

MINUTES

COUNCIL MEETING

Tuesday 28 February 2023
6:00 pm

Cloverdale Community Centre
167–169 Purnell Road, Corio

LIVE STREAMED ON THE CITY'S WEBSITE:

www.geelongaustralia.com.au/meetings

COUNCIL:

Cr T Sullivan (Bellarine Ward) - Mayor
Cr A Aitken (Windermere Ward) - Deputy Mayor
Cr P Murrihy (Brownbill Ward)
Cr S Asher (Bellarine Ward)
Cr J Mason (Bellarine Ward)
Cr E Kontelj (Brownbill Ward)
Cr M Cadwell (Brownbill Ward)
Cr B Harwood (Kardinia Ward)
Cr B Moloney (Kardinia Ward)
Cr R Nelson (Kardinia Ward)
Cr K Grzybek (Windermere Ward)

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2.2. Amendment C441ggee 672-690 & 692-700 Portarlington Road, Leopold - Consideration of Panel Report and Adoption of Amendment

Source: City Planning & Economy
Director: Gareth Smith

Purpose

1. To consider the Amendment C441ggee Panel Report and adopt the Amendment.

Background

2. On 25 May 2022 Council resolved under delegation to prepare and exhibit Amendment C441ggee to the Greater Geelong Planning Scheme.
3. The Amendment rezones 672-690 and 692-700 Portarlington Road, Leopold, from Farming Zone to General Residential Zone Schedule 1. In addition to the rezoning, the Amendment will apply a Design and Development Overlay (DDO) to the land and an Environmental Audit Overlay (EAO) to 692-700 Portarlington Road only.
4. Public exhibition of the Amendment occurred in July-August 2022. Notices were sent to the landowners and nearby residents and appeared in local newspapers.
5. Seven submissions were received including one from NovoPlanning on behalf of the owners of 692-700 Portarlington Road, Leopold which objected to the property being rezoned and application of the EAO.
6. On 13 September 2022 Council under delegation resolved to refer all the submissions to an Independent Panel appointed by the Minister for Planning.
7. A one-day Panel Hearing was held on 3 November 2022 attended by Council, the proponent and NovoPlanning. At the Hearing NovoPlanning revised its position and supported the rezoning but requested the EAO only be applied to part of its client's land.

Key Matters

8. The Panel Report (see Executive Summary in **Attachment 3**) was received on 20 December 2022. Under the *Planning and Environment Act* the Planning Authority (i.e Council) must consider the Panel's report before deciding to adopt the Amendment. The Panel recommends the Amendment be adopted subject to changes to the exhibited DDO47 which are supported by officers. The Panel found the Amendment is strategically justified and implements policy. The Panel agreed with the Council and Environment Protection Authority position that an EAO should apply to the whole of 692-700 Portarlington Road, Leopold.
9. The amendment is now ready for adoption by Council (**Attachment 2**) and approval by the Minister for Planning. Section 173 Agreements accompanying the rezoning will be signed to provide for community infrastructure contributions by future developers.
10. Further background and discussion are included in **Attachment 1**.

RESOLUTION - Item 2.2

Cr Mason moved, Cr Sullivan seconded -

That Council:

- 1. Adopt Amendment C441ggee 672-690 & 692-700 Portarlington Road, Leopold (Attachment 2 of this report); and**
- 2. Submit the adopted Amendment and prescribed information to the Minister for Planning requesting approval.**

Carried

Financial Sustainability

11. There are no adverse financial implications associated with the Amendment.
12. Community infrastructure contributions (at \$40,000 per net developable hectare) will be levied on future developers via Section 173 Agreements.

Community Engagement

13. The Amendment was exhibited in accordance with the *Planning and Environment Act*. Council officers also held meetings with the proponent, NovoPlanning and a submitter who raising drainage maintenance concerns in the area.
14. The Panel Hearing was convened by video conference using Microsoft Teams. The hearing was attended by Council, the proponent and NovoPlanning.
15. The Panel Report was published on the Geelong Australia C441ggee webpage on 22 December 2022 and all submitters to the Amendment were alerted to the publication. A further alert was provided to submitters of the date this report will be presented at a Council Meeting.

Social Equity and Sustainability

16. The Amendment will provide social benefits by facilitating new residential development conveniently located to retail and community facilities. An increase in housing supply will support opportunities for affordable housing on the Bellarine Peninsula.
17. Development contributions will be allocated to community infrastructure projects within Leopold.

Relevant Law/Policy/Legal Implications

18. The Amendment is consistent with the Leopold Structure Plan which identifies the land as suitable for residential development and within the Leopold Settlement Boundary, as designated at Clause 11.03-6L-01 of the Greater Geelong Planning Scheme.
19. The residential rezoning is also consistent with the State Government *Final draft Bellarine Peninsula Statement of Planning Policy, October 2022*. The policy designates the site for 'incremental change' and inside the Leopold Protected Settlement Boundary.
20. The Amendment meets the requirements of *Ministerial Direction No.1 – Potentially Contaminated Land* and Clause 13.04-1S - *Contaminated and potentially contaminated land* by applying the Environmental Audit Overlay to 692-700 Portarlington Road, Leopold.

Alignment to Community Plan and Vision

21. This report aligns with Our Community Plan 2021-2025 strategic priority:
Sustainable growth and environment.
22. This report aligns with the Community led 30-year Vision, "Greater Geelong: A Clever and Creative Future" community aspiration:
Sustainable development that supports population growth and protects the natural environment.

