

*Planning and Environment Act 1987*

**Panel Report**

**South Gippsland Planning Scheme Amendment C109  
Planning Permit Application 2016/180**

**29 December 2017**

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 and section 96E of the Act

South Gippsland Planning Scheme Amendment C109

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A handwritten signature in black ink, appearing to read 'Michael Kirsch', with a long, sweeping underline.

Michael Kirsch, Chair

# Contents

	<b>Page</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The Amendment.....	1
1.2 The planning permit application .....	2
1.3 Issues dealt with in this report .....	2
<b>2 Background.....</b>	<b>4</b>
2.1 Venus Bay .....	4
2.2 The subject site.....	5
<b>3 Planning context .....</b>	<b>6</b>
3.1 South Gippsland Planning Scheme.....	6
3.2 Strategies, plans and policies .....	11
3.3 Ministerial Directions .....	15
3.4 Planning Practice Notes.....	16
3.5 Discussion .....	17
<b>4 Issues.....</b>	<b>19</b>
4.1 Flooding .....	19
4.2 Land supply.....	27
4.3 The environment .....	30
4.4 Traffic.....	32
4.5 Reticulated water and sewerage.....	32
4.6 Other issues .....	34
<b>5 Recommendations .....</b>	<b>36</b>

**Appendix A Document list**

**Appendix B Recommended Special Use Zone Schedule 7**

**Appendix C Recommended Planning Permit**

## List of Tables

	<b>Page</b>
Table 1 Venus Bay residential land supply.....	28

## List of Figures

	<b>Page</b>
Figure 1 Proposed zones .....	1
Figure 2 Revised plan of subdivision .....	2

Figure 3	Venus Bay and surrounding area .....	4
Figure 4	The subject site.....	5
Figure 5	Venus Bay – Estate 1 Framework Plan .....	9
Figure 6	Existing land supply .....	12
Figure 7	Projected housing demand .....	12

## List of Abbreviations

ABS	Australian Bureau of Statistics
AEP	Annual Exceedance Probability
BOM	Bureau of Meteorology
CASS	Coastal Acid Sulfate Soil
CFA	Country Fire Authority
CMA	Catchment Management Authority
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
ESO	Environmental Significance Overlay
FZ	Farming Zone
GRGP	Gippsland Regional Growth Plan
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
MD13	Ministerial Direction 13: Managing Coastal Hazards and Coastal Impacts of Climate Change
m/s	metres per second
MSS	Municipal Strategic Statement
PPN11	Planning Practice Note 11: Applying for a Planning Permit under the Flood Provisions
PPN36	Planning Practice Note 36: Applying a Coastal Settlement Boundary
PPN53	Planning Practice Note 53: Managing Coastal Hazards and the Coastal Impacts of Climate Change
SEPP	State Environment Protection Policy
SES	State Emergency Service
SGHSS	South Gippsland Housing and Settlement Strategy

SUZ7	Special Use Zone Schedule 7
SPPF	State Planning Policy Framework
the Act	the Planning and Environment Act, 1987
TZ	Township Zone
UDF	Urban Design Framework
VCS	Victorian Coastal Strategy
VFMS	Victorian Floodplain Management Strategy
WGCMA	West Gippsland Catchment Management Authority
WGFMS	West Gippsland Floodplain Management Strategy

## Overview

### Summary

<b>The Amendment</b>	South Gippsland Planning Scheme Amendment C109
<b>Brief description</b>	<p>The Amendment proposes to:</p> <ul style="list-style-type: none"> <li>- rezone land in Venus Bay from Farming Zone to a mix of Special Use Zone Schedule 7, Low Density Residential Zone and Township Zone</li> <li>- delete the Environmental Significance Overlay Schedule 3 from the land being rezoned Low Density Residential Zone and Township Zone</li> <li>- apply the Design and Development Overlay Schedule 5 to the land being rezoned Low Density Residential Zone and Township Zone</li> <li>- apply the Environmental Significance Overlay Schedule 7 to land being rezoned Low Density Residential Zone and Township Zone.</li> </ul>
<b>Planning Permit</b>	Application No 2016/180
<b>Brief description</b>	The planning permit application seeks approval for the subdivision of the land into 9 lots and the removal of native vegetation.
<b>Subject land</b>	The subject land is the site of the Venus Bay Caravan Park and Lot 143B Inlet View Road, Venus Bay.
<b>The Proponents</b>	J and F van der Meulen
<b>Planning Authority</b>	South Gippsland Shire Council
<b>Authorisation</b>	Letter from the Department of Planning, Environment, Land, Water and Planning dated 21 October 2016
<b>Exhibition</b>	29 June to 31 July 2017
<b>Submissions</b>	<p>West Gippsland Catchment Management Authority</p> <p>Maree Ryan</p> <p>Gus Blaauw (withdrawn)</p> <p>Peter Prysten and Sonia Zalucki</p> <p>Mare and Greg Ananijevski</p> <p>Pam Kokke</p>

## Panel process

<b>The Panel</b>	Michael Kirsch, Chair
<b>Directions Hearing</b>	Leongatha, 3 November 2017
<b>Panel Hearing</b>	Leongatha, 28 and 29 November 2017
<b>Site inspections</b>	Unaccompanied, 3 November 2017
<b>Appearances</b>	<p>South Gippsland Shire represented by Darren Wong (Planology) and Ken Griffiths (Council)</p> <p>J and F van der Meulen (proponents) represented by Jane Sharp (counsel) who called expert evidence from:</p> <ul style="list-style-type: none"> <li>- Warwick Bishop (Water Technology) in flooding</li> <li>- John Glossop (Glossop Town Planning Pty Ltd) in planning</li> </ul> <p>West Gippsland Catchment Management Authority represented by Adam Dunn who called evidence from:</p> <ul style="list-style-type: none"> <li>- Michael Cawood (Michael Cawood and Associate Pty Ltd) in flooding.</li> </ul>
<b>Date of this Report</b>	29 December 2017

## Executive summary

### (i) Summary

The Amendment and planning permit application propose the rezoning and subdivision of the Venus Bay Caravan Park and an adjoining lot. The Amendment will rezone the caravan park to a new Special Use Zone Schedule 7 (SUZ7), while surplus land will be rezoned Low Density Residential Zone (LDRZ) and Township Zone (TZ). The Amendment will also rationalise various overlays that apply to the site. The planning permit application is for the subdivision of the site into 9 lots and the removal of native vegetation.

The proposal attracted five submissions, including a submission from the West Gippsland Catchment Management Authority (WGCMA) and four submissions from local residents and landowners.

The key issues raised in submissions related to:

- flooding of the Inverloch–Venus Bay Road
- residential land supply and demand
- environmental impacts
- traffic impacts.

The Hearing was held on 28 and 29 November, 2017 and the Panel heard from Council, the proponents and the WGCMA.

Following its consideration of submissions and evidence, the Panel reached the following key conclusions:

- there is broad strategic support for the proposal
- flooding issues, while important, are not a reason to reject the proposal
- any environmental impacts will be limited
- there are unlikely to be any significant traffic issues.

The key issue discussed during the Hearing was the flooding of the Inverloch–Venus Bay Road that provides the only road access to Venus Bay. The WGCMA submitted that flooding of this road was a significant community hazard and because of this no additional residential lots should be created in Venus Bay.

Although the Panel acknowledges the WGCMA's concerns, it has had to assess the nature, frequency and extent of the flood risk, and have regard risk to management strategies and the small number of additional lots that will be created. The Panel has also had regard to the broader community benefits that might result from the proposal and concluded, on balance, that it should proceed.

The other issues raised in submissions are either capable of being addressed through the permit approval process or are not an impediment to approving the proposal.

For these reasons, the Panel is satisfied that the Amendment should be adopted and that the proposed planning permit should be approved, subject to the revisions recommended in this report and discussed during the Hearing.



**(ii) Recommendations**

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

- A1 Adopt Amendment C109 to the South Gippsland Planning Scheme as exhibited, subject to the following:**
- 1 Include the Special Use Zone Schedule 7 included at Appendix B of the Panel's report.**
  - 2 Include any appropriate consequential changes to Clause 21.15-9 (Venus Bay), including the Venus Bay – Estate 1 Framework Plan.**
- P1 Approve Planning Permit 2016/180 in the form included at Appendix C of the Panel's report.**

# 1 Introduction

The proposal involves the rezoning and subdivision of land that includes the Venus Bay Caravan Park and a former Council reserve. It was initiated by the owners of the land and is intended to facilitate the ongoing use of the site as a caravan park, while surplus land will be rezoned and subdivided, enabling its sale. The surplus land will be subdivided into six Low Density Residential Zone (LDRZ) lots and two Township Zone (TZ) lots. A new Special Use Zone Schedule 7 (SUZ7) will be applied to the Caravan Park to facilitate its ongoing use and development.

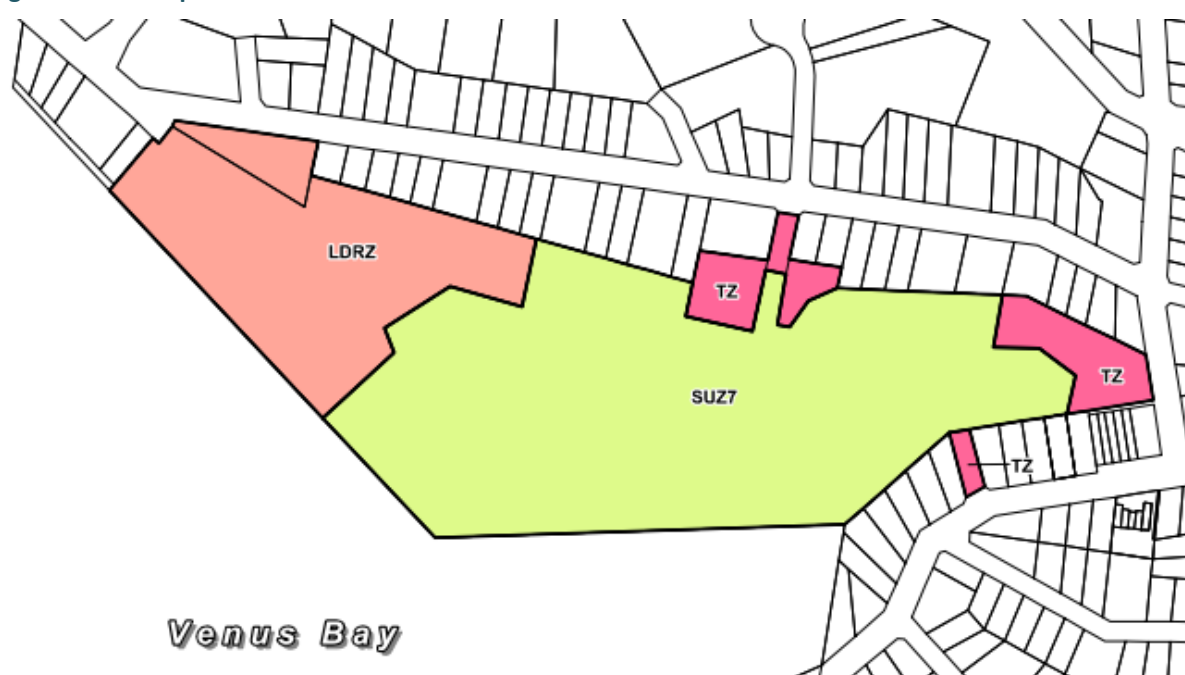
Council supported the proposal, submitting that the caravan park is “an important part of the economic base of Venus Bay” and that facilitating its ongoing use and development will have “important long term social and economic benefits”.

## 1.1 The Amendment

Specifically, the Amendment proposes to:

- rezone a portion of Lot 2 PS648056H from Farming Zone (FZ) to a new SUZ7
- rezone a portion of Lot 2 PS648056H from FZ to LDRZ
- rezone lot 1 PS648056H from FZ to LDRZ
- rezone a portion of Lot 1 TP 172550M from FZ to TZ
- rezone a portion of Lot 1 TP 172550M from the FZ to the SUZ7
- rezone Lot 1 PS 54175 from TZ to LDRZ
- rezone Ockenga Close and the road leading to the Caravan Park off Jupiter Boulevard from FZ to TZ
- delete the Environmental Significance Overlay Schedule 3 (ESO3) from the land to be rezoned LDRZ and TZ

Figure 1 Proposed zones



- apply the Design and Development Overlay Schedule 5 to the land be rezoned LDRZ and TZ
- apply the Environmental Significance Overlay Schedule 7 (ESO7) to the land to be rezoned LDRZ and TZ.

The rezonings are shown on Figure 1.

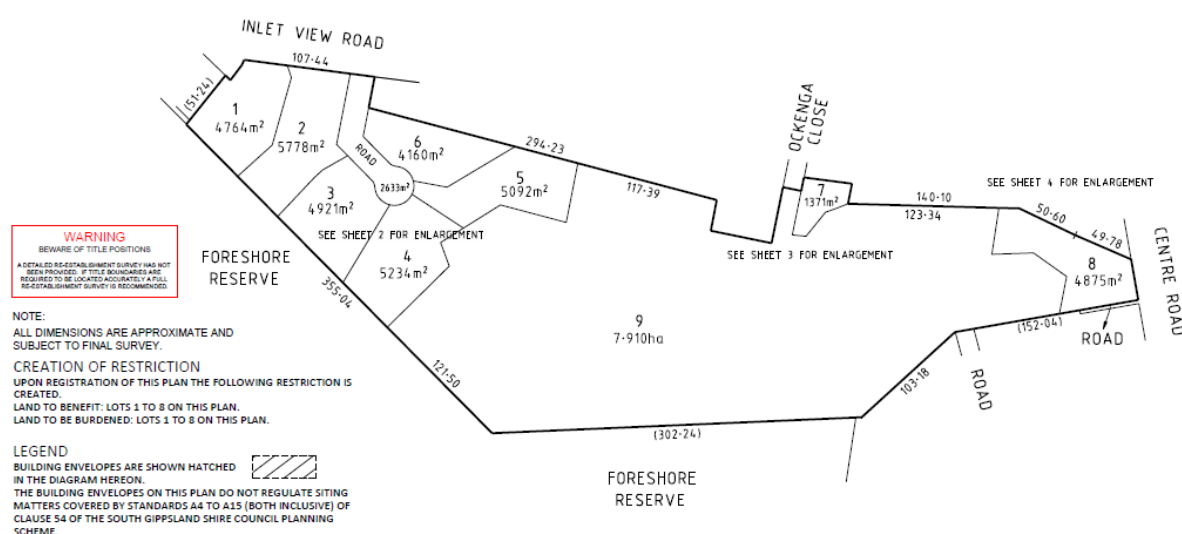
## 1.2 The planning permit application

The planning permit application was lodged under s96A of the *Planning and Environment Act 1987* (the Act) and seeks approval for:

- removal of native vegetation
- a six lot subdivision of the land to be zoned LDRZ (lots 1-6 on the proposed plan of subdivision)
- a two lot subdivision of the land to be zoned TZ (lots 7-8 on the proposed plan of subdivision)
- a single lot created for the balance of the land (the Caravan Park) to be zoned SUZ7 (lot 9 on the proposed plan of subdivision).

The proponent circulated a revised version of the exhibited plan of subdivision that reflects bushfire management plans approved by the Country Fire Authority (CFA). The revised plan (version 5) is shown in figure 2.

**Figure 2 Revised plan of subdivision**



## 1.3 Issues dealt with in this report

The Panel considered all written submissions made in response to the exhibition of the Amendment and planning permit application, observations from visiting the site and the general area, and submissions, evidence and other material presented to it during the Hearing.

The Panel has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials

have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This report deals with the issues under the following headings:

- Planning context
- Flooding
- Land supply
- The environment
- Traffic
- Reticulated water and sewerage
- Other issues, including drafting, consequential planning scheme changes, the sale of the Council reserve and public open space.

## 2 Background

### 2.1 Venus Bay

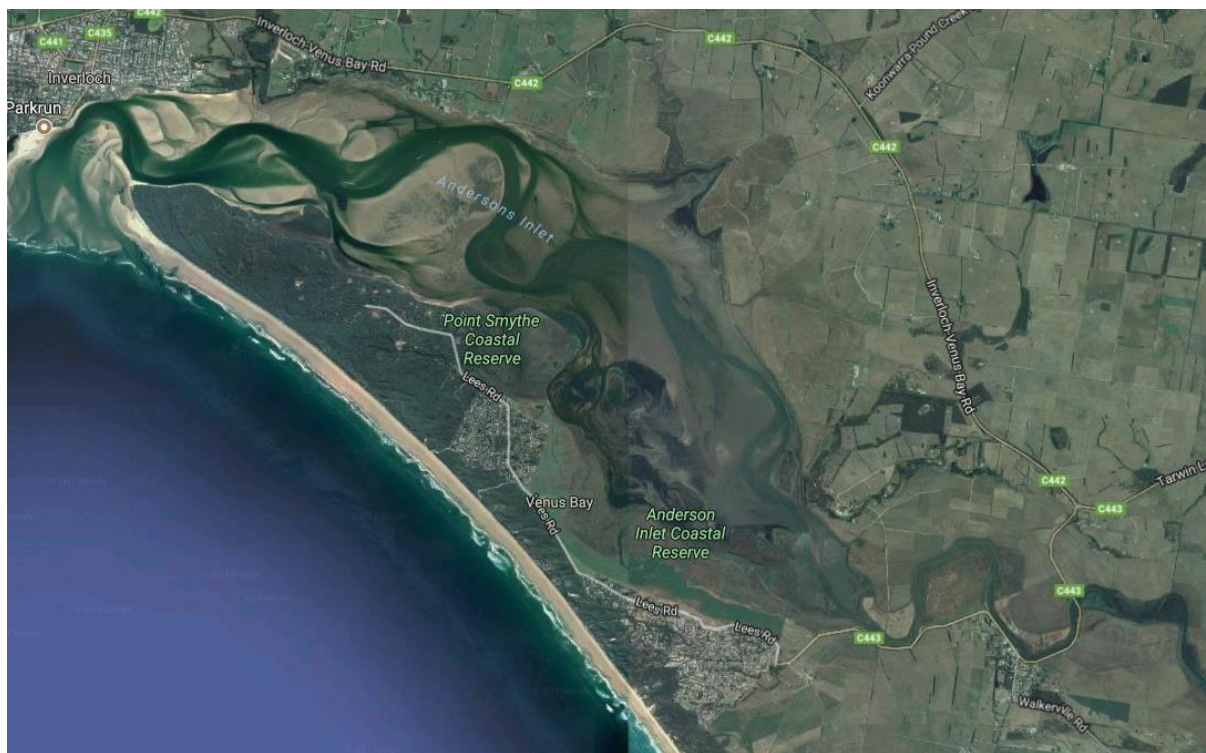
Venus Bay is a small coastal settlement situated on a narrow peninsula of land, bordered to the south by Bass Strait and to the north by Anderson Inlet. The Tarwin River flows into Anderson Inlet to the east of the town.

Venus Bay and the surrounding area are shown in Figure 3.

The town has a resident population of approximately 600 people but during holiday periods the population can swell to over 4,000 people.

The town is in an environmentally sensitive area and is largely bordered by coastal foreshore reserve. It is subject to various 'environmental' overlays, including the Environmental Significance, Significant Landscape, Bushfire Management, Land Subject to Inundation and Design and Development Overlays.

**Figure 3 Venus Bay and surrounding area**



The town consists of three 'estates', with the subject site being in Estate 1. Estate 1 is predominantly zoned TZ, with an area of LDRZ and pockets of Public Park and Recreation Zone.

The town has electricity, but no reticulated sewerage, water or gas. It has a limited range of commercial and community facilities, commensurate with its size and tourism function and relies on larger towns such as Leongatha for larger retail, industrial and commercial facilities.

The only vehicular access is via the Inverloch–Venus Bay Road that crosses the Tarwin River floodplain to the east of Venus Bay. This road is cut during major flood events making the town inaccessible by road.

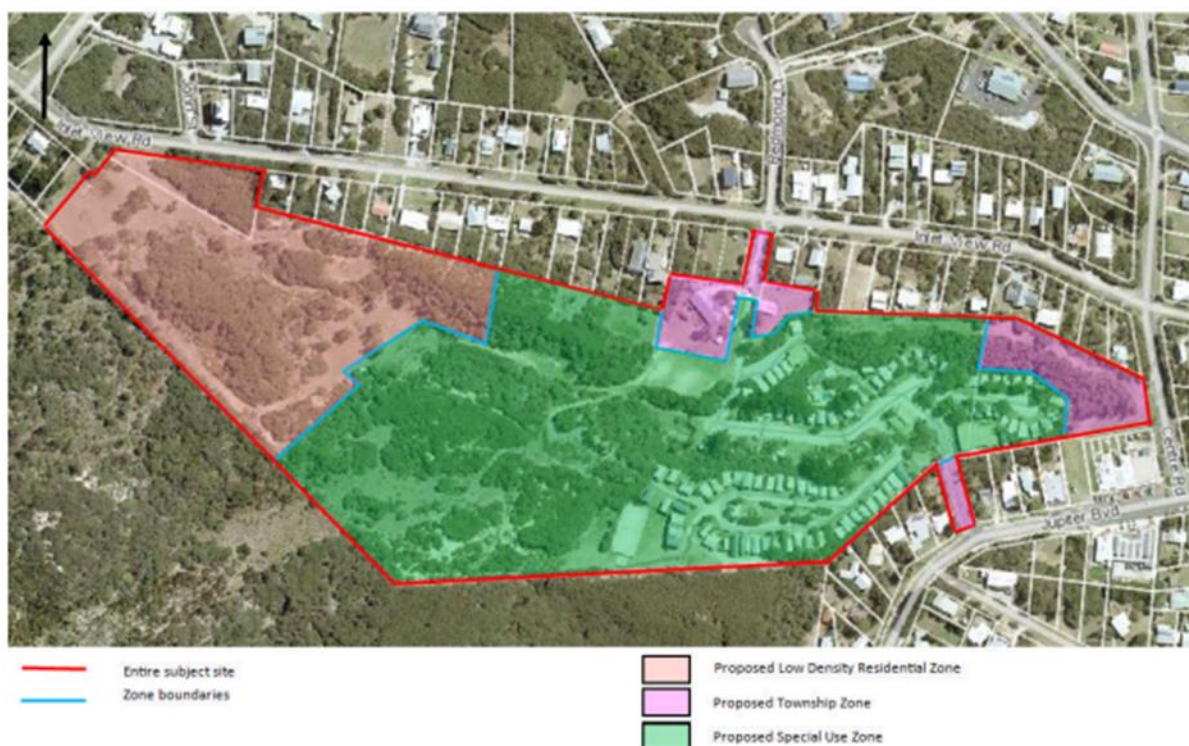
## 2.2 The subject site

The subject site (refer to Figure 4) has a total area of approximately 12 ha within four titles and is adjacent to Estate 1 and the town’s commercial area. It is also adjacent to a broader residential area zoned TZ.

The eastern area of the site is used for the Venus Bay Caravan Park, while the central and western areas of the site are partly cleared but contain remnant native vegetation. The Caravan Park is accessed from Jupiter Boulevard.

The former Council reserve (Lot 143B) is a triangular parcel in the north-west corner of the site.

**Figure 4** The subject site



### 3 Planning context

This chapter provides an overview of the planning context for the proposal and highlights the matters the Panel has had regard to when considering issues raised in submissions.

#### 3.1 South Gippsland Planning Scheme

##### (i) State Planning Policy Framework

Clause 10.04 (Integrated decision making) highlights the need to balance competing interests in favour of net community benefit:

*Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*

Council and Ms Sharp (on behalf of the Proponents) submitted that the proposal would result in a 'net community benefit'.

Clause 11.05-1 (Coastal settlement) includes a range of strategies in support of the objective "To plan for sustainable coastal development", including:

*Support a network of diverse coastal settlements which provides for a broad range of housing types, economic opportunities and services.*

*Encourage urban renewal and redevelopment opportunities within existing settlements to reduce the demand for urban sprawl.*

*Identify a clear settlement boundary around coastal settlements to ensure that growth in coastal areas is planned and coastal values protected ...*

*Direct residential and other urban development and infrastructure within defined settlement boundaries of existing settlements that are capable of accommodating growth.*

This clause also requires that "Planning must consider as relevant" the Victorian Coastal Strategy (Victorian Coastal Council, 2014) and the Gippsland Regional Growth Plan (Victorian Government, 2014).

