

Planning and Environment Act 1987

Panel Report

Surf Coast Planning Scheme Amendment C97

Anglesea Great Ocean Road Study

13 November 2015

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Surf Coast Planning Scheme Amendment C97

Anglesea Great Ocean Road Study

13 November 2015

A handwritten signature in blue ink, appearing to read 'Brett Davis', with a stylized flourish at the end.

Brett Davis, Chair

Contents

	Page
Executive Summary	1
1 Introduction.....	2
1.1 Panel process.....	2
1.2 Preliminary Matters	2
1.3 The proposal.....	2
1.4 Issues dealt with in this report.....	4
2 Planning Context.....	5
2.1 Policy framework.....	5
2.2 Planning scheme provisions	5
2.3 Ministerial Directions and Practice Notes.....	7
2.4 Discussion	7
3 Great Ocean Road Resort.....	8
3.1 The issue	8
3.2 Submissions	8
3.3 Discussion	10
3.4 Conclusions.....	11
3.5 Recommendations	12

Appendix A Document list

List of Figures

	Page
Figure 1 Anglesea Land affected by the Amendment.....	3
Figure 2 Map 1 to Clause 37.01 Schedule 5	6
Figure 3 Map 1 to Clause 37.01 Schedule 8	6
Figure 4 Location of 105 Great Ocean Road	8

List of Abbreviations

DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
SPPF	State Planning Policy Framework
SUZ	Special Use Zone

Overview

Amendment Summary

The Amendment	Surf Coast Planning Scheme Amendment C97
Common Name	Anglesea Great Ocean Road Study
Planning Authority	Surf Coast Shire
Authorisation	A directive was received from DELWP on 6 March 2015 to proceed with the preparation of the Amendment
Exhibition	23 April 2015 to 25 May 2015
Submissions	Number of Submissions: 5 Opposed: 1 <ul style="list-style-type: none"> - Corangamite Catchment Authority - VicRoads - CFA - Jeff McGrath (opposed) - ACDD Developments Pty Ltd

Panel Process

The Panel	Brett Davis
Directions Hearing	Not required
Panel Hearing	Surf Coast Shire offices, Monday 19 October 2015
Site Inspections	Unaccompanied 19 October 2015
Appearances	<ul style="list-style-type: none"> - Surf Coast Shire represented by Cletus Kweifio Okai, Senior Strategic Planner - ACDD Developments Pty Ltd represented by Damien Cerantonio - Written submission from Nicola McGowan of James Livingstone Planning, on behalf of Jeff McGrath, in lieu of appearance
Date of this Report	13 November 2015

Executive Summary

Summary

Amendment C97 to the Surf Coast Planning Scheme seeks to implement the recommendations of the Anglesea Great Ocean Road Study 2013 by developing new zone controls (Special Use Zone Schedule 8) for the tourist development precincts around Diggers Parade and Four Kings. The Amendment also proposes to remove overlays that only apply to residential areas from the expanded Diggers Parade Precinct.

The Amendment proposes to amend Special Use Zone Schedule 5, which currently applies to the Tourism Development Precincts both at Torquay and Anglesea, by separating the zone schedule for each township. As such, the Special Use Zone Schedule 5 now applies to Torquay exclusively. In relation to the Torquay precinct the Panel makes no comments to the proposed changes as no submissions on the controls proposed for this area.

The Amendment was exhibited from 23 April 2015 to 25 May 2015 and five submissions were received. Of the five, four supported the Amendment. The unresolved issue relates to including a rear portion of the land at 105 Great Ocean Road, Anglesea. This land forms part of the Anglesea Great Ocean Road Resort. This submission does not object to rezoning the eastern portion fronting the Great Ocean Road and Diggers Parade as exhibited.

Council submitted that the rear portion of the subject land was inadvertently excluded from the study and this Amendment was correcting an anomaly. It argued that the Anglesea Structure Plan 2012 identified the entire site at 105 Great Ocean Road as part of the existing retail and commercial area and it was inappropriate to retain the current General Residential Zone for the balance of the site.

The owner of the Great Ocean Road Resort submitted that the land in question had always been used for tourism uses and the rezoning was in line with Council's strategic vision for the property and its local policy planning framework. The opposing submission considered that the Amendment would introduce planning requirements inappropriate for the interface with the surrounding residential area and submitted that the existing controls be retained. It was argued that the Amendment lacked strategic justification to include the additional land.