Conflict of Interest

23. No officer involved in the preparation of this report declared a general or material conflict of interest.

Risk Assessment

24. There are no risks with proceeding with the recommendations of this report.

Environmental Sustainability

25. The site is located within the Leopold Settlement Boundary and can conveniently connect to the local street network and service infrastructure. Both the Leopold Sub-regional activity centre and Leopold recreation reserve are accessed from Melaluka Road one kilometre to the south, while the Bellarine Rail Trail and Leopold Sportsmans club are within walking distance.
26. The site contains exotic and planted non-native vegetation. Part of the land close to Melaluka Road is flood prone which can be managed by a site stormwater plan required for future subdivision and development. All of the land is designated as a bushfire prone area however the Country Fire Authority raised no objections due to separation distances provided by Portarlington Road and Melaluka Road.

Attachments

1. Amendment C441ggee Background and Discussion
2. Amendment C441ggee for Adoption
3. Amendment C441ggee Panel Report Executive Summary
4. Section 173 Agreement

Attachment 1**Background and Discussion - Amendment C441ggee****Background**

1. The Amendment applies to 672-690 Portarlington Road, Leopold and 692-700 Portarlington Road, Leopold, as shown below.



2. On 30 November 2021 a Planning Scheme Amendment application was made by Context Planning Pty Ltd (the proponent) on behalf of the current owners of 672-690 Portarlington Road and 627 Port Road Pty Ltd.
3. It was proposed to rezone 672-690 Portarlington Road and 692-700 Portarlington Road, Leopold, from Farming Zone to General Residential Zone Schedule 1. In addition to the rezoning, the Amendment will apply a Design and Development Overlay to the land being rezoned and an Environmental Audit Overlay to 692-700 Portarlington Road.
4. Council resolved under delegation on 25 May 2022 to exhibit the Amendment subject to Ministerial authorisation, which was granted on 16 June 2022. The Amendment was placed on public exhibition between 6 July and 15 August 2022.
5. Seven submissions were received. Two of the submissions objected to the Amendment, including one from NovoPlanning on behalf of the owners of 692-700 Portarlington Road, Leopold. The NovoPlanning submission objected to the property being rezoned at this time and application of the Environmental Audit Overlay.
6. The other objecting submission (no. 7) was from a local resident raising concerns about urban impacts on the downstream municipal drainage network and lack of maintenance to the 'Kancy' open drain on private land west of Melaluka Road.

7. Supportive submissions were received from the proponent and Government Authorities and Agencies. The Department of Transport (DoT) and the Environment Protection Authority (EPA) requesting minor changes to the exhibited Design and Development Overlay Schedule 47 (DDO47).
8. Under delegation on 13 September 2022, Council considered the submissions and resolved to refer all the submissions to an Independent Planning Panel. The delegated report recommended some drafting changes to the DDO47. The NovoPlanning submission to remove 692-700 Portarlinton Road from the Amendment was not supported.
9. The Amendment C441ggee Panel was appointed by the Planning Minister's delegate on 14 September 2022.

Discussion

10. A one-day video Panel Hearing on 3 November 2022 was attended by a Council officer, the proponent and NovoPlanning.
11. During the course of the Hearing, NovoPlanning revised its position and now supported the rezoning however requested that the Environmental Audit Overlay only be applied to part of the land at 692-700 Portarlinton Road, Leopold.
12. In addition to the Panel hearing submissions from parties, the Panel considered all written submissions, as well as undertaking a site visit and reading the exhibited technical reports.
13. The Panel's report was received by Council officers dated 20 December 2022 and released to the public on 23 December 2022. Under Section 27 of the *Planning and Environment Act* the Planning Authority (i.e., Council) must consider the report before deciding whether or not to adopt the Amendment. The Panel recommended the Amendment be adopted.
14. This report recommends the Amendment be adopted and the adopted Amendment is shown in **Attachment 2**.
15. **Attachment 3** is the Executive Summary of the Panel Report and contains the consolidated Panel recommendations (i.e., all the recommended changes to the Greater Geelong Planning Scheme). The full Panel Report is available on the City's amendment's webpage - www.geelongaustralia.com.au/amendments.
16. **Attachment 4** shows the draft section 173 agreements for signing.

City response to Panel Report

17. This section of the report summarises the issues identified by the Panel and provides a City response to the Panel's conclusions and recommendations.
18. The Panel Report outlined the planning policy context and rezoning history in relation to the Amendment and proceeded to discuss the following issues:
 - 18.1 Strategic issues;
 - 18.2 Design and Development Overlay – Schedule 47;
 - 18.3 Environmental Audit Overlay; and
 - 18.4 Stormwater Management

Strategic issues

19. The Panel referred to several relevant policies including the Leopold Structure Plan, G21 Regional Growth Plan and Bellarine Peninsula Statement of Planning Policy, finding the Amendment to be strategically justified. The Panel concluded that the Amendment is

supported by, and implements, the relevant sections of the Planning Policy Framework in the Greater Geelong Planning Scheme.

20. The Panel also noted that no submitter raised objections to the strategic justification for the Amendment.
21. Council officers agree with the findings of the Panel. The rezoning is the final piece of Farming Zone land in Leopold to be made available for residential development.

Design and Development Overlay – Schedule 47 (DDO47)

22. A proposed DDO47 was exhibited as part of the Amendment to manage future subdivision and development of the land. The drafting of the DDO47 was discussed at the Panel hearing, which included Council's preferred version and submissions from the proponent.
23. The Panel addressed DDO47 requirements relating to stormwater management, movement and access, noise and air quality, and urban design. All of the Panel recommended changes are accepted by council officers.
24. The Panel was satisfied that stormwater requirements to prepare a stormwater management plan and pursue development of a single detention/treatment facility (potentially using the existing drainage basin on the adjoining council reserve), are appropriate.
25. The Panel agreed with the alternative vehicle access requirements to Portarlington and Melaluka Roads as submitted by the DoT. The Panel also agreed with Council's proposal to add a new requirement to ensure internal pedestrian connections are provided to assist with access to the nearby bus stop on Portarlington Road.
26. The EPA in its written submissions advised of redrafting of requirements to appropriately manage noise impacts on future dwellings from Portarlington Road. Both council and the Panel agreed to the proposed EPA changes.
27. The Panel considered several urban design requirements and generally supported council's submissions at the Hearing. This included retaining requirements relating to the provision of active road frontages and landscaping at the rural – urban interface as part of future subdivision and development.