Clause 11.07-1 (Regional planning) includes various strategies under the objective:

*To develop regions and settlements which have a strong identity, are prosperous and are environmentally sustainable.*

The strategy under the theme "Climate change, natural hazards and community safety" includes:

*Respond to the impacts of climate change and natural hazards and promote community safety by:*

- *Siting and designing new dwellings, subdivisions and other development to minimise risk to life, property, the natural environment and community infrastructure from natural hazards, such as bushfire and flood.*

- *Developing adaptation response strategies for existing settlements in hazardous and high risk areas to accommodate change over time.*

Clause 11.10 (Gippsland) implements the Gippsland Regional Growth Plan and includes strategies in support of tourism investment and the continuing role of towns and small settlements.

Clause 12.01-2 (Native vegetation management) includes the strategy:

*Where native vegetation is permitted to be removed, ensure that an offset is provided in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.*

Clause 12.02-1 (Protection of coastal areas) applies the "*hierarchy of principles for coastal planning and management as set out in the Victorian Coastal Strategy 2014*".

Clause 12.02-4 (Coastal tourism) includes the objective:

*To encourage suitably located and designed coastal and marine tourism opportunities.*

Clause 13.01-1 (Coastal inundation and erosion) provides a range of strategies under the objective "*To plan for and manage the potential coastal impacts of climate change*", including:

*Consider the risks associated with climate change in planning and management decision making processes.*

Clause 13.02-1 (Floodplain management) includes the objective:

*To assist the protection of:*

- *Life, property and community infrastructure from flood hazard.*
- ...

Clause 17.03-1 (Facilitating tourism) includes the objective:

*To encourage tourism development to maximise the employment and long-term economic, social and cultural benefits of developing the State as a competitive domestic and international tourist destination.*

## **(ii) Local Planning Policy Framework**

Clause 21.03-3 (Environmental risks) identifies the 'key issue':

*The anticipated impact of climate change on the local environment, and the need to monitor and continue to plan for these impacts in the context of broader climate change policy and new knowledge.*

Clause 21.05-1 (Growth of towns) defines the 'role and function' of Venus Bay as:

*Small coastal village that supports a small permanent population and is an attractive holiday destination. Venus Bay provides convenience facilities and is reliant on Tarwin Lower and Leongatha for major retail, industrial and commercial facilities.*



Clause 21.06-2 (Coastal and hinterland landscapes) includes the objective:

*To ensure that coastal development at the edge of settlements responds appropriately to the landscape setting and character.*

Clause 21.07-1 (Climate change) includes the objective:

*To manage the impacts resulting from climate change.*

This objective is supported by the strategy:

*Apply the precautionary principle when considering the intensification of development in coastal areas.*

Clause 21.11-4 (Tourism) includes the objective:

*To encourage a diverse range of tourism opportunities.*

Clause 21.15-9 (Venus Bay) includes:

*Future population growth in Venus Bay, when required, will be promoted within the existing zoned land and in the growth areas defined on the Venus Bay Framework Plan.*

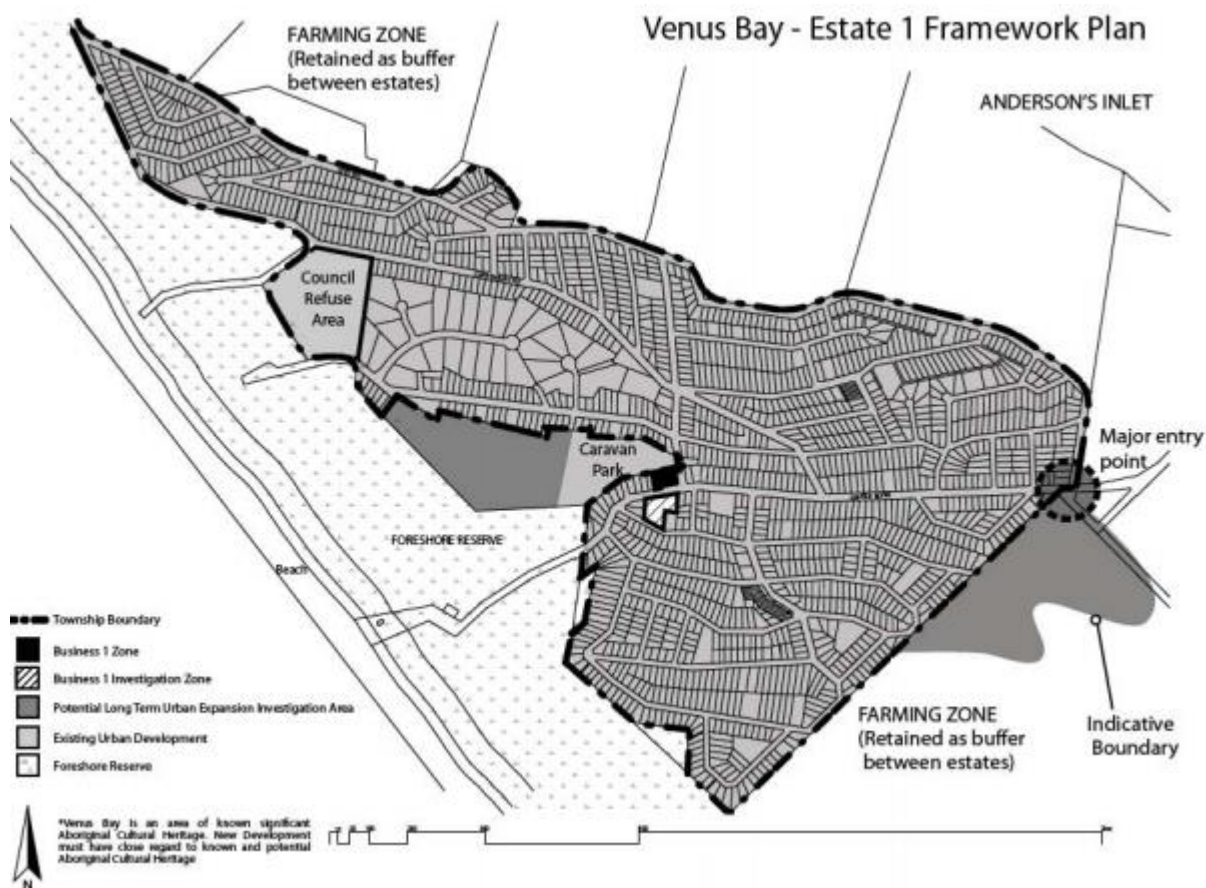
Clause 21.15-9 requires that “any proposed use or development of land in Venus Bay is generally in accordance with the Venus Bay Estate 1 and Estate 2 Framework Plans”. The site is within the Venus Bay Estate 1 Framework Plan shown in Figure 5. The Framework Plan shows the site is adjacent to, but outside, the “Township Boundary”. The caravan park part of the site is designated “Existing Urban Development” while the undeveloped western area of the site is designated “Potential Long Term Urban Expansion Investigation Area”.

Under the “Settlement” theme, Clause 21.15-9 includes:

- *Limit projected residential growth to the long term development areas identified on the Venus Bay Framework Plan*
- *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.*

This Clause also includes the Venus Bay Urban Design Framework: Settlement Background Paper (2006) as a reference document.

Figure 5 Venus Bay – Estate 1 Framework Plan



In relation the 'development prerequisites', Council submitted that:

- 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.

Ms Sharp submitted that "when Clause 21.15-9 is read in a balanced manner and in the context of the planning scheme, the proposal satisfies the intention of the development prerequisites".

The issues raised by the 'prerequisites' are discussed in chapter 4 of this report.

**(iii) Zones**

The Amendment proposes to apply the LDRZ, TZ and SUZ7.

The 'purposes' of the LDRZ are:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.*

The LDRZ provides for a minimum lot size of 0.4 ha where reticulated sewerage is not connected. There is no reticulated sewerage in Venus Bay and the proposed subdivision includes lots ranging from 4,160 to 5,778 sqm.

There is an existing area of LDRZ to the north of the site that has been subdivided and largely developed.

The purposes of the TZ are:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for residential development and a range of commercial, industrial and other uses in small towns.*

*To encourage development that respects the neighbourhood character of the area.*

*To allow educational, recreational, religious, community and a limited range of other non residential uses to serve local community needs in appropriate locations.*

The TZ has been applied as the 'default' zone to the town's urban areas and its use in the Amendment is consistent with this approach.

The exhibited 'purposes' of the SUZ7 are specific to the Caravan Park and include:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To recognise and provide for the ongoing use of the site for the Venus Bay Caravan Park and related tourism facilities.*

*To ensure that the development of the Venus Bay Caravan Park and its facilities takes place in an orderly and proper manner and does not cause loss of amenity to the surrounding area.*

*To provide for sustainable tourism activities and a range of accommodation opportunities which complement the Venus Bay Caravan Park use.*

**(iv) Clause 65 (Decision guidelines)**

Clause 65 requires that “*Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate*” a range of matters, including:

*The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

**Discussion**

The SPPF includes a range of policies that are relevant to the proposal, particularly in relation to sustainable development, flooding, native vegetation and tourism.

The LPPF augments these SPPF policy positions, but also provides specific planning policy in relation to Venus Bay. It identifies the subject site as one of two investigation areas for future urban expansion and lists a set of development prerequisites to be met before they are developed. The implications of the development prerequisites are discussed in chapter 4 of this report.

Submitters raised a range of issues relevant to these State and local policies, with the WGCMA focussed on flooding issues and submitting that flooding policy should be the determinative policy consideration.

Council and Ms Sharp submitted that competing planning policies and objectives, including those related to flooding, need to be balanced in favour of net community benefit and sustainable development.

In terms of the proposed zones, the Panel is satisfied that they are appropriate in light of the intended use of the land and are consistent with the purposes of the zones and their current use within Venus Bay. Issues associated with the proposed use of the land are discussed in the Chapter 4 of this report.

**3.2 Strategies, plans and policies****(i) Victorian Coastal Strategy (Victorian Coastal Council, 2014)**

The Victorian Coastal Strategy (VCS) underpins the various coastal strategies in the SPPF, including coastal inundation strategies at Clause 13.01-1.

The VCS identifies the considerations relevant to introducing or reviewing a coastal settlement boundary and provides general policy guidance and context for more detailed and localised coastal inundation policies and guidelines.

**(ii) Victorian Floodplain Management Strategy (DELWP, 2016)**

The Victorian Floodplain Management Strategy (VFMS) provides the overarching State policy in relation to floodplain management, including:

- Policy 13a: *The 1% Annual Exceedance Probability flood will remain the design flood event for the land use planning and building systems in Victoria.*
- Policy 13b: *The strategic planning framework must give due consideration to flooding and its impacts on land use potential.*

It also includes various actions relating to flood monitoring and warning systems.

### (iii) Gippsland Regional Growth Plan (Victorian Government, 2014)

The Gippsland Regional Growth Plan (GRGP) highlights the key role that tourism plays in the regional economy and that it is a key element of “Principle 1”:

*Strengthen economic resilience by growing a more diverse economy, that is supported by new investment, innovation, and value-adding in traditional strengths.*

The GRGP supports ongoing investment in tourism infrastructure, including facilities within existing settlements.

In relation to flooding, it also notes that:

*Significant areas of Gippsland are at risk from natural hazards including flood, bushfire and sea level rise. There is the potential for loss of property and life where settlement and infrastructure intersect with high risk areas.*

It includes the strategy “Direct urban growth away from areas of high risk from bushfire, flood and coastal inundation”.

### (iv) The South Gippsland Housing and Settlement Strategy, (Planisphere 2013)

The South Gippsland Housing and Settlement Strategy (SGHSS)<sup>1</sup> defines Venus Bay as one of a number of ‘coastal villages’ to which it applies the strategy “Contain Growth in accordance with the Victorian Coastal Strategy”.

It includes the following land supply and demand assessments that were referred to in submissions and evidence:

**Figure 6 Existing land supply**

	TZ	LDRZ	TOTAL
Existing Vacant Lots	692	0	692
Potential Lots	0	0	0
Sub-Total	692	0	692

**Figure 7 Projected housing demand**

POPULATION 2011	POPULATION 2031 *	TOTAL NEW OCCUPIED DWELLINGS 2011-2031	NEW OCCUPIED DWELLINGS REQUIRED ANNUALLY*
589	791	124	27

\*Based on Moderate Growth Scenario

<sup>1</sup> The SGHSS will be implemented by Amendment C90 that was on exhibition at the time this report was written. The Amendment does not directly affect Venus Bay.

The SGHSS also includes the following ‘recommendations’:

- *Local facilities and services commensurate with village and environs catchment.*
- *Coastal villages contain a high proportion of holiday homes, however small and vulnerable permanent populations require access to services.*
- *Explore opportunities to optimise use of existing facilities and take advantage of Venus Bay-Tarwin Lower Cluster.*
- *Enhance connections to larger centres for higher level services.*
- *Monitor the level of sea change movement to the settlement as a result of the conversion of holiday homes to permanent residences as well as construction of new permanent homes.*

**(v) Venus Bay Urban Design Framework (Connell Wagner, 2006)**

The Venus Bay Urban Design Framework (UDF) underpins the planning scheme provisions relating to Venus Bay, particularly Clause 21.15-9. The UDF identified the two long term growth areas shown on the Venus Bay – Estate 1 Framework Plan and defined the ‘development prerequisites’ listed in Clause 21.15-9.

The UDF includes these sites within the “Proposed Township Boundary” on the Structure Plan (included in the UDF as Figure 5.0), but for some reason they are not included within the Township Boundary shown on the approved Framework Plan in Clause 21.15-9.

**(vi) Guidelines for Coastal Management Authorities: Assessing development in relation to sea level rise (Department of Sustainability and Environment, June 2012)**

These guidelines set out relevant criteria and considerations to be taken into account by coastal Catchment Management Authorities (CMAs) in assessing development proposals that may potentially be affected by sea level rise. The guidelines focus on coastal inundation and are not relevant to development proposals on floodplains that are not affected by coastal inundation.

In terms of ‘evaluating proposals’ the guidelines include:

*Access to the development must not be through an area which in the opinion of the CMA poses an unacceptable hazard.*

The guidelines also define four ‘hazard categories’ that “are tied to the safety of people”:

- *Low - depth of floodwaters is less than 0.3 m*
- *Medium - depth of floodwaters is between 0.3 and 0.6 m*
- *High - depth of floodwaters is between 0.6 and 1.2 m*
- *Extreme - depth of floodwaters is more than 1.2 m.*

*Generally with regard to evacuations:*

- *A low hazard means that there are no significant evacuation problems.*
- *A medium hazard means that most adults and some children are likely to be able to wade to safety (at least for relatively short distances). Small*

*children may experience difficulties when depths exceed 0.5 m and most cars will float.*

- *A high hazard means that children and the elderly will have trouble wading to safety and evacuation by most vehicles will be impossible.*
- *An extreme hazard means that evacuation other than by boat or helicopter is not an option.*

**(vii) Guidelines for development in flood prone areas (WGCMA, 2013)**

These guidelines include seven objectives against which applications should be assessed, including:

*Objective 4 Site access: Development must not be allowed where the depth and flow of floodwaters along the access to or from the property is hazardous.*

They note that:

*People trying to enter or leave a property during a flood should not be endangered by deep or fast-flowing water. This objective considers driveways, roads and footpaths that link a property to a refuge area and aims to safeguard emergency workers as well as residents and visitors.*

They conclude that:

*A development should be refused if it relies on low-level access to and from the site and/or it is likely to increase the burden on emergency services and the risk to emergency personnel.*

In relation to ‘residential development’ and objective 4, the guidelines include:

*Approval is unlikely if along the access route and at site:*

- *depth > 0.3m or*
- *velocity > 1.5m/s or*
- *vxd > 0.3m<sup>2</sup>/s*

This applies to “connecting roads, driveways, footpaths, ingress and egress routes (eg. Connecting routes to higher ground/refuge areas)”.

**(viii) West Gippsland Floodplain Management Strategy 2018 – 2027 (WGCMA, 2017)**

The West Gippsland Floodplain Management Strategy (WGFMS) is the regional implementation of the Victorian Floodplain Management Strategy. It includes an assessment of regional flooding and a ‘strategy’ that includes an implementation plan and various actions.

The WGFMS was adopted by the CMA board in September 2017.

**(ix) Discussion**

These policy documents were discussed in submissions and evidence, and in questioning during the Hearing. There were differing views about the relevance and application of some of these documents, particularly those related to ‘flooding’. Council and Ms Sharp generally attributed the ‘flooding’ policies less weight than the WGCMA and submitted that they

should be considered as part of the broader policy framework, rather than in isolation and as determinative factors.

Having reviewed the flood related material, the Panel notes that it strongly reinforces the flood hazard policies in the SPPF and provides support and context for the WGCMA's submissions. However, the Panel also agrees with Ms Sharp's observations about the role of policy as described in *SMA Projects v Port Phillip CC [1999] VCAT 1312*:

*In the new planning system planning decisions are meant to be heavily influenced by policy, and in particular the consistent application of policy can avoid the adverse effects of incremental change which can occur through an ad hoc site by site decision making process. Nevertheless, policy must be applied in an intelligent and flexible way having regard to the entire strategic and policy framework affecting the future use of land while at the same time avoiding unfortunate outcomes in individual permit applications.*

The Panel agrees that flooding policies, while important, are part of a broader suite of considerations. As the Tribunal also noted in *SMA Projects v Port Phillip CC*:

- *Policy can never be more than a guideline, it should not be applied as if it is a mandatory limitation on the exercise of discretion provided for by the scheme.*
- *Policy must be considered in a framework which includes all the policies relevant to a proposal in the scheme.*

This broader suite of considerations includes policies relating to the viability and role of settlements, such as Venus Bay, including the local tourism industry.

### **3.3 Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction 11: Strategic Assessment of Amendments
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

The Panel is satisfied that the Amendment is generally consistent with these Directions, subject to the discussions of specific issues in chapter 4 of this report.

Ministerial Direction 13: Managing Coastal Hazards and the Coastal Impacts of Climate Change (MD13) applies to planning scheme amendments that provide for the rezoning of non-urban land for urban use and development where that land is:

- *Abutting the coastline or a coastal reserve.*
- *Less than 5 metres Australian Height Datum within one kilometre of the coastline including the Gippsland Lakes.*

MD13 requires that various matters be addressed in the explanatory report, including State policy, risks from sea level rise, flooding and erosion, and the siting and design of new development. It also requires that the views of the *"relevant floodplain manager and the Department of Sustainability and Environment be considered"*.



The explanatory report for Amendment C109 did not address MD13 and Council submitted that MD13 only applies when both ‘triggers’ are met. In the case of the Amendment site, it abuts a coastal reserve but is higher than the 5 metre Australian Height Datum.

The Panel’s reading of MD13 is that meeting either requirement triggers its application and that it should have been addressed in the explanatory report.

Nevertheless, the Panel is satisfied that the Panel process has provided the opportunity to address many of the matters required by the Direction, particularly in the context of the ‘development prerequisites’ that raise a range of relevant ‘strategic’ issues.

### **3.4 Planning Practice Notes**

#### **(i) Planning Practice Note 11 (PPN11) Applying for a Planning Permit under the Flood Provisions (August 2015)**

PPN11 provides guidance about making an application for a planning permit where flooding is a consideration and explains how an application will be assessed. It also identifies that “a development must be consistent with various matters, including *“any floodplain management strategy adopted by the CMA”*.”

It provides decision making guidance, including that *“A development should be refused if it is likely to cause an unacceptable increase in flood risk”* in various situations, including if:

- *it relies on low-level access to and from the site*
- *it is likely to increase the burden on emergency services and the risk to emergency personnel.*

The WGCMA relied on PPN11 in support of its submission, highlighting various factors that should be considered.

Council submitted that PPN11 was not relevant because it only applies to land that is subject to flooding and the site does not flood.

The Panel takes a broader view about the application of PPN11, and believes that the consideration of flood risk includes access issues that arise off-site.

#### **(ii) Planning Practice Note 36 (PPN36) Applying a Coastal Settlement Boundary (November 2016)**

PPN36 provides guidance about implementing a coastal settlement boundary for settlements outside Metropolitan Melbourne.

In relation to *“reviewing a coastal settlement boundary”* PPN36 includes:

*There may be a need to review a coastal settlement boundary over time due to emerging information about the environmental values of an area, increased infrastructure capacity or other strategic considerations.*

*Any change to a coastal settlement boundary should be the product of a comprehensive strategic review. This will involve assessment of progress against the established coastal settlement boundary in the context of other planning issues arising across the municipality.*

*The extent of the review will depend on the issues to be addressed. There must be adequate recognition and consideration of the Victorian Coastal Strategy including an analysis of the hierarchy of principles<sup>2</sup> for coastal planning and management and consistency with the strategy's objectives.*

PPN36 is triggered by the need to expand the Venus Bay 'Township Boundary' shown on the Venus Bay – Estate 1 Framework Plan at Clause 21.15-9 (Venus Bay). This change was not included in the exhibited Amendment but will need to be included in the adopted Amendment.

Although PPN36 was not considered by Council when preparing the Amendment, the Panel is satisfied that the Amendment and Panel processes have enabled the relevant issues to be considered and assessed.

The Panel also notes that the site is already identified as a long term urban expansion area (subject to meeting the 'development prerequisites') in the LPPF and the Venus Bay UDF, indicating that a change to the settlement boundary to include the site has been contemplated since at least 2006.

**(iii) Planning Practice Note 53 (PPN53) Managing coastal hazards and the coastal impacts of climate change (August 2015)**

PPN53 establishes that 'rezoning for urban purposes' should address various considerations, including:

- *the ability for a proposal to provide safe, allweather access during times of emergency*

Council submitted that PPN53 does not directly apply to the proposal because the subject site is not subject to flooding.

Consistent with its findings about PPN11, the Panel takes a broader view about the application of PPN53 and believes that the provision of safe access can be an off-site as well as an on-site issue. In any event, PPN53 highlights and reinforces the broader issues associated with providing safe access.

### **3.5 Discussion**

The range of relevant policy and guidance documents is extensive, and there were differing views about their relevance and the 'weight' that they should be given.

The Panel has taken a broad view about the application of these documents, particularly those related to the flooding issues raised by the WGCMA, because of the potential risks to community safety that are involved.

Council was satisfied that the proposal was broadly consistent with the policy context and relied on the explanatory report to explain the strategic justification for the Amendment. Council also highlighted the broader community benefit that will be derived from retaining the caravan park.

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<sup>2</sup> Principle 4 is: Ensure development on the coast is located within existing modified and resilient environments where the demand for development is evident and any impacts can be managed sustainably.

Ms Sharp relied on the evidence of Mr Glossop who assessed the proposal against the Act, the SPPF and LPPF. He concluded that it was strategically justified, particularly in terms of the role of Venus Bay, the significance of tourism and the need to satisfactorily address various environmental issues.

The Panel is satisfied that there is broad strategic support for the proposal, particularly the policies that support the role of Venus Bay and the community benefits derived from supporting the continued operation and development of the Caravan Park. However, submissions and evidence raised various issues that are discussed in the following chapter.

## 4 Issues

### 4.1 Flooding

#### (i) The issue

The issue is whether the periodic inundation of the vehicular access to Venus Bay should preclude the LDRZ and TZ rezonings, and associated subdivision from proceeding.

This issue was raised by the WGCMA. Flooding is also one of the ‘development prerequisites’ in Clause 21.15-9 requiring that “*expansion into the long term development areas*” should not occur until:

- *further investigation is undertaken to confirm the extent of potential problems associated with acid sulfate soils and **flooding*** (Panel’s emphasis)

The only public road access to Venus Bay is the Inverloch–Venus Bay Road that approaches Venus Bay from Tarwin Lower to the east. This section of road is located within the Tarwin River/Anderson Inlet coastal river flat and is subject to flooding that cuts road access to Venus Bay. This area (including the road) is subject to the Land Subject to Inundation Overlay that was introduced by Amendment C87 and implements the Tarwin Lower Flood Study (2007).

It was generally agreed that increasing the height of the Inverloch–Venus Bay Road above the flood level or providing an alternative access would address the WGCMA’s concerns. In this context, Council sought advice from VicRoads about the security of, or any upgrades to, the Inverloch–Venus Bay that might be relevant to flooding issues. VicRoads did not respond by the time of the Hearing and the Panel has proceeded on the basis of the current road level and configuration.

The Panel notes that the Amendment site is not subject to riverine or coastal flooding and is not subject to the LSIO – the flooding issue is confined to the Inverloch–Venus Bay Road.

#### (ii) Evidence and submissions

The WGCMA is the floodplain manager for the West Gippsland region, including the Shire of South Gippsland, and was represented at the Hearing by Mr Dunn who called evidence from Mr Cawood.

The WGCMA objected to:

- the proposed LDRZ rezoning and the associated 6 lot subdivision
- the TZ rezoning of proposed lots 7 and 8 and the associated subdivision.

Mr Dunn submitted that the creation of 8 additional residential lots and future dwellings:

*...represents an intensification of the flood risk in this area as the 8 new lots would rely on low level access via Inverloch-Venus Bay Road. This low-level access is prone to flooding under current climatic conditions from coastal storm surge inundation as well as riverine flooding.*

Mr Dunn highlighted that floodwater depth and velocity create the most hazard.

Mr Dunn advised that the WGCMA seeks to achieve “*practical outcomes*” that are consistent with the objectives of its guidelines. He also advised that the WGCMA did not object to applications for dwellings in the existing ‘town area’, recognising that a development expectation attached to existing vacant lots in the town area. In contrast, he submitted that Amendment C109 seeks to enlarge the area of the town and create ‘new’ residential development opportunities.

Mr Dunn provided an overview of the various planning scheme provisions, Victorian Civil and Administrative Tribunal (VCAT) decisions<sup>3</sup> and policy and guidance documents, including the:

- Victorian Floodplain Management Strategy
- West Gippsland Floodplain Management Strategy
- WGCMA Guidelines for development in flood prone areas
- South Gippsland Shire Flood Emergency Plan.

In relation to the VCAT decisions, the Panel notes that while they highlight the importance of flooding policy in planning decisions, the nature and circumstances of those applications are quite different and less complex than those involved in this proposal.

Mr Dunn relied on the evidence of Mr Cawood who provided an overview of flood processes in relation to the Inverloch-Venus Bay Road and the depth, velocity and frequency of flooding.

The key elements of Mr Cawood’s evidence were that:

- For a 1% Annual Exceedance Probability (AEP) riverine flood event, the road will be “*wetted for around 120 hours (i.e. 5 days) and flooded to a depth of more than 300mm at the low points for roughly 75 hours (i.e. 3 days) or perhaps longer*”.
- For a 1% AEP storm surge event, the road will be “*substantially wetted for around 24 hours (i.e. 2 days) and flooded to a depth of more than 1m for a few hours every 12 hours or so*”.
- Sea level rise associated with climate change “*is estimated to cause more severe flooding, raising levels by up to 800mm during the 1% AEP event*”.
- Flood velocities on the river flats are “*typically around 0.2m/s or less*” although the velocity over the road “*could be expected to be higher due to what might be loosely termed “the weir effect”*”. Mr Cawood ‘speculated’ that this might be in the range of 1 to 1.5 metres per second (m/s).
- In a 1% AEP flood event “*access presents as extreme hazard while the period of isolation presents as high hazard*”.
- The flood forecast and warning system is limited, a situation that he rated as “*extreme hazard*”.

Mr Cawood’s risk assessment also addressed ‘vehicle and people safety’ and ‘impact on emergency services personnel’, and he submitted that:

- the ‘business case’ for installing a local flood warning service for the Tarwin River is not strong

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<sup>3</sup> WGCMA v South Gippsland SC [2017] VCAT 63, Crawford v Surf Coast SC [2017] VCAT 1660, Rizza v Wellington SC [2013] VCAT 1475 and Walsh v Bass Coast SC [2015] VCAT 1454

- the State Emergency Service (SES) and Melbourne Water do not support ‘shelter in place’ in relation to flooding.

He concluded that:

- *Creation of the additional lots will give rise to an increase in flood risk. This is contrary to current policy and accepted good floodplain management practice wherein the growth in flood risk is prevented by limiting the frequency of exposure of new development and its inhabitants to hazardous flood situations;*
- *The flood risk associated with access to and egress from Venus Bay cannot be adequately managed;*
- *An extreme flood hazard category is appropriate; and*
- *Subdivision should not occur.*

Mr Dunn’s assessment of the proposal concluded that:

- *It is contrary to the Planning Scheme under existing flood conditions.*
- *The Site is inappropriate for intensification due to the significant flood hazard over its access.*
- *The exposure of additional people to the significant flood hazard represents an unacceptable increase in flood risk and does not represent orderly planning of this area when considered against the multitude of flood provisions and other relevant policies under the South Gippsland Planning Scheme.*
- *While not considered in detail as part of this submission it is likely that climate change induced sea level rise will significantly increase the existing flood risk and is further justification for not supporting the proposed amendment and planning permit.*

Council accepted that flooding of the Inverloch-Venus Bay “is relevant to the Amendment and does present some risk”, but submitted that “the aim of planning is not to avoid all risk” - planning should “assess risk in a balanced way to decide whether it is acceptable having regard to a broad range of considerations”.

Council’s support for the proposal reflected its ‘balancing’ of a range of considerations, including:

- *the Subject Land and Venus Bay township more generally will not be inundated during the 1% AEP flood event;*
- *unobstructed road access to Tarwin Lower and beyond is maintained up to and including the 2% AEP flood event;*
- *according to Mr Bishop, it would only be the 1% AEP flood event that would result in the Inverloch-Venus Bay Road becoming impassable;*
- *according to Mr Bishop, there would be at least 12 hours from the peak of the Tarwin River at Meeniyan before the road access to and from Venus Bay would be cut in the 1% AEP flood event;*
- *prior to the flood peak at Meeniyan, the Bureau of Meteorology will issue severe weather warnings for significant storm events and issue a Flood Watch for the region to notify the community of a potential flood threat;*

- *depending on the likelihood of flooding, the SES will set up an incident control centre to coordinate community messaging;*
- *in the event of a 1% AEP flood occurring, the road access would be cut for approximately 24 hours but up to 48 hours;*
- *there would be no loss of water supply (Venus Bay is on tank water);*
- *there is no record of power loss occurring in Venus Bay as a result of flooding;*
- *Venus Bay has a general store, a number of cafes, a permanently stationed CFA vehicle, a first response medical unit and many safe places to land a helicopter in an emergency;<sup>4</sup>*

Council concluded that although the closure of the road would be an “*inconvenience*”, it did not represent “*unreasonable risk*”.

As discussed in the following section, Council provided advice on the number of vacant lots and recent development rates for dwellings. In the context of the WGCMA submission, Council noted that Venus Bay has the capacity to accommodate “*almost 700 additional dwellings*” on zoned land within the existing town boundary and that an additional 8 lots would be a “*very marginal increase*” in overall land supply, equating to a “*0.35%*” increase.

Council also expressed concern that if the WGCMA’s position was taken to its “*logical conclusion*” it would place a “*de facto moratorium on any new development in Venus Bay*”.

Ms Sharp submitted that the WGCMA’s objections were “*overly cautious*” having regard to:

- a) *The very low frequency of the risk occurring given the Accessway will begin to be flooded during infrequent events of less than a 2% chance of being equalled or exceeded in any given year;*
- b) *The 1.5 - 2 days warning time, with likely 12 hours minimum of a clear messaging regarding the need to evacuate if the Accessway is predicted to flood;*
- c) *The limited period of time that the Accessway would be flooded of no more than 2-2.5 days;*
- d) *The Site and Venus Bay itself will not flood;*
- e) *Appropriate services (such as food, drink, water, electricity, emergency CFA and medical assistance) will be available in the Venus Bay township if the Accessway is flooded;*
- f) *Flood emergency procedures that can be put into place today; and*
- g) *Flood emergency procedures that can be developed in the future should statutory authorities determine that they are necessary due to either the existing conditions or an increase in frequency of flooding due to the effects of climate change.*

<sup>4</sup> Should an emergency evacuation become necessary, it is likely that air evacuation would be required whether or not the Inverloch-Venus Road was blocked.

Ms Sharp relied on the evidence of Mr Bishop who assessed the flood risk associated with the Inverloch–Venus Bay Road and advised that:

- Anecdotal information (including advice from the CFA) indicated that the road between Tarwin Lower and Venus Bay had not been cut by flooding in the past 55 years.
- The road would be cut in a 1% AEP design flood, but not in a 2% AEP design flood.
- Flood velocities across the road would be low, below 0.2 m/s.
- In a 1% AEP riverine design flood the road is predicted to inundate above 300 mm deep over a 500 metre section, of which approximately 280 meters is inundated to a depth greater than 0.5 metres.
- In a 1% AEP storm surge event, a 1.3 km section of the road would potentially be inundated to depths greater than 0.5 meters.
- The road is likely to remain unpassable for between 24 to 48 hours.

Mr Bishop also described the current flood warning systems as follows:

- There are no site-specific flood warnings provided by the Bureau of Meteorology (BOM) for Tarwin Lower or Venus Bay, but BOM issues ‘severe weather warnings’ for significant events and ‘flood watches’ for regions notifying of potential flood threats.
- If necessary, the State Emergency Service (SES) sets up an ‘incident control centre’.
- The Venus Bay community would be likely to receive a ‘severe weather warning’ and ‘flood watch’ at least 1.5 to 2 days prior to the *“initiation of flooding at Tarwin Lower”*.
- *“More definitive messaging”* would then be issued by the SES and it is likely that there would be at least 12 hours warning of the road access being cut.

He indicated that these warning processes would provide adequate time for people to evacuate, however ‘shelter in place’ would also be a reasonable response given that:

- Venus Bay, including the residential, community and commercial areas, would be well above the 1% AEP flood height
- people would have access to various community and commercial facilities
- infrastructure (other than road access) is not likely to be damaged
- a CFA vehicle is permanently stationed in Venus Bay as well as a first medical response unit (community emergency response team).
- there are several locations where a helicopter could land.

Mr Bishop also noted that access to the town might be achievable through adjacent farmland.

Mr Bishop noted that PPN11 suggests that an application should be refused if *“it is likely to result in danger to life, health and safety of the occupants due to flooding of the site”*, *“it relies on low-level access to and from the site”*, and *“it is likely to increase the burden on emergency services and the risk to emergency personnel”*.

He responded that:

- the site would not be flood affected
- the risk to people would be reduced by early evacuation or shelter in place



- although ‘low level access’ is not defined, it should not include the road between Venus Bay and Tarwin Lower given the infrequency of flooding (above a 2% AEP flood event)
- there would be no measurable additional burden placed on emergency services because of the proposal.

Mr Bishop also outlined additional risk management strategies that could be applied at the town level, including improved flood warning and messaging, greater community awareness and engagement about evacuation and ‘shelter in place’, and the possible provision of alternative emergency access between Tarwin Meadows Road and Venus Bay.

Mr Bishop submitted there is significant risk difference between a site or dwelling that is surrounded by floodwater and one that is a significant distance from the flood threat. He also added that the very low probability of flooding needs to be factored in, suggesting that if, for example, the road flooded every 2 years a different response would be warranted.

Ms Sharp also relied on the evidence of Mr Glossop, who observed that ‘*few planning processes are risk free*’ and that the Panel needed to assess whether the risks are manageable and if the management processes are in place. He added that flooding was only one factor, albeit an important factor, that needed to be considered in balancing the benefits and risks of the proposal, and that the Panel should have regard to the ‘net community benefit’ arising from the proposal.

In this context, Ms Sharp submitted that:

*The Courts, the Tribunal and panels have frequently upheld the principle that the concept of net community benefit is not about ideal outcomes but about acceptable outcomes arising from a balancing of the benefits and dis-benefits of a proposal. This is just as true in the context of planning scheme amendments as in permit applications.*

Mr Glossop also submitted that the WGCMA’s position would have broader ramifications for settlements affected by coastal flooding, potentially “*curtailing the future development of towns like Venus Bay*” and discouraging “*local tourism or the establishment or enhancement of existing businesses*”. He concluded that these outcomes would undermine the achievement of other State and local planning policies.

Ms Sharp concluded that the risk identified by the WGCMA is manageable, and that the proposal will have a broader community benefit.

### **(iii) Discussion**

#### **Flooding**

There was general agreement between Mr Cawood and Mr Bishop about the level and frequency of flooding, although they disagreed about riverine flood duration and velocity. These differences were largely a result of applying different assumptions. Without repeating the detail of this evidence, the Panel accepts the agreed evidence relating to the level and frequency of flooding.

In relation to flood duration, the Panel believes that it would be prudent to accept Mr Cawood's more conservative assessment for the purpose of assessing risk. Determining flood duration is not an exact science and, in the case of the Tarwin River, relies on a number of assumptions and incomplete information. As Mr Bishop conceded, Mr Cawood's assessment that the road could be inundated for 5 days was "*not unreasonable*" depending on the modelling inputs and assumptions that were used.

In relation to velocity, the Panel accepts Mr Bishop's evidence that the expected velocity is below 0.2 m/s, based on the Tarwin River Flood Study. Mr Cawood indicated that the velocity could be between 1 to 1.5 m/s because of the "*weir effect*" but he conceded that this assessment was speculative. The Panel does not have adequate evidence to establish that the velocity will be significantly greater than the 0.2 m/s indicated by Mr Bishop, although it accepts that the weir effect described by Mr Cawood might increase the predicted velocity.

On the basis of this evidence, the Panel accepts that the potential depth and duration of a 1% AEP flood constitute a hazard to the Venus Bay community and are relevant considerations in assessing the proposal.

There was general agreement about the description of existing flood monitoring and warning systems although there was some disagreement about their adequacy. From the material presented to the Panel it seems unlikely that a local flood warning and forecast service (as described by Mr Cawood) will be established in the foreseeable future. Nevertheless, the Panel accepts Mr Bishop's evidence that the current arrangements will provide adequate time for people to evacuate Venus Bay if necessary.

The Panel agrees that the proposal will result in an incremental increase in risk because of the additional population that might be resident in Venus Bay during a flood event, but also believes that that these risks are partly mitigated because:

- The Inverloch–Venus Bay Road will be flooded very infrequently (between the 1 and 2% AEP flood events).
- The existing flood warning systems will provide adequate time for people to evacuate Venus Bay.
- Venus Bay provides a legitimate opportunity for 'shelter in place' because it would not be flooded and has a range of community, commercial and emergency services.
- The risks associated with a settlement being isolated by flooding are different from and less immediate than the risks associated with a single or remote dwelling being isolated.

In addition, the Panel notes that:

- The proposal will result in a very small overall increase in the number of vacant residential lots (and dwellings) in Venus Bay.
- The incremental increase in risk is very small in the context of the number of vacant lots that currently exist and are likely to be developed in the future (refer to section 4.2) and the significant increase in population during holiday periods.
- Applying the LDRZ limits the subdivision and development potential of the site compared, for example, to applying the TZ.

- The site has been identified as one of two candidate areas for urban development since at least 2006, creating an understandable expectation that it will be developed, and potentially at higher density than currently proposed.
- There are broader benefits that will accrue from the proposal.

Council and Ms Sharp made lengthy submissions about broader community benefits that would result from the proposal, focussing on the continued operation of the Caravan Park.

Ms Sharp submitted that the proposal would formalise and provide a more suitable suite of planning scheme controls for the Caravan Park, facilitating its ongoing use and development. She also submitted that the proposal would:

- create 8 new lots in an area identified for urban expansion
- utilise 'surplus' land that has no agricultural use
- provide an acceptable outcome in terms of waste water treatment, bushfire, native vegetation, cultural heritage and flooding.

The Panel accepts that there would be a community benefit if the Caravan Park continues, but also notes that neither the Amendment nor the planning permit ensure its continuation. The Park could close tomorrow, regardless of what planning controls and approvals are in place.

Nevertheless, the Panel accepts that rationalising the extent of the Caravan Park site and applying a tailored zone will 'facilitate' its ongoing operation and further development. If this happens, the community benefit described by Council and Ms Sharp will eventuate.

On balance, the Panel is satisfied that the flooding of the Inverloch–Venus Bay Road does not preclude the proposal from proceeding. The Panel has reached this conclusion taking into account a broad range of factors, including the nature of the flood risk and the particular characteristics of the proposal and Venus Bay. The Panel expects that some of these factors might also have influenced the WGCMA's practice of not opposing applications for dwellings on existing lots in Venus Bay.

It follows that the Panel is satisfied that the proposal adequately addresses the flood related 'development prerequisite' in Clause 21.15-9.

Finally, although the Panel does not support the WGCMA's objection, it acknowledges that the WGCMA's position is consistent with its charter and the extensive policy and guidance documents related to flooding issues. Although Council and Ms Sharp described the WGCMA's position as 'overly cautious', it is entirely appropriate that the WGCMA prosecute the case for protecting the community from flood risks. However, as Ms Sharp also noted, the Panel is required to consider a broader range of matters beyond those raised by the WGCMA and to balance potentially competing policies.

### **Proposed section 173 agreement**

In response to the WGCMA submission, Council proposed to include a planning permit condition<sup>5</sup> requiring a s173 agreement that acknowledged potential flooding.

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<sup>5</sup> Proposed condition 6

The WGCMA did not support this approach, submitting that it was not an appropriate response to its *“duty of care to provide flood advice to the community”* and that it would *“circumvent the purpose of the relevant controls and considerations in the Scheme and would not be a proper planning outcome”*.

Mr Glossop submitted that the condition was unnecessary *“as risks of this sort are typically communicated using different media”*. However, he did not *“object”* to it being included on the permit.

The proposed condition seems to be a standard condition applied in circumstances that are different to those of the current proposal. It refers to *“coastal climate change and associated inundation”* but not to riverine flooding. It also refers to access roads under Council’s control and not roads controlled by VicRoads such as the Inverloch–Venus Bay Road.

The Panel does not believe that the condition, as drafted, adds any value or assists in addressing the flooding issues raised by the WGCMA and has deleted it from the recommended planning permit at Appendix C.

## **4.2 Land supply**

### **(i) The issue**

The issue is whether the existing supply of vacant residential lots, particularly low density residential lots, is adequate.

This issue was raised in submissions and is one of the ‘development prerequisites’ in Clause 21.15-9 requiring that *“expansion into the long term development areas”* should not occur until:

- *a significant proportion of vacant lots within the Township Zone and Low Density Residential Zone have been developed*

### **(ii) Evidence and submissions**

Peter Prysten and Sonia Zalucki submitted that Venus Bay *“does not face any land or property shortages”* and that *“extending Venus Bay is not required”*.

Pam Kokke queried why the development and the associated land clearing should proceed when *“there are so many for sale signs in Venus Bay”*.

Residential land supply and the potential lot yield from the proposal were discussed at length during the Hearing.

Ms Sharp submitted that:

- a) It is evident from the supporting urban design framework and the Housing and Settlement study that Venus Bay has experienced moderate housing growth over the last 35 years or more and that development of vacant lots for infill (generally detached dwellings) is occurring over time;*
- b) Whilst there are a number of smaller lots that are vacant within the Township Zone (692 lots in 2011), there are very few larger Low Density Residential lots with very few vacancies;*

- c) Venus Bay contains a large number of holiday homes and a small, but growing permanent population; both of which are expected and encouraged to develop over time;
- d) The Land falls within land identified for future residential growth in the Structure Plan;
- e) On this basis, and having regard to the Housing & Settlement Strategy 2013 ABS data, the first dot point requiring a “significant proportion” of vacant lots within the Low Design Residential Zone to have been developed, is met.

Ms Sharp relied on the evidence of Mr Glossop who noted that:

*... there are still a number of vacant lots in Venus Bay (the South Gippsland Housing and Settlement Strategy 2013 states that in 2013, Venus Bay contained 2,247 total lots with 692 lots being vacant). Nonetheless, the proposed area of LDRZ is less than half the size of the area indicated in Clause 21.15-9 and facilitates the development of only six lots. The Agenda of the Ordinary Council Meeting No. 416 – 27 September 2017 indicates that the town only has seven vacant lots within the existing LDRZ, which is modest.*

In terms of the broader lot supply within the TZ, Council provided the following assessment following the Hearing.

**Table 1 Venus Bay residential land supply**

Item	Estate 1	Estate 2	Estate 3 (RCZ)	RLZ
Total lots	1,620	1,003	33	6
Vacant lots <sup>6</sup>	527	365	3	5
Lots with Structures <sup>7</sup>	1,093	638	30	1

Council also provided information on the number of planning permits that have been issued for dwellings in Venus Bay:

- 2015 – 23 permits
- 2016 – 25 permits
- 2017 (part year) – 14 permits.

In relation to the potential lot yield, Council submitted that the LDRZ area would be unlikely to support more than the proposed 6 lots and that the scope to further subdivide the TZ lots was limited because of:

- the lack of reticulated sewerage (limiting the lot size to a minimum 4,000 sqm in the LDRZ)
- the proposed ‘building envelopes’

<sup>6</sup> Council advised that “Vacant lots were deduced by subtracting the number of lots with structures from the Total Lots”

<sup>7</sup> Council advised that “many vacant lots are tenements and some appear to be used as gardens associated with the tenement dwelling. This would indicate that the number of vacant lots readily available for development is lower than the raw figures suggest...”

- the ‘bushfire’ constraints associated with the Bushfire Management Overlay
- the ‘environmental’ constraints associated with the ESO7.

Council concluded that the additional lots represent “a 0.3% increase in the total number of lots”.

Council also advised that it would support a planning permit condition requiring a s173 agreement that the land cannot be further subdivided and that there can only be one dwelling on each lot.

Council concluded that the land supply ‘development prerequisite’ was satisfied because the number of additional lots being created was very small and the supply of vacant LDRZ lots was limited.

### **(iii) Discussion**

During the Hearing, the Panel was provided with various Council assessments of vacant land supply in Venus Bay, leading it to seek a review of this material by Council. The further assessment was provided after the Hearing and confirms that there is a significant reserve of vacant residential lots within the TZ, but few vacant or uncommitted LDRZ lots.

Recent permit approvals for dwellings also suggest that there is ongoing demand for new houses and that development of vacant lots will continue for some time. As noted earlier, the WGCMA advised that it does not object to applications for dwellings on existing lots, suggesting that flooding will not be an impediment to continued housing development in existing zoned areas.

The proposal will not add significantly to the existing supply of lots, perhaps providing for an additional 10 or so dwellings based on the six LDRZ lots and the proposed TZ lots, some of which might be capable of further subdivision or multiple dwellings. In terms of land supply, the proposal will satisfy less than 6 months demand based on recent approvals.

The Panel also notes that the Amendment includes the rezoning of some existing TZ land (Lot 143B) to LDRZ, potentially ‘offsetting’ some of the ‘new’ TZ.

Based on this assessment, the Panel is satisfied that the provision of additional LDRZ lots can be justified because of the limited supply of vacant and uncommitted lots, and that the small number of additional TZ lots is inconsequential in terms of overall supply.

The Panel does not believe that a s173 agreement to restrict further subdivision and the number of dwellings is necessary because of the existing planning scheme constraints that apply.

The Panel also concludes that the proposal is appropriate in the context of the land supply ‘development prerequisite’ in Clause 21.15-9.

## 4.3 The environment

### (i) The issue

The issue is whether the proposal will have negative environmental impacts.

Environmental issues were raised in submissions and are also included in the ‘development prerequisites’ in Clause 21.15-9 that require that *“expansion into the long term development areas”* should not occur until:

- *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.*

### (ii) Submissions

Maree Ryan raised concerns about the removal of native vegetation and the loss of habitat.

Peter Prysten and Sonia Zalucki submitted that the site is too close to the *“Coastal Marine Park”* and that the area is *“very fragile”*.

Pam Kokke opposed the *“loss vegetation and habitat”* in an *“environmentally sensitive area”*, including issues associated with seepage from septic tanks and Coastal Acid Sulfate Soil (CASS).

In relation to the foreshore reserve, Council noted that the proposed subdivision includes *“building envelopes for all lots which abut the foreshore reserve”* and that *“setbacks in excess of 30 metres”* from the reserve boundary will be required.

In relation to native vegetation and habitat, Council acknowledged that *“there will be some loss of vegetation as a result of the subdivision”* but concluded that the loss was *“reasonable”*. Council also noted that *“conditions 18 to 21, which have been required by the Department of Environment, Land, Water and Planning, will ensure that the removal of vegetation will be offset”*.

In relation to cultural and heritage sites, Council noted that the site has been investigated for, and does not have any, *“sites of recognised cultural and heritage significance”*.

In relation to CASS, Council provided a copy of the Department of Primary Industries Coastal Acid Sulfate Soil Hazard map<sup>8</sup> (document 6) that indicates the site is outside the *“estimated extent of probable acid sulfate soils”* which is generally to the north of Venus Bay Estate 1. This seems to be consistent with the similar designation shown in the Venus Bay UDF.<sup>9</sup> Mr Griffiths also noted that the ‘sandy’ characteristics of the site were not typically associated with CASS and that the CASS reference in the ‘development prerequisites’ was directed at the *“Potential Long Term Expansion Investigation Area”* to the south-east of Venus Bay Estate 1, rather than the subject site.

<sup>8</sup> Wonthaggi T8020, July 2002

<sup>9</sup> Existing Conditions Context Analysis Figure 1.0

Ms Sharp noted that although the site was in an environmentally sensitive area, the only 'environmental' issue raised by any of the relevant authorities was the flooding issue raised by the WGCMA.

Ms Sharp noted that the presence of CASS had not been raised by Council or any agencies and she provided a copy of a bore test undertaken on the site in 1977 that identified 'sandy' soils to a depth of 26 metres.

Ms Sharp also advised that:

- a cultural heritage 'due diligence' report was submitted with the proposal and no issues were raised
- a flora and fauna assessment was submitted with the proposal, and that vegetation offset requirements will be addressed through permit conditions.

### **(iii) Discussion**

#### **Vegetation and habitat**

The Panel notes that the application was accompanied by a 'Flora and Fauna' assessment dated March 2017 that identified native vegetation offset requirements, but did not identify any other issues arising from the relevant Commonwealth and State environmental legislation.

As some submitters noted, the proposal will result in the loss of vegetation and habitat, but this will be offset in accordance with DELWP's requirements.<sup>10</sup> The Panel also notes that the proposed building envelopes were delineated having regard to a number of 'environmental' factors, including minimising the loss of native vegetation and habitat.

In addition, the area to be zoned LDRZ will be subject to the ESO7 that has extensive permit requirements, environmental objectives and decision guidelines relating to native vegetation.

The Panel is satisfied that the limited loss of native vegetation and habitat should not preclude the proposal from proceeding, particularly in light of the planning permit conditions requiring vegetation offsets.

#### **Cultural and heritage sites**

The Panel notes that the application was accompanied by a 'Desktop Due Diligence' heritage assessment dated 7 July 2016. The report concluded that:

- no further investigations in relation to aboriginal heritage are required
- there are no historic sites on the site.

#### **Coastal acid sulfate soil**

Although the Panel was not provided with any definitive evidence that the site is not subject to CASS, the anecdotal evidence and characteristics of the site suggest that CASS is not present. In the unlikely event that the site does contain CASS, this would need to be addressed as part of future development.

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<sup>10</sup> Conditions 19 - 22



## Conclusion

The Panel is satisfied that the environmental issues raised in submissions and raised in the 'development prerequisites' have either been addressed or are not an impediment to approving the proposal.

### 4.4 Traffic

#### (i) The issue

The issue is whether the proposal will create traffic issues, particularly along Inlet View Road.

#### (ii) Evidence and submissions

Mare and Greg Ananijevski supported the proposal but raised traffic safety concerns associated with sight lines along the Inlet View Road, specifically in relation to proposed lots 1 and 2. They submitted that lot 2 should be accessed from the internal road and not Inlet View Road, and that lot 1 should retain the existing access.

Pam Kokke raised a general concern about increased traffic along Inlet View Road.

Council noted that access points will be subject to future approval (cross over permits) and that lot 2 can be accessed by the proposed internal road if required. The Panel was also advised that Council's traffic engineers *"...raised no concerns about the proposed access arrangements subject to specific conditions being imposed on any planning permit. These conditions are proposed on the draft planning permit."*

Ms Sharp submitted that traffic and access issues were capable of being addressed. Mr Glossop, while conceding that he was not a traffic engineer, noted that it would *"... appear that each lot has a satisfactory road frontage which will facilitate convenient access. Inlet View Road is a local road and six additional dwellings is unlikely to impact upon its safety or functionality"*.

#### (iii) Discussion

The proposed development will not generate a significant level of traffic and the Panel is satisfied that suitable access and traffic management arrangements can be put in place, subject to detailed assessment and approval by Council, and consistent with the proposed planning permit conditions.

### 4.5 Reticulated water and sewerage

#### (i) The issue

The issue is whether the development should proceed in the absence of reticulated water and sewerage.

Although this issue was not directly raised in submissions, one of the 'development prerequisites' in Clause 21.15-9 requires that *"expansion into the long term development areas"* should not occur until *"reticulated water and sewerage is available"*.

**(ii) Submissions**

Council advised that reticulated water and sewerage were not available within Venus Bay and there were no plans to provide them. The town is reliant on tank and bore water, and on-site waste water disposal systems.

Council submitted that the reticulated sewerage 'prerequisite' was not relevant given that the proposed lot sizes in the LDRZ were capable of treating waste water on site.

Ms Sharp submitted:

*This prerequisite cannot be viewed as a prohibition on expansion on land already identified for long term growth in Venus Bay, given the LDRZ specifically contemplates low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater;*

*The appropriate question to ask is whether the proposed lots are capable of treating and retaining all waste water in accordance with the SEPP (Waters of Victoria);*

*This can be met by the Proposal and accordingly, the second dot point is satisfied;*

**(iii) Discussion**

The reticulated water and sewerage 'prerequisite' came from the Venus Bay UDF. The UDF identified various environmental problems arising from inadequate and failed septic systems in the town and noted the lack of reticulated water.

While the UDF discusses the 'environmental' benefits of providing reticulated sewerage, the discussion relating to reticulated water is comparatively brief. The UDF concluded that reticulated water should be provided in Venus Bay largely because of its size and population.

The Panel agrees with Council and Ms Sharp that the provision of reticulated sewerage to the LDRZ subdivision is unnecessary given the size of these lots (ranging from 4,160 to 5,778 sqm) and the commensurate capacity to treat waste water on-site. The two TZ lots (lots 7 and 8) are 1,371 and 4,875 sqm respectively, and although lot 7 is less than 4,000 sqm (the minimum lot size typically associated with on-site waste water disposal), the permit contains extensive conditions related to waste water disposal. For these reasons, the Panel does not believe that the lack of reticulated sewerage is an impediment to the proposal proceeding.

The Panel agrees that the provision of reticulated water to the town (and the subject site) would be a positive outcome but is satisfied that because of the small number of lots, the lack of reticulated water is not a reason to refuse the proposal. The Panel also notes the submissions from Council and Ms Sharp that the failure to meet one of the 'prerequisites' need not preclude the Amendment from proceeding.

In reaching this position, the Panel notes that if the amendment and permit provided for more intensive subdivision and development, it may have adopted a different position in relation to these matters. The Panel has taken the view that the small scale and low density nature of the proposal does not exacerbate the concerns discussed in the UDF about providing reticulated services.

## 4.6 Other issues

### (i) Drafting

Mr Glossop reviewed the drafting of the SUZ7 and planning permit conditions, and included a revised version of the SUZ7 in his evidence report. He also recommended some minor changes to the planning permit conditions. The proposed changes mainly involve drafting and technical matters and do not significantly change the intent of the schedule or permit. The changes were discussed during the Hearing, and Council and Ms Sharp did not oppose Mr Glossop's recommendations.

The Panel supports the proposed changes and has included them in the recommended SUZ7 and planning permit conditions shown at Appendices B and C of this report.

Mr Glossop also queried the proposed 'building and works' exemptions from notice and review in the SUZ7 and suggested that these exemptions be reviewed by the Panel. The exemptions apply to all of the site, except where the 'buildings and works' are within 10 metres of the site's boundary. Mr Glossop submitted that this "*tipped the ledger*" in favour of the Caravan Park owner rather than the adjoining landowners. Although the issue was not raised in submissions, Council invited the Panel to comment on the provision.

The Panel agrees with Mr Glossop's observation and believes that the 'exemptions' are too generous, particularly in light of the extensive interface with the coastal reserve and existing houses in the area. For this reason, the Panel recommends that the area excluded from the exemptions be increased from 10 to 30 metres. Although this is still a somewhat arbitrary figure, it will provide a more appropriate opportunity for adjoining landowners to be involved in the permit process and reflect a more generous potential 'buffer area'. This change is included in the recommend schedule at Appendix B.

### (ii) Consequential changes

The Venus Bay - Estate 1 Framework Plan at Clause 21.15-9 (Venus Bay) requires consequential changes to reflect the rezoning and subdivision of the site. The need to do this was identified in the DELWP letter of authorisation, but the necessary changes were not included in the exhibited Amendment.

The changes include:

- including the site in the "Township Boundary"
- replacing the "Potential Long Term Urban Expansion Investigation Area" designation and including it within the "Existing Urban Development" designation
- modifying the "Caravan Park" designation to reflect the extent of the SUZ7.

Council should also review whether other consequential changes to Clause 21.15-9 are necessary and, if so, include them in the Amendment.

### (iii) Sale of the Council reserve

The proposal includes a former Council reserve (Lot 143B) that was sold to the proponents. The lot forms part of the proposed subdivision and the Amendment proposes to rezone it from TZ to LDRZ.

Peter Prysten, Sonia Zalucki and Pam Kokke expressed various concerns about the sale of this lot and queried whether the process had been lawful.

Council noted that the sale of the lot was unrelated to the Amendment and was consistent with “*Council’s Strategic Land Review*” that identified a number of reserves, including Lot 143B, that were surplus to Council’s needs. Council advised that:

*The former reserve has been sold by Council after following the formal process under the Local Government Act 1989, which included public consultation. Council did not receive any submissions received from the public opposing the proposed sale of the land.*

The Panel notes Council’s advice and agrees that the sale of the lot is unrelated to its assessment of the merits of the proposal.

**(iv) Public open space**

Peter Prysten and Sonia Zalucki raised concerns about the proposed planning permit condition that requires “*a 5% cash in lieu contribution for public open space*”. Council noted that this is consistent with Clause 52.01 (Public Open Space Contribution and Subdivision) - a provision that applies throughout Victoria.

Clause 52.01 provides for an applicant to “*...make contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both).*”

The Panel is satisfied that Council’s requirement for a ‘cash in lieu contribution’ is appropriate given the extent of public land in the area.

## 5 Recommendations

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

- A1 Adopt Amendment C109 to the South Gippsland Planning Scheme as exhibited, subject to the following:
  - 1 Include the Special Use Zone Schedule 7 included at Appendix B of the Panel's report.
  - 2 Include any appropriate consequential changes to Clause 21.15-9 (Venus Bay), including the Venus Bay – Estate 1 Framework Plan.
- P1 Approve Planning Permit 2016/180 in the form included at Appendix C of the Panel's report.

## Appendix A Document list

No.	Date	Description	Tabled by
1	28/11/2017	Part B submission	Council
2	28/11/2017	Appendices	Council
3	29/11/2017	DELWP Authorisation	Council
4	29/11/2017	Council email to DELWP Gippsland office 17/11/2017	Council
5	29/11/2017	Copy of letter of withdrawal from G Blaauw	Council
6	29/11/2017	Venus Bay Estate 1 Context Analysis and Site Analysis maps, Venus Bay UDF DPI Coastal Acid Sulfate Soil Hazard map, Wonthaggi T8020	Council
7	29/11/2017	Supreme Court [2010] VSC 583	J Sharp
8	29/11/2017	Lonsdale Golf Course Redevelopment EES, Greater Geelong Planning Scheme Amendment C67, Planning Permit Application 1313/2009, Inquiry Report, 30 May 2012	J Sharp
9	29/11/2017	Colac Otway Planning Scheme Amendment C29, Panel Report, July 2007	J Sharp
10	29/11/2017	Venus Bay caravan park planning permit, 28 September 1977	J Sharp
11	29/11/2017	Submission	J Sharp
12	29/11/2017	Submission	A Dunn
13	29/11/2017	WGCMA Flood Guidelines, February 2013	A Dunn

# Appendix B Recommended Special Use Zone Schedule 7

--/-- **SCHEDULE [7] TO THE SPECIAL USE ZONE**

Shown on the planning scheme map as **SUZ7**

**CAMPING AND CARAVAN PARK**

**Purpose**

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To recognise and provide for the ongoing use of the site for the Camping and Caravan Park and related tourism facilities.

To ensure that the development of the Camping and Caravan Park and its facilities takes place in an orderly and proper manner and does not cause an unreasonable loss of amenity to the surrounding area.

To provide for sustainable tourism activities and a range of accommodation opportunities which complement the Camping and Caravan Park use.

**1.0 Table of uses**

--/-- **Section 1 - Permit not required**

<b>Use</b>	<b>Condition</b>
<b>Apiculture</b>	Must meet the requirements of the Apiary Code of Practice, May 1997.
<b>Camping and caravan park</b>	
<b>Extensive Animal Husbandry</b>	
<b>Minor utility installation</b>	
<b>Caretaker's house</b>	Must be the only Caretaker's house on the land.
<b>Informal Outdoor Recreation</b>	Must be in conjunction with the <a href="#">Camping and Caravan Park</a> .
<b>Search for stone</b>	Must not be costeaning or bulk sampling.
<b>Telecommunications Facility</b>	Buildings and works must meet the requirements of Clause 52.19.
<b>Any use listed in Clause 62.01</b>	Must meet the requirements of Clause 62.01

**Section 2 - Permit required**

<b>Use</b>	<b>Condition</b>
<b>Agriculture (other than Apiculture and extensive animal husbandry)</b>	
<b>Backpacker's Lodge</b>	Must be used in conjunction with the Camping and Caravan Park
<b>Carpark</b>	Must be used in conjunction with the Camping and Caravan Park



<b>Child care centre</b>	Must be used in conjunction with the Camping and Caravan Park
<b>Convenience shop</b>	
<b>Hostel</b>	
<b>Minor sports and recreation facility</b>	
<b>Office</b>	Must be used in conjunction with the Camping and Caravan Park
<b>Restaurant</b>	
<b>Restricted recreation facility</b>	
<b>Take away food premises</b>	
<b>Utility installation (other than Minor utility installation)</b>	
<b>Renewable energy facility</b>	
<b>Any other uses not in Section 1 or 3</b>	

### Section 3 - Prohibited

Use
<b>Accommodation (other than Caretaker's house, Camping and Caravan Park, Backpacker lodge and Hostel)</b>
<b>Adult bookshop</b>
<b>Brothel</b>
<b>Crematorium/Cemetery</b>
<b>Education Centre</b>
<b>Earth and energy resources industry</b>
<b>Fuel Depot</b>
<b>Industry</b>
<b>Leisure and recreation (other than Minor sports and recreation facility and Informal Outdoor Recreation)</b>
<b>Place of Assembly</b>
<b>Retail premises (other than Restaurant and Convenience shop)</b>
<b>Research centre</b>
<b>Service station</b>
<b>Veterinary centre</b>
<b>Warehouse</b>

## 2.0 Use of land

--/--

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- The purpose of the use and the type of activities to be carried out.

- How the proposed use supports, or is ancillary to the use of the land for a Camping and Caravan Park.
- The likely effects, if any, on adjoining land, including but not limited to;
  - noise levels;
  - traffic;
  - the hours of delivery and dispatch of goods and materials (including garbage collections);
  - hours of operation; and,
  - potential light spill.
- How the proposed use will respond to the bushfire risk;

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

### General issues

- The need to protect the ongoing use of the Camping and Caravan Park and to support appropriate ancillary uses complementary to the [Camping and Caravan Park](#) ~~and camping ground~~.
- The capability of the land to accommodate the proposed use in relation to existing infrastructure and services.
- The effect of traffic to be generated on roads.
- Any impact upon the existing use of the land and the surrounding area especially adjoining residential areas and public use areas.

### Environmental issues

- The capability of each lot and/or area of common property to treat and retain all waste water on-site in accordance with the State Environment Protection Policy (Waters of Victoria).
- The impact of the proposed use on the natural physical features and resources of the area, in particular on vegetation, soil and water quality.
- The impact of the proposed use on flora, fauna and landscape.
- The impact of the proposed use on the adjoining foreshore areas.
- The need for the planting of additional locally indigenous vegetation to complement the existing vegetation on the site and adjoining foreshore areas.
- Whether the proposed use adequately responds to bushfire risk.

## 3.0 Subdivision

--/--

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A report which explains how the proposed subdivision promotes the purpose of the zone and is supported by the decision guidelines of the Planning Scheme and the zone. The report must address how the subdivision will facilitate the ongoing use of the land for a Camping and Caravan Park.
- A Bushfire Management Plan that shows any bushfire mitigation measures to be relied upon in the subdivision of the land.
- A plan drawn to scale which shows for each lot:
  - The location and dimensions of existing development, car parking areas and driveway access.

- Proposed building envelopes.
- The natural topography and features of the site.
- The location and dimensions of wastewater treatment and disposal areas.
- Any areas of common property.
- A land capability assessment which demonstrates that each lot is capable of treating and retaining all waste water in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

#### **General issues**

- The need to protect the ongoing use of the Camping and Caravan Park and to support appropriate ancillary uses complementary to the [Camping and Caravan pPark](#) ~~and camping ground~~.
- The capability of the land to accommodate the proposed development in relation to existing infrastructure and services.
- The effect of traffic to be generated on roads.
- Any impact upon the existing use of the land and the surrounding area especially adjoining residential areas and public use areas.

#### **Environmental issues**

- The capability of each lot and/or area of common property to treat and retain all waste water on-site in accordance with the State Environment Protection Policy (Waters of Victoria).
- The impact of the proposed subdivision on the natural physical features and resources of the area, in particular on vegetation, soil and water quality.
- The impact of the proposed subdivision on flora, fauna and landscape.
- The impact of the proposed subdivision on the adjoining foreshore areas.
- The need for the planting of additional locally indigenous vegetation to complement the existing vegetation on the site and adjoining foreshore areas.
- Whether the proposed subdivision adequately responds to the bushfire risk.

#### **4.0 Buildings and works**

No permit is required to construct a building or construct or carry out works for the following:

- An alteration or extension to an existing building provided the floor area of the alteration or extension is not more than 10 square metres.
- A rainwater tank.

The following application requirements apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- A report which explains how the proposed development promotes the purpose of the zone and how the proposed development is supported by the decision guidelines of the Planning Scheme and the zone.
- A report which addresses how the buildings and works will respond to ~~the~~ bushfire risk.
- A Site Context Plan drawn to scale which shows:
  - The boundary and dimensions of the site.

- The natural topography and features of the site.
- Adjoining roads, tracks and pathways.
- The location, height and purpose of surrounding buildings and works.
- Detailed Architectural Plans drawn to scale which show:
  - Floor and roof plans.
  - Elevation drawings showing the colour, materials of all buildings and works.
  - Proposed landscape areas.
- A land capability assessment which demonstrates that the treatment and retainment of all waste water is in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.

An application for buildings and works is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act except where new buildings and works are proposed to be located 30 ~~40~~ metres or less from the boundary of the Special Use Zone.

The following decision guidelines apply to an application for a permit under Clause 37.01, in addition to those specified in Clause 37.01 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

#### **General issues**

- The need to protect the ongoing use of the Camping and Caravan Park and to support appropriate ancillary uses complementary to the Camping and Caravan Park.
- The capability of the land to accommodate the proposed development in relation to existing infrastructure and services.
- The effect of traffic to be generated on roads.
- Any impact upon the amenity of the existing use of the land and any impacts on the amenity of the surrounding area especially the interface with adjoining residential areas and other public use areas.

#### **Environmental issues**

- The capability of each lot and/or area of common property to treat and retain all waste water on-site in accordance with the State Environment Protection Policy (Waters of Victoria).
- The impact of the proposed development on the natural physical features and resources of the area, in particular on vegetation, soil and water quality.
- The impact of the proposed development on flora, fauna and landscape.
- The impact of the proposed development on the adjoining foreshore areas.
- The need for the planting of additional locally indigenous vegetation to complement the existing vegetation on the site and adjoining foreshore areas.
- Whether the proposed development adequately responds to the bushfire risk.

#### **Design and siting issues**

- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads and vistas.
- The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- The need for building materials to be non-reflective or of colours that complement the surrounding landscape.

- Whether the proposed development maintains the landscape significance of the area.
- The extent of landscaping proposed around buildings and throughout the site, including the use of indigenous species to minimise the visual impact of buildings.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the proposed development will require traffic management measures.
- Access points for of vehicles, cyclists, pedestrians, and service vehicles (including deliveries, waste removal, emergency services and public transport), and circulation around the site.
- The provision of car parking and bicycle parking.
- The need to ensure that any landscaping does not increase the risk from bushfire.

## **5.0 Advertising signs**

--/-- Advertising sign requirements are at Clause 52.05. All land located within the Camping and Caravan Park Special Use Zone is in Category 3.

## **Appendix C Recommended Planning Permit**

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# PLANNING PERMIT

GRANTED UNDER SECTION 96I OF THE  
PLANNING AND ENVIRONMENT ACT 1987

Permit No.: 2016/180

Planning scheme: South Gippsland Planning  
Scheme

Responsible authority: South Gippsland Shire  
Council

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**ADDRESS OF THE LAND:** Lot 1 PS800516 being 143B Inlet View Road Venus Bay; Lot 2 PS648056 and Lot 1 TP172550 being 113A Jupiter Boulevard Venus Bay

**THE PERMIT ALLOWS:** The subdivision of the land into 9 lots and removal of native vegetation in accordance with the endorsed plans

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

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## General Conditions

1. Prior to the endorsement of any plans, amended plans and information to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the permit. These plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application/~~other specified plans~~, but modified to show:
  - a) Revised indicative driveway locations and alignments to enable safe and reliable access at an appropriate grade to access the approved building envelopes in accordance with Council's engineering requirements.
  - b) Amended layout plan for Ockenga Court indicating an appropriately sized turning area to safely cater for emergency and waste collection vehicles, without requiring a vehicle to reverse.
  - c) [Dimensions that identify the boundary setbacks of the building envelopes.](#)
2. The layout of the subdivision, as shown on the approved plans, must not be altered or modified without the consent in writing of the Responsible Authority.
3. A 5% cash in lieu contribution for public open space must be lodged with the Responsible Authority in accordance with Section 18 of the *Subdivision Act 1988* prior to the issue of Statement of Compliance.

4. All existing and proposed easements and sites for existing and required utility services and roads must be set aside in favour of the relevant authority for which the easement or site is to be created on the plan of subdivision submitted for certification under the *Subdivision Act 1988*.
5. The name for the proposed road for the subdivision must be in accordance with the Guidelines for Geographic Place Names and to the satisfaction and approved by the Responsible Authority.

### Section 173 Agreement

~~6. Before the Statement of Compliance is issued under the Subdivision Act 1988, the owner of the land must enter into an agreement with the Responsible Authority in accordance with Section 173 of the Planning and Environment Act 1987 which states that the road access to the land may be detrimentally impacted by coastal climate change and associated inundation, which may impact upon the owner's use and enjoyment of the land and which may cut off access to and egress from the subject land from time to time or permanently should the access road become, in Council's view, uneconomic to repair. Council has no responsibility nor does Council accept any responsibility for providing alternate access to or egress from the subject land.~~

~~The Agreement must be registered on title pursuant to Section 181 of the Planning and Environment Act and confirmation of the Dealing number provided to Council. All costs relating to the preparation and registration of the Agreement must be borne by the applicant.~~

~~Note: A copy of the Section 173 Agreement and Section 181 Form is available on [www.southgippsland.vic.gov.au](http://www.southgippsland.vic.gov.au) under Planning and Building / Understanding your permit conditions.~~

- 6 Before the Statement of Compliance is issued under the Subdivision Act 1988, the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. The agreement must state:
 

Prior the issue of a Building Permit in respect to any building constructed on any newly created lot, the owner of the lot must:

  - a) construct suitