall per hectare cost for drainage in Charge Area 3 was significantly higher when compared to other charge areas.

The Panel acknowledges that the drainage costs associated with Charge Area 3 are higher when compared to the other charge areas, however, considers the proposed costs associated with DR-04 are robust and appropriate based on the evidence.

(v) Conclusion

The Panel concludes:

- It is not appropriate to reduce or change the apportionment of costs for DR-04 to include Charge Area 2.

9.5 Right turn lanes to access to Property 30**(i) The issue**

The issue is whether it is appropriate and justified to redesign the southern section of Tivoli Drive (RD-03) to include right turn lanes into Property 30 with the costs included in the Stage 2 DCP.

(ii) Evidence and submissions

Portarlington Road Pty Ltd submitted:

- it intends to develop Property 30 as a service station (with ancillary convenience restaurants, childcare centre and medical centre)
- as a result, Tivoli Drive should be designed to include two right turn lanes into Property 30 as shown in Figure 27
- projects RD-03 and RD-06 in the Stage 2 DCP should updated to include the cost of the provision of the two right turn lanes.

Figure 27 Access arrangements sought for Property 30



Source: D61

Council submitted:

- the Urban Growth Plan does not envisage a commercial use in this location but some non-residential uses could be considered during the permit process

- the proposed right turn access points into Property 30 from Tivoli Drive would need to be considered from a traffic perspective as part of the permit process
- access would be coordinated with the balance of the area
- it is premature to be identifying access locations at this time.

(iii) Discussion

The Panel agrees with Council that it is premature to consider access arrangements at this point in the process. Access will depend on a range of factors and should be coordinated with the balance of the area.

Should a development be approved in the future and the introduction of right turn lanes is required, they would be a direct benefit to Property 30. As Property 30 would receive the full benefit of any construction of right turn lanes, they should be responsible for paying for the full cost of the works.

(iv) Conclusion

The Panel concludes:

- It is not appropriate or justified to redesign the southern section of Tivoli Drive (RD-03) to include right turn lanes into Property 30.

9.6 Shared user path – south of Coriyule Road

(i) Background

Map 1 of the Framework Plan identifies a 'Rural Interface Vegetation Treatment Including Shared Path' along the west of the subject land to the south of Coriyule Road.

(ii) The issue

The issue is whether the shared user path should be credited to the developer of Property 15 as unencumbered public open space.

(iii) Evidence and submissions

The Proponent sought to have the shared footpath within the road reserve moved to the eastern side of the road and credited to the developer of Property 15 as unencumbered public open space.

The Proponent submitted:

- the objective of the public open space provision in Clause 56.05-2 includes reference to the need to provide open space in the form of trails
- a shared footpath and associated landscaping is active open space akin to a trail and this space should be credited
- the path will form part of the Bellarine Rail Trail and is akin to a regional rather than local trail.

Mr McNeill considered there was merit in crediting the shared footpath as unencumbered open space and said the same principle should also be applied to other properties, such as those adjoining Interface 2 and Interface 3. These two interfaces are adjacent to Properties 11, 12, 13 and 14 and the location is shown in Figure 14.

Council submitted the local pathway is a local item of infrastructure and not a regional path. Council said each length of the shared path along the western boundary should be constructed by each owner for the length of their frontage to ensure they each fairly share the cost. Council noted that Mr McNeill agreed this approach was a feasible option when questioned by Council. Council submitted:

- including it in the Stage 2 DCP is possible but would likely result in the same cost contribution
- the southern properties are already contributing to the shared path through the Stage 2 DCP in the southern area because the path does not sit on all the properties but rather in the waterway.

(iv) Discussion

The Panel does not accept the provision of the shared path should be credited as unencumbered open space. If the path did have regional significance, its likely it would be included as a DCP item or counted as open space. However, the Panel does not consider the path to be akin to a regional trail simply because it connects with the Regional Rail Trail. Its everyday use will be as a local footpath serving the wider growth area, and the fact that it links into the Rail Trail is a bonus but does not elevate its status.

The Panel agrees with Council that the logical approach is for each length of the shared path along the western boundary to be constructed by each owner for the length of their frontage. This will ensure they each fairly share the cost. While the shared footpath could be included in the DCP as an alternative, this would likely result in the same, or very similar, cost contribution.

(v) Conclusion

The Panel concludes:

- The shared footpath within the road reserve should not be credited to the developer of Property 15 as unencumbered public open space.

9.7 Other DCP issues

The parties identified several errors in the Stage 2 DCP which require correction. In particular there was an error in labelling the costs sheets costs sheets for DR-01, DR-02 and DR-03 in Appendix E of the Stage 2 DCP.

The Panel recommends:

17. Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023)* to update labels of the cost sheets for DR-01, DR-02 and DR-03 in Appendix E as follows:

- 21 (D-03) Drainage Works – Pipeline (Property 11) amended to 21 (D-~~03~~01) Drainage Works – Pipeline (Property 11).**
- 14 (D-02) Drainage Works – Pipeline (Property 15) amended to 14 (D-~~02~~03) Drainage Works – Pipeline (Property 15)**
- 13 (D-01) Detention and WSUD Basin and Constructed Waterway amended to 13 (D-~~01~~04) Detention and WSUD Basin and Constructed Waterway.**

10 Other issues raised by submitters

(i) Lack of community consultation on the Amendment

Several submitters said there was a lack of community consultation on the Amendment.

The Amendment was exhibited in accordance with the requirements of the PE Act. The Panel has not considered this issue any further.

(ii) Consultation on the Development Plan

Several submitters questioned whether there will be consultation in relation to the approval of a Development Plan under the DPO46.

The Development Plan Overlay does not mandate any formal notice in relation to the approval of a Development Plan under the DPO46. Council assured the parties during the Hearing, however, that it can and will undertake informal consultation in relation to this Development Plan. This is at the discretion of Council, however the Panel strongly supports this and encourages Council to consult with the public.

(iii) Lack of certainty in the DPO46

Submitter 42 was concerned about the lack of certainty provided by the DPO46 in relation to the landscape outcomes along McDermott Road and associated interface treatments. It also sought a requirement for a construction management plan or similar, limiting the hours and days of construction work, prohibiting construction access from McDermott Road and construction related car parking along McDermott Road.

Council submitted:

- the DPO46 has been prepared in accordance with *Planning Practice Note 23: Applying the Incorporated Plan and Development Plan Overlays* and contains an appropriate level of detail
- it includes the Framework Plan with which a Development Plan must be generally in accordance
- the Framework Plan sets out the key elements of the future urban structure of the growth area, and although it does not show the finer detail of subdivisional lots and roads, it provides a relatively clear understanding of the pattern of development within the area.

Council noted the DPO46 contains various objectives and requirements aimed at providing an appropriate level of certainty with respect to the landscape outcomes along McDermott Road, including:

- the objective “to ensure subdivision and development responds to the topography, natural features and key views within the growth area, as well as interfacing rural, coastal and residential land”
- several conditions and requirements which support the above objective
- references to the Background Landscape Report which shows the western boundary landscape context and provides an additional layer of guidance on this issue.

Council and the Proponent submitted matters such as construction management are generally the function of permit conditions and not the Development Plan and agreed the DPO46 should not be amended to respond to this submission.

The Panel appreciates Submitter 42's concerns regarding whether the DPO46 provides sufficient certainty in relation to the McDermott Road (western) interface.

There is an important balance to be achieved between prescription and flexibility in a DPO. Council was ultimately satisfied the DPO46 provided a sufficient level of certainty to guide future design and ensure an appropriate rural-residential interface, consistent with Planning Practice Note 23. The Panel agrees and is comfortable the DPO46 provides a sufficient level of certainty that good planning outcomes will be achieved for the interface through the subsequent permit process.

In Ms Jordan's cross examination, she made it clear that she considers the role of the DPO46 is to make the intention and vision clear and provide guidance on how a Development Plan ought to respond. The Panel agrees with Ms Jordan that the DPO46 does not need to be more specific – the Development Plan itself can include that level of detail.

In relation to Submitter 42's request for the inclusion of text regarding construction management in the DPO46, the Panel does not consider this is necessary. Matters such as construction management are generally the function of planning permit conditions and not the DPO.

(iv) Public Open Space and Public Open Space Contribution

The Proponent identified that the DPO46 requires the preparation of an Open Space and Landscape Masterplan that includes, among other things, "an open space contribution equal to 10% of the net developable land (unencumbered) or in-lieu cash payment or combination of both". The Proponent was concerned that this provision does not specifically reference clause 53.01 and it may be possible to double dip. It submitted:

The problem is that this obligation does not have regard to, or account for, the requirement for open space contributions under clause 53.01. As currently drafted, the effect of the exhibited DPO46 would be to impose an additional obligation to make an open space contribution in addition to that required clause 53.01.

The schedule to clause 53.10 currently requires the subdivision of land zoned for residential purposes to make a contribution based on the number of lots. For subdivisions for 10 or more lots, the specified contribution is 10%. The requirement under the exhibited DPO46 would not exclude the requirement to make this contribution in addition to the 10% or unencumbered land that it requires.

It is assumed that this is not the intended result. There are a number of ways the problem could be addressed, including by amending the schedule to 53.01 to identify that the contribution required for land that is subject to DPO46 is that specified in DPO46.

While Council submitted that this is not what was intended, Council agreed to revise the drafting to make it clear that only one contribution can be sought and made. Council and the Proponent agreed to the following re-wording of the relevant condition (and agreed that it should be moved to Clause 3.0):

Unless a contribution has already been made under any other provision of the Scheme, any development of land (whether or not it is subdivided) must make an open space contribution equal to 10% of the net developable land (unencumbered) or in lieu cash payment or a combination of both subject to equalisation as set out in clause 4.3 of the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan.

Encumbered land for the purposes of the public open space contribution is land required for one or more of the following purposes:

- Stormwater drainage reserves (including retarding basins, wetlands, sediment ponds and associated sediment drying and access/maintenance areas as approved within the Integrated Water Management Plan inclusive of functional layout plan designs);
- Any waterway corridor reserve which consists of the hydraulic width (1% AEP channel), riparian zone and vegetated buffer zone;
- The foreshore reserve exclusion zone;
- Land area required for the protection of remnant vegetation and scattered native trees (to be transferred to Council as road or conservation reserve); and
- Land set aside in Aboriginal cultural heritage reserves.

Encumbered Land is not to be credited for the purposes of the open space contribution.

The Proponent did not agree to the inclusion of the bullet point highlighted in yellow.

The Panel supports the redrafting of the open space provisions as agreed between Council and the Proponent. It does not consider it is necessary to delete the highlighted bullet point. No submissions were made of evidence presented to justify this.

Council and the Proponent also agreed to the following re-wording of section 4.3 of the Stage 2 DCP to address the same issue which the Panel supports:

The Greater Geelong Planning Scheme (at Clause 53.01 and in DPO Schedule 46) requires a public open space contribution to be made.

This DCP does not include any public open space land items – all land is to be provided through Clause 53.01 or under DPO Schedule 46. Improvements projects to open space are included in this DCP. Unencumbered land to be used for open space equates to 5.76% of the Net Developable Area of the Precinct. Public open space must be provided in accordance with the Framework Plan and the areas set out in Table 12.

Where the proportion of land shown in the Framework Plan and Table 12 as to be provided for public open space exceeds 10% of the net developable land (unencumbered) that landowner will be compensated by Council for the provision in excess of 10% of the net developable land (unencumbered).

Where the proportion of a land parcel which is being provided as public open space is zero or less than 10% of the net developable land (unencumbered), the landowner must pay the open space contribution up to 10% of the net developable land (unencumbered).

Submitter 52, the owner of Property 27, took issue with the 'Portarlinton Road Vegetation Interface Treatment' as shown on the Framework Plan. Submitter 52 accepted the premise that a vegetation interface to Portarlinton Road is warranted, however questioned whether the 10 metre width was necessary and if so, submitted the land should count towards to site's public open space contribution and be excluded from the site's net developable area for the purposes of calculating the DCP fees.

The Panel supports the Vegetation Interface Treatment along the Southern Residential Area of the Framework Plan. It is not necessary to identify the exact width of the interface area and in any event Submitter 32 did not suggest an alternative. Neither is it appropriate to remove the area from the site's net developable area. The setback is akin to an environmental constraint which remains the responsibility of the landowner to address. Equally, the Panel does not consider this land should be credited as part of the public open space requirement. The Panel does not agree with Submitter 52 that the proposed interface is akin to the tree reserves in Property 11 which have been included as public open space. The tree reserve area in Property 11 contains remnant native vegetation and has been identified in both the Framework Plan and Background Landscape Report as being part of the wider open space network in the form of linkages between areas. This differs from the vegetation interface proposed for Portarlinton Road.

The Panel recommends:

- 18. Revise Development Plan Overlay Schedule 46 as shown in Appendix E to update the provision dealing with the open space requirement to avoid any double dipping.**
- 19. Revise the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan (October 2023)* to replace the text in 'Section 4.3 Open Space' with:**

PUBLIC OPEN SPACE CONTRIBUTIONS

The Greater Geelong Planning Scheme (at Clause 53.01 and in DPO Schedule 46) requires a public open space contribution to be made.

This DCP does not include any public open space land items – all land is to be provided through Clause 53.01 or under DPO Schedule 46. Improvements projects to open space are included in this DCP. Unencumbered land to be used for open space equates to 5.76% of the Net Developable Area of the Precinct. Public open space must be provided in accordance with the Framework Plan and the areas set out in Table 12.

Where the proportion of land shown in the Framework Plan and Table 12 as to be provided for public open space exceeds 10% of the net developable land (unencumbered) that landowner will be compensated by Council for the provision in excess of 10% of the net developable land (unencumbered).

Where the proportion of a land parcel which is being provided as public open space is zero or less than 10% of the net developable land (unencumbered), the landowner must pay the open space contribution up to 10% of the net developable land (unencumbered).

11 Drafting issues

The Panel has considered the various parties' responses to both Council's and the Proponent's final versions of the DPO46. Given there were several versions provided, with the Proponent's and Council's versions differing significantly, the Panel has used the exhibited DPO46 as a base for its final recommendations.⁴⁶

A tracked-change version of the DPO46 is included Appendix E. It includes all changes recommended by the Panel, including to:

- specify the quantum of the affordable housing contribution and the market discount in the Primary Obligation to five per cent of the total number of serviced lots at a 20 per cent market discount
- delete all references to specific delivery models that are to form the basis of the provision of affordable housing
- delete all references to how the affordable housing is to be provided across the subject land, including the references to the distribution, mix and design presentation of the affordable housing
- simplify the provisions dealing with ESD and replace them with a set of clear principles and goals to be addressed
- delete the provision which restricts the use and development of land within 100 metres of the District Park boundary
- refine the provisions to ensure any proposed retirement or residential village is able to function appropriate to its needs
- strengthen the ability for consideration of non-residential uses and appropriate access requirements
- encourage the consideration of a variety of batter slopes without prescribing specific batter gradients
- allow for the development of up 211 lots with direct access from Hackwill Place to occur on land to the south of the Rail Trail before Tivoli Drive, between Portarlington Road and the Bellarine Rail Trail are upgraded
- remove the east-west pedestrian link through Property 13 as shown in the Framework Plan
- ensure the Framework Plan clearly depicts the shared user path at the western interface of Properties 13 and 14 located in the existing McDermott Road reserve
- include specific provisions which seek to protect and enhance the rural character of the western interface
- require a minimum four-metre-wide 'no build zone' to be established along the western boundary of the subject land to meet bushfire requirements for defensible space
- ensure any boundary fencing along the western boundary of the subject land is of a rural nature, for example post and wire
- delete reference to the Background Landscape Report as it relates to the western interface.

⁴⁶ D1ad

Further changes which were generally agreed to by Council and the Proponent include:

Clause 3.0 and 4.0

The Proponent sought the following update to the first line of Clause 3.0 which relates to conditions and requirements for permits:

The following conditions and /or requirements apply to permits [as relevant to the satisfaction of the Responsible Authority](#):

It also sought the following update to the first line of Clause 4.0 which relates to the requirements for a Development Plan:

A Development Plan must include the following general requirements [as relevant to the satisfaction of the Responsible Authority](#).

Council said the addition of these words was unnecessary as this has already been built into the dot points set out in Clause 3.0. In relation to Clause 4.0, Council submitted again that the words are unnecessary as it will be evident to the responsible authority if a specific requirement is not relevant to any particular Development Plan area. Council said if the Panel considers any additional words are required, only “*as relevant*” is necessary as a plan must be to the satisfaction of the responsible authority.

The Panel agrees with Council that the suggested additional wording is unnecessary. It duplicates the head provision and other provisions within the DPO46. Repetition is to be avoided when drafting planning provisions.

Indicative key local street

The Proponent and Council agreed the Indicative Key Local Street as shown on the Framework Plan, running north-south through Properties 13 and 14, should be removed. No traffic evidence was presented indicating this would have a negative impact on the road network.

The Panel has included minor drafting changes in Appendix E that seek to improve the clarity and readability of the DPO46. These are straightforward and self-explanatory and do not require any supporting commentary.

Appendix A Submitters to the Amendment

No	Submitter	No	Submitter
1	Henley Ridge Pty Ltd	30	Richard L
2	Barwon Water	31	Alan Lindsay
3	L. Bisinella Developments P/L	32	Peter and Anne Kuc
4	Susan Bonner	33	Jason MacArthur
5	Patrick T Booker	34	Noel McDonald
6	Naomi Bourke	35	Neil McGuinness
7	Stockland (Stockland Land Lease Management Pty Ltd), SOHO Living (Curlewis Bellarine Pty Ltd) and APD Projects (Curlewis Land Pty Ltd)	36	H McKenna
8	Eliza Carlon	37	Beatrice Mistri
9	Leura Park	38	P Murphy
10	Phillip M Corton	39	Fiona Norton
11	Jan Cowdery	40	Whitney Petty
12	Alan Cowdery	41	Chris Puttyfoot
13	Belinda Cox	42	Bryce Raworth and Isobel Williams
14	Tivoli Drive Residents Group	43	Heather Robertson
15	Anneka De Zeeuw	44	Carol Robinson
16	Jay DhaDuk	45	Gill and Michael Rosier
17	Lance Duncan	46	Philip Ryan
18	EPA Victoria	47	Crystal Somerville-Hinchey
19	Raelae Fechner	48	Marlies Spendier
20	Tyler Fehling	49	Jacinta Stirling
21	Byron Filia	50	Jamie Sullivan
22	Merv and Heather Finger	51	Algo Properties Pty Ltd
23	Ryan Grech	52	Landowners of 1451-1459 Portarlington Road
24	Moira Harvey	53	Portarlington Road Pty Ltd
25	Michael Hendy	54	Dorian Turne
26	MA Holding	55	Ursula Turner
27	Jessie Holton	56	Suzana Welsh
28	Vicki Jenkins	57	Department of Energy, Environment and Climate Action
29	Cheryl Kerr	58	Pebruk Nominees Pty Ltd

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Greater Geelong City Council	Terry Montebello of Maddocks, who called expert evidence on: <ul style="list-style-type: none"> - Development contributions from Matt Ainsaar of Urban Enterprise - Drainage from Chris Beardshaw of Afflux Consulting
Stockland Lend Lease Management Pty Ltd, Curlewis Bellarine Pty Ltd and Curlewis Land Pty Ltd	Nick Tweedie SC and Ella Delany of Counsel, instructed by Norton Rose Fulbright who expert evidence on: <ul style="list-style-type: none"> - Town planning from Sophie Jordan of Contour Consultants - Landscape design from Barry Murphy of Murphy Consulting - Drainage from Jonathon McLean of Alluvium - Traffic and transport strategy from Jason Walsh of Traffix Group - Development contributions from Chris McNeill of Ethos Urban - Valuation from Claudio Petrocco of Charter Keck Cramer - Civil engineering and quantity surveying from Stephen Watters of SMEC
Various owners of 1451-1459 Portarlington Road, Curlewis	Nick Clements of Tract Consultants, calling the following expert evidence: <ul style="list-style-type: none"> - Civil engineering/quantity surveying from Isaac Clarey of Loetis
Algo Properties Pty Ltd	John Cicero of Best Hooper, calling expert evidence on: <ul style="list-style-type: none"> - Social planning from Kate Kerkin of K2 Planning
Tivoli Residents Group	Elizabeth Crowe and John Paddison
Portarlington Road Pty Ltd	Simon Loader of Tract Consultants
Isobel Williams and Bryce Raworth	David Song of Song Bowden Planning Pty Ltd
Henley Ridge Pty Ltd	Thomas Hams of ABAN Planning
Merv Finger	
Neil McGuinness	
Peter and Anne Kuc	

Appendix C Document list

No	Date	Description	Presented by
2024			
1	14 Feb	Referred materials: <ul style="list-style-type: none"> Amendment documentation (Documents 1aa – 1ah) Council meeting minutes, authorisation and exhibition materials (Documents 1ai – 1al) Background reports and documents (Documents 1am – 1bw) 	Planning Panels Victoria (PPV)
2	16 Feb	Directions Hearing notice letter	PPV
3	8 Mar	Update on Directions Hearing format	PPV
4	15 Mar	Version 1 Directions and Hearing Timetable	PPV
5	28 Mar	Additional direction regarding expert witness meetings	PPV
6	4 Apr	Part A submission	Greater Geelong City Council (Council)
7	4 Apr	Letter raising additional issues and requesting Jetty Road DCP advice	Stockland Lend Lease Management Pty Ltd, Curlewis Bellarine Pty Ltd and Curlewis Land Pty Ltd (Proponent)
8	5 Apr	Email to Council regarding Jetty Road DCP advice	PPV
9	5 Apr	Response to PPV regarding Jetty Road DCP advice	Council
10	5 Apr	Jetty Road DCP advice: <ol style="list-style-type: none"> Letter of advice to Peter Schembri (Council) (5 December 2022) Email from Peter Schembri (28 November 2018) Email from Chris Marston (5 March 2020) Email chain within Council (4 June to 4 September 2020) 	Council
11	5 Apr	Email requesting information on Proponent's submission	Council
12	5 Apr	Email foreshadowing new issue to be raised at hearing	Owners of 1451-1459 Portarlington Road
13	8 Apr	Email objecting to Proponent raising new issues	Council

