

**Date: 20 November 2017**

**AMENDMENT C109– SOUTH GIPPSLAND PLANNING SCHEME**

**PART A SUBMISSION – SOUTH GIPPSLAND SHIRE COUNCIL**

DRAFT

---

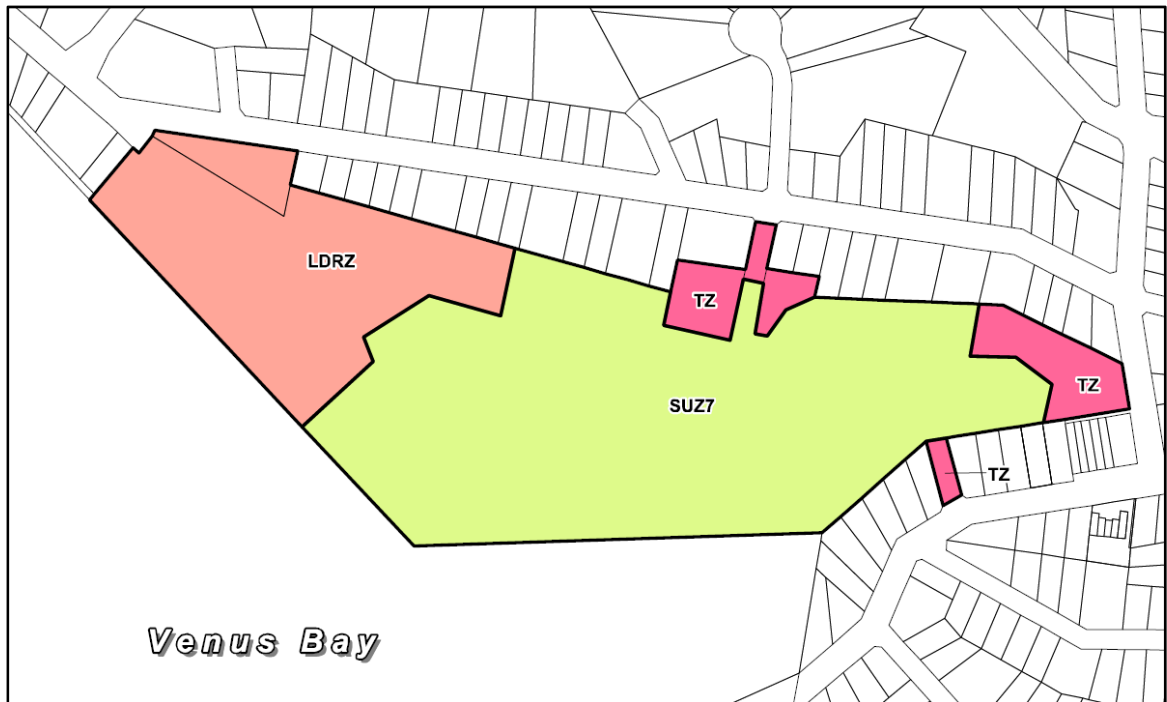
## INTRODUCTION

1. The Panel has requested that South Gippsland Shire Council (**Council**) provides its 'Part A' submission on 20 November 2017 prior to the commencement of the hearing.
2. Amendment C109 to the South Gippsland Planning Scheme (**Scheme**) (**Amendment**) proposes to rezone the Venus Bay Caravan Park, and adjoining undeveloped land (**Subject Land**), from Farming Zone (**FZ**) to a combination of the Special Use Zone (**SUZ**), Low Density Residential Zone (**LDRZ**) and Township Zone (**TZ**).
3. This submission responds to that request under the following headings:
  - 3.1 Background to the Amendment;
  - 3.2 Chronology of Events;
  - 3.3 Strategic context and assessment:
    - 3.3.1 Ministerial Direction No 13;
    - 3.3.2 Planning Practice Notes 11, 36 and 53;
    - 3.3.3 Victorian Coastal Strategy;
    - 3.3.4 Guidelines for Coastal Management Authorities: Assessing development in relation to sea level rise;
    - 3.3.5 Guidelines for development in flood prone areas (WGCMA 2013);
    - 3.3.6 Clause 21.07-1 Climate Change strategy 1.2;
    - 3.3.7 Clause 21.15-9 Venus Bay, the "development prerequisites" under the fourth "settlement" strategy; and
  - 3.4 Changes to the Amendment documentation proposed as a result of the issues raised in the submission.
4. Council's Part B Submission will address all other matters set out in the Panel's Directions dated 8 November 2017, including a response to the submissions received.

## BACKGROUND TO THE AMENDMENT

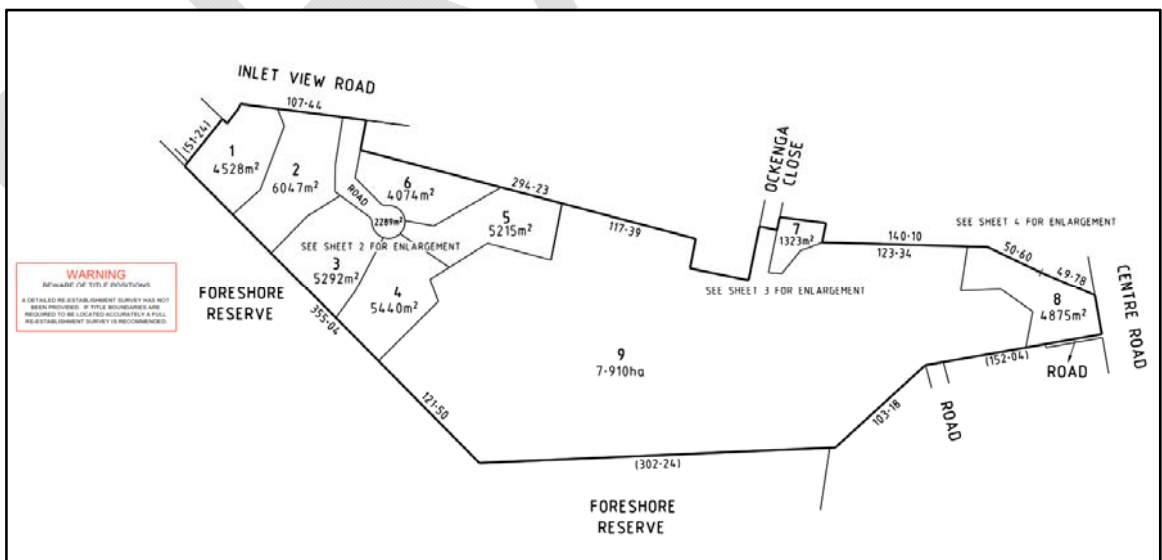
5. Council, in its capacity as the planning authority under the *Planning and Environment Act 1987 (Act)*, has prepared the Amendment. The Amendment has been prepared at the request of the owner of the Subject Land, Mr Jacob Van Der Meulen. The Amendment is combined with planning permit application (2016/180) for a nine lot subdivision of the land pursuant to section 96A of the Act.
6. The Amendment proposes to introduce new planning controls for the Subject Land to protect and facilitate its ongoing use as a caravan park and to allow for a low density residential subdivision on land identified as surplus to the caravan park's current and future needs. The Amendment also seeks to create two additional lots within the TZ which are surplus to the needs of the caravan park. The lot containing the caravan park will be zoned Special Use.
7. The proposed zoning map is at Figure 1. Specifically, the Amendment:
  - 7.1 rezones a portion of Lot 2 PS648056H from the FZ to the Special Use Zone – Schedule 7 (**SUZ7**);
  - 7.2 inserts SUZ7;
  - 7.3 rezones a portion of Lot 2 PS648056H from the FZ to the LDRZ;
  - 7.4 rezones Lot 1 PS648056H from the FZ to the TZ;
  - 7.5 rezones a portion of Lot 1 TP 172550M from the FZ to the TZ;
  - 7.6 rezones a portion of Lot 1 TP 172550M from the FZ to the SUZ7;
  - 7.7 rezones Lot 1 PS800516D from the TZ to the LDRZ (former Council Reserve lot);
  - 7.8 rezones Ockenga Close and the road leading to the caravan park off Jupiter Boulevard from the FZ to the TZ;
  - 7.9 amends Planning Scheme Map 24ESO3 by deleting the Environmental Significance Overlay – Schedule 3 from the land to be rezoned to the LDRZ and TZ;
  - 7.10 amends Planning Scheme Map 24DDO by including the land to be rezoned to the LDRZ and TZ in the Design and Development Overlay – Schedule 5; and
  - 7.11 amends Planning Scheme Map 24ESO7 by including the land to be rezoned to the LDRZ and TZ in the Environmental Significance Overlay – Schedule 7.

Figure 1



8. The planning permit application seeks approval for the subdivision of the Subject Land into nine lots and the removal of native vegetation.
9. The proposed plan of subdivision is extracted in Figure 2.

Figure 2



## CHRONOLOGY OF EVENTS

### Council Meeting – 30 November 2015

10. The Amendment was requested, and planning permit application formally received by Council, in August 2016. Discussions with the landowner and its consultants had occurred prior to the submission of the request.
11. On 24 August 2016, Council resolved to seek authorisation to prepare the Amendment.
12. Council received Ministerial authorisation to prepare the Amendment on 21 October 2016.
13. An exemption from the requirements of Ministerial Direction No. 15 (extension of time to exhibit an amendment) was provided on 1 March 2017.
14. The Amendment was exhibited between 29 June 2017 and concluded on 31 July 2017. Exhibition involved:
  - 14.1 Postal notification to the owners and occupiers of adjoining and surrounding lots.
  - 14.2 Public notice in local newspapers.
  - 14.3 Three A3 yellow public notice signs located around the Subject Land and one inside the Caravan Park kiosk. A sign was also placed on the town's Community Noticeboard in the shopping centre.
  - 14.4 Notice to Prescribed Ministers and other agencies and authorities including West Gippsland Catchment Management Authority (**WGCMA**), Country Fire Authority (**CFA**), Aboriginal Affairs (Native Title Services), DELWP, Parks Victoria, South Gippsland Water, SP Ausnet and Comserv. Notification was not provided to VicRoads. Note: As of 20 November 2017, Council has not received a response from VicRoads regarding the issue of road flooding since asking VicRoads on 6 November 2017.
  - 14.5 Display on Council and DELWP's websites. Hard copy display at Council's Leongatha office.No defects in the exhibition process have been identified.
15. After considering submissions received during the exhibition period, Council resolved to refer those submissions to a Planning Panel at its Ordinary Council Meeting on 27 September 2017.
16. On 19 October 2017, the Minister for Planning (under delegation) appointed Michael Kirsch as the Panel to consider submissions.

## Strategic Assessment

### *Why is the Amendment required?*

17. The Amendment is required to protect and facilitate the long-term retention of the Venus Bay Caravan Park which is an important service and piece of local infrastructure.
18. Caravan parks are an affordable tourist accommodation option for visitors to rural and regional Victoria. In smaller communities, caravan parks often form an important part of the local economy and community. They are also important to help accommodate the surge in temporary resident and visitor numbers during key holiday periods.
19. Coastal caravan parks in private ownership are attractive to developers wishing to develop in coastal townships. Councils have limited control over private business and cannot require them to stay in operation. Therefore, where opportunities arise to protect the kind of asset which provides a net benefit to the community, the protection of the ongoing use can be encouraged through the application of appropriate land use controls in the planning scheme.
20. The owners of the Venus Bay Caravan Park propose to rezone and subdivide their land to help facilitate the ongoing use of the land as a caravan park by subdividing off surplus land and placing the Venus Bay Caravan Park in a SUZ specifically prepared to encourage the ongoing caravan park use of the land.

### *How does the Amendment implement the objectives of planning in Victoria?*

21. The Amendment implements the following objectives set out in section 4 of the Act:
  - To provide for the fair, orderly, economic and sustainable use and development of land.
  - To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.
  - To protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community.
  - To facilitate development in accordance with the objectives set out in the points above.
  - To balance the present and future interests of all Victorians.

### *How does the Amendment address any environmental, social and economic effects?*

#### *Environmental*

22. Land Capability Assessments have been submitted for all the proposed lots subject to this proposal. The Land Capability Assessments conclude that adequate land area is available for sustainable waste water disposal from proposed residential dwellings within the LDRZ.
23. Condition 7 of the proposed permit will require implementation of the recommendations of the Land Capability Statements.

24. A Flora and Fauna Assessment has been undertaken to determine the effect the proposal will have on flora and potential fauna within the Subject Land.
25. The Flora and Fauna Assessment concludes that the subdivision and subsequent development will not pose an unreasonable impact to flora and fauna on the Subject Land. Conditions are also proposed for offset planting for the loss of native vegetation from the Subject Land.

### *Social*

26. The Amendment and proposed subdivision is not expected to impact on any cultural heritage in the area. The Subject Land is not within an area of cultural sensitivity, and therefore a Cultural Heritage Management Plan is not required.

### *Economic*

27. Economic effects of the proposed rezoning are expected to be positive. The development of the subdivision will provide opportunities for local businesses, both during construction and as a consequence of an increased population base, which are both positive economic outcomes.
28. The Venus Bay Caravan Park is a major economic driver for the township and the SUZ provisions, which seek to protect the ongoing use of the caravan park, will contribute to protecting the economic benefit provided by the use.
29. The Farming Zone land proposed to be rezoned Low Density is not currently used for agricultural production and is entirely surrounding by the TZ and the PUZ1. The rezoning of this land will not have a material impact on the supply of agricultural land in the municipality.

### *Does the Amendment address relevant bushfire risk?*

30. The Subject Land is within the Bushfire Management Overlay. The Amendment has addressed bushfire risk by undertaking a Bushfire Management Statement to accompany the subdivision component. The conditions on the draft permit require that all the new lots will have a Bushfire Attack Level (BAL) of between BAL12.5 and BAL29, which satisfy the requirements of the CFA.
31. The Bushfire Planning Considerations Report prepared by bushfire consultants Euca Planning Pty Ltd supports the Amendment and the proposed 8 lots.

## State Planning Policy Framework (SPPF)

32. The following clauses of the SPPF are relevant to the Amendment:

- clause 11.02-4 – Supply of Urban Land;
- clause 11.05 – Coastal Settlement;
- clause 12.01-1 – Protection of biodiversity;
- clause 12.10-2 – Native vegetation management;
- clause 12.02-2 – Appropriate development of coastal areas;
- clause 12.02-4 – Coastal tourism;
- clause 12.04-1 – Environmentally sensitive areas;
- clause 13.01-1 – Coastal inundation and erosion;
- clause 13.05-1 – Bushfire planning strategies and principles;
- clause 14.01-1 – Protection of agricultural land;
- clause 16.02-1 – Rural residential development;
- clause 17.03-1 – Facilitating Tourism; and
- clause 19.03-1 – Development Infrastructure.

33. The Amendment will implement these clauses of the SPPF for the reasons set out in the Explanatory Report. Council adopts that assessment as part of this submission.

## Local Planning Policy Framework (including MSS)

34. The following clauses of the LPPF are relevant to the Amendment:

- clause 21.04 – Vision;
- clause 21.05 – Towns – roles and functions – Venus Bay;
- clause 21.06-2 – Coastal and hinterland landscapes;
- clause 21.07-1 – Climate Change; and
- clause 21.15-9 – Local Areas – Venus Bay;

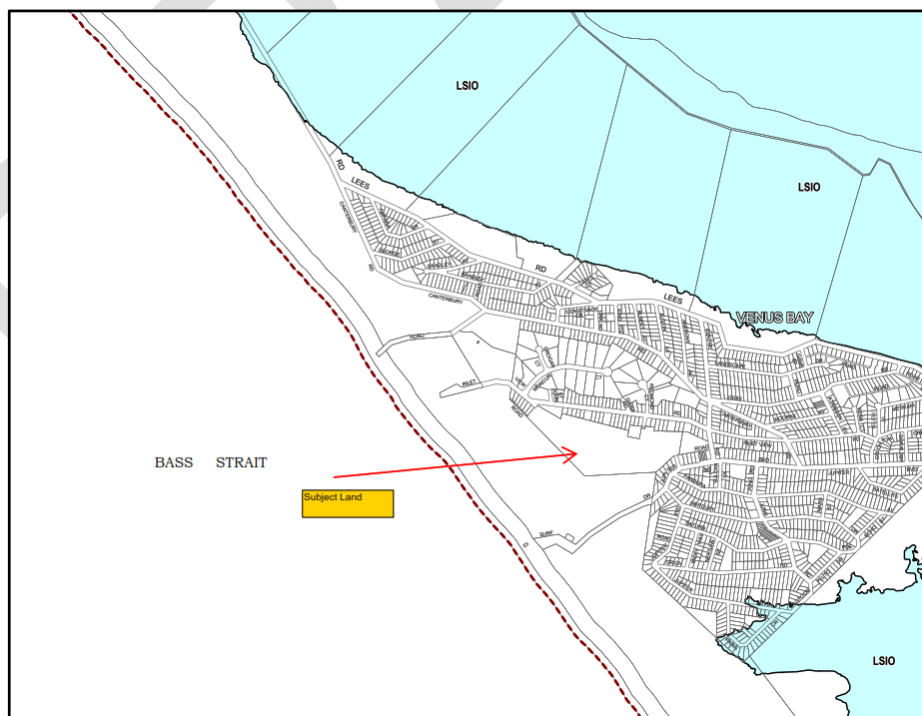
35. The Amendment will implement these clauses of the LPPF for the reasons set out in the Explanatory Report. Council adopts that assessment as part of this submission.

### *Clause 21.07-1 and clause 21.15-9*

36. The Panel has specifically directed a response from Council regarding strategy 1.2 in clause 21.07-1 and the reference to 'development prerequisites' under the fourth 'settlement' strategy in clause 21.15-9.



37. Turning first to strategy 1.2 in clause 21.07-1. It states:
- Apply the precautionary principle when considering the intensification of development in coastal areas.
38. Council considers that the strategy is relevant to the Amendment. The strategy reflects the general language used in the Victorian Coastal Strategy 2014 (**Coastal Strategy**), which is one of the matters that planning must consider under clause 13.01-1 of the Scheme. The Coastal Strategy adopts a position to ‘apply the precautionary principle to planning and management decision-making when considering the risks associated with climate change’.<sup>1</sup> The application of the precautionary principle advocated by the Coastal Strategy has been embedded into the Scheme.<sup>2</sup>
39. Council considers the Amendment and the proposed permit are consistent with the precautionary principle.
40. Further, Amendment C81 to the Scheme identified those areas which would be subject to inundation from a 0.8m sea level rise (including a storm surge event) in 2100. The Land Subject to Inundation Overlay (**LSIO**) was used to identify this land. Amendment C81 has been approved and the LSIO proposed as part of that Amendment is now found in the Scheme. As can be seen from the extract of Map 24, the LSIO is some distance from the Subject Land.



<sup>1</sup> Page 38.

<sup>2</sup> For example, clause 13.01-1 includes a strategy to plan for a 0.8m sea level rise by 2100 which is the measure adopted to apply the precautionary principle under the Coastal Strategy.

41. Turning now to the fourth settlement strategy to clause 21.15-9. It states:

Ensure that any expansion into the long term development areas identified on the Venus Bay Framework Plan does not occur until the following Development Prerequisites have been met:

- a significant proportion of vacant lots within the Township Zone and Low Density Residential Zone have been developed
- reticulated water and sewerage is available
- further investigation is undertaken to confirm the extent of potential problems associated with acid sulfate soils and flooding
- further investigation is undertaken to confirm the location of sites of recognised cultural and heritage significance
- further investigation is undertaken to confirm the location of sites of recognised environmental significance

42. The clause is intended to set out a list of criteria which should be considered if an expansion of the township boundary is being proposed. Given the Amendment proposes to rezone land within the FZ, this strategy needs to be taken into account when considering the submissions to the Amendment.

43. Council acknowledges the relevance of these guidelines, and without attempting to reduce their general importance, makes the following observations:

43.1 a failure to meet one or more of the criteria does not preclude the Amendment, as a matter of law, from proceeding;

43.2 the criteria are a policy statement which needs to be considered as part of the whole of the policy framework contained within the Scheme;

43.3 the weight to be given to these criteria will vary depending upon the specific proposal under consideration;

43.4 any non-compliance with the criteria needs to be balanced against the benefits created by delivering greater certainty to a critical piece of community and economic infrastructure within Venus Bay; and

43.5 the Amendment generally satisfies these criteria.<sup>3</sup>

44. Council expects that proponent's planning expert will also consider and address these criteria. Therefore, Council considers that it is appropriate to hear and test this evidence before making further submissions regarding these criteria.

---

<sup>3</sup> Noting that reticulated sewerage will not be available.

### *Response to the Panel's Directions*

45. The Panel has directed Council to provide a response to the relevant elements of:
- 45.1 Ministerial Direction No 13 (Requirements to be met);
  - 45.2 Planning Practice Notes 11, 36 and 53;
  - 45.3 Victorian Coastal Strategy;
  - 45.4 Guidelines for Coastal Management Authorities: Assessing development in relation to sea level rise (DSE) (2012); and
  - 45.5 Guidelines for development in flood prone areas (WGCMA) (2013).
46. The following is Council's initial response to those matters. The Panel will note that Council considers that these documents provide an important strategic context to the Amendment. As the Subject Land is not subject to flooding, the weight to be given to these documents is reduced. Although Council forms this view, Council acknowledges that the concerns raised by the WGCMA need to be considered.

### *Ministerial Direction 13 'Managing Coastal Hazards and the Coastal Impacts of Climate Change' (Ministerial Direction 13)*

47. The stated purpose of Ministerial Direction 13 is:
- The purpose of this Direction is to set out the general requirements for consideration of the impacts of climate change within coastal Victoria as part of an amendment which would have the effect of allowing non-urban land to be used for an urban use and development.
48. It is specified as applying to:
- This Direction applies to any planning scheme amendment that provides for the rezoning of non-urban land for urban use and development of all land:
- Abutting the coastline or a coastal reserve.
  - Less than 5 metres Australian Height Datum within one kilometre of the coastline including the Gippsland Lakes.
49. Council understands that both criteria need to be satisfied before Ministerial Direction 13 applies. The Subject Land is above 5m AHD. Therefore, Council considered that Ministerial Direction 13 did not apply.
50. Council's position is consistent with the considerable technical work underpinning Amendment C81 to the Scheme which did not identify the Subject Land or any adjoining land to be affected by inundation.
51. In any event, Council has sought the views of WGCMA and its views are now before the Panel.

52. If Council has misunderstood the Panel's reason for referring to Ministerial Direction 13, Council would be happy to discuss the content of this Ministerial Direction in more detail at the hearing.

*Planning Practice Note 11 'Applying for a Planning Permit under the Flood Provisions' (PPN11)*

53. Council considers that PPN11 applies to land which is identified as being subject to flooding.
54. There is no land proposed to be subdivided or rezoned which is identified in the Scheme or has been identified by any party which is subject to flooding. For this reason, Council considers PPN11 has no application to the proposed permit application or the Amendment.
55. If Council has misunderstood the Panel's reason for referring to PPN11, Council would be happy to discuss the content of this practice note in more detail at the hearing.

*Planning Practice Note 36 'Implementing a Coastal Settlement Boundary' (PPN36)*

56. The purpose of the PPN36 is stated as:
- The purpose of this practice note is to provide guidance about implementing a coastal settlement boundary in a planning scheme for settlements outside Metropolitan Melbourne.
57. The reason for identifying a township boundary is described as:
- The VCS [Victorian Coastal Strategy] identifies the need to provide direction for the location and scale of use and development on the coast. Planning schemes are the primary tool to manage growth of coastal settlements and land outside existing settlement boundaries. Action 4.2a of the 2008 VCS encouraged the establishment of coastal settlement boundaries in planning schemes as the mechanism to guide the extent of use and development in coastal settlements. The 2014 VCS continues this approach (Section 2.2 Policy 1).

58. Council considers that it is important to identify the extent of the Venus Bay settlement.
59. The proposed rezoning of the Subject Land to the SUZ7, TZ and LDRZ gives rise to a question as to whether the settlement boundary for this part of Venus Bay needs to be amended.
60. Council will address the Panel on this issue in more detail as part of its Part B submission.

*Planning Practice Note 53 Managing coastal hazards and the coastal impacts of climate change (PPN53)*

61. Council considers that PPN53 applies to land which may be affected by the coastal impacts of climate change.
62. Council considers that PPN53 does not directly apply to the proposed permit application or the Amendment. This is because there is no land proposed to be subdivided or rezoned which is identified in the Scheme or has been identified by any party which is subject to flooding.

63. Council again refers to the considerable technical work underpinning Amendment C81 which did not identify the Subject Land or any adjoining land to be affected by inundation.
64. If Council has misunderstood the Panel's reason for referring to PPN53, Council would be happy to discuss the content of this practice note in more detail at the hearing.

### *Victorian Coastal Strategy*

65. The Coastal Strategic fulfilled an important policy gap in 2014 relating to the assessment of planning proposals which may be affected by the flooding, tidal and storm surge effects of climate change.
66. As already acknowledged above, the Coastal Strategy is a matter that planning must consider under the SPPF.
67. Importantly, the SPPF has been amended to incorporate the key policy directions of the Coastal Strategy. Further, Council, through Amendment C81, has undertaken the detailed strategic planning work to identify land in its planning scheme which could be affected by climate change in 2100. Given this strategic work adopted the threshold metrics for applying the precautionary principle, a sound strategic and statutory basis exists to conclude that the Subject Land would not be affected by inundation impacts associated with climate change.
68. For these reasons, Council considers that the Coastal Strategy is only of contextual relevance in this case.
69. Again, if Council has misunderstood the Panel's reason for referring to the Coastal Strategy, Council would be happy to discuss the content of this practice note in more detail at the hearing.

### *West Gippsland Catchment Management Authority – Flood Guidelines (Flood Guidelines)*

70. Council considers that the Flood Guidelines have no direct application to the proposed permit application or the Amendment. There is no land proposed to be subdivided or rezoned which is identified in the Scheme or has been identified by any party which is subject to flooding.
71. Council again refers to the considerable technical work underpinning Amendment C81 which did not identify the Subject Land or any adjoining land to be affected by inundation.
72. If Council has misunderstood the Panel's reason for referring to the Flood Guidelines, Council would be happy to discuss the content of these Guidelines in more detail at the hearing.
73. Council understands that the WGCMA does not suggest that the Subject Land will be subject to inundation.

*Proposed changes to the Amendment*

74. Aside from those changes identified in the Council report on 21 August 2017, Council has not identified any further changes to the proposed Amendment documents.

**CONCLUSION**

75. This completes Council's Part A Submission.

.....  
Darren Wong  
Planology  
Lawyers for the South Gippsland Shire Council  
20 November 2017

DRAFT