

Planning and Environment Act 1987

Panel Report

Surf Coast Planning Scheme Amendment C103

Planning Scheme Corrections

11 March 2016

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act
Surf Coast Planning Scheme Amendment C103
Planning Scheme Corrections

11 March 2016

A handwritten signature in black ink, appearing to read 'Chris Harty', is written over a light grey rectangular background.

Chris Harty, Chair

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List of Abbreviations

| | |
|-------|---|
| CDZ | Comprehensive Development Zone |
| DELWP | Department of Environment, Land, Water and Planning |
| DDO | Design and Development Overlay |
| DPO | Development Plan Overlay |
| ESO | Environmental Significance Overlay |
| GRZ | General Residential Zone |
| HO | Heritage Overlay |
| LDRZ | Low Density Residential Zone |
| LPPF | Local Planning Policy Framework |
| MSS | Municipal Strategic Statement |
| NCO | Neighbourhood Character Overlay |
| PCRZ | Public Conservation and Resource Zone |
| PPRZ | Public Park and Recreation Zone |
| RCZ | Rural Conservation Zone |
| RO | Restructure Overlay |
| SPPF | State Planning Policy Framework |
| WMO | Wildfire Management Overlay/Bushfire Management Overlay |

Overview

Amendment Summary

| | |
|---------------------------|--|
| The Amendment | Surf Coast Planning Scheme Amendment C103 |
| Common Name | Planning Scheme Corrections |
| Purpose | The Amendment proposes to amend various provisions in the Surf Coast Planning Scheme to correct a number of items by making map and ordinance changes. |
| Subject Site | Areas affecting Torquay, Jan Juc, Bellbrae, Moggs Creek, Aireys Inlet, Fairhaven, Lorne, Winchelsea and Barrabool |
| Planning Authority | Surf Coast Shire Council |
| Authorisation | Ministerial Authorisation dated 30 June 2015 |
| Exhibition | 16 July 2015 to 11 August 2015 |
| Submissions | Number of Submissions: 21 Opposed: 12 Refer to Appendix A for list of submitters |

Panel Process

| | |
|----------------------------|--|
| The Panel | Chris Harty |
| Directions Hearing | Surf Coast Shire Offices, Torquay on 29 January 2016 |
| Panel Hearing | Surf Coast Shire Offices, Torquay on 24 February 2016 |
| Site Inspections | Unaccompanied, 29 January 2016 |
| Appearances | <ul style="list-style-type: none"> - Mr Cletus Kweifio-Okai, Senior Strategic Planner from Surf Coast Shire - Mr Anthony Sang, Town Planner from St Quentin Consulting Pty Ltd on behalf of Ron Dennehy and Kim and Robert Walker (Submitter 19) - Ms Eliza Minney, Lawyer from Planning & Property Partners Pty Ltd on behalf of Lorne Building Company Pty Ltd (Submitter 21) - Mr Anthony Jeavons, in person (Submitter 16) |
| Date of this Report | 11 March 2016 |

Executive Summary

Amendment C103 seeks to amend various provisions in the Surf Coast Planning Scheme to correct a number of items by making map and ordinance changes. The Amendment was part of Council's continuous improvement process of the Surf Coast Planning Scheme and considered to be house-keeping in nature in order to 'tidy-up' the planning scheme.

The majority of changes proposed under the Amendment are considered satisfactory. Key issues raised in submissions related to:

- The change to Table 1 to Clause 22.09 – *Torquay-Jan Juc Residential Development and Neighbourhood Character Policy* to replace the preferred housing density character of 2,500 square meters for sewered lots in the *Low Density Residential Areas* with 2,000 square meters except where a schedule to the zone specifies a local variation to the minimum lot size. All submissions related to this issue came from the Castaway Crescent precinct in Jan Juc.
- The change to Schedule 12 to the Design and Development Overlay – *Lorne Residential Areas* to vary, with a permit, the minimum lot requirements where land is developed or been granted approval to be developed for two or more dwellings prior to 16 October 2008 (which is the gazettal date for Design and Development Overlay Schedule 12). The primary submission sought to exempt outright the need for a permit under the Schedule for such variation.
- A request from the Country Fire Authority (CFA) to include a change to the extent of coverage of the Wildfire Management Overlay that is in addition to the proposal under the Amendment to rezone part of the land at 35 Boyd Avenue, Moggs Creek from part Public Conservation and Resource Zone and part General Residential Zone 1 to Rural Conservation Zone, to recognise the rural conservation and private ownership of the entire land which is held in one title.

Having considered these issues, the Panel concludes that:

- The change to Table 1 of Clause 22.09 is satisfactory and reflects the current minimum lot size of 2,000 square meters for subdivision in the Low Density Residential Zone where lots are sewered.
- The variation of the minimum lot size for subdivision of residential development in Lorne that either lawfully exists or has been approved prior to the gazettal of the Design and Development Overlay Schedule 12 is supported subject to an amendment that exempts the requirement for a permit under the Schedule. This better recognises previous development rights and reflects the distinction between allowing subdivision of existing or approved residential development that has occurred before the gazettal of Schedule 12 and what outcomes are currently sought under the planning scheme.
- The request to amend the extent of coverage of the Wildfire Management Overlay in addition to the rezoning proposed for land in Moggs Creek is beyond the scope of consideration of the Panel and not supported.

Based on the reasons set out in this Report, the Panel recommends:

Surf Coast Planning Scheme Amendment C103 be adopted as exhibited subject to the following:

- 1. Amending the second column of Table 1 to Clause 22.09 with respect to Low Residential Areas to replace the first sentence with the following:**

Dispersed single housing at low densities minimum 2,000 square meters for sewerred lots; 0.4 hectares for unsewered lots, except where a local variation to this minimum lot size is specified in the Schedule to the Low Density Residential Zone. Any subdivision application will be considered on its merits and where relevant will take into consideration bushfire, vegetation, and landscape significance controls in the planning scheme.

- 2. Amending Clause 3.0 – *Subdivision* of Schedule 12 – *Lorne Residential Areas* of the Design and Development Overlay to include the following:**

A permit is not required to subdivide land if the land is developed by two or more dwellings which were lawfully constructed or approved by a permit issued under this Scheme before 16 October 2008.

1 Introduction

1.1 The Amendment

Amendment C103 to the Surf Coast Planning Scheme (the Amendment), proposes to amend various provisions in the Surf Coast Planning Scheme to correct a number of items by making map and ordinance changes.

In August 2014, Council adopted the Surf Coast Planning Scheme Review Report. This review is a legislated requirement in the *Planning and Environment Act 1987* to enhance the effectiveness and efficiency of the planning scheme in achieving the objectives of planning in Victoria. Whilst some corrections were made to the Surf Coast Planning Scheme as part of this process (through Amendment C101 in early 2015), some additional changes were identified as necessary to correct technical errors, remove or update redundant references and clarify and improve the planning scheme's provisions.

Amendment C103 proposes further unrelated changes to the planning scheme as part of this continuous improvement process. The changes include:

- Additions to the wording in the Heritage Overlay for Heritage Place HO3 for 1135 Barrabool Road, Barrabool to include the former manse and significant trees as a result of a revised heritage assessment for the entire site.
- Corrections to the Heritage Overlay maps as a result of redevelopment or subdivision that has confined the heritage place within a new allotment.
- Inconsistencies in the Planning Scheme Overlay mapping affecting property ownership and boundaries.
- Redundancies in the application of Planning Scheme Overlays on some properties.
- Correction to an inconsistency between zoning provisions and policy.
- Corrections to zoning of land as a result of land transfers to adjoining properties.

The Amendment is considered to be house-keeping in nature and has been proposed to 'tidy-up' the planning scheme.

(i) Amendment Description

The Amendment proposes to make the following map changes:

- Correction Item 1 - Delete Heritage Overlay (HO63) from land at 116 Mountjoy Parade, Lorne.
- Correction Item 2 - Delete Heritage Overlay (HO90) from land at 4 Anderson Street, Torquay and apply HO90 to 2A Pearl Street.
- Correction Item 3 - Delete Heritage Overlay (HO120) from part of land at 17-19 Anderson Street, Torquay and apply HO120 to Lot 2 PS711120B and associated heritage outbuildings.
- Correction Item 4 - Delete Heritage Overlay (HO121) from 27 Anderson Street and 8 Beale Street, Torquay and apply HO121 to 27 Anderson Street only.
- Correction Item 5 - Delete Heritage Overlay (HO140) from land at 41 Hesse Street, Winchelsea and apply HO140 to Lot 1 PS 729111C of the subject land.

- Correction Item 6 - Delete Heritage Overlay (HO19) from land at 33 Main Street, Winchelsea and retain HO19 to Lot 2 PS 734342C of the subject land.
- Correction Item 7 - Delete Development Plan Overlay Schedule 1 (DPO1) affecting land at Wybellena Drive and Bimbadeen Drive, Fairhaven.
- Correction Item 8 - Apply the Wildfire Management Overlay (WMO) to the northern strip of the land at 1 Beacon Boulevard, Torquay.
- Correction Item 9 – Delete the Design and Development Overlay (DDO14) affecting part of 25 Grossmans Road (Pimelea Way), Torquay (PS 713555C).
- Correction Item 10 - Apply the Neighbourhood Character Overlay (NCO1) to part of land at 15-17 Boundary Road, Aireys Inlet.
- Correction Item 11 - Apply Restructure Overlay (RO2) to 10 Lorne Terrace, Lorne.
- Correction Item 12 - Rezone land at 365 The Esplanade, Torquay and part of the adjacent Thompson Creek tributary from part Rural Conservation Zone (RCZ) and part Comprehensive Development Zone (CDZ2) to Public Conservation Resource Zone (PCRZ).
- Correction Item 13 - Rezone 9,747 square meters parcel of Crown Land abutting 365 The Esplanade, Torquay (Crown Allotment 2006 Parish of Puebla) from CDZ2 to PCRZ.
- Correction Item 14 - Rezone part of land at 35 Boyd Avenue, Moggs Creek from part PCRZ and part General Residential Zone (GRZ1) to RCZ.
- Correction Item 15 - Rezone strip of land at 85 Torquay Boulevard, Jan Juc, from Public Park and Recreation Zone (PPRZ) to GRZ1.

The Amendment proposes to make the following Ordinance changes:

- Correction Item 16 - In Clause 21.02 Settlement, Built Environment, Heritage and Housing, amend Clause 21.02-7 Implementation and Clause 21.02-8 Reference documents to make references to the Barrabool Uniting (formally Presbyterian) Church & Manse Heritage Assessment (2014).
- Correction Item 17 - Amend 'Map 1 to Clause 21.08: Torquay/Jan Juc Framework Map'; 'Map 2 to Clause 21.08: Residential Development Framework', 'Map 3 to Clause 21.08: Activity Centre' and 'Map 1 to Clause 22.09 Torquay/Jan Juc Residential Development Framework' to align settlement boundary at 460 Grossmans Rd with the boundary of the Low Density Residential Zone (LDRZ) in Amendment C84.
- Correction Item 18 - Amend Table 1 to Clause 22.09 – Torquay–Jan Juc Residential Development and Neighbourhood Character Policy to replace the preferred housing density of 2,500 square meters for sewerred LDRZ lots with 2,000 square meters, except where a schedule to the LDRZ specifies a local variation to the minimum lot size.
- Correction Item 19 - Amend Clause 43.01 in the Schedule to the Heritage Overlay, "Heritage Place" HO3 relating to 1135 Barrabool Road, Barrabool, to include the Church, former Manse and mature exotic garden setting. Apply external paint control to both Church and former Manse. Apply internal alteration controls to the Church, and apply specific tree controls on the property.
- Correction Item 20 - Amend Clause 43.01 Schedule to the Heritage Overlay to delete HO63 relating to the former Ozone Milk Bar 116 Mountjoy Parade, Lorne.
- Correction Item 21 - Amend Clause 43.01 Schedule to the Heritage Overlay HO120 to correct the specific Heritage Place address being part of land at 17-19 Anderson Street (Lot 2 PS711120B and associated heritage outbuildings).

- Correction Item 22 - Amend Clause 43.01 Schedule to the Heritage Overlay HO140 to correct the specific Heritage Place address being part of land at 41 Hesse Street Winchelsea (Lot 1 PS 729111C).
- Correction Item 23 - Amend Clause 43.01 Schedule to the Heritage Overlay HO19 to correct the specific Heritage Place address being part of land at 33 Main Street, Winchelsea (Lot 2 PS 734342C).
- Correction Item 24 - Amend Clause 43.02 Schedule 12 to the DDO – Lorne Residential Areas, to include subdivision exemption provisions.
- Correction Item 25 - Delete Clause 43.02 Schedule 14 (DDO14) – affecting part of land at 25 Grossmans Road (Pimelea Way), Torquay (PS 713555C).
- Correction Item 26 - Delete Clause 43.04 Schedule 1 (DPO1) – affecting land at Wybellena Drive and Bimbadeen Drive, Fairhaven.
- Correction Item 27 - Amend Clause 61.03 to delete Map 39DPO (DPO1) - affecting land at Wybellena Drive and Bimbadeen Drive, Fairhaven.

1.2 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of particular areas.

The majority of matters proposed to be changed under the Amendment attracted little if any submissions during public exhibition. Apart from a few matters of clarification from the Panel, submissions to the Amendment focused on the following matters:

- Correction Item 18 – To amend the Table 1 to Clause 22.09 – *Torquay-Jan Juc Residential Development and Neighbourhood Character Policy* to replace the preferred housing density character of 2,500 square meters for sewered lots in *Low Density Residential Areas* (in the LDRZ) with 2,000 square meters except where a schedule to the zone specifies a local variation to the minimum lot size, as it relates to Jan Juc.
- Correction Item 24 – to amend Schedule 12 to the DDO – *Lorne Residential Areas* to vary, with a permit, the minimum lot requirements where land is developed or has been granted approval to be developed with two or more dwellings prior to 16 October 2008 (which is the gazettal date for DDO12).
- A request from the CFA to include a change to the extent of coverage of the Wildfire Management Overlay in addition to proposed Correction Item 14 under the Amendment to rezone part of the land at 35 Boyd Avenue, Moggs Creek from part PRCZ and part GRZ1 to RCZ to recognise the rural conservation and private ownership of the entire land which is held in one title.

Accordingly, this report deals with the above issues under the following headings:

- Strategic Planning Context
- Jan Juc rural residential lot density
- Lorne residential subdivision
- Moggs Creek
- Other matters (relating to matters of clarification by the Panel).

All other proposed changes under Amendment C103 not addressed later in this report are considered by the Panel to be satisfactory.

2 Planning Context

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

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning directions and guides.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework (SPPF):

- Clause 10.02 – *Goal* which seeks:
“...to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.”

Council considers the Amendment supports the above outcome and the other objectives and strategies contained within the SPPF including:

- Clause 11 - *Settlement*
- Clause 12 – *Environmental and Landscape Values*
- Clause 15 – *Built Environment and Heritage*
- Clause 16 - *Housing*

The Amendment ensures that the provisions which apply to land within the Surf Coast Planning Scheme are accurate and consistent with relevant state policy.

(ii) Local Planning Policy Framework

Council submitted that the Amendment is consistent with the objectives and strategies of the Local Planning Policy Framework (LPPF) including the Municipal Strategic Statement (MSS) and local planning policies at:

- Clause 21.01 – *Profile and Vision*
- Clause 21.02 – *Settlement, Built Environment, Heritage and Housing*
- Clause 21.03 – *Environmental Management*
- Clause 21.07 – *Rural Residential Living*
- Clause 21.08 – *Torquay-Jan Juc Strategy*
- Clause 21.10 – *Lorne Strategy*
- Clause 22.09 – *Torquay-Jan Juc Residential Development and Neighbourhood Character Policy*

The Amendment ensures that the provisions which apply to land within the Surf Coast Planning Scheme are accurate and consistent with relevant local policy.

2.2 Planning scheme provisions

The Amendment seeks to update, correct and delete anomalies, inconsistencies and obsolete provisions of the planning scheme. Planning policy is updated and corrected, and where necessary aligned with changes to zoning and overlay coverage. Changes are also proposed to the application of zones, rezoning and overlays and to the drafting of schedules where relevant.

All of these changes have appropriately used the relevant zones and overlays currently applied under the Surf Coast Planning Scheme.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

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

PPN11 - Strategic Assessment Guidelines

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment Guidelines)

The Form and Content of Planning Schemes (s7(5))

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

2.4 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the SPPF and LPPF.

The Panel concludes that the Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Jan Juc rural residential lot density

3.1 The issue

The Amendment proposes to alter Table 1 to Clause 22.09 – *Torquay–Jan Juc Residential Development and Neighbourhood Character Policy* by replacing the low density residential areas preferred housing density character of 2,500 square meters for sewerer LDRZ lots with 2,000 square meters except where a schedule to the LDRZ specifies a local variation to the minimum lot size.

Currently, the LDRZ in the Surf Coast Planning Scheme includes a requirement under Clause 32.03 – *Subdivision* for a minimum lot size of 2,000 square meters in sewerer areas and 4,000 square meters for lots in unsewerer areas. This reflects the capacity of lots that are connected to reticulated sewerer services to have a smaller minimum lot size compared to lots requiring a larger area to collect, treat and dispose of wastewater effluent on-site.

Current policy under Table 1 of Clause 22.09 for Torquay and Jan Juc includes a preferred characteristic for low density residential areas of:

Dispersed single housing at low densities (minimum 2,500 square meters for sewerer lots; 0.4 hectares for unsewerer lots).

The proposed change to the policy seeks to achieve consistency with the LDRZ. The proposed change has received the most number of submissions¹ all from within the Castaway Crescent area of Jan Juc and with the majority (12 submitters) expressing concern over the appropriateness of increasing the lot density for the area.

The issue is whether such a change to the preferred housing density character for the Jan Juc low density residential area is appropriate.

3.2 Submissions

Generally, the submitters were concerned that changing the preferred housing density character for low density residential areas would allow an increase in housing growth within the Castaway Crescent precinct of Jan Juc. The area has significant vegetation cover as well as bushfire risk. An increase in the number of lots from subdivision and subsequent housing development would result in environmental impacts from vegetation loss, reduction in safety from bushfire and an increase in traffic movement. Submitters generally considered that these effects combined would result in a loss of ambience and character of the neighbourhood of the area.

However, there were four submitters who supported the change in the preferred housing density character. Their reasons included:

- Only a small number of lots within the LDRZ in the Castaway Crescent precinct, Jan Juc, have sufficient area to further subdivide using the reduced minimum lot size and therefore, this Amendment will have minimal impact on the area.

¹ Sixteen (16) out of the 21 submissions were from the Castaway Crescent precinct of Jan Juc of which 12 were objections.

- Any future subdivision proposals submitted under the proposed 2000 square meters minimum lot size will be assessed against the other policies and provisions of the planning scheme to prevent inappropriate subdivision proposals.
- Bushfire safety can be better managed with higher density development and achieve more efficient use of resources and infrastructure, and relieve pressure for development in more significant natural areas.
- Ensuring consistency between planning policy and zone provisions represents good planning practice.

The submission from Mr Jeavons (Submitter 16) provided an analysis of the number of lots in the Castaway Crescent precinct that would have greater subdivision potential if the Amendment proceeds. He submitted that there are 53 lots of which approximately 27 would be large enough to consider an application for further subdivision. He submitted that given existing development constraints including buildings and vegetation approximately 13 lots overall may have likely potential for further subdivision. The Panel notes that a similar analysis by Council identified that 11 out of 51 lots would have potential for further subdivision reflecting a close alignment of possible outcomes.

Council submitted that consideration was given to re-introducing a local variation to the minimum lot size in this precinct by applying a minimum subdivision lot size of 4,000 square meters under the Schedule to the LDRZ. Council consulted with the objecting submitters who displayed some support however, Council did not pursue this option. Council considered what was proposed under the Amendment a better reflection of the current LDRZ lot size provisions for subdivision.

As a further response to submissions, Council also suggested a further alteration of the wording to Table 1 of Clause 22.09 to include wording to the effect that any subdivision applications will be considered on merit and where relevant will take into consideration wild fire, vegetation protection and landscape significance controls in the planning scheme.

3.3 Discussion

The LDRZ minimum lot size under Clause 32.03-3 was amended by Amendment VC100 on 15 July 2013 with the introduction of a minimum lot size of 2,000 square meters for sewered lots in addition to the 4,000 square meters minimum lot size for lots where reticulated sewerage is not connected. The Castaway Crescent precinct is connected to sewer. Given the changes to the LDRZ under Amendment VC100 those lots greater than 4,000 square meters currently have scope to apply for further subdivision approvals.

The change proposed by Council under the Amendment merely seeks to ensure consistency between what is a policy preference for housing character for Low Density Residential Areas in Table 1 to Clause 22.09 with what is now in place for minimum lots sizes under the LDRZ zone provisions for areas that are sewered.

The Panel considers the key element with this issue is the fact that Clause 22.09 relates to neighbourhood character as well as residential development. The policy establishes its role under Clause 22.09-1 – *Policy basis* by identifying that its purpose is to identify those locations in Torquay and Jan Juc where different levels of housing growth and change are encouraged and provide policy guidance on how development design should respond to

desired neighbourhood character and housing objectives. It recognises that change will occur and that such change needs to be managed.

The Castaway Crescent precinct in Jan Juc is identified in the policy within *Housing Area 6 - Low Density Residential* and the future development and preferred character statement for this area is:

Low density residential areas are located on the edge of the township and are characterised by single dwellings at low densities. They perform as a transition zone between the urban and rural interface and often contain significant patches of vegetation.

While some capacity may exist to increase lot densities beyond the specified minimum lot size in a limited number of further investigation areas as defined by this Planning Scheme, the low density residential areas have limited capacity to accommodate future residential development other than through subdivision of larger lots in accordance with minimum lot size provisions as specified by the Low Density Residential Zone and Schedule to the zone. The low density, single dwelling character will be retained.

In addition Table 1 to the Clause lists “single dwellings (large lots)” as the dwelling type for this housing area.

The Castaway Crescent area of Jan Juc retains a character of large lots with single dwellings, most of which are substantial buildings, set amongst a combination of remnant native vegetation and planted gardens. The local road network is meandering and sealed with kerb and channel but no footpaths which gives the area an informal and spacious character.

The Panel does not consider these values will be lost from the change in preferred housing density character proposed under the Amendment. The change will align with the current minimum lot size for subdivision in the LDRZ where lots are serviced by reticulated sewerage. Single dwellings on large lots will remain the key neighbourhood characteristic for the area. Any subdivision will require a permit and the Panel notes that Clause 32.03-5 sets out requirements for permit applications for subdivision which require a site analysis to document land form, vegetation coverage and the relationship with surrounding land, and how the proposed subdivision responds to the site analysis.

In addition, the LDRZ has a decision guideline under Clause 32.03-6 that requires consideration of the protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.

Given these elements, the Panel considers the Amendment is satisfactory.

With respect to the matter of introducing a 4,000 square meters minimum lot size variation in the LDRZ Schedule for the Castaway Crescent precinct, the Panel notes Council has not supported or pursued this option and irrespective, considers such a change would have been outside the scope of its consideration of the Amendment.

The Panel concludes that the proposed change to the wording in the second column as exhibited and as suggested by Council in response to submissions is appropriate and satisfactory.

3.4 Recommendations

The Panel recommends:

- 1. Amending the second column of Table 1 to Clause 22.09 with respect to Low Residential Areas to replace the first sentence with the following:**

Dispersed single housing at low densities minimum 2,000 square meters for sewerred lots; 0.4 hectares for unsewered lots, except where a local variation to this minimum lot size is specified in the Schedule to the Low Density Residential Zone. Any subdivision application will be considered on its merits and where relevant will take into consideration bushfire, vegetation, and landscape significance controls in the planning scheme.

4 Lorne residential subdivision

4.1 The issue

The Amendment proposes to amend Schedule 12 to the DDO – *Lorne Residential Areas* to vary, with a permit, the minimum lot requirements where land is developed or has been granted approval to be developed with two or more dwellings prior to 16 October 2008 (which is the gazettal date for DDO12). DDO12 establishes a mandatory minimum lot size of 550 square meters for the residential areas in Lorne, apart from an area associated the Mountjoy Parade Heritage Precinct (HO77)².

The issues are:

- Whether the scope of the provision should be extended to exempt the requirement for a permit altogether.
- Whether the drafting of the provision should be amended to provide a better distinction between multi-dwelling development that has either been constructed or has been approved by a permit issued under the planning scheme prior to the gazettal date of DDO12 which was 16 October 2008.

4.2 Submissions

The Amendment attracted two (2) submissions (Submitter 19 and 21) both of which were generally supportive of the proposed change.

Mr Anthony Sang from St Quentin Consulting Pty Ltd, representing Submitter 19, submitted that a permit to subdivide either existing or approved multi-residential development prior to 16 October 2008 should not require a permit for subdivision. He argued that there is no value in requiring a permit under the DDO12 as none of the decision guidelines are relevant in considering an application for subdivision and a permit is already required under the provisions of the General Residential Zone.

Mr Sang provided some context describing how his clients had obtained planning approval in 1995 that allowed the use and development of three dwellings and their subdivision into three lots and which was subsequently only subdivided into two lots. He then described how Amendment C34 to the Surf Coast Planning Scheme later introduced DDO12 in 2008 and a mandatory minimum lot size for subdivision of 550 square meters despite not having the support of the Amendment C34 Panel. The effect of DDO12 was that the ability to create the third lot that was approved originally was now not achievable because it is prohibited.

He noted that, Amendment C103 enables the minimum lot size to be varied with a permit, not whether a permit should be required in the first instance. Continuing to require a permit for such subdivision under DDO12 was argued by Mr Sang to have no value because the Schedule provides little relevant guidance of development that either already exists or has been approved. Mr Sang included in his submission an analysis of the design objectives and decision guidelines of DDO12 to demonstrate the lack of relevance these provisions have

² This area has a 1,000 square meters minimum lot size.

with respect to subdivision of residential development that either has been constructed or approved before 16 October 2008.

Similarly, the submission from Ms Eliza Minney from Planning & Property Partners Pty Ltd (Submitter 21), acknowledged that it is well accepted that the planning permit application process to subdivide an approved multi-dwelling residential development in the GRZ is essentially an administrative process. All substantive planning considerations would have been addressed at the permit application stage for development including consideration of neighbourhood character, lot sizes, density, accessibility, site layout and impacts on neighbouring amenity.

Ms Minney submitted the permit application process for a subdivision is not intended to provide Council with a further opportunity to consider the merits of an already approved multi-dwelling development. She submitted this principle is already demonstrated under Clause 32.08-1 of the GRZ which states that an application to subdivide land must meet the requirements of Clause 56 *“other than an application to subdivide land into lots each containing an existing dwelling...”*. In doing so, Clause 32.08-2 recognises that it is unnecessary to have regard to Clause 56 when the relevant and substantive planning considerations would have already been dealt with as part of the approval process for development.

Both Council and Ms Minney outlined how discussions had been held to improve the wording of the proposed change to DDO12. The exhibited version included reference to making allowance for the subdivision of multi-dwellings that have been approved and completed prior to 16 October 2008. Council amended the wording to refer to land developed by two or more dwellings which were lawfully constructed or approved by a permit issued under this scheme before 16 October 2008.

4.3 Discussion

The Surf Coast Planning Scheme establishes a planning framework for Lorne that places emphasis on ensuring residential development does not result in the loss of the leafy vegetated canopy and neighbourhood character of the town. These elements include low profile buildings that have a sense of space between properties and views of surrounding landscape features. DDO12 seeks to support this direction.

Council has identified an issue with subdivision of residential development that has either been constructed or approved under the planning scheme prior to DDO12 becoming part of the planning scheme. This issue is due to the prohibition on subdivision of lots less than the current minimum lot size now mandated under DDO12.

There is obviously tension between the strategic direction of the current planning scheme policies and provisions for Lorne with what residential development has been built or approved prior to these current directions being introduced.

Generally there is support for introducing a variation of lot sizes less than the current minimum for subdivision of residential development built or approved prior to the gazettal of DDO12. The Panel acknowledges this support and agrees that it is appropriate to have the ability to vary the minimum lot size on this basis.

The Panel accepts the suggested wording change arising from discussions described by Ms Minney to distinguish between completed and approved residential development that both pre-date DDO12.

However, the Panel agrees with the submitters that under the DDO12 an exemption from the requirement for a permit for subdivision of pre-dated residential development would be appropriate.

The Panel considers that the subdivision of existing multi-dwellings lawfully constructed or approved by a permit issued under the planning scheme before 16 October 2008 would effectively have no physical changes 'on the ground'. The Panel agrees with the submission of Ms Minney that the permit process for such subdivision would be administrative given the substantive issues of siting and design and environment impacts would have been primarily considered at the development approval stage.

Requiring a permit under DDO12 for subdivision of residential development either existing or approved prior to gazettal of DDO12 is considered by the Panel to be unnecessary for the following reasons:

- The inconsistency between creating a discretion to allow a permit application for subdivision under DDO12 to create a lot below the minimum lot size for existing or approved residential development that pre-dates DDO12 and yet requiring such permit application to be assessed under the DDO12.
- Lack of recognition that the variation relates to development that has either already lawfully been constructed or has been approved under a permit issued prior to DDO12 and the substantive development issues that would have already been addressed.
- Lack of relevance of the provisions of the DDO12 such as the design objectives and decision guidelines relating to the assessment of proposals to subdivide existing dwellings or approved dwellings that pre-date DDO12.
- Recognition that subdivision of land that either already contains a dwelling or has been approved by a permit prior to 16 October 2008 would amount to an 'administrative process' with no 'changes on the ground' that would have relevance to neighbourhood or landscape character for Lorne's residential areas.
- Permit requirements will remain triggered under the GRZ applying to Lorne's residential areas and hence consideration of planning issues will remain available to Council where appropriate.

Given these elements, the Panel concludes the Amendment is satisfactory subject to DDO12 being reworded. The rewording should separately distinguish between residential development that has been completed or approved before DDO12 was introduced into the planning scheme and exempting the need for a permit for subdivision.

4.4 Recommendations

The Panel recommends:

- 2. Amending Clause 3.0 – *Subdivision of Schedule 12 – Lorne Residential Areas of the Design and Development Overlay to include the following:***

A permit is not required to subdivide land if the land is developed by two or more dwellings which were lawfully constructed or approved by a permit issued under this Scheme before 16 October 2008.

5 Moggs Creek

5.1 The issue and submissions

The Amendment proposes under Correction Item 14 to rezone part of land at 35 Boyd Avenue, Moggs Creek from part PCRZ and part GRZ1 to RCZ (refer to Figure 1).

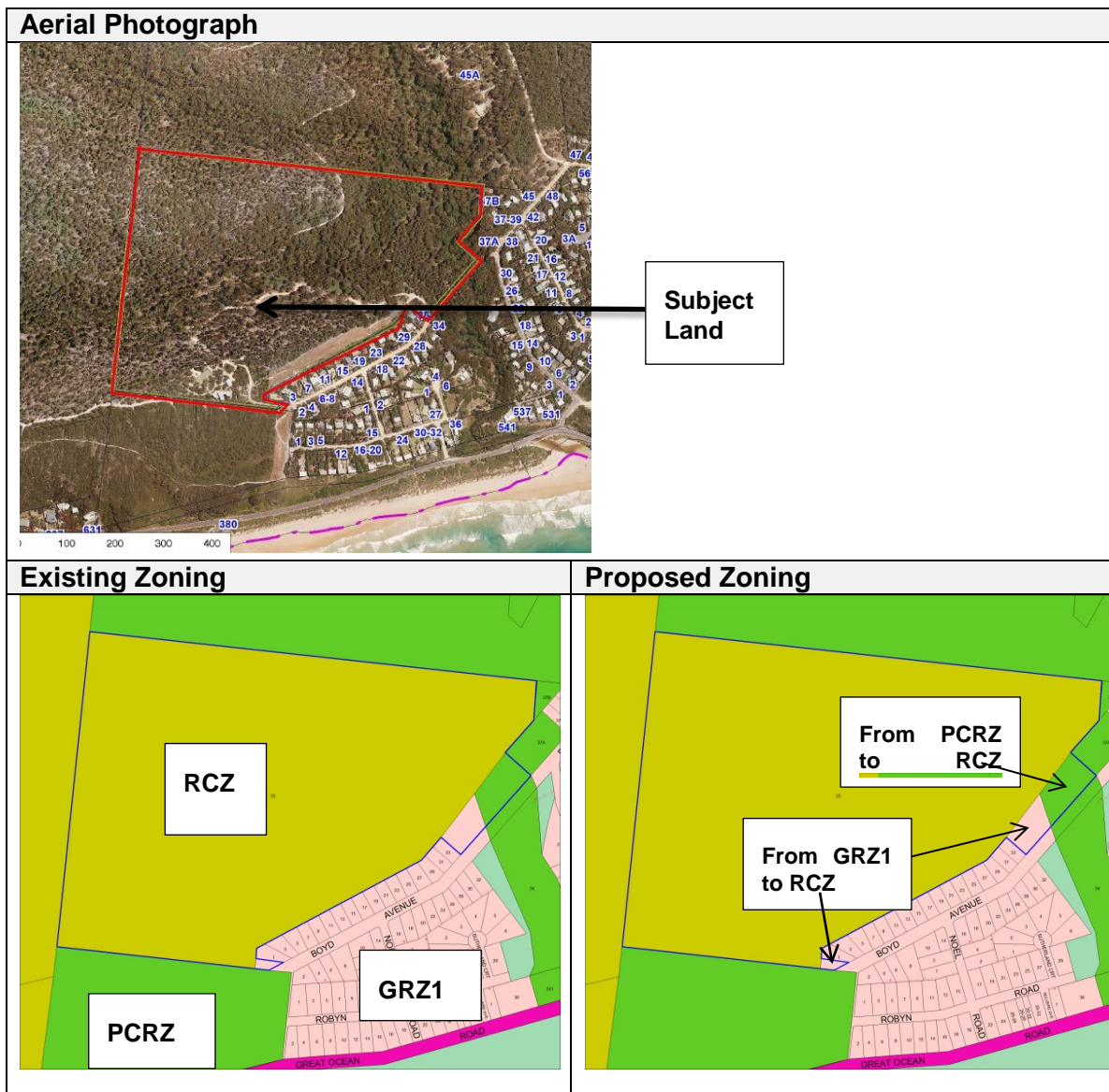


Figure 1: Proposed rezoning of land at 35 Boyd Avenue, Moggs Creek under Amendment C103.

The majority of the subject land is zoned RCZ, however small portions at the eastern section, which from part of the same titled parcel of land are zoned GRZ1 and PCRZ. Because of the conservation nature and private ownership of the subject land, Council considered that the entire land should be zoned RCZ.

No submissions were received objecting to the proposed Amendment. However, the Country Fire Authority (CFA) made a submission (Submitter 1) supporting the Amendment but requesting a change to extend the application of the WMO over that portion of the subject land proposed to be rezoned.

Currently the WMO applies to a majority of the subject land except land zoned PCRZ (refer to Figure 2).



Figure 2 The current extent of coverage of the WMO over the 35 Boyd Avenue, Moggs Creek.

The CFA requested that for the ease of administration, clarity and future development, the WMO should be extended to include the entire subject land including land proposed for rezoning. This submission was supported by Council since it will address bushfire risk relating to the entire subject land.

The issue with the request to extend the coverage of the WMO is whether it represents a change that is beyond the scope of Amendment C103.

5.2 Discussion

The Amendment sought to rezone the subject land at 35 Boyd Avenue, Moggs Creek from part PCRZ and part GRZ1 to RCZ and was publicly exhibited as such. The Amendment did not refer to any changes to the coverage of overlays on the subject land including any change to the coverage of the WMO.

Although the CFA have sought a change to the coverage of the WMO and which has the support of Council and as such, would appear reasonable to accommodate, this is not what Amendment C103 has sought to do. Accordingly, the request to alter the extent of coverage of the WMO is one that lies outside the scope of Amendment C103. This would be a matter that is outside what the Panel has been appointed to consider. Any alteration of the extent of coverage of the WMO would be a change to the planning scheme that has not been canvassed with either the landowner concerned or the public as part of the public exhibition process and would be considered a breach of natural justice. In the interests of natural justice, the Panel should confine its assessment to what has been exhibited or modifications to what has been exhibited and not to new matters arising from the public exhibition process.

For reasons explained above, the Panel considers a change to the extent of coverage of the WMO would be a potential breach of natural justice.

5.3 Conclusion

The Panel concludes that the proposed change to the extent of the WMO over part of land located at 35 Boyd Avenue, Moggs Creek is not appropriate or supported because it is beyond the scope of the Panel's assessment of the matters forming part of Amendment C103.

6 Other matters

6.1 The issues

At the Directions Hearing, the Panel directed clarification from Council on a number of matters that were unclear with respect to the extent of change and implications of changes. They included the extent of change to the application of overlays such as the HO and WMO and a rezoning change at Thompsons Creek. Other matters involved ordinance amendments involving the deletion of DDO14 and DPO1 from the planning scheme.

6.2 Heritage Overlay at 17-19 Anderson Street, Torquay

The Amendment proposes (Correction Item 3) to amend Planning Scheme Map 20HO to delete HO120 from the land at 17-19 Anderson Street, Torquay and apply a new HO120 to Lot 2 PS711120B and heritage outbuildings.

The Panel questioned what was to be changed with respect to HO120 (the proposed change appears to be the same as the area proposed to be deleted).

Council submitted that the land has now been subdivided into 3 lots resulting in the heritage building (former butcher's shop) being confined within the north-western allotment (Lot 2 PS711120B). HO120 is proposed to be amended to reflect the correct allotment on which the former butcher's shop is located as well as covering the heritage outbuildings located to the south on part of lot 3 PS711120B.

Council's response is accepted by the Panel.

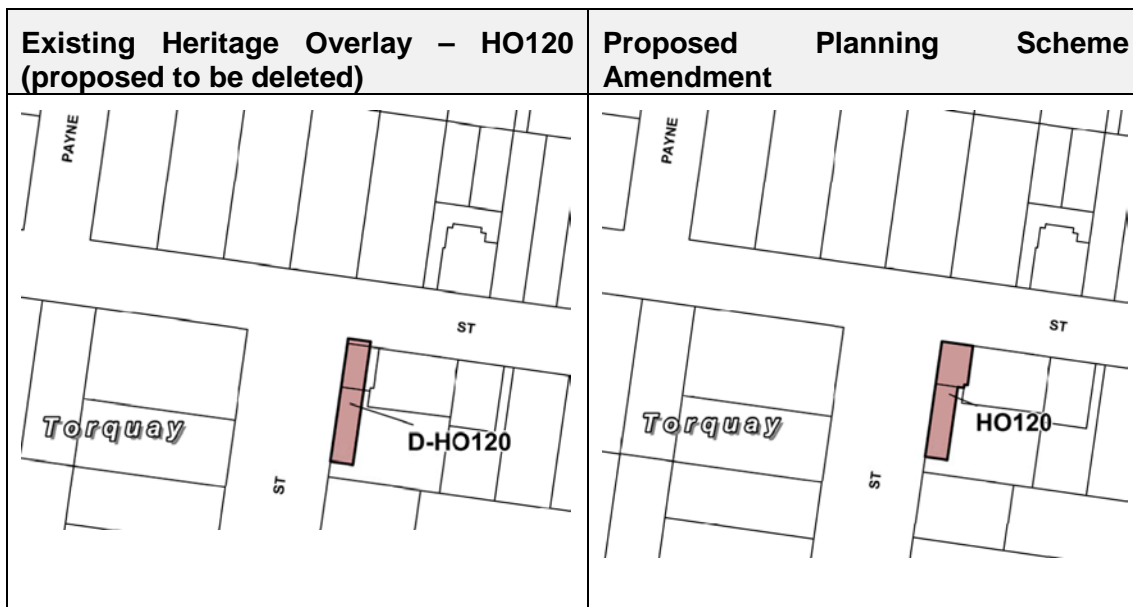


Figure 3: The existing and proposed map changes to HO120.

6.3 1 Beacon Boulevard, Torquay

The Amendment proposes (Correction Item 8) to amend Planning Scheme Map 20WMO to apply the existing WMO to the northern strip of 1 Beacon Boulevard, Torquay (Bunnings Warehouse).

The Panel questioned how the proposed change to the WMO links in with the extent of the WMO currently shown on Map 20WMO of the Planning Scheme.

Council submitted that currently, the industrial estate at Torquay North (West Coast Industrial Park) contains a 70m wide strip of WMO applied along its northern boundary. However, this strip of WMO is inadvertently set back from the northern title boundary of the subject land (Bunnings Warehouse). The Amendment seeks to correct this anomaly by including the northern balance of the subject land as part of the WMO.

Confusion with respect to how the existing WMO is shown in the planning scheme map is a reflection of variation with Council's cadastral base of the West Coast Industrial Park subdivision on which Bunnings Warehouse is situated and will be updated following approval of the Amendment to more accurately depict cadastre with the extent of overlays.

The Panel accepts Council's response.

6.4 365 the Esplanade, Torquay (Thompsons Creek)

The Amendment proposes (Correction Item 12) to rezone land at 365 The Esplanade, Torquay and part of the adjacent Thompson Creek tributary, from part RCZ and part CDZ2 to PCRZ.

The Panel questioned the extent of area marked as CDZ2 to be rezoned to PCRZ.

Council submitted the CDZ2 area proposed to be rezoned is part of Crown Land located at the south-western section of the subject land (refer to Figure 4). This correction is proposed as a result of a mapping anomaly in the planning scheme.

The Panel accepts Council's response.

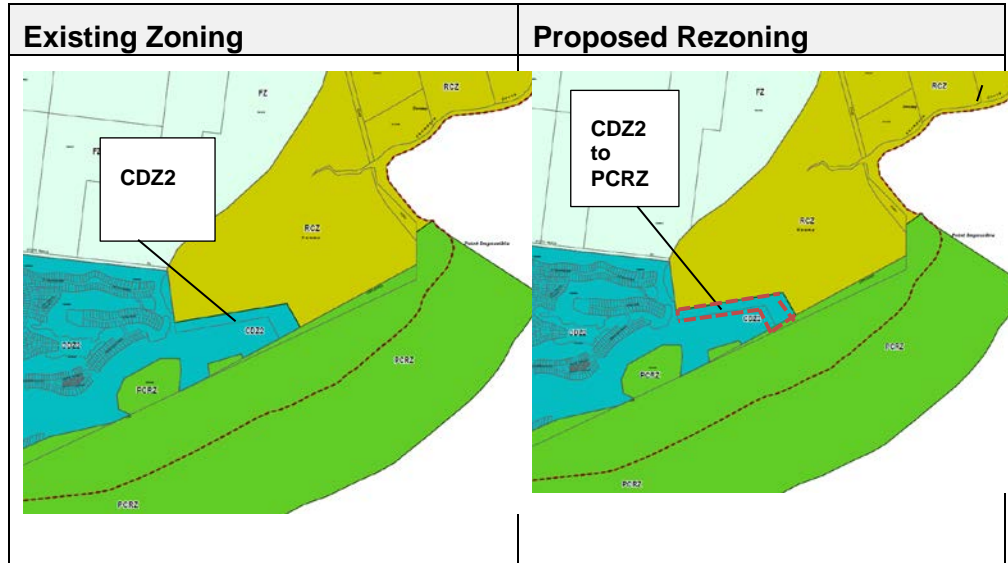


Figure 4: The CDZ2 area (61,540 sqm) proposed to be rezoned.

6.5 Deletion of overlays

The Amendment proposes the deletion of two overlays from the planning scheme:

- Deletion of DDO14 (Correction Item 25) from affecting part of 25 Grossmans Road (Pimelea Way). Council considered the need for the DDO14 is now unnecessary because subdivision of the land has been completed and titles issued.
- Deletion of DPO1 (Correction Item 26) from affecting land at Bimbadeen Drive and Narani Way, Fairhaven. The need for DPO1 is redundant due to sufficient control provided under the combination of other existing provisions under the planning scheme including the NCO1, WMO, Environment Significance Overlay (ESO5), and DDO10. A Section 173 Agreement also includes specification of habitation building envelopes, land management and a single dwelling restriction for all lots.

The Panel questioned whether these overlays apply solely to these sites. Council submitted that both the DDO14 and DPO1 apply only to these site and no other areas in the Shire. The Panel accepts Council's response.

Appendix A Submitters to the Amendment

| No. | Submitter |
|-----|--|
| 1 | Country Fire Authority |
| 2 | Department of Environment, Land, Water & Planning |
| 3 | VicRoads |
| 4 | Sarah Reid |
| 5 | Nikki Lyons |
| 6 | Emma Barr |
| 7 | Anna Day |
| 8 | Karren Fahroedin |
| 9 | Amanda Carson |
| 10 | Ingrid Daniell |
| 11 | Stefan & Emma Tamasse |
| 12 | Morgan Bridgeford |
| 13 | John Law |
| 14 | Phillip Stockton |
| 15 | Beverley Baxter |
| 16 | Tony Jeavons |
| 17 | Tom Dickson |
| 18 | Sally Williams |
| 19 | Anthony Sang from St Quentin Consulting Pty Ltd on behalf of R Dennehy, K & R Walker |
| 20 | Chris Mason from St Quentin Consulting Pty Ltd on behalf of John Allan |
| 21 | Chris Taylor from Planning & Property Partners Pty Ltd on behalf of Lorne Building Company Pty Ltd |