No	Date	Description	Presented by
14	8 Apr	Direction regarding issues to be raised in Proponent's submission	PPV
15	8 Apr	Expert witness statement of Matt Ainsaar	Council
16	8 Apr	Expert witness statement of Chris Beardshaw	Council
17	8 Apr	Expert witness statement of Jonathon McLean	Proponent
18	8 Apr	Expert witness statement of Sophie Jordan	Proponent
19	8 Apr	Expert witness statement of Stephen Watters	Proponent
20	8 Apr	Expert witness statement of Chris McNeill	Proponent
21	8 Apr	Expert witness statement of Barry Murphy	Proponent
22	9 Apr	Expert witness statement of Claudio Petrocco	Proponent
23	9 Apr	Expert witness statement of Jason Walsh	Proponent
24	9 Apr	Invitation for Proponent response to Documents 13 and 14	PPV
25	9 Apr	Response to Documents 13 and 14	Proponent
26	10 Apr	Expert witness statement of Kate Kerkin	Algo Properties Pty Ltd
27	10 Apr	Panel Directions regarding new issues, statements of issues, and PE Law advice	PPV
28	10 Apr	PE Law letter of advice to Council (17 February 2021)	Council
29	10 Apr	Expert witness statement of Isaac Clarey	Owners of 1451-1459 Portarlington Road
30	12 Apr	Site visit plan	Council
31	15 Apr	Statement of issues	Council
32	15 Apr	Statement of issues	Proponent
33	15 Apr	Statement of issues	Owners of 1451-1459 Portarlington Road
34	16 Apr	Statement of issues	Algo Properties Pty Ltd
35	17 Apr	Version 2 Hearing Timetable and Distribution List	PPV
36	17 Apr	Email raising issues remaining in dispute	Neil McGuinness
37	18 Apr	Development contributions expert witnesses' statement of agreed opinions and facts	Proponent and Council

No	Date	Description	Presented by
38	18 Apr	Civil engineering and quantity surveying expert witnesses' statement of agreed opinions and facts	Proponent and owners of 1451-1459 Portarlington Road
39	18 Apr	Drainage expert witnesses' statement of agreed opinions and facts	Proponent and Council
40	18 Apr	Part B submission	Council
41	18 Apr	Day 1 version of 43_04s46 (tracked changes)	Council
42	18 Apr	Day 1 – Log of changes proposed to the Stage 2 DCP	Council
43	18 Apr	Day 1 – Jetty Road Stage 2 Land Valuation Report - March 2024 update - Westlink Consulting	Council
44	18 Apr	Day 1 – Updated exhibited Jetty Road DCP tables	Council
45	18 Apr	Opening submission	Proponent
46	18 Apr	Day 1 version of 43_04s46 (tracked changes) (corrected)	Proponent
47	22 Apr	Brief to Drainage Expert	Proponent
48	22 Apr	Coriyule Road Drain Advice Brief	Proponent
49	22 Apr	Memorandum from City of Greater Geelong - Coriyule Road Drain - Cost Recoupment via DCP or Agreement	Proponent
50	23 Apr	Afflux report dated 4 July 2023	Council
51	23 Apr	Affordable Housing in other Schemes	Council
52	23 Apr	Jetty Road calculations to assess proposed discounted dwellings	Council
53	23 Apr	Jetty Road calculations to assess proposed discounted dwellings - Developer	Council
54	23 Apr	Submission	Algo Properties Pty Ltd
55	23 Apr	Submission presentation slides	Owners of 1451-1459 Portarlington Road
56	23 Apr	Isaac Clarey expert witness presentation slides	Owners of 1451-1459 Portarlington Road
57	24 Apr	Aerial image showing 100 metre buffer around District Park	Council
58	24 Apr	Development Plan Overlay - Schedule 32	Council
59	24 Apr	Development Plan Overlay - Schedule 37	Council

No	Date	Description	Presented by
60	24 Apr	Design and Development Overlay - Schedule 44	Council
61	24 Apr	Submission presentation slides	Portarlington Road Pty Ltd
62	24 Apr	Version 3 Hearing Timetable and Distribution List	PPV
63	24 Apr	Submission (amended)	Neil McGuinness
64	29 Apr	Submission	Henley Ridge Pty Ltd
65	29 Apr	Submission	Merv Finger
66	29 Apr	Submission, enclosing attachments: a) Appendix 1 - Site photos.pdf b) Appendix 2 - Victorian Heritage Database Report c) Appendix 3 - Coriyule letter of advice v2	Isobel Williams and Bryce Raworth
67	29 Apr	Council Day 1 version of DPO46 (43_04s46) - Portarlington Road Pty Ltd tracked changes	Portarlington Road Pty Ltd
68	29 Apr	Greater Geelong Planning Scheme Clause 13.07 - Amenity, human health and safety	Portarlington Road Pty Ltd
69	29 Apr	Letter from Stephen Watters	Proponent
70	30 Apr	Presentation of Stephen Watters	Proponent
71	1 May	Letter from Department of Transport dated 17 May 2021	Council
72	2 May	Submission on inclusion of existing infrastructure in the DCP, enclosing attachment: a) Part 3B, Planning and Environment Act 1987	Proponent
73	2 May	Presentation of Barry Murphy	Proponent
74	3 May	Jetty Road Urban Growth Area Stage 1 Development Contributions Plan (December 2023)	Proponent
75	3 May	Speaking notes of John Paddison (updated)	Tivoli Drive Residents Group
76	3 May	Speaking notes of Michael Hendy (updated)	Tivoli Drive Residents Group
77	3 May	Version 4 Hearing Timetable and Distribution List	PPV
78	3 May	Memorandum regarding Coriyule Road catchment assessment (August 2018)	Council
79	3 May	Project Initiation Document - Capital Drainage Project, Coriyule Road	Council

No	Date	Description	Presented by
80	6 May	Closing submission, enclosing attachments: a) Email correspondence between Council and Bursill Consulting concerning wetland batters b) Letter from Council concerning wetland batters c) Letter of Advice regarding CHMP costs by Dugay & Co d) Comparison table	Proponent
81	6 May	Speaking notes of Elizabeth Crowe	Tivoli Drive Residents Group
82	6 May	Part C closing submission	Council
83	6 May	Correction to further directions issued 3 May 2024	PPV
84	7 May	Letter inviting Proponent response to Council closing submission	PPV
85	9 May	Further submissions in response to Council closing submission	Proponent
86	9 May	Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101	Proponent
87	9 May	Day 10 version of 43_04s46 (tracked changes)	Proponent
88	9 May	Letter enclosing final day documents	Council
89	9 May	Day 10 version of 43_04s46 (tracked changes)	Council
90	9 May	Log of proposed changes to DCP	Council
91	10 May	Additional wording for primary obligation for retirement village	Proponent
92	10 May	Drafting comments	Algo Properties Pty Ltd
93	13 May	Closing email to Parties	PPV
94	17 May	Submission on the VicSmart Pathway	Proponent
95	17 May	Post-Panel version of C387ggee 43_04s46 (tracked changes)	Council

Appendix D Planning context

D:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the PPF, which the Panel has summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by:

- providing for the fair, orderly, economic and sustainable use and development of land
- providing for the protection of natural and human-made resources
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- protecting public utilities and other assets
- facilitating development in accordance with the above objectives.

Clause 2 (Municipal Planning Strategy)

The Amendment supports the Municipal Planning Strategy by:

- directing development within an area identified for growth, as well as implementing the strategic direction to ‘support and preserve the individual character, identity, role and function of each Bellarine Peninsula township’
- encouraging environmentally sustainable design
- seeking to protect, restore and enhance biodiversity and natural systems and to protect and enhance waterways, noting the designated waterway that is proposed to be incorporated into a drainage reserve
- incorporating bushfire risk assessments to ensure the development of the subject land will appropriately respond to bushfire risks
- seeking to increase diversity of housing stock to respond to growth pressure
- delivering a transport network consistent with Clause 02.03-8
- providing for the delivery of appropriate infrastructure, including open space.

Clause 11 (Settlement)

The Amendment supports Clause 11 by facilitating residential growth in an orderly manner within the established town of Drysdale Clifton Springs with access to recreational, community, schooling and retail services.

Clause 11.01-1R (Settlement – Greater Geelong)

Clause 11.01-1R includes a strategy to:

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 focussing growth along key road and rail networks.

The Amendment implements this strategy as it will support the development of the Growth Area, which is identified as the primary area for growth within Drysdale Clifton Springs.

Clause 11.02-1S (Managing Growth)

The Amendment implements the objectives of Clause 11.02-1S including:

- to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses (Clause 11.02-1S)
- to facilitate the fair, orderly, economic and sustainable use and development of urban areas (Clause 11.02-2S)
- to manage the sequence of development in areas of growth so that services are available from early in the life of new communities (Clause 11.02-3S)
- to manage the release of new growth areas to make sure infrastructure, services and facilities are provided in a timely and efficient way, and to ensure development proceeds in a logical, sequenced manner that maximises the efficient delivery and use of development and community infrastructure (Clause 11.02-3L).

The Amendment supports Clause 11.03 (Planning for Places) by facilitating an increase in population and expansion of the Drysdale Clifton Springs area, resulting in residential growth in a town close to services and necessary infrastructure within the defined settlement boundary.

The Amendment supports Clause 12 (Environment and landscape values) by:

- ensuring development responds to the significant environmental, aesthetic and open space and recreational benefits of waterways
- facilitating the transfer of the foreshore land into public ownership
- incorporating the designated waterway, that flows from the corner of Portarlington Road/Hackwill Place north-west through the RLZ precinct and 91-125 Coriyule Road, into a stormwater drainage constructed waterway corridor reserve, with revegetation and shared paths.

The Amendment supports Clause 15 (Built environment and heritage) by:

- appropriately responding to the subject land's context and landscape features
- including off-road trails that will link the foreshore to the Bellarine Rail Trail and nearby community facilities
- protecting native habitat to provide nature in urban areas.

The Amendment supports Clause 16 (Housing) by:

- facilitating housing diversity and the efficient provision of supporting infrastructure
- facilitating housing close to the Curlewis Neighbourhood Activity Centre (which is within the Stage 1 area), as well as nearby schools and other community facilities
- providing for the provision of affordable housing.

The Amendment supports Clause 18 (Land use and transport) by:

- ensuring that vehicle, walking and cycling networks are safe, attractive and connect with the broader neighbourhood
- ensuring the early delivery of Tivoli Drive and Greenvale Drive to support increased traffic volumes and allow for the development to be developed in an orderly and serviced manner.

The Amendment supports Clause 19 (Infrastructure) by:

- rezoning the subject land and applying the appropriate overlay controls allowing for the provision of shared infrastructure required to service future residents in the community
- incorporating the Stage 2 DCP and applying DCPO9 to guide the delivery of identified shared infrastructure, as well as the construction of the Drysdale Regional Community and Learning Hub

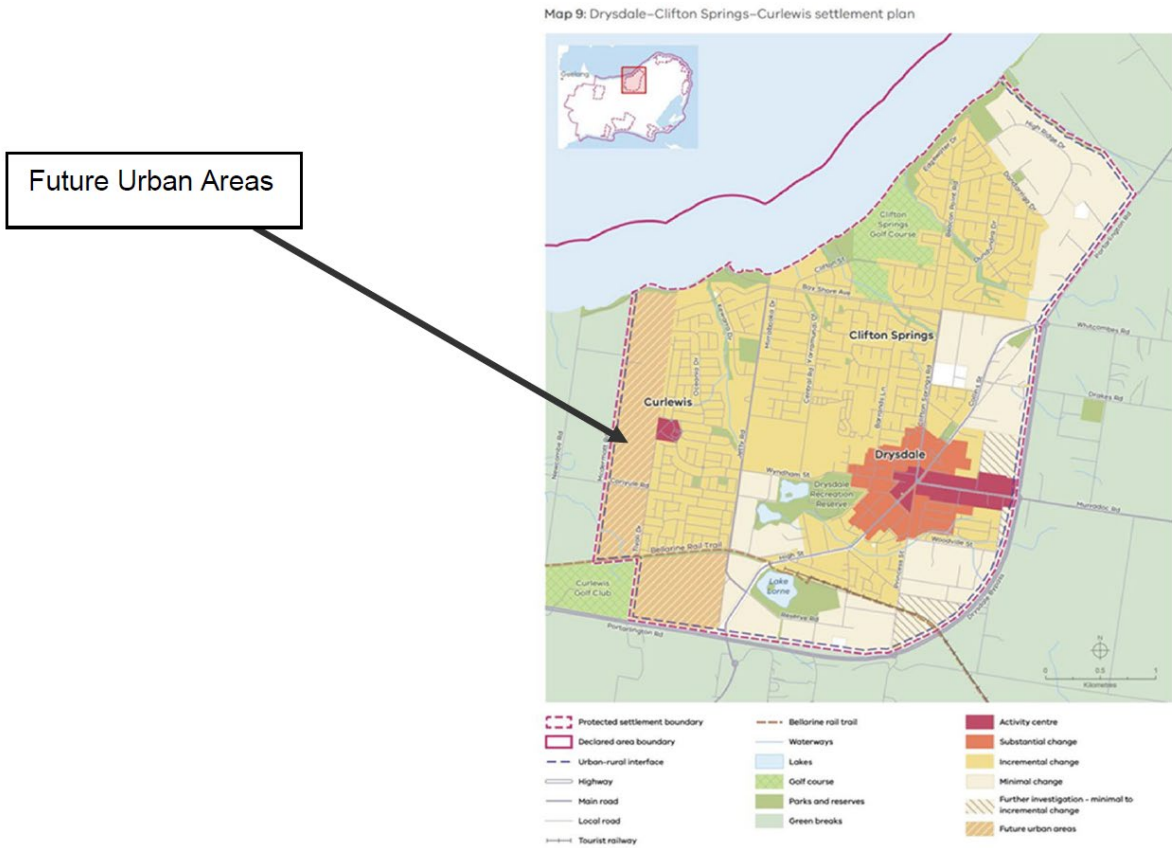
- incorporating water-sensitive urban design techniques to reduce volume run-off and peak flows, and integrate stormwater treatment.

D:2 Other relevant planning strategies and policies

i) Bellarine Peninsula Statement of Planning Policy

On 29 October 2019, the Bellarine Peninsula was declared a Distinctive Area and Landscape under Part 3AAB of the Act. The declaration triggered a requirement to prepare a Statement of Planning Policy.

The Amendment has been prepared with regard to the BPSPP. Drysdale-Clifton Springs- Curlewis is a designated ‘District Town’ that provides a diversity of housing, services and employment. The subject land is located within the town’s protected settlement boundary and identified as ‘future urban areas’ on Map 9



The Amendment, including the various strategic documents which informed the Amendment, are consistent with Objective 8 of the BPSPP relating to settlements:

To plan and manage the sustainable development of settlements in the declared area consistent with the protection of the area’s landscape significance, environment and biodiversity values, Wadawurrung living cultural heritage and historic heritage values and consistent with the unique character and hierarchy designation of each settlement.

ii) Drysdale – Clifton Springs Structure Plan 2010

The 2010 Structure Plan outlines a plan to guide future planning and development of Drysdale Clifton Springs for the next 10 to 15 years. It includes the following vision for Drysdale Clifton Springs:

In the year 2016 Drysdale Clifton Springs will provide residents with a unique lifestyle offering comfortable and convenient urban living with bay vistas in a peaceful rural setting. It will be well serviced with education, community, sports cultural and recreation facilities, have a vibrant shopping precinct with distinct village character and a renewed focus on the foreshore with improved landscaping, facilities and access.

The purpose of the 2010 Structure Plan is to:

- identify the key strategic planning issues facing the townships, including community aspirations and needs
- articulate the preferred future directions for the townships, including the location of settlement boundaries
- identify appropriate planning controls which will protect and enhance the distinctive elements of the townships, biodiversity and landscape feature.

The 2010 Structure Plan shows the Growth Area within the settlement boundary in the Structure Plan map, which is now included in the Scheme at Clause 11.03-6L-01 (Bellarine Peninsula) (see Figure 7).

iii) **Jetty Road Urban Growth Plan (adopted 26 June 2007, amended 23 September 2008)**

The Urban Growth Plan sets the strategic direction for the development of the land in the Growth Area, as well as the key planning responses that will be pursued at each stage of the planning process for the area.

The Urban Growth Plan identifies the following 'vision' for the Growth Area:

The Jetty Road urban growth area will be developed into a sustainable community that demonstrates best practice urban development. The relationship to the bay, connections to adjacent residential areas and the growth areas natural features will be enhanced to form a distinct urban character. By responding to the needs of the future community and managing sensitive interfaces, Jetty Road will become a highly sought after location for living, working and recreation, forming an attractive addition to Drysdale/Clifton Springs.

The Urban Growth Plan sets the long term strategic framework for the development of the Growth Area for:

- land use (such as residential development of varying densities, open space and community facilities)
- transport (such as the road network, collector roads & proposed public transport)
- the neighbourhood activity centre
- open space (passive & active), waterways and environmentally sensitive areas.

The Jetty Road Urban Growth Plan Map No. 4 provides a visual representation of the principles in the Urban Growth Plan and is included in the Planning Scheme at Clause 11.03-6L-01 (Bellarine Peninsula).

The objectives and principles of the Urban Growth Plan continue to apply to the subject land and have guided the preparation of the Amendment (subject to some changes reflecting the new policies and controls that have been developed since the Urban Growth Plan was adopted).

D:3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the PPF.

i) Zones and overlays

The Amendment seeks to apply the GRZ1, DPO46, DCP09 and EAO to the subject land which will facilitate redevelopment of the land for residential purposes, as summarised as follows:

- the GRZ is an appropriate zone to facilitate a diversity of residential development, and was also applied to Stage 1 of the Growth Area
- the DPO46 will ensure the coordinated development of the subject land in circumstances where the subject land is owned by a number of parties - the use of the DPO46 is consistent with the approach taken to the development of Stage 1 of the Growth Area
- the DCP09 and the DCP will ensure that the cost of providing new infrastructure is shared between developers and Council in a fair and reasonable way
- the EAO is required to be applied to part of the Subject Land given the risk of contamination associated with the previous uses of the Subject Land and in order to comply with Ministerial Direction 1.

D:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions and Planning Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 1 – Potentially Contaminated Land
- Ministerial Direction 11 - Strategic Assessment of Amendments
- Ministerial Direction 15 – The Planning Scheme Amendment Process
- Ministerial Direction 17 – Localised Planning Statements
- Ministerial Direction 19 – Part A: The Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health
- Ministerial Direction on the Preparation and Content of Development Contribution Plans
- *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46).

That discussion is not repeated here.

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

Appendix E Panel preferred version of Development Plan Overlay Schedule 46

[Tracked Added](#)

~~Tracked Deleted~~

SCHEDULE 46 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

~~Proposed~~
C387ggee

Shown on the planning scheme map as **DPO46**.

JETTY ROAD URBAN GROWTH AREA STAGE 2

1.0 Objectives

~~Proposed~~
C387ggee

To provide an ~~attractive~~, liveable and sustainable urban environment ~~inclusive of~~ with a diverse range of residential densities and dwelling types.

To protect and where possible enhance areas with cultural, biodiversity and landscape value, including the foreshore, significant vegetation, the waterway corridor, and indigenous heritage.

To ensure subdivision and development responds to the topography, natural features and key views within the growth area, ~~as well as interfacing~~ and provides an appropriate interface to rural, coastal and residential land.

To provide a permeable movement network of parks, landscaped streets and shared paths which connect to adjoining residential land, the foreshore reserve, Bellarine Rail Trail, neighbourhood activity centre and nearby community facilities.

To coordinate development infrastructure sequencing and staging, including the early delivery of a boulevard-style Tivoli Drive and Greenvale Drive.

2.0 Requirement before a permit is granted

~~Proposed~~
C387ggee

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a Development Plan has been prepared to the satisfaction of the Responsible Authority.

Before granting a permit, the Responsible Authority must be satisfied that the permit will not prejudice the preparation of a Development Plan and the future use ~~and or~~ development of the land in an integrated and orderly manner.

3.0 Conditions and requirements for permits

~~Proposed~~
C387ggee

The following conditions and/or requirements apply to permits:

- A permit must contain conditions or requirements which give effect to the provisions and requirements of an approved Development Plan.
- Where an acoustic assessment report approved as part of the Southern Residential Area Development Plan recommends any noise attenuation measures, permit conditions must give effect to the recommendations of the acoustic assessment unless a restriction on title of the relevant plan of residential subdivision is able to give effect to the recommendations of the acoustic assessment report.
- Unless there is already an agreement in place between the permit applicant and the Responsible Authority to provide that relates to the provision of affordable housing, a permit for subdivision or (where no subdivision is proposed), a permit for buildings ~~or~~ and works associated with residential development should include any condition necessary to give effect to any approved Affordable Housing Delivery Strategy required by this schedule. ~~provide affordable housing in accordance with the approved Development Plan.~~

- ~~▪ A permit for subdivision must include a condition which requires:~~

~~Prior to the certification of a plan of subdivision for the first stage of a subdivision, the proponent must demonstrate how it is proposed that the Environmentally Sustainable Development Assessment approved as part of the Development Plan will be given effect. This may include either by way of an agreement under section 173 of the Act or by the various requirements of the Environmentally Sustainable Development Assessment being applied as a restriction on title of the relevant plan of subdivision as appropriate.~~
- Any permit for the subdivision of land must include a condition that provides that, prior to the certification of the plan of subdivision, it must be demonstrated to the satisfaction of the Responsible Authority how any relevant Environmentally Sustainable Development Assessment that is approved as part of any approved Development Plan for that land will be given effect.
- ~~▪ A permit for buildings and works associated with a non-residential land use or a Residential/Retirement village must include a condition which requires that prior to the commencement of development the permit holder demonstrates how the Environmentally Sustainable Development Assessment approved as part of the Development Plan is to be given effect as part of the permitted development.~~
- If the retention of vegetation is proposed within the Sensitive Residential Interface Treatment linear area ~~is shown~~ in the approved Northern Residential Area Development Plan ~~as to be retained~~, a permit for the residential subdivision must include ~~the include a~~ condition that requires the plan of subdivision to include a restriction (or other suitable mechanism) to the satisfaction of the Responsible Authority that requires a vegetation protection zone to be created to ensure that the retained vegetation will be protected, and to prevent the construction of any built form (including impervious pavements) other than boundary fencing that vegetation protection zone, unless the Responsible authority agrees otherwise following condition:

~~The plan of subdivision must include a restriction requiring the vegetation protection zone as nominated in the Biodiversity Assessment forming part of the approved Development Plan to be provided on the land and kept free of all built form (including impervious pavements) but excluding boundary fencing.~~
- A permit for residential development including the subdivision of land which abuts the western boundary of the growth area which interfaces with ~~(interfacing rural land)~~ must include the following conditions:

 - a condition that the section of the Rural Interface Vegetation Treatment including Shared Path as shown in Map 1 (Shared Path), which is to sit within the McDermott Road reserve, must be delivered as developer works where each landowner of land abutting the McDermott Road reserve should construct the section of the Shared Path along the length of their land frontage. The method of securing this obligation, and the manner in which it is to be implemented should be by way of an agreement made between the landowner and the responsible authority under Section 173 of the *Planning and Environment Act 1987*.
 - a condition requiring the preparation of a landscape plan designating suitable areas for canopy tree planting, and the proposed species of those trees, as well as species selection, in the front setback of private lots, to the satisfaction of the Responsible Authority; and
 - ~~a condition requiring that prior to certification of a plan of subdivision for the relevant stage, a restriction on title stating that this area is to be kept free from all built form and landscaped in accordance with the Landscape Plan.~~
 - a condition to the satisfaction of the Responsible Authority that requires the land to be landscaped in accordance with any approved landscape plan under the permit, and which requires that landscaping to be maintained to the satisfaction of the Responsible Authority;
 - a condition that requires that prior to the certification of a plan of subdivision, requiring the preparation of a dwelling colour and materials schedule (Colour

- and Materials Schedule), and a fence design plan (Fence Design Plan), which reflects the coastal and rural transition, ~~must be submitted to and approved by to the satisfaction of~~ the Responsible Authority; and
- a condition that operates to ensure that the construction of a building or works are in accordance with ~~requiring that prior to certification of a plan of subdivision for the relevant stage, a restriction on title stating that each dwelling must be constructed in accordance with~~ the Colour and Materials Schedule and the Fence Design Plan approved under the Permit.
- A permit for subdivision of land within the catchments identified in the Stormwater Management Strategy prepared by Water Technology dated 15 February 2023, must contain the following conditions and requirements, unless the Responsible Authority is satisfied that the conditions and requirements have been or can be satisfied by an alternative method:
 - Prior to certification of the Plan of Subdivision, an easement(s) (or widened easements) for stormwater drainage to Port Phillip Bay must be secured to the satisfaction of Council.
 - All costs associated with the facilitation and delivery of down-stream drainage works to Port Phillip Bay, including acquisition of easement land and outfall construction, shall be at the cost of the developer except where funded by an approved Development Contributions Plan.
 - Unless a contribution has already been made under any other provision of the Scheme, any development of land (whether or not it is subdivided) must make an open space contribution equal to 10% of the net developable land (unencumbered) or in lieu cash payment or a combination of both subject to equalisation as set out in clause 4.3 of the Jetty Road Urban Growth Area Stage 2 Development Contributions Plan.
Encumbered land for the purposes of the public open space contribution is land required for one or more of the following purposes:
 - Stormwater drainage reserves (including retarding basins, wetlands, sediment ponds and associated sediment drying and access/maintenance areas as approved within the Integrated Water Management Plan inclusive of functional layout plan designs);
 - Any waterway corridor reserve which consists of the hydraulic width (1% AEP channel), riparian zone and vegetated buffer zone;
 - The foreshore reserve exclusion zone;
 - Land area required for the protection of remnant vegetation and scattered native trees (to be transferred to Council as road or conservation reserve); and
 - Land set aside in Aboriginal cultural heritage reserves.Encumbered Land is not to be credited for the purposes of the open space contribution.

4.0 Requirements for development plan

Proposed
C387ggee

A Development Plan must be generally in accordance with the Jetty Road Stage 2 Urban Growth Area Framework Plan at Map 1 to this Schedule.

A Development Plan may vary from the layout shown in Map 1 to this Schedule where that variation is necessary to protect or respond to Aboriginal cultural heritage and the Responsible Authority is satisfied that the alternative layout is an acceptable outcome.

A Development Plan should ~~have regard to be generally in accordance with~~ the *Jetty Road Urban Growth Plan, 26 June 2007 (Amended 23 September 2008)* as appropriate.

A separate Development Plan may only be prepared and approved for each of the four land areas shown on Map 1, being the:

- Northern Residential Area (land budget property no's 11 & 12);
- Central Residential Area A (land budget property no's 13 & 14);
- Central Residential Area B (land budget property no. 15); and

- Southern Residential Area (land budget property no's 16-30).

Each Development Plan must demonstrate how the subdivision and/or development of the area to which it relates will be planned so that it integrates with any adjoining Development Plan area(s) and the Jetty Road Urban Growth Area Stage 1 development.

A Development Plan must include the following ~~general~~ requirements:

A **Site Analysis and Local Context Assessment** that includes:

- A description of the existing features, environmental conditions and characteristics of the land and a design response to those features, environmental conditions, and characteristics.
- A description and design response ~~to, as where~~ appropriate to:
 - The *Jetty Road Urban Growth Plan, 26 June 2007 (amended 23 September 2008)*, approved Development Plan for Jetty Road Stage 1 and subsequent development.
 - The Bellarine Peninsula Statement of Planning Policy, July 2023.
 - The foreshore and Port Phillip Bay.
 - The rural and golf course land to the west and south.
 - The Bellarine Rail Trail.
 - The surrounding road and pedestrian/cycle network.

An **Urban Design Masterplan** that includes:

- The proposed use and development of each part of the land, and the location of all ~~all~~ proposed land uses including, but not restricted to, proposed roads, open spaces, drainage reserves and any proposed locations for ~~the location of proposed~~ medium density housing.
- A subdivision or development layout that includes the location and distribution of lots showing a variety of lot sizes and densities which can ~~to~~ support a diverse range of housing types. The following principles should ~~must~~ be applied in developing the layout:
 - A ~~target~~ minimum residential density of 15 dwellings per net developable hectare across the whole Jetty Road Urban Growth Area Stage 2 ~~growth area.~~
 - The highest housing densities should be ~~Highest density~~ located within the 400-metre walkable catchment of the neighbourhood activity centre (minimum of 20 dwellings per net developable hectare).
 - Medium to higher densities should be located opposite or near local parks and the waterway corridor reserve.
 - Larger lot sizes should be located along the western boundary where there is an interface with ~~interfacing~~ rural land, except in the Central Residential Area A if it is developed for a Retirement village or Residential village.
 - If the Central Residential Area A is proposed to be developed for a Residential or Retirement village, the Urban Design Masterplan must include details as to how the development will ensure that appropriate interface with the rural land to the west.

Those details must include:

- Directions as to the appropriate design, height, colours and materials for 'rural' fences along the boundary;
- A minimum 4 metre deep "no build zone" to be established along the western boundary of the land, within which no buildings of any kind can be constructed (unless with the written consent of the Responsible Authority);
- Details of a suitable hard and soft landscaping treatments for the "no build zone"; and
- Directions and guidelines as to how buildings associated with the residential or retirement village should be orientated and designed (including materials and

colours) so as to achieve an appropriate interface outcome.

- Design measures that will assist to deliver quality, affordable housing, to prevent rows of front loaded townhouses that result in streetscapes which are garage dominated. Consideration should be given to rear loaded townhouses with laneway services, to provide a more diverse range of built forms and interfaces to open space.
- A Pedestrian & Bicycle Network Plan showing ~~convenient~~ off and on-road footpaths and shared paths that are well connected to the adjoining residential land and neighbourhood activity centre, public open spaces including parks, the foreshore reserve and Bellarine Rail Trail, and nearby schools and other community uses. Shared user paths should must be provided in the locations as shown on Map 1.
- A development subdivision design that responds to the demonstrates how impacts on biodiversity values identified in the Biodiversity Assessment and which seeks to avoid or minimise adverse impacts on those values can be avoided and minimised.
- A development design that responds to any identified Retention of Aboriginal heritage and the waterway corridor as reserves in the subdivision design.
- Retention of vegetation rows in the Northern Residential Area, native vegetation and site boundary vegetation, within road or open space reserves to the greatest extent possible, ~~as part of subdivision design.~~
- An arboricultural assessment to identify any trees of medium and high value suitable for retention in reserves for landscape, habitat and amenity value.
- Road frontages along the foreshore reserve, waterway corridor reserve and the Bellarine Rail Trail to the greatest extent possible.
- Measures to be undertaken to ensure appropriate iInterface treatments to the rural land to the west and south, ~~guided by the C387ggee Development Plan Overlay Schedule 46 Background Landscape Report, November 2022, City of Greater Geelong. For the Northern Residential Area and Central Residential Area A, treatment includes vegetation planting within McDermott Road reserve. including details of landscape treatments, design, heights, colours and materials for fencing, and as well for the design of roads, road reserves, shared paths or footpaths, and built form setbacks.~~

Further to the above, the Masterplan should include the following:

- Service infrastructure ~~should be~~ located outside land required for interface treatments where it conflicts with landscape outcomes.
- Recognition of the need fFor lots abutting the western boundary interfacing rural land to have the following characteristics:
 - Each facing lot ~~must~~ should have a front setback (garden) to allow for planting of at least one canopy tree.
 - Any lot presenting its side boundary to the interface ~~must~~ should provide low transparent fencing which appropriately responds to the rural character of the adjoining land where possible.
 - Future dwellings should be of a colour, material and have fencing treatments which must make colour and material, as well as fencing style, choices which reflect appropriately respond to the rural character of the adjoining land.
- Details of how the Protection of the Bellarine Rail Trail reserve will be protected from development or infrastructure that may jeopardise or limit the future use of the rail reserve for the introduction of heavy rail or light rail.
- A contours plan at 0.5m intervals.
- ~~Urban design e~~Cross-sections for all road types.
- Identification of the Portarlington Road and Tivoli Drive corner as a potential site for non-residential uses.
- For land in the Southern Residential Area ~~close to Portarlington Road,~~ recommendations that are derived from an acoustic assessment report prepared by a suitably qualified acoustic engineer or other suitably qualified person to the satisfaction

of the responsible authority, of any measures required to ensure that future residential development can meet the ~~which~~ following noise objectives:

- Not greater than 35 dB LAeq,8h when measured within a sleeping area between 10 pm and 6 am.
- Not greater than 40 dB LAeq,16h when measured within a living area between 6 am and 10 pm.
- ~~Includes recommendations for any noise attenuation measures required to meet the applicable noise level objectives.~~

An **Environmentally Sustainable Development (ESD) Assessment** ~~must be prepared for residential subdivision as well as any buildings and works. The ESD Assessment must~~ that includes:

- An assessment of the nature of the proposed development, and the site conditions which present opportunities or constraints for achieving sustainable design outcomes.
- A framework which identifies how the use and development of the land can achieve Environmentally Sustainable Design (ESD) outcomes in accordance with any relevant policies and strategies developed by the City of Greater Geelong and the Victorian Government.
- ~~Residential ESD Design Guidelines prepared for residential subdivision which includes requirements for:~~
 - ~~The roof and façade materials of all new residential dwellings to meet a minimum Solar Reflective Index (SRI) benchmark of 50 or greater.~~
 - ~~All new dwellings with up to two bedrooms to have installed a 3kW minimum capacity solar photovoltaic (PV) system. An additional 1kW capacity solar photovoltaic (PV) system is required for each additional bedroom proposed.~~
- ~~A Sustainable Energy and Zero Carbon Plan prepared for residential subdivision or development which demonstrates:~~
 - ~~Actions to reduce greenhouse gas emissions from the construction and ongoing operation of any new dwellings towards net zero.~~
 - ~~How opportunities for renewable energy and/or green energy will be maximised.~~
 - ~~That subdivision and development does not connect existing or future reticulated gas networks.~~
- ~~A Circular Economy Plan prepared for residential subdivision or development that demonstrates, through ISCA Materials Calculator 2.1 or a similar life cycle assessment tool, how materials containing recycled content and low embodied carbon will be utilised.~~
- ~~For commercial and community buildings, commitment to the use of a best practice environmental performance rating tool, such as a Green Star Buildings rating of 6 stars, or an equivalent rating achieved through a similar tool.~~

An **Affordable Housing Delivery Strategy** that includes:

- The provision of affordable housing ~~comprising a transfer to the City of Greater Geelong Affordable Housing Trust or a Registered Housing Association under the Housing Act 1983 of~~ that is equal to the value of 5% of the total number of serviced lots proposed ~~to be provided on the land in the application~~ at a discount of ~~35~~20% to market value as determined by an appropriately qualified expert. ~~The serviced lots are to have an assumed area of 300 square metres.~~ This ~~provision~~ is referred to as the **Primary Obligation**, ~~or:~~

Where a development does not include the creation of separate serviced lots, the value of the Primary Obligation for that development is to be determined on the basis of a valuation methodology that assumes that the land for the development could otherwise have been developed as serviced lots each with an assumed area of 300 square metres.

The Primary Obligation may be delivered as:

- A monetary contribution to the City of Greater Geelong Affordable Housing Trust or another Housing Agency nominated by Council which is of equal value (as independently assessed) to the Primary Obligation; or
- A provision of completed dwellings for nil consideration which in total have the same monetary value as the Primary Obligation as independently assessed;
- A combination of the above options; or
- Any other delivery model of the contribution which is of equal value to the Primary Obligation.

~~▪ The provision of affordable housing should be:~~

- ~~○ delivered within the land to which a planning permit application applies or if agreed with the responsible authority, other land in the Jetty Road Stage 2 area;~~
- ~~○ functionally and physically indistinguishable from other dwellings within the development; and~~
- ~~○ distributed across the development; and~~
- ~~○ a mix of lot or housing types to respond to local housing needs~~
- The strategy should demonstrate how it responds to local housing need and have regard to the any relevant Ministerial Notice made under Section 3AA(2) of the *Planning and Environment Act 1987*.
- The method of securing the implementation of the Affordable Housing Delivery Strategy, and the manner by which it is to be implemented should be by way of an agreement made between the landowner and the responsible authority under Section 173 of the *Planning and Environment Act 1987*.

~~The method of implementing the Affordable Housing Delivery Strategy should be by a signed agreement between the landowner and the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*.~~

The Any requirement in this Schedule for a Development Plan to include an Affordable Housing Delivery Strategy does not apply:

- where any other provision of the Greater Geelong Planning Scheme, or the *Planning and Environment Act 1987* (or any other Act), requires an affordable housing contribution to be made in respect of the residential development of the land.
- to land in respect of which an agreement with the Responsible Authority has already been entered into for the provision of affordable housing.

An **Integrated Water Management Plan** that takes an integrated approach to flooding, stormwater and drainage management, and is designed with reference to the whole catchment.

The plan must ~~be guided by~~ have regard to the *Final Report Jetty Road Rezoning – Stage 2 SWMS, Water Technology, Version 07, 15 February 2023* and include:

- Reference to:
 - WSUD Engineering Procedures: Stormwater CSIRO Publishing 2005.
 - Clause 56.07 of the Greater Geelong Planning Scheme.
 - The Infrastructure Design Manual and associated Design Notes.
- A Drainage Strategy that addresses:
 - Drainage Feasibility.
 - Stormwater Quality Management.
 - Peak Discharge Management.
 - Potential impacts of the overall volume of stormwater on downstream land.
 - Functional Peak Flood Level Determination.
- Identification of all land to be set aside for drainage purposes, detailing the approximate size and location of all drainage reserves and system components, including retarding basins, treatment and sediment ponds, drying areas and access tracks to provide for the required stormwater assets and meet Best Practice Environmental Management

Guidelines [and to achieve shared paths, attractive landscape design and community amenity](#). ~~The land required may include unencumbered land (as calculated in the Jetty Road Stage 2 DCP Land Budget) once functional designs have been approved.~~

- A stormwater management system that ensures peak discharge rates, ~~pollutant loads~~ of all stormwater leaving the site post development are no greater than pre-development and that ensures no adverse impacts to any surrounding area, upstream or downstream of the volume of stormwater discharged over time from any stormwater asset. [Post development pollutant loads must meet that the load reduction targets in the Best Practice Environmental Management Guidelines](#).
- ~~Treatment to achieve best practice pollutant removal targets in accordance with relevant standards and guidelines (including Design Note 3 and Melbourne Water guidelines).~~
- A cross-section of the constructed waterway and corridor reserve [that has had regard to consistent with](#) the Melbourne Water *Waterway Corridors* guidelines version 1 October 2013, and also ~~having regard~~ to [the](#) ancillary open space functions of the waterway corridor.
- [The landscape design for the waterway infrastructure should be prepared having regard to the following principles:](#)
 - [Batter slopes appropriate to the efficient use of the land, adopting a variety of slopes and design for specific purpose.](#)
 - [The provision of an attractive, visually interesting landscape that will form a useful recreational asset for the future community.](#)
- Easement creation and/or widening and realignment as necessary to ensure adequate provision for pipe-laying, maintenance and overland flow paths, both within the development area, and to external affected properties and reserves.
- Exploration of [the potential for](#) stormwater reuse opportunities with the Curlewis Golf Club and Council parks.
- Resting points for pedestrians and cyclists using the rural interface shared path, to be located and integrated into, the design of the drainage reserves along the western boundary, [except within a Residential Village or Retirement Village](#).
- For Central Residential Area A, drainage infrastructure design and construction on the corner of Coriyule Road and McDermott Road must not impact the health of the significant River Red Gum located within the McDermott Road reserve.
- For the Southern residential Area, the plan must also be guided by the *Final Report, Jetty Road South of Rail Trail SWMS, Water Technology, Version 06, 6 September 2023*.
- Consideration of development staging and assets necessary to be delivered in step with development.

The final design of the waterway corridor reserve, retarding basins, wetlands, and associated paths, sediment drying areas, maintenance access areas and planting, must be to the satisfaction of the Responsible Authority.

A **Road Network and Traffic Management Plan** that ~~is guided by~~ [responds to](#) the Traffix Group reports *G21702R-03E, G21702R-04E & G21702R-05D, November 2022* and which includes:

- An internal road network that provides ~~a high level of~~ access for all vehicular and non-vehicular traffic and which responds to the topography.
- [Measures to achieve s](#)Safe sight lines to all property access and internal roads.
- Details of all necessary upgrades to the surrounding road network to urban standards including any required upgraded intersection treatments.
- Identification of future bus routes and bus stop infrastructure locations as advised by the Head, Transport for Victoria.
- The duplication of Tivoli Drive and Greenvale Drive consistent with the role and function of the road at full development of the Jetty Road Urban Growth Area. This includes a roundabout treatment at the intersection of Tivoli Drive, Greenvale Drive and Coriyule Road.

- ~~Locating lower order connector streets~~ Key local streets generally as shown on Map 1, noting that some changes to respond to detailed subdivision design may be necessary, to provide convenient connectivity and access to the public open space network, as well as wayfinding through the area.
- Engineering cross-sections of all roads categories within and bordering the site, ~~and~~ showing:
 - Tivoli Drive and Greenvale Drive to be duplicated and designed as a boulevard-style road.
 - Key Local ~~Lower order connector~~ streets to include a shared path, parking bays and tree planting in kerb outstand.
- Provision and design of local streets so as to provide an appropriate ~~to~~ interface with rural land, the Bellarine Rail Trail and Portarlington Road, to the satisfaction of the Responsible Authority, ~~guided by the cross section designs shown in the Amendment C387ggee Development Plan Overlay Schedule 46 Background Landscape Report, City of Greater Geelong, November 2022.~~
- ~~No new road or private vehicular lot access to Portarlington Road and McDermott Road, and no direct access to future dwellings on the east side of Tivoli Drive for at least 100 metres north of Portarlington Road. No road access, or vehicles access to private residential lots to Portarlington Road. Access may be permitted for non-residential development if access can be provided in a safe and orderly manner having regard to the nature of those proposed uses.~~
- No new road or private vehicular access to McDermott Road, and no direct access to future dwellings on the east side of Tivoli Drive for at least 100 metres north of Portarlington Road.
- Traffic management controls for the internal road network as required, including calming treatment required towards the western end of Coriyule Road (between the new drainage reserves), to discourage the use of Coriyule Road to the west of McDermott Road.
- Provision of a shared path within the Jetty Road/Hackwill Place reserve to connect the Bellarine Rail Trail and Jetty Road paths with the Drysdale Bypass/High Street/Grubb Road signalised intersection.
- A staging plan informed by a traffic impact assessment.