Environmental Audit Overlay (EAO)

28. The issue is whether the EAO should be applied to part or all of 692-700 Portarlington Road.
29. The Panel report provided background including relevant planning policy and guidance, council's and the landowner's approach, and a chronology of events. Prior to the Hearing, NovoPlanning for the landowners, submitted a Preliminary Site Investigation (PSI) prepared by Landserv Pty Ltd, which found the property to be potentially contaminated but not the land containing the dwelling and gardens. At the conclusion of the Hearing council sought further formal written comments from the EPA and the comments were provided to the Panel as part of council's final position on the issue.
30. Council submitted that as the land is identified as potentially contaminated it is appropriate to apply the EAO to the entire property as exhibited.
31. The EPA advised that the land meets the definition of 'potentially contaminated land' and strongly recommended applying the EAO to the entire site.
32. NovoPlanning did not support application of the EAO to all of the property and submitted the dwelling and residential area should be excluded as recommended by the PSI. NovoPlanning accepted the EAO should be applied to the balance of the land.

33. The Panel noted parties agreed the land has either 'medium' or 'high' potential for contamination. The disagreement related to whether the EAO should be applied to the entire site or only to the land outside of the residential area on the property, which the PSI had determined to be low risk.
34. The Panel referred to Planning Practice Note 30 - *Potentially Contaminated Land* (PPN30) which states a Preliminary Risk Screen Assessment (PRSA) or environmental audit is the preferred assessment mechanisms for land with 'medium' or 'high' potential for contamination, not a PSI. The Panel agreed with Council and the EPA that reliance on a PSI is not consistent with PPN30, which specifies that planning scheme amendments proposing to allow sensitive uses, such as residential development, require a planning authority to satisfy itself that the land is suitable for the use by either: (1) a PRSA stating no audit is required, or (2) an environmental audit stating the land is suitable for the proposed use.
35. The Panel further referred to PPN30 where it provides guidance that where land has been "*determined to be potentially contaminated, but it is difficult or inappropriate to meet environmental audit system requirements at the amendment stage, the application of the [EAO] to the land allows deferment of these requirements*".
36. On the issue of applying an EAO to the entire property, the Panel said it was appropriate to do so because:
 - 36.1 the *DELWP Planner's Toolkit: a toolkit for planners working with potentially contaminated land* explains generally the EAO should be applied to the cadastral area boundary and a PRSA is needed to obtain sufficient information to inform a reduced EAO extent;
 - 36.2 in the absence of a PRSA there is uncertainty on the extent of potentially contaminated land and it is prudent to take a precautionary approach; and
 - 36.3 identified current and historic uses have potential to result in offsite contamination (so may not be limited to the area identified in the PSI).
37. The Panel concluded it is appropriate to apply the EAO to all of 692-700 Portarlington Road, Leopold, which council agrees.

Stormwater management

38. Submission no. 7 was concerned that urban development was resulting in increased runoff, resulting in overgrown open drains and localised flooding on farming zoned land to the west. The submitter did not appear at the Hearing.
39. Council advised the Panel that: (1) the Amendment land does not drain to the area of concern; (2) the area of concern was part of a reactive maintenance program; and (3) works were planned for the 2021-22 open drain renewal program.
40. Council submitted that the future stormwater drainage from the subject land would be developed consistent with the requirements of DDO47 and the Planning Scheme.
41. The Panel concluded downstream stormwater management is adequately considered.

Attachment 2

Amendment C441ggee Adoption Documents

Planning and Environment Act 1987

GREATER GEELONG PLANNING SCHEME

AMENDMENT C441ggee

INSTRUCTION SHEET

The planning authority for this amendment is Greater Geelong City Council.

The Greater Geelong Planning Scheme is amended as follows:

Planning Scheme Maps

The Planning Scheme Maps are amended by a total of 3 attached map sheets.

Zone Maps

1. Amend Planning Scheme Map No. 57 in the manner shown on the 1 attached map marked "Greater Geelong Planning Scheme - Local Provision, Amendment C441ggee".

Overlay Maps

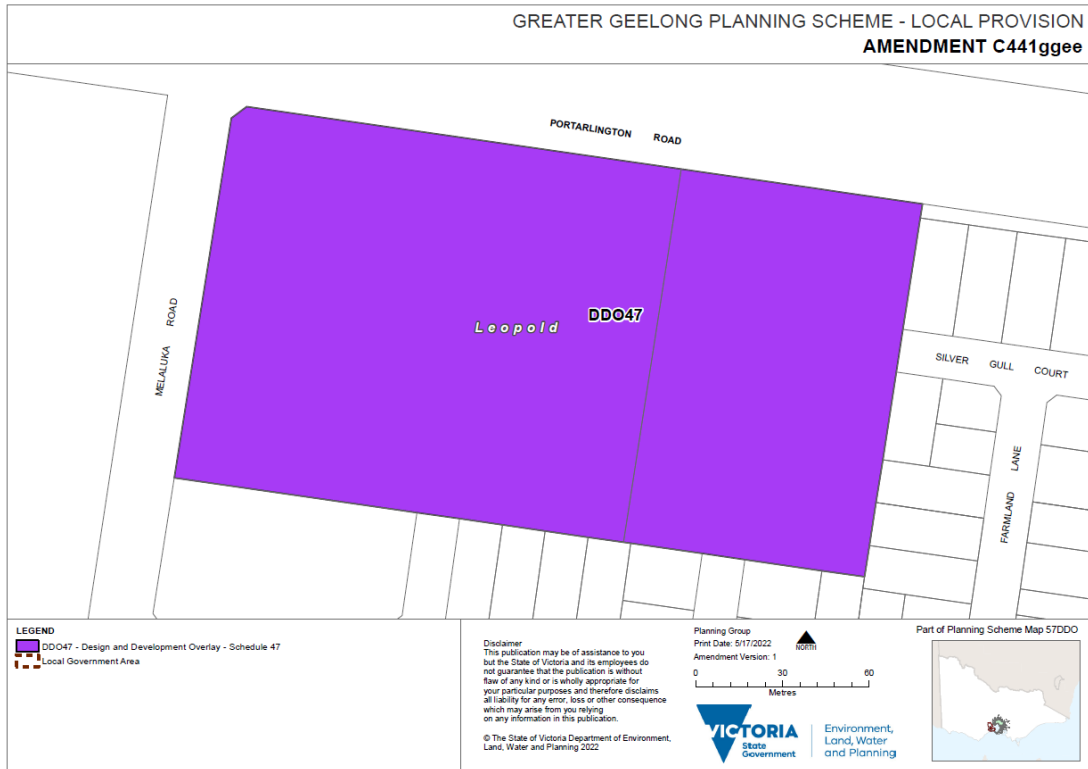
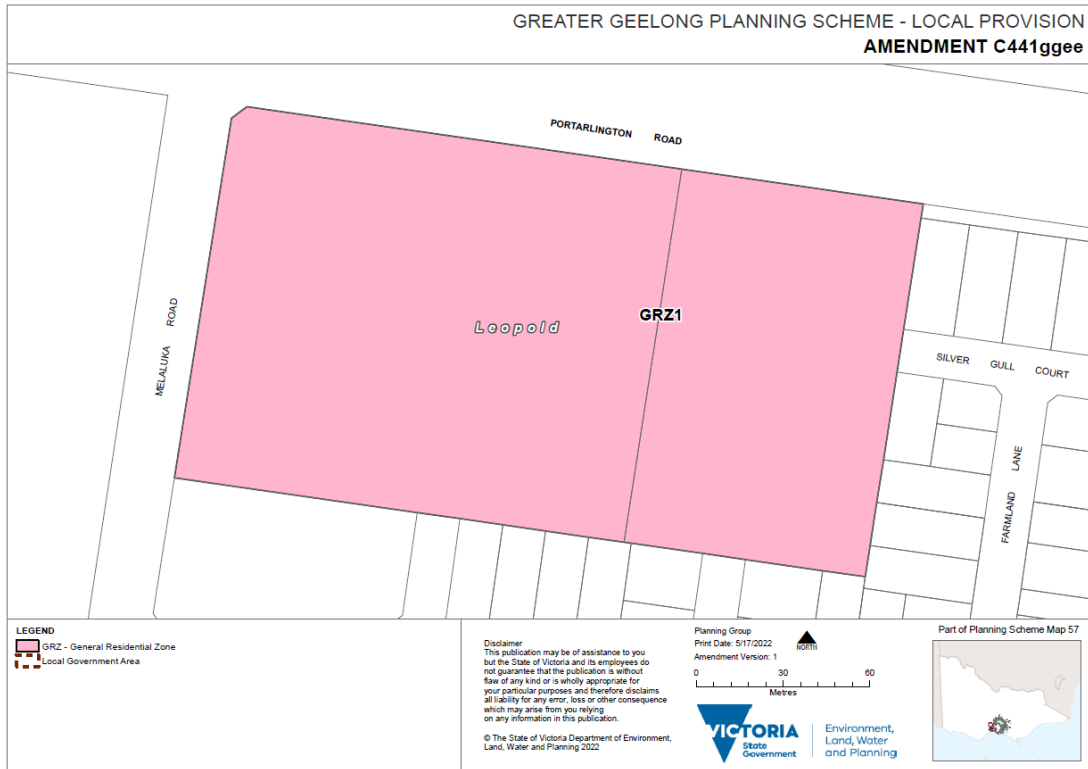
2. Amend Planning Scheme Map No. 57DDO in the manner shown on the 1 attached map marked "Greater Geelong Planning Scheme - Local Provision, Amendment C441ggee".
3. Insert Planning Scheme Map No. 57EAO in the manner shown on the 1 attached map marked "Greater Geelong Planning Scheme - Local Provision, Amendment C441ggee".

Planning Scheme Ordinance

The Planning Scheme Ordinance is amended as follows:

4. In Overlays – Clause 43.02, insert a new Schedule 47 in the form of the attached document.

End of document





GREATER GEELONG PLANNING SCHEME

C441ggee **SCHEDULE 47 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY**

Shown on the planning scheme map as DDO47.

672-690 AND 692-700 PORTARLINGTON ROAD, LEOPOLD

1.0 Design objectives

C441ggee

To facilitate the orderly and integrated development of the area.

To ensure best practice stormwater management and water quality treatment to prevent any adverse impact on downstream areas.

To manage site constraints with appropriate built form and urban design measures.

2.0 Buildings and works

C441ggee

A permit is not required to construct a building or to construct or carry out works.

3.0 Subdivision

C441ggee

A permit to subdivide land must meet the following requirements:

Stormwater Management

- Subdivision and development must be informed by a Stormwater Management Plan that takes an integrated approach to flooding, stormwater and drainage management, considers the whole of the catchment, and includes:
 - Measures to ensure peak discharge rates of all stormwater leaving the site post-development are regulated to integrate with downstream infrastructure, at no greater than pre-development rates, with reference to *Flood Assessment 672-690 Portarlington Road, Leopold* (Cardno, Nov 2021, NW30247).
 - Treatment to achieve best practice pollutant removal targets in accordance with relevant standards and guidelines (including Design Note 3 and Melbourne Water guidelines).
 - No adverse impacts to any surrounding land, upstream or downstream.
 - A single detention / treatment facility to service all of the DDO land. New drainage infrastructure effectively co-located with the existing drainage reserve to the south must be investigated.

Movement and Access

- An internal road network which utilises existing access connections from the adjoining street network.
- Direct access points or vehicular entrances to residential subdivision should be from Melaluka Road only.
The following must be accompanied by a Transport Impact Assessment and subject to further review and approved by the Head, Transport for Victoria:
 - Any access proposed at Melaluka Road.
 - Consideration of any potential Commercial Activity on the corner of Portarlington and Melaluka Roads and any access proposed to Portarlington Road as a result.
- Construction of a concrete footpath to the frontage of the site (on Melaluka Road) to link the existing path south of the DDO land to the existing path at the Portarlington Road / Melaluka Road signalised intersection.
- Provision of a public pedestrian connection to Melaluka Road, close to the Portarlington Road intersection, from the internal road network.

GREATER GEELONG PLANNING SCHEME

Urban Design

- A mix of lot sizes and dwelling types which include designs to achieve passive surveillance of the municipal drainage reserve to the south and any future on-site drainage reserve.
- Road layout and arrangement of lots should provide for lots to front Portarlington Road and Melaluka Road.
- Creation of a 5 metre wide landscaped land buffer to the Portarlington Road interface.

Exemption from notice and review

An application to subdivide land is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

4.0 Signs

C441ggee

None specified.

5.0 Application requirements

C441ggee

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- An acoustic assessment report prepared by a qualified acoustic engineer or other suitably skilled person to the satisfaction of the responsible authority which:
 - Applies the following noise objectives:
 - 35 dB LAeq,8h when measured within a sleeping area between 10 pm and 6 am.
 - 40 dB LAeq,16h when measured within a living area between 6 am and 10 pm.
 - For areas other than sleeping and living areas, the median value of the range of recommended design sound levels of Australian Standard AS/NZ 2107:2016 (Acoustics – Recommended design sound level and reverberation times for building interiors).
 - Includes recommendations for any noise attenuation measures required to meet the applicable noise level objectives.
 - Includes additional considerations, where relevant, to address:
 - potential noise character (tonality, impulsiveness or intermittency);
 - noise with high energy in the low frequency range; and
 - transient or variable noise.

Where the report recommends any noise attenuation measures, permit conditions should be applied to that effect.

6.0 Decision guidelines

C441ggee

None specified.

Attachment 3**C441ggee Panel Report Executive Summary**

Greater Geelong Planning Scheme Amendment C441ggee | Panel Report | 20 December 2022

Executive summary

Leopold is located on the Bellarine Peninsula, approximately 12 kilometres from the regional city of Geelong. It is a designated district town and service hub for the Bellarine Peninsula, identified for residential development within an existing settlement boundary.

Greater Geelong Planning Scheme Amendment C441ggee (the Amendment) seeks to rezone the land at 672-690 Portarlington Road and 692-700 Portarlington Road, Leopold for residential purposes. It seeks to apply the:

- General Residential Zone – Schedule 1
- Design and Development Overlay – Schedule 47
- Environmental Audit Overlay to 692-700 Portarlington Road, Leopold.

The Proponent for the Amendment is the owner of 672-690 Portarlington Road, Leopold and 627 Port Road Pty Ltd (the Proponent).

Seven submissions were received during exhibition of the Amendment. Two submitters objected to the Amendment, and a number of submitters requested changes including:

- Department of Transport, which recommended changes to the Design and Development Overlay – Schedule 47 relating to access points and vehicular entrances
- Environment Protection Authority Victoria, which recommended changes to the Design and Development Overlay – Schedule 47 relating to noise and air quality and made submissions relating to application of the Environmental Audit Overlay.

The owners of 692-700 Portarlington Road, Leopold objected to the Amendment and requested their land be removed from the Amendment, or if the Amendment proceeds for the Environmental Audit Overlay to only be applied to part of the land.

One submitter opposed the Amendment raising concerns about the lack of a downstream drainage network.

The Proponent requested changes to the drafting of Development Overlay – Schedule 47.

The Panel is satisfied the Amendment is strategically justified on the basis it is consistent with:

- key policy objectives relating to settlement, managing growth, planning for places and environmental risks
- directions and strategies in the *G21 Regional Growth Plan* and the *draft Bellarine Peninsula Statement of Planning Policy*.

Rezoning the land to General Residential Zone – Schedule 1 will support the final stages of residential development in the north-western part of Leopold within the settlement boundary. The Amendment delivers net community benefit and sustainable development as required by Clause 71.02-3 (Integrated decision making) and should proceed subject to the recommendations in this Report.

Regarding the Design and Development Overlay – Schedule 47, the Panel concludes:

- The 'stormwater management' requirement relating to the single detention/treatment facility is appropriate.
- The additional and amended 'movement and access' requirements relating to provision of a pedestrian connection to Melaluka Road and vehicle access are appropriate, subject to wording changes recommended by the Panel.

- The 'urban design' requirement relating to noise and air quality is not clear and should be removed, and the amended application requirement proposed by the Environment Protection Authority Victoria is appropriate.
- The 'urban design' subdivision requirements relating to road frontage and landscaping are appropriate, and it is appropriate to remove the requirement relating to retaining existing trees.

The Panel concludes it is appropriate to apply the Environmental Audit Overlay to all of 692-700 Portarlinton Road, Leopold.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Geelong Planning Scheme Amendment C441ggee be adopted as exhibited subject to the following:

1. **Amend Design and Development Schedule 47 to:**
 - a) **Include the additional 'movement and access' requirement:**

Provision of a public pedestrian connection to Melaluka Road, close to Portarlinton Road intersection, from the internal road network.
 - b) **Amend the 'movement and access' requirements to:**
 - **Delete the following text:**

New direct vehicle access from Portarlinton Road should be limited to the corner of Portarlinton and Melaluka Roads for potential commercial uses only. Any vehicle access from Portarlinton Road and/or Melaluka Road must be supported by a Traffic Impact Assessment and approved by the Head, Transport for Victoria.
 - **Add the following text:**

Direct access points or vehicular entrances to residential subdivision should be from Melaluka Road only.

The following must be accompanied by a Transport Impact Assessment and subject to further review and approved by the Head, Transport for Victoria:

 - *Any access proposed at Melaluka Road*
 - *Consideration of any potential Commercial Activity on the corner of Portarlinton and Melaluka Roads and any access proposed to Portarlinton Road as a result.*
 - c) **Delete the following 'urban design' requirements:**

Noise and air quality attenuation measures to future dwellings from the source of the emissions (Portarlinton Road), as appropriate.

Existing trees of medium-high arboricultural value should be retained where appropriate in conjunction with the design and location of the drainage reserve. Any trees retained should be located on land to be transferred to council as road or drainage reserve.
 - d) **Amend the following 'urban design' requirement to state:**

Creation of a 5 metre wide landscaped land buffer to the Portarlinton Road interface.
 - e) **Amend the application requirements as follows:**

- Delete the following text:

An assessment report(s) of noise and air quality emissions from Portarlington Road and impacts on sensitive land uses by a suitably qualified expert. Where the report recommends built form and/or landscape or other design measures to mitigate noise/air quality risk, permit conditions should be applied that satisfy the report.

- Add the following text:

An acoustic assessment report prepared by a qualified acoustic engineer or other suitably skilled person to the satisfaction of the responsible authority which:

- *Applies the following noise objectives:*
 - *35 dB LAeq,8h when measured within a sleeping area between 10 pm and 6 am.*
 - *40 dB LAeq,16h when measured within a living area between 6 am and 10 pm.*
- *For areas other than sleeping and living areas, the median value of the range of recommended design sound levels of Australian Standard AS/NZ 2107:2016 (Acoustics – Recommended design sound level and reverberation times for building interiors).*
- *Includes recommendations for any noise attenuation measures required to meet the applicable noise level objectives.*
- *Includes additional considerations, where relevant, to address:*
 - *potential noise character (tonality, impulsiveness or intermittency);*
 - *noise with high energy in the low frequency range; and*
 - *transient or variable noise.*

Where the report recommends any noise attenuation measures, permit conditions should be applied to that effect.



**DEED OF AGREEMENT
UNDER SECTION 173 OF THE
*PLANNING AND ENVIRONMENT ACT 1987 (VIC)***

672-690 PORTARLINGTON ROAD, LEOPOLD

Dated

Made between

Greater Geelong City Council

(Council)

and

(Owner)

Francis Abourizk Lightowers

Level 14, 114 William Street
Melbourne Victoria 3000

PO Box 302, Collins Street West
Melbourne Victoria 8007

e enquiries@fal-lawyers.com.au
www.fal-lawyers.com.au

ABN 85 275 937 113

Ref: GEEL006

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PARTICULARS

BACKGROUND		
A.	Council is:	<ul style="list-style-type: none"> I. the responsible authority pursuant to the Act for the Planning Scheme applying to the Land; and II. the planning authority for Amendment C441ggee to the Planning Scheme.
B.	The Owner is or is entitled to be the registered proprietor of the Land.	
C.	The Planning Scheme requires that a planning permit for subdivision must include a mandatory condition requiring the Owner to enter into an Agreement under section 173 of the Act.	
D.	Amendment C441ggee proposes to:	<ul style="list-style-type: none"> I. rezone the Land from Farming Zone to General Residential Zone – Schedule 1 under the Planning Scheme, in support of the objectives under the Leopold Structure Plan; and II. apply a Design and Development Overlay to the Land and to 692 – 700 Portarlinton Road, Leopold, Victoria .
E.	The Parties agree that the Owner will pay the Community Infrastructure Contribution.	
F.	The Parties enter into this Deed to record the terms and conditions of each Party to the agreement.	

This deed of agreement under section 173 of the Planning and Environment Act 1987 (Vic) (**Deed**) is made up of the Particulars and Operative Provisions.

No.	Item	Details
1.	Date of Deed:	
2.	Council:	Greater Geelong City Council City Hall, 30 Gheringhap Street, Geelong VIC 3220
3.	Owner:	<div style="background-color: black; width: 100%; height: 1em; margin-bottom: 5px;"></div> 690 Portarlinton Road, Leopold VIC 3224 Email: <div style="background-color: black; width: 100%; height: 1em; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 1em;"></div>
4.	Land:	The land comprised in: (a) Certificate of Title Volume 08831 Folio 633, namely lot 1 on title plan 085129 situated at 672 – 690 Portarlinton Road, Leopold VIC 3224.
5.	Community Infrastructure Contribution	\$40,000.00 per hectare of Net Residential Area.

SIGNED, SEALED AND DELIVERED AS A DEED

SIGNED SEALED AND DELIVERED on behalf of the **GREATER GEELONG CITY COUNCIL** by _____ pursuant to an instrument of delegation authorised by Council resolution, in the presence of:

Witness's signature

Print witness name

Date

Authorised delegate's signature

SIGNED SEALED AND DELIVERED by [REDACTED] in the presence of:

[REDACTED]

Witness's signature

Date

Print witness name

SIGNED SEALED AND DELIVERED by [REDACTED] in the presence of:

[REDACTED]

Witness's signature

Date

Print witness name

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

In this Deed, except where the context otherwise requires:

- (a) **Act** means the *Planning and Environment Act 1987* (Vic);
- (b) **Amendment C441ggee** means amendment C441ggee to the Planning Scheme prepared by Council in its capacity as the planning authority;
- (c) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;
- (d) **Community Infrastructure Contribution** means the amount set out in Item 5 as at the commencement of this Deed and subject to adjustment in accordance with the provisions of this Deed;
- (e) **Community Infrastructure Levy** is a levy imposed by a development contributions plan prepared pursuant to Part 3B of the Act;
- (f) **CPI** means the annual Consumer Price Index (all groups) Melbourne as published by the Australian Bureau of Statistics or its successor, and includes any published index replacing the Consumer Price Index;
- (g) **GST** means the goods and services tax levied pursuant to the GST Act and includes any replacement or subsequent similar tax;
- (h) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (i) **Infrastructure Contribution** is any contribution imposed by any infrastructure contributions plan prepared pursuant to Part 3AB of the Act;
- (j) **Item** means an item of the Particulars to this Deed;
- (k) **Land** means the land described in Item 4 and any reference to Land in this Deed includes any lot created via subdivision of the Land or any part of it;
- (l) **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Land or any part thereof;
- (m) **Net Developable Area** means those parts of the Land which are available for development, including lots and local streets. This excludes encumbered land, arterial roads, significant heritage sites, schools, community facilities and public open space;
- (n) **Net Residential Area** means the same as for Net Developable Area but excludes permitted non-residential uses;
- (o) **Owner** means the person registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Land or any part of the Land and includes any Mortgagee-in-possession;
- (p) **Particulars** means the particulars commencing on page 2 of this Deed;

- (q) **Parties** means the parties to this Deed, and **Party** means any one of them;
- (r) **Plan of Subdivision** means a plan of subdivision of the Land which, upon registration, creates any number of additional lots which can be disposed of separately;
- (s) **Planning Scheme** means the City of Greater Geelong Planning Scheme and any other planning scheme that applies to the Land;
- (t) **Registrar of Titles** means the Victorian Registrar of Titles;
- (u) **Residential Lot** means a lot which is of an appropriate size and dimension to be developed with a residential house without further subdivision, in the sole opinion of Council; and
- (v) **Statement of Compliance** means a statement of compliance issued by Council under the *Subdivision Act 1988* (Vic).

1.2 Interpretation

In this Deed:

- (a) headings to clauses are for convenience only and do not affect interpretation;
- (b) any reference to a clause, recital, particular or annexure is a reference to a clause of, recital in, particular of or annexure to, this Deed;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) if a word or phrase is not defined in this Deed but is defined in the Act, it holds the same meaning in this Deed as defined in the Act;
- (e) a reference to dollars and "\$" is to Australian currency;
- (f) a reference to a statute, ordinance, code or other law, including the Act or Planning Scheme, includes a regulation, rule or other statutory instrument issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a reference to a document includes any variation or replacement of it;
- (h) a reference to a person includes a reference to the person's executors, administrators, substitutes (including, but not limited to, persons taking by novation), successors and permitted assigns;
- (i) a reference to time is to Geelong, Victoria, Australia time;
- (j) where any obligation of this Deed is to be performed on a day other than a Business Day, that obligation is to be performed on the next Business Day;
- (k) if an act under this Deed to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (l) if the Owner comprises two or more persons, this Deed binds them jointly and each of them individually;
- (m) where any time period is required to be calculated from a specified date, that date will not be included in the calculation;
- (n) any indemnity in this Deed is a continuing indemnity and survives termination;
- (o) the singular includes the plural and vice versa;

- (p) a reference to a gender includes all genders;
- (q) the words "include", "including", "for example", "such as" or cognate expressions are to be construed without limitation;
- (r) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any government agency;
- (s) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

2. Obligations of the Owner

2.1 Community Infrastructure Contribution

- (a) The Owner must pay the portion of Community Infrastructure Contribution in respect to the part of the Land which forms part of a Plan of Subdivision. Such portion of Community Infrastructure Contribution must be paid prior to the issue of a Statement of Compliance for the relevant Plan of Subdivision.
- (b) On 1 July each year, the Community Infrastructure Contribution is to be adjusted by the CPI.
- (c) The Parties agree, and Council acknowledges, that:
 - (i) the Community Infrastructure Contribution is inclusive of any Community Infrastructure Levy and/or Infrastructure Contribution which may be levied or payable under the Act; and
 - (ii) payment of the Community Infrastructure Contribution will satisfy any obligation imposed on the Owner to pay a Community Infrastructure Levy prior to the issue of a building permit.

2.2 Attachment to Land

Pursuant to the Act, this Deed will be recorded as a registered encumbrance on the title of the Land. The Parties agree that this Deed creates separate and severable covenants which run with the Land, at law and in equity, and where the Land is subdivided, this Deed must be interpreted such that each subsequent owner of a lot which forms part of the Land will only be responsible for those covenants which relate to that owner's lot.

3. Council's use of Community Infrastructure Contribution

- 3.1 Pursuant to the purposes of this agreement, Council will utilise the amount of Community Infrastructure Contribution received from the Owner for the purpose of providing community facilities within Leopold, Victoria.

4. Other Obligations

4.1 Notice

The Owner must bring this Deed to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

4.2 Registration

- (a) The Parties acknowledge that pursuant to section 181 of the Act, Council must apply to the Registrar of Titles, without delay, to record the agreement relating to Land set out in this Deed.

- (b) The Owner must, at its own cost, do all things necessary to give effect to this Deed. This includes all things necessary to enable recording of the agreement, including:
 - (i) signing any further agreement, acknowledgment or document; and
 - (ii) obtaining all necessary consents to enable the recording to be made.

4.3 Third parties

- (a) Where the agreement created under this Deed has not yet been recorded on the Certificate of Title of the Land, the Owner must require all successors in title of the Land or part of the Land to:
 - (i) give effect to this Deed; and
 - (ii) enter into a deed with the Parties agreeing to be bound by the terms of this Deed.
- (b) The Owner warrants that, apart from the Owner or any other person who has consented in writing to this Deed, no other person has any legal or equitable interest in the Land which may affect or be affected by this Deed.

4.4 Costs

The Owner covenants and agrees that the Owner will pay to Council immediately upon receiving a request from Council, its reasonable costs and expenses (including legal expenses) for and incidental to the drafting, execution, amendment and registration of this Agreement which are and until paid will remain a debt due to Council by the Owner.

5. GST

- (a) For the purposes of this clause, expressions set out in italics bear the same meaning as those expressions in the GST Act.
- (b) To the extent that a party makes a taxable supply under or in connection with this Deed, except where express provision is made to the contrary, the consideration payable by a Party under or in connection with this Deed is exclusive of GST.
- (c) If a Party makes a taxable supply under or in connection with this Deed, then the Party liable to pay for the taxable supply must also pay the amount of any GST payable in respect of the taxable supply.
- (d) Upon receipt of the consideration and GST payable, a valid tax invoice will be delivered to the Party which paid that sum within 7 days of payment.

6. Notices

6.1 Service of Notice

Any notice or communication given or made under this Deed:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must be served on the intended recipient by one or more of the following means:
 - (i) personally on the person;
 - (ii) by delivering it to the person's current address for service; or
 - (iii) by electronic mail to the person's current email address for service.

6.2 Address for service

The address for service for each Party is as stated in the relevant Item of the Particulars, or as notified by that Party from time to time.

7. Agreement under the Planning and Environment Act

7.1 Creation of agreement

The Parties acknowledge and agree that, to the extent allowed, the agreement created via this Deed is made pursuant to Part 9, Division 2 of the Act and the Owner's obligations under this Deed operate as conditions precedent to which the Land may be used and developed by the Owner. This clause 7.1 shall not operate as a limitation or restriction of the Parties' power to enter into this Deed.

7.2 Commencement of agreement

In accordance with section 176 of the Act, this Deed will only come into effect upon Amendment C441ggee being approved and gazetted in the Victorian Government Gazette.

7.3 Amendment of agreement

This Deed may be amended in accordance with the Act. Where clause 178C(2) of the Act requires Council to give a notice of the proposal to amend the Deed to any other persons, the Parties agree that Council need only provide this notice to the Owner of the Land or that part of the Land subject to the proposed amendment.

7.4 Ending of agreement

- (a) The agreement made under this Deed ends upon the earlier of:
- (i) the Owner complying with all of the Owner's obligations under this Deed; and
 - (ii) the Parties entering into an agreement to end the Deed in accordance with section 177 of the Act.
- (b) Where clause 178C(2) of the Act requires Council to give a notice of the proposal to end the Deed to any other persons, the Parties agree that Council need only provide this notice to the Owner of the Land or that part of the Land subject to the proposed ending.
- (c) Upon the issue of a Statement of Compliance for a plan of subdivision for a Residential Lot or multiple Residential Lots, the Deed ends in respect of that Residential Lot or those Residential Lots, provided that:
- (i) the Owner's obligation in respect to the Community Infrastructure Contribution has been met; and
 - (ii) the Deed remains registered on the balance of the Land at all times or until such time as the Deed ends in relation to such balance of the Land.
- (d) Upon:
- (i) this Deed ending as to part of the Land; and
 - (ii) Council receiving a request from the Owner of that part of the Land,

Council will, within a reasonable time and at the cost of the Owner, execute all documents necessary to cause the Registrar of Titles to cancel the recording of the Deed on the Certificate of Title for that part of the Land, pursuant to section 183(2) of the Act.

(e) Upon:

- (i) The Owner complying with all of its obligations under this Deed; and
- (ii) Council receiving a request from the Owner,

Council will, within a reasonable time and at the cost of the Owner, execute all documents necessary to cause the Registrar of Titles to cancel the recording of the Deed on the Certificates of Title, pursuant to section 183(2) of the Act.

8. General

8.1 Interest on overdue monies

- (a) Any amount due under this Deed but unpaid by the due date incurs interest at the rate referenced in section 172 of the Local Government Act 1989 (Vic) and any payment made towards such due amount shall be first directed to payment of interest and then the principal amount owing.
- (b) Notwithstanding anything contained in this Deed, interest will not begin to accrue unless the person obliged to make a payment has been specifically notified in writing by the other party of the event which gives rise to the obligation to make the payment.

8.2 No fettering

The Parties agree that this Deed does not fetter or otherwise restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the use or development of the Land.

8.3 Counterparts

This Deed may consist of a number of counterparts and if so executed by hand or by electronic signature, the counterparts taken together constitute the one instrument.

8.4 Inspection of documents

A copy of any document referred to in this Deed is available for inspection at Council's offices during standard business hours upon giving Council reasonable notice.

8.5 Waiver and exercise of rights

In this Deed:

- (a) a single or partial exercise or waiver of a right relating to this Deed may be given subject to conditions and does not prevent any other exercise of that right or the exercise of any other right;
- (b) no party is liable for any loss or expense of another Party caused or partly caused by the waiver, exercise or failure to exercise a right;
- (c) waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Deed must be in writing and signed by the Party granting the waiver; and
- (d) this clause may not itself be waived except in writing.

8.6 Prohibition or enforceability

- (a) Any provision of, or the application of any provision of this Deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of this Deed, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction.
- (c) The application of this clause 8.6 is not limited by any other provision of this Deed in relation to severability, prohibition or enforceability.

8.7 **Governing law**

This Deed is governed by, and is to be construed in accordance with, the laws in force in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts having jurisdiction to hear appeals from those courts.

8.8 **Mortgagee Consent**

- (a) The Parties agree that as at the date of this Deed, the Land or any part thereof is not encumbered by any mortgage.
- (b) Prior to allowing any part of the Land to be encumbered by a mortgage, the Owner must procure the Mortgagee's consent to this Deed, or otherwise ensure that each Mortgagee agrees to be bound by this Deed.
- (c) The Parties agree that sub-clause 8.8(b) only applies where the agreement created under this Deed has not yet been recorded on the Certificate of Title of the Land.