The Panel agrees with Council that the Special Use Zone is an appropriate outcome to be applied for the western portion of the site. The General Residential Zone and Neighbourhood Character Overlay are no longer applicable for this site. In preparing this Amendment the Council has clearly attempted to correct what it sees as an anomaly.

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

Surf Coast Planning Scheme Amendment C97 be adopted as exhibited subject to the following:

- 1. Modify the Anglesea Great Ocean Road Study to include the land at 105 Great Ocean Road within Special Use Zone Schedule 8.**

1 Introduction

1.1 Panel process

The Panel met in the offices of Surf Coast Shire on 19 October 2015 to hear submissions about the Amendment.

1.2 Preliminary Matters

On 12 August 2015 the Panel determined that a Directions Hearing was not required. At the same time it provided written advice informing parties that a Hearing **may** be scheduled the week beginning 19 October 2015 should requests to be heard be received. Council and Nicola McGowan of James Livingston Town Planning representing Mr McGrath had indicated that they had a preference for the matter to be conducted “*on the papers.*”

In email correspondence on 16 October 2015, Ms McGowan submitted that they were only given 4 working days’ notice that the hearing was to be convened. In the same email, Ms McGowan submitted an additional submission to the Panel in lieu of an appearance at the hearing. At Ms McGowan’s request, this submission was not tabled until the beginning of the hearing on 19 October 2015.

All Panels appointed under Part 8 of the *Planning and Environment Act 1987* are specifically bound by the rules of natural justice, and Panels are required under the Act to give a reasonable opportunity to be heard. It is the Panel’s view that reasonable opportunity was afforded by way of the original notice dated 12 August 2015, and that in the event a hearing was required, Ms McGowan had requested a 1 hour timeslot.

1.3 The proposal

(i) The subject area

With regard the area before the Panel in Anglesea, the Amendment applies to land shown in Figure 1.

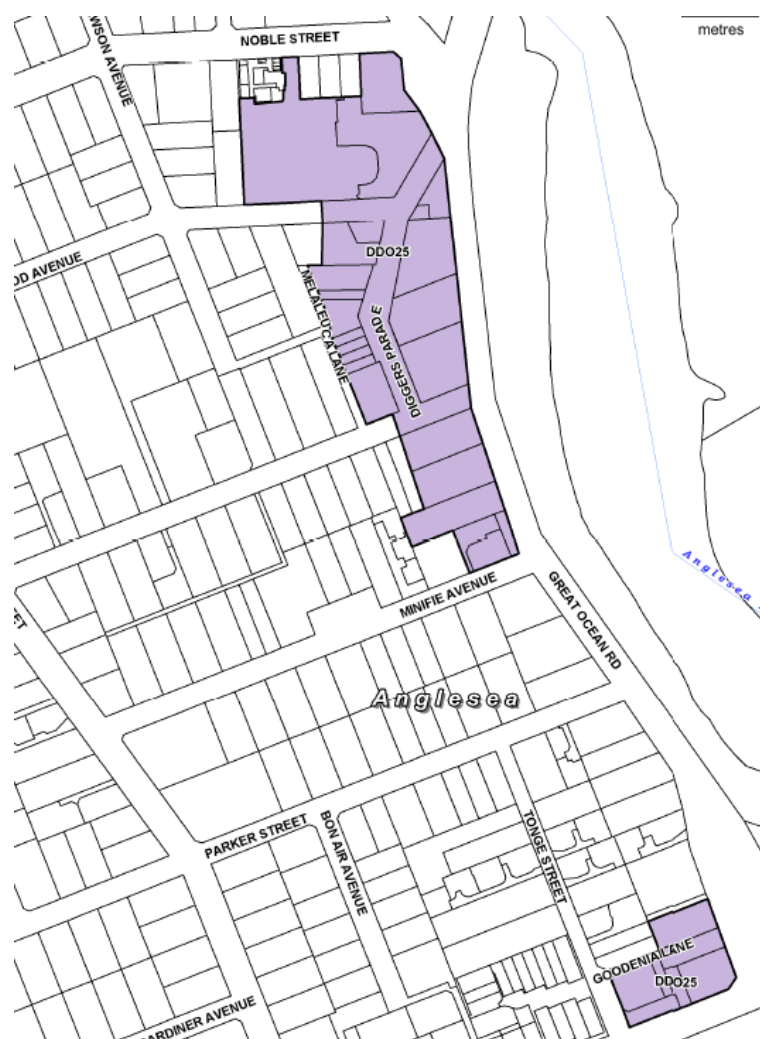


Figure 1 Anglesea Land affected by the Amendment
Source: C97 Explanatory Report

(ii) Purpose of the Amendment

Specifically, the Amendment proposes to:

- Insert a new Clause 37.01 Schedule 8 to the Special Use Zone (SUZ8) – Anglesea Tourism Development Precincts, including a new Map 1 to this Schedule and amend SUZ5 accordingly.
- Rezone land along the Anglesea Great Ocean Road at an expanded Diggers Parade Precinct from Noble Street to Minifie Avenue from part General Residential Zone 1 (GRZ1) and part Special Use Zone 5 (SUZ5) to Special Use 8 (SUZ8).
- Delete the Neighbourhood Character Overlay (NCO3), Significant Landscape Overlay (SLO3) and Design and Development Overlay (DDO19) from the properties being rezoned from GRZ1 to SUZ8 at the expanded Diggers Parade Precinct.
- Rezone land at the Four Kings Precinct along the Great Ocean Road (adjacent to Tonge Street), Anglesea from SUZ5 to SUZ8.
- Make consequential changes to Clause 21.11 – Anglesea Strategy.

- Insert Clause 43.02 Schedule 25 to the Design and Development Overlay (DDO25) - Anglesea Tourism Development Precincts to implement the urban design guidelines in the Anglesea Great Ocean Road Study, 2013.
- Amend Clause 43.02 Schedule 9 to the Design and Development Overlay (DDO9) – Anglesea Town Centre to reference the Anglesea Great Ocean Road Study 2013.
- Include the Anglesea Great Ocean Road Study 2013 as a Reference Document in the Surf Coast Planning Scheme.

1.4 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 specific sites. In relation to the Torquay precinct and Special Use Zone 5 the Panel makes no comments on the proposed changes as no submissions on the controls proposed for this area were received.

This report deals with the issues under the following headings:

- Planning Context
- Great Ocean Road Resort

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 strategies.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

- Clause 11.05-4 by developing settlements which have a strong identity, are prosperous and are environmentally sustainable.
- Clause 11.05-5 by planning for sustainable coastal development.
- Clause 15.01-1 by creating an urban environment that is safe, functional and provides good quality environment with a sense of place and cultural identity.
- Clause 17.03-1 by encouraging tourism development to maximise the employment and long term economic, social and cultural benefits.

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports Clause 21.11-4 of the Local Planning Policy by promoting a variety of sustainable tourist facilities and activities in Anglesea that provide social and economic benefits while respecting the environment, landscape and community values of the locality.

In addition the Amendment supports further strategic work in Clause 21.11-6 Anglesea Strategy by implementing urban design guidelines and streetscape plans for the tourism precincts in Anglesea.

(iii) Other planning strategies or policies used in formulating the Amendment

The Amendment seeks to include the Anglesea Great Ocean Road Strategy 2013 as a reference document.

2.2 Planning scheme provisions

(i) Zones

The Special Use Zone Schedule 5 (as amended) and Schedule 8 form part of the Amendment. The purpose of the Special Use Zone Schedule 5 (Torquay Tourism Development Precincts) is:

To encourage tourism development in the following high profile precincts as shown on Map 1 of this schedule to Clause 37.01:

- Precinct T1 - Surf Coast Gateway Precinct, Surf Coast Highway, Torquay
- Precinct T2 - Surf City Precinct, Surf Coast Highway, Torquay
- Precinct T3 - Town Centre Foreshore Precinct, The Esplanade, Torquay
- Precinct T4 - Corner Bristol Road and Surf Coast Highway, Torquay



Figure 2 Map 1 to Clause 37.01 Schedule 5

The purpose of the Special Use Zone Overlay Schedule 8 (Anglesea Tourism Development Precincts) is:

To encourage tourism development in the following high profile precincts shown on Map 1 to Schedule 8 to Clause 37.01:

- Precinct A1 – Diggers Parade Precinct, Anglesea
- Precinct A2 – Four Kings Precinct, Anglesea



Figure 3 Map 1 to Clause 37.01 Schedule 8

(ii) Overlays

Design and Development Overlay Schedule 9 currently applies to the Anglesea Town Centre. Design and Development Overlay Schedule 25 is proposed to be applied to the Anglesea Tourism Development Precincts. Both overlays outline design objectives.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

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

Ministerial Direction 11 (Strategic Assessment Guidelines) and the Form and Content of Planning Schemes under Section 7(5) of the Act.

(ii) Planning Practice Notes

Planning Practice Note 3 (June 2015) relates to the appropriate use when applying the Special Use Zone.

This Practice Note states that a Special Use Zone can be considered when either:

- an appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements.
- the site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.
- Application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

2.4 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

3 Great Ocean Road Resort

3.1 The issue

The issue is whether the Amendment is strategically justified on the basis that the western part of land at the Great Ocean Road Resort at 105 Great Ocean Road Anglesea was not shown in the Anglesea Great Ocean Road Strategy.

3.2 Submissions

Council submitted that the site at 105 Great Ocean Road forms one property and is developed and operating as the Great Ocean Road Resort (Figure 4).

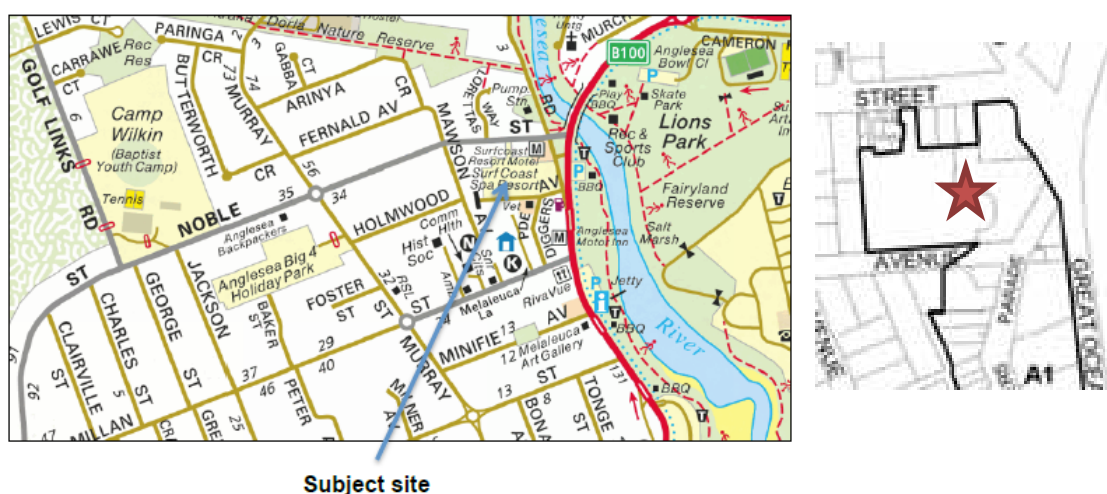


Figure 4 Location of 105 Great Ocean Road
Source: McGowan submission

The total complex has two main portions; at the front with direct frontage to Great Ocean Road is a two storey building that contains a mix of motel units, serviced apartments and a day spa centre; towards the rear or western portion, there is a collection of single storey buildings containing motel units, serviced apartments, gym, restaurant, conference facilities, Jumpz trampoline park and a swimming pool.

Mr Kweifio-Okai, for Council submitted:

Whilst the western section of 105 Great Ocean Road was inadvertently excluded as part of the Study area in the *Anglesea Great Ocean Road Study 2013*, this anomaly has been corrected in Amendment C97 to recognise the existing use of the entire site (both the western and eastern portions) for commercial/tourism purposes and more accurately adhere to the integrated property boundary of the Great Ocean Road Resort.

The Anglesea Structure Plan Review 2012 Figure 4 identifies the entire site at 105 Great Ocean Road as part of the existing retail/commercial area and therefore it is inappropriate that it remains in the current General Residential Zone (GRZ1). Amendment C97 seeks to rezone this land to Special Use Zone (SUZ8) – Anglesea Tourism Development Precincts consistent with its use as a tourism facility.

Council submitted that the *Anglesea Strategy* seeks to provide an appropriate range of retail, commercial and tourist-related services and facilities in the commercial centres of Anglesea

to cater for the needs of both the permanent and visitor population. Strategies to deliver this outcome include:

Encourage a mix of tourist-related uses, including cafes and restaurants, accommodation and tourist retailing within the tourism development precincts at Four Kings and Diggers Parade.

To address the potential amenity impacts on the surrounding areas, Council submitted that the provisions of the proposed Special Use Zone Schedule 8 stipulate that a use must not detrimentally affect the amenity of the neighbourhood, including through the:

- Transport of materials, goods or commodities to or from the land.
- Appearance of any building, works or materials.
- Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

In addition, Council argued that to address potential building form impacts on the surrounding areas, the built form controls proposed in Design and Development Overlay Schedule 25; were direct ResCode (Clause 54 and 55) translations. That is, building height and setback controls, would ensure that future applications to develop the site need to consider an appropriate design response.

Mr Cerantonio for the Great Ocean Road Resort supported the rezoning of the entire property at 105 Great Ocean Road, Anglesea (Great Ocean Road Resort) as proposed in Amendment C97 from General Residential Zone to Special Use Zone 8 'Tourism Development Precincts'. He submitted that:

Historically, the land has been used for tourist accommodation and ancillary facilities. There is a need to rezone this land to reflect the tourism nature of the property.

Amendment C97 complies with the Local Policy Framework in the Planning Scheme and other strategic documents namely 'Anglesea Great Ocean Road Study 2013' and 'Anglesea Structure Plan Review – Economic Assessment 2010'.

The building design controls proposed in the Amendment will ensure that any future development to the site will have an appropriate design response.

The use of land at the rear or western portion of the subject land is closely related to a Tourism Development Precinct than development in a General Residential Zone.

Ms McGowan, on behalf of the objecting submitter Mr McGrath, generally supported the Amendment with the exception of the inclusion of the western portion of the land at the Great Ocean Road Resort. Ms McGowan argued:

The subject site at 105 Great Ocean Road has had a chequered history and it is unclear exactly what is permitted at this site. It is understood that the original permit for this site allowed accommodation and private use of the onsite facilities for people staying in the accommodation only. Over the years the gymnasium has been opened for public use, a day spa accessible to tourists and locals and more recently a number of outdoor trampolines were installed without a planning permit.

Ms McGowan submitted that Amendment C97 would introduce planning requirements that were inappropriate for the interface with the surrounding residential area and unnecessary on this rear parcel of land. She argued that the proposed rezoning was inappropriate and submitted that the existing controls should be retained on the rear (western) portion of this property, being the General Residential Zone and the Neighbourhood Character Overlay

Schedule 3. Ms McGowan questioned the legitimacy of uses across the site and whether or not permits had been granted.

Ms McGowan listed PPN3 – *Applying the Special Use Zone* and argued that the desired outcome for the western portion of 105 Great Ocean Road could be achieved through the existing application of General Residential Zone Schedule 1 and Neighbourhood Character Overlay Schedule 3.

Mr Cerantonio produced a folder of documents that outlined all current approvals through Planning Permit 14/0516, dated 2 June 2015 for the rear of the site, that allows:

Use of land for a Leisure and Recreation (Swimming Pools, Gym and Trampolines), Buildings and works for the development of a Swimming Pool, Trampoline Facility and extension of an existing restaurant and waiver of standard car parking rates in accordance with endorsed plans.

In addition he tabled a Section 173 Agreement that was with Council for execution by Council with a restriction on the rear lot (lot C) that it:

Must only be used or developed for tourist accommodation, tourist activities and leisure and recreation uses.

At the time of the Hearing, this agreement had not been ratified.

(i) Anglesea Structure Plan 2012

Ms McGowan tabled numerous extracts from the Anglesea Structure Plan that did not include the rear of the Great Ocean Road Resort.

Council tabled figure 4 from the Structure Plan, highlighting the entire site as '*existing retail/commercial.*' Depending on which plan you read (and there are many), for the most part the entire site is highlighted, yet only the area fronting the Great Ocean Road seems to have been included within the study area and tourist development precinct.

Council put forward that the site's mapping omission was simply an anomaly and the Special Use Zone 8 seeks to support the current and future tourist related uses specifically for Anglesea.

3.3 Discussion

The application of the zones and overlays are predicated on a strategic basis underpinned by the Anglesea Structure Plan and this was followed by the Anglesea Great Ocean Road Study.

The reason for the hearing came down to an interpretation of whether or not the property at 105 Great Ocean Road should be included in its entirety or left in two zones. There were differences of opinion tabled on whether the site was "in" or "out" of various strategic documents. The majority of plan references include the entire site as one property. The Panel notes however that this has not clearly translated into the Anglesea Structure Plan, or the Anglesea Great Ocean Road Study.

The site clearly has had issues of non-conforming uses and buildings and works proceeding without a planning permit. The retrospective issue of the planning permit in June 2015 clarifies this. Technically, until such time as the S173 Agreement is registered, the planning

permit does not come into effect. Having said this it was clear that the site is operating at present.

The key issue is whether or not the Special Use Zone Schedule 8 should apply to the rear of the site. It is clear that the use of the land is for tourist and recreation facilities. Leaving the land in two zones simply does not provide a good planning outcome. The Panel agrees with Council's submission of this situation being an anomaly.

Concerns raised by Ms McGowan relating to possible future development are safeguarded by the S173 Agreement and the 'Requirements' contained within Design and Development Overlay Schedule 25, that specifies:

Where a site directly adjoins a lot used for residential purposes, ResCode standards A10, A13, B17 and B20 should be applied.

The Panel also notes that third party rights in are not exempted by the Special Use Zone Schedule 8. This means that any future development proposed would be subject to notice requirements. Given the level of investment and diverse offer of the resort, the Special Use Zone Schedule 8 gives the owner more certainty to contemplate future uses better suited to the tourist activities.

On review of the Anglesea Great Ocean Road Study it is evident the western portion of the site was excluded from the study area. However when reviewing the *Opportunities* section page 18 of the Strategy, it is apparent that future change is contemplated:

The Great Ocean Road / Noble Street precinct should remain a day to day convenience retail and spa resort accommodation area with a possibility of rezoning this area from a Residential 1 zone with a more appropriate zone to reflect the commercial uses within this precinct.

It is for these reasons the Panel agrees that the Special Use Zone Schedule 8 is an appropriate outcome to be applied for the western portion of the site. The General Residential Zone and Neighbourhood Character Overlay are no longer applicable for this site.

3.4 Conclusions

The Panel concludes that the Amendment is strategically justified. The Great Ocean Road Resort is a tourism development that is consistent with Council's aspirations and intent of the Anglesea Great Ocean Road Strategy. The property offers not only tourist accommodation but a number of tourist activities which will increase visitor stays as well as provide activities/services to the local community.

In relation to the Torquay precinct the Panel makes no comments to the proposed changes as there were no submissions on the controls proposed for this area. It agrees that the splitting of Anglesea and Torquay *Tourism Development Precincts* is aligned with proposed local policy changes at Clause 21.11. The inclusion of the Anglesea Great Ocean Road Strategy as a reference document is supported.

In order to better align the documents, the Panel forms the view that the Anglesea Great Ocean Road Strategy needs to be amended so that the mapping reflects the outcome of this Amendment. The Panel is satisfied that the strategic intent of applying the Special Use Zone Schedule 8 to the whole site is reflected in the Amendment, however believes this mapping change will clarify it for anyone using the reference document into the future.

The Panel is satisfied that Council's response in Design and Development Overlay Schedule 25 with built form controls (ResCode requirements) will ensure that future applications take into consideration the appropriate design response and safeguards against amenity concerns.

The Amendment provides a sound strategic platform for the implementation of the Anglesea Great Ocean Road Study 2013.

3.5 Recommendations

The Panel recommends that Amendment C97 to the Surf Coast Planning Scheme be adopted as exhibited subject to the following change:

- 1. Modify the Anglesea Great Ocean Road Study to include the land at 105 Great Ocean Road within Special Use Zone Schedule 8.**

Appendix A Document list

No.	Date	Description	Presented by
1	16 Oct	Written Submission on behalf of Jeff McGrath	Presented as a written submission
2	19 Oct	Surf Coast Shire submission	Surf Coast Shire
3	“	Anglesea Structure Plan 2012	Surf Coast Shire
4	“	Anglesea Structure Plan Review	Surf Coast Shire
5	“	Folder of documents including S173 Agreements, site plans and planning permits for 105 Great Ocean Road	Damien Cerantonio