A Tivoli Drive and Greenvale Drive Early Delivery Plan that includes:

- How it is proposed to provide land and works for the early delivery of the ultimate treatment of Tivoli Drive and Greenvale Drive consistent with the ultimate cross-sections shown in the Traffix Group reports *G21702R-03E, G21702R-04E & G21702R-05D, November 2022.*
- Completion of the ultimate treatment of Tivoli Drive and Greenvale Drive in accordance with the following requirements, as follows (or at an earlier time to the satisfaction of the Responsible Authority) unless otherwise agreed in writing by the Responsible Authority:
 - Property ~~ies~~ 11 and 12 ~~cannot are not to~~ be further ~~subdivided~~ developed until the full length of Tivoli Drive and Greenvale Drive are upgraded to their ultimate profile as described in the relevant DCP Drawing project scoping sheet ~~unless otherwise agreed in writing by the Responsible Authority.~~
 - Property ~~ies~~ 13 and 14 ~~cannot are not to~~ be further ~~subdivided~~ developed until Tivoli Drive and Greenvale Drive north of the Bellarine Rail Trail is constructed to its ultimate profile ~~unless otherwise agreed in writing by the Responsible Authority.~~
 - Property 15 ~~cannot is not to~~ be further ~~subdivided~~ developed until Tivoli Drive and Greenvale Drive north of the Bellarine Rail Trail is constructed to its ultimate profile ~~unless otherwise agreed in writing by the Responsible Authority.~~

- Land south of the Bellarine Rail Trail relying on access from Tivoli Drive ~~cannot~~ is not to be further ~~subdivided~~ developed until Tivoli Drive is constructed to its ultimate profile from the northern boundary of the Rail Trail Reserve to Portarlinton Road including the lengthening of the turn lane from Tivoli Drive into Portarlinton Road as proposed by DCP Project RD-03 Proposed Tivoli Drive Duplication (Portarlinton Road – Bellarine Rail Trail) design plan ~~as proposed by plan Traffic Group and as shown in the relevant DCP scoping sheet unless otherwise agreed in writing by the Responsible Authority.~~ Construction includes the required upgrades to and widening of the existing Pedestrian Operated Signals that are located across Tivoli Drive at the Rail Trail.

An Open Space and Landscape Masterplan that includes:

- Identification of all areas and location of public open space generally in accordance ~~consistent~~ with Map 1.
- ~~▪ An open space contribution equal to 10% of the net developable land (unencumbered) or in lieu cash payment or combination of both.~~
- ~~▪ Encumbered land being land required for the following:~~
 - ~~○ Stormwater drainage reserves (including retarding basins, wetlands, sediment ponds and associated sediment drying and access/maintenance areas as approved within the Integrated Water Management Plan inclusive of functional layout plan designs);~~
 - ~~○ The waterway corridor reserve which consists of the hydraulic width (1% AEP channel), riparian zone and vegetated buffer zone;~~
 - ~~○ The foreshore reserve exclusion zone;~~
 - ~~○ Land area required for the protection of remnant vegetation and scattered native trees (to be transferred to Council as road or conservation reserve); and~~
 - ~~○ Land set aside in Aboriginal cultural heritage reserves is not to be credited for the purposes of the open space contribution under clause 53.01 of the Scheme.~~
- A Public Open Space Table showing the land size and the percentage of each land parcel that will be ~~parcel percentage~~ provided for unencumbered public open space contribution.
- Plans of all encumbered land reserves, identifying vegetation and fauna retention and management, re-establishment of local indigenous plant species, and any bank stabilisation and rehabilitation works.
- A tree canopy plan that demonstrates how ~~meets~~ the tree canopy target of 25% contained in the *City of Greater Geelong Urban Forest Strategy 2015-2025* will be met and which identifies ~~stipulates~~ the number and type of trees to be delivered.
- Landscaping treatment concepts proposed to provide an attractive entrance to the Jetty Road Growth Area (at Portarlinton Road) and along the Tivoli Drive/Greenvale Drive boulevard using local indigenous plant species where ~~suitable~~ appropriate.
- The pProvision of a 1.82 hectare district park located ~~on the natural highpoint~~ in the location as shown in Map 1. The district park ~~should~~ is to integrate with that part of the park (0.18ha) which is provided within the Jetty Road Stage 1 area so as to create a combined district park total area of 2 hectares.
- The provision of tThree local parks ~~that are~~ must be provided and configured to be a usable space (generally square or rectangular shape unless an alternative configuration is agreed by the Responsible Authority) and edged by road frontages or other reserve frontage.
- All open space areas must be separated from dwellings by road frontages or other active interfaces such as pedestrian paths, paper roads and/or a shared path.
- Plans for the Aboriginal heritage reserves shown on Map 1. Plans should show works required to improve the land for its intended purpose, any interpretive signage or structures and interface treatments. Plans should be prepared in consultation with the Wadawurrung Traditional Owners Aboriginal Corporation.

- The Open Space and Landscape Masterplan must include concept plans to the satisfaction of the Responsible Authority for each of the following:
 - Foreshore reserve.
 - District park.
 - Local parks **of approximately 1 hectare.**

Concept plans should show the general layout and indicative landscape treatments (such as paths, seating, lighting, shading structures, play spaces and paving materials) in accordance with Council infrastructure standards, and the use of local indigenous plant species where appropriate. Utility kiosks/cabinets must not be located in any open space.

The Open Space and Landscape Masterplan must integrate with the Pedestrian & Bicycle Network Plan [to the satisfaction of the Responsible Authority.](#)

A **Biodiversity Assessment** [prepared by a suitably qualified expert](#) that includes:

- A native vegetation assessment and response to the *Guidelines for the Removal, Destruction or Lopping of Native Vegetation* (DELWP 2017). The assessment must include adjoining road reserves as relevant.
- A biodiversity desktop assessment, and if **necessary required**, an in-season fauna survey including survey for any particular rare or listed species potentially onsite and recommendations which are to be given effect in subdivision and development permit conditions.
- For Central Residential Area B, protection of four scattered River Red Gums identified in the *Mark Trengove Ecological Services, April 2019* vegetation assessment (Trees C-F in Figure 4), within the local park.
- For the Southern Residential Area, protection of the six scattered native trees (River Red Gum, Manna Gum and Swamp Gum) identified in the *Mark Trengove Ecological Services, March 2020* vegetation assessment (Trees A-F in Figure 4), within an open space or road reserve.
- Details of protection measures that should be applied to vegetation identified for retention, including remnant trees and other vegetation in adjoining road reserves and the Bellarine Rail Trail (or on the boundary).

A **Bushfire Assessment and Development Plan** informed by a report prepared [by](#) a suitably qualified expert that includes [recommendations with respect to the:](#)

- Creation of low-threat and/or non-vegetated setback areas to address bushfire risk from the Farming Zone land to the west. Any bushfire setback areas should be designed to not detract from rural-urban transition interface and shared path requirements [and should have regard to any directions or guidelines contained within any approved Urban Design Masterplan.](#)
- For Central Residential Area A, creation of interim low-threat and/or non-vegetated setback areas to address bushfire risk from the north until development of the Northern Residential Area progresses [or any alternative design response that is to the satisfaction of the Responsible Authority.](#)

An Area specific **Land Use Budget** consistent with the *Jetty Road Urban Growth Area Stage 2 Development Contributions Plan.*

A **Development Sequencing and Staging Plan** that provides for the timely provision and delivery of service infrastructure and open space and includes:

- The sequence in which the initial stages of the Development Plan area is to proceed and identification of likely direction of development shown in a Staging Plan.
- Evidence that reticulated water supply and sewerage services can be provided to the land in a timely and efficient manner.
- The proposed staging and early provision of stormwater management infrastructure.
- The proposed delivery of all public open space reserves in association with the creation of private lots. The district park must be delivered in the early stages of development of Central Area A.

- The delivery of Council-managed land/nature strips directly abutting public open space reserves within the same stage as the public reserve.
- Any interim termination of roads which may be extended in the future across site boundaries ~~are to~~ ~~must~~ be designed and constructed to allow for functional vehicular movement during that interim period.

Northern Residential Area Development Plan

In addition to the Development Plan general requirements at Clause 4.0 of this Schedule, a Development Plan prepared for the Northern Residential Area must include the following specific requirements:

- A view analysis from the site to Port Phillip Bay, and from the foreshore reserve to the site, prepared by a suitably qualified expert. ~~Subdivision-Development~~ design must respond to the key opportunities and constraints derived from this analysis, and provide for:
 - An urban structure to which respects and where possible preserves ~~maximise~~ viewlines towards the bay ~~within~~ from the public realm.
 - The orientation and arrangement of lots to achieve a reasonable sharing of ~~share~~ views where practical.
 - Views to the bay from the district park, if possible and practicable.
- An Aboriginal Cultural Heritage Desktop Assessment.
- An Infrastructure Servicing Assessment.
- Identification of the land area adjacent to the foreshore, including the land between the mean high water line and the top of the foreshore escarpment and extending south of the top of the foreshore escarpment, as public open space reserve generally in accordance ~~consistent~~ with the area identified in the report: *Geotechnical Investigation for Cliff Stability, Jetty Road Foreshore, Stantec, 14 April 2023*.
- A report prepared by a suitably qualified expert to address potential issues arising from coastal instability and erosion along the foreshore and foreshore reserve, including storm surge, having regard to the report: *Geotechnical Investigation for Cliff Stability, Jetty Road Foreshore, Stantec, 14 April 2023*, and to the satisfaction of the Responsible Authority.
- The Integrated Water Management Plan must include a report to inform the design and location of the DCP coastal outfall structure having regard to any on-site native vegetation and the report: *Geotechnical Investigation for Cliff Stability, Jetty Road Foreshore, Stantec, 14 April 2023*.
- The Biodiversity Assessment must consider:
 - How the identified Remnant Vegetation Reserve on Map 1 can be enhanced, with reference to the C387ggee Development Plan Overlay Schedule 46 Background Landscape Report, November 2022, City of Greater Geelong.
 - The retention value of any the planted native vegetation within the Sensitive Residential Interface Treatment linear area along the eastern boundary and nominating a vegetation protection zone.
- Existing vegetation rows identified on Map 1 and in the *C387ggee Development Plan Overlay Schedule 46 Background Landscape Report, November 2022, City of Greater Geelong*, must be protected to the greatest extent possible in road reserves or open space reserves, and form part of the street and shared path network.
- A report prepared by a suitably qualified expert that identifies ~~assesses~~ a preferred and distinct built form character for future dwellings on lots that front, or are visible from, the foreshore reserve to the satisfaction of the Responsible Authority. Any recommendations of the report that are necessary to achieve that preferred built form character should ~~Report recommendations must~~ be given effect as permit conditions ~~to the satisfaction of the Responsible Authority~~.
- Provision of the western interface shared path within the McDermott Road reserve and closure of the road to vehicles north of the 121-201 McDermott Road Curlewis private access driveway, subject to further investigation.

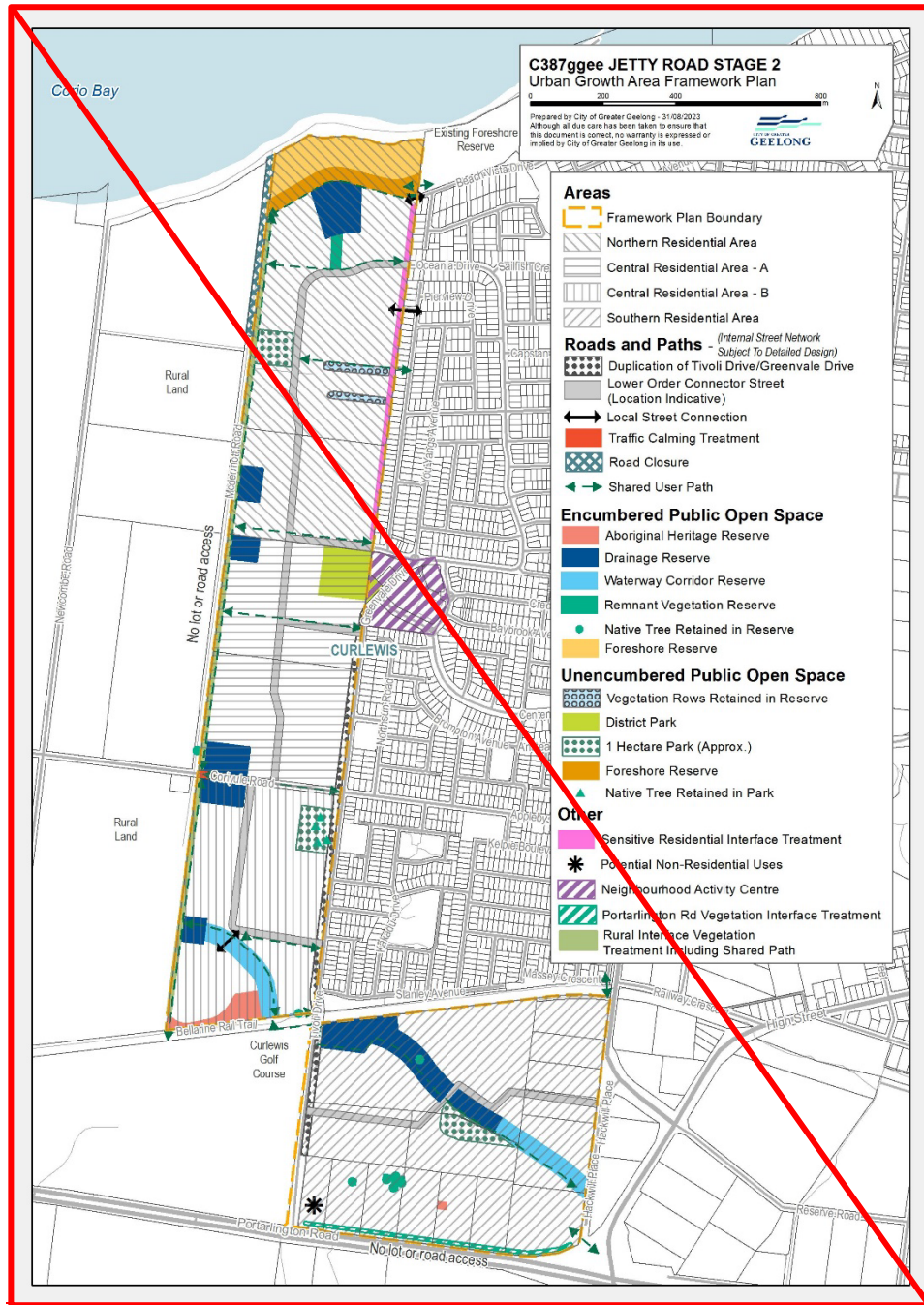
Specific Land Use and Development

In addition to the Development Plan general requirements at Clause 4.0 of this Schedule, the Development Plan must ~~make provision for the following further specific requirements for the following land uses~~ include the following requirements of guidelines with respect to:

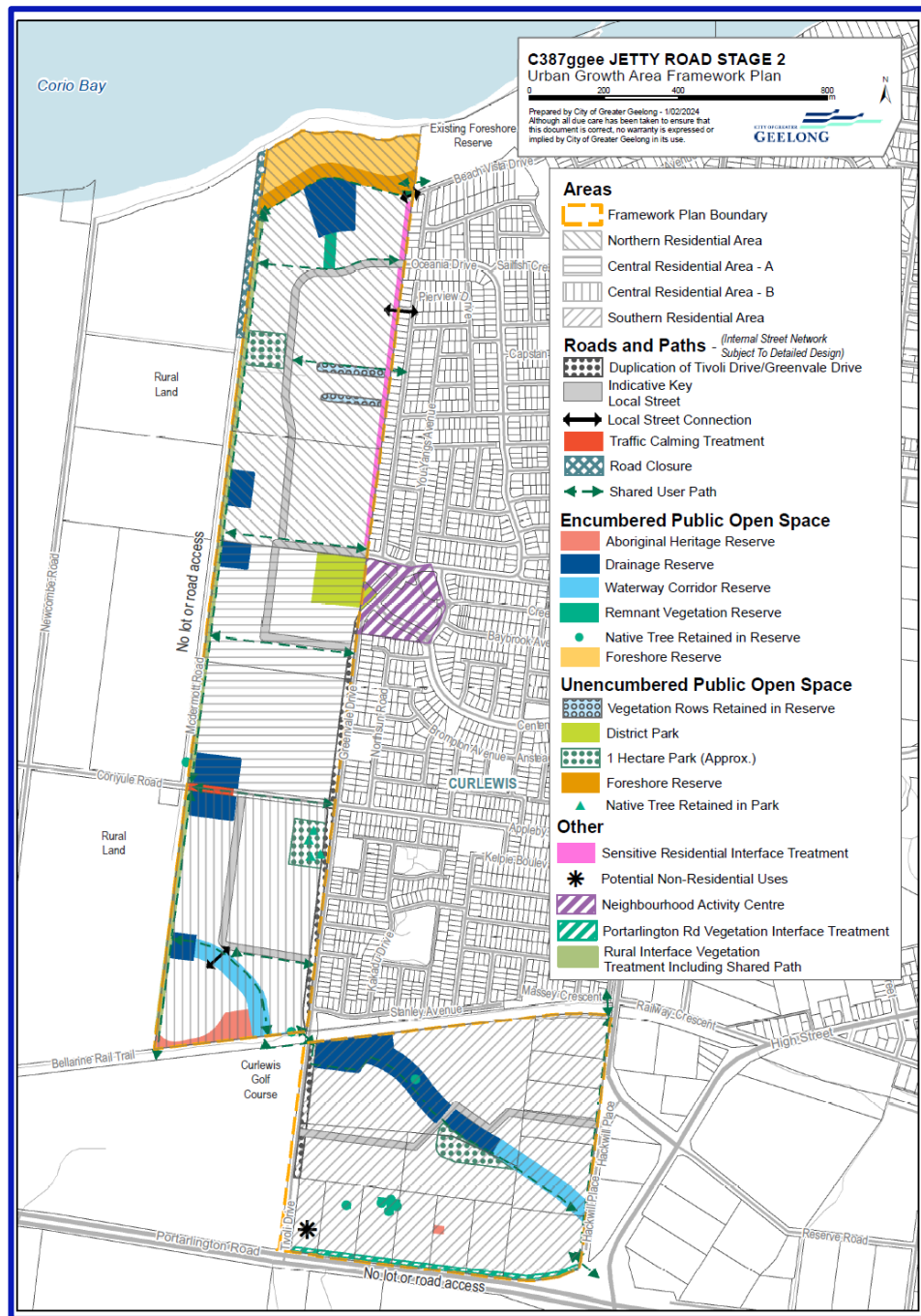
- All of Central Residential Area A identified on Map 1 for residential use may be developed and used as a Residential Village or Retirement Village with the exception of a 14.5 metre wide local access street to be provided along the south and west boundaries of the District Park.
- The key local streets and shared user paths shown on Map 1 do not need to be provided within Central Residential Area A if it is proposed to be used and developed as a Residential Village or Retirement Village.
- Specialised housing that forms part of a Residential village or Retirement village should:
 - Be located within the walkable catchment of the neighbourhood activity centre and be accessible by existing or planned public transport.
 - Respond to and integrate with adjoining development, avoiding inactive interfaces and blank facades to the public street network.
 - Be designed to front any district park / local park. Each dwelling at this interface should comprise low front fencing and a front gate to ensure activation of the public space.
- ~~Residential village and Retirement village~~
 - ~~The use and development must not be located within 100 metres of the boundary of the district park.~~
 - ~~Regard must be had to, and compliance must be demonstrated with, the Urban Design Guidelines for Victoria.~~
 - Not present an unreasonable barrier to movement through the surrounding public road and pedestrian movement network
 - ~~A movement analysis must be undertaken to demonstrate that public pedestrian connectivity through the area~~ include convenient and direct access to bus stops and public open space ~~is not compromised by the proposed use and development.~~
 - ~~Gates that provide access to the public realm must be open during daylight hours.~~
 - Any boundary fencing installed should be of low height, transparent in design, and be sympathetic to the urban or rural character.
 - ~~Dwelling frontage should ensure strong passive surveillance and contribute towards activation of the public realm.~~
 - Trees should generally be located to provide shade to paved surfaces, with specific focus on shading pedestrian paths.
 - Where the use interfaces with the western boundary rural land:
 - ~~A Plan of Subdivision must vest land in Council sufficient to provide for a rural interface reserve inclusive of a shared path. This area is not to be credited as part of the public open space contribution.~~
 - A landscape plan must be prepared showing generous planting including canopy trees within the rural interface reserve minimum 4 metre deep “no build zone” to be established along the western boundary of the land and which is consistent with bushfire protection principles.
 - A ~~dwelling (or any other building)~~ colour and materials schedule, and a fence design plan, must be prepared which appropriately reflects ~~the coastal and rural transition~~ rural character of the adjoining land and which is consistent with any requirements or guidelines contained within the Urban Design Masterplan, to the satisfaction of the Responsible Authority.

- On-site stormwater assets required to drain and treat stormwater from the development must be designed, constructed and maintained as private assets, to the satisfaction of the Responsible Authority.
- ***Non-residential uses subject to permit in the General Residential Zone***
 - The location of any ~~proposed~~ potential non-residential use(s), other than a Child care centre, should be limited to the corner of Portarlington Road and Tivoli Drive, and is subject to a traffic impact assessment and approval by the Head, Transport for Victoria. The exception to this requirement is that a Food and drink premises (café or restaurant) may be located adjacent to the foreshore reserve.
 - A site analysis must be undertaken to ensure the proposed development design responds to the existing character and features of the site and surrounding land.
 - Non-residential use should demonstrate that the impacts of the proposed use on the amenity of residential uses, and on the operation of the road network, will be acceptable.
 - Non-residential development should provide appropriate ~~Development must provide sufficient~~ setbacks from ~~land to~~ roads and private lots to enable generous landscaping including canopy trees.
 - ~~Signage must be sympathetic in scale, ssnot dominate the landscape and be entirely integrated into the design of the built form and architecture.~~

MAP 1 TO THE SCHEDULE 46 TO CLAUSE 43.04



MAP 1 TO THE SCHEDULE 46 TO CLAUSE 43.04



The following changes are proposed to MAP 1:

[The Rural Interface Vegetation Treatment including Shared Path to be located within the eastern McDermott Road reserve and not within Properties 11, 12, 13 and 14.](#)

[East west shared user path shown south of District Park, on Property 13 to be deleted.](#)

[Amend legend by deleting the words "including Share Path" in "Rural Interface Vegetation Treatment including Share Path".](#)

[Change location of Indicative Key Local Street on Property 13 to wrap around the District Park.](#)

[Amend "Portarlington Road Interface Treatment" to make it clear that access to non-residential uses from Portarlington Road can be considered.](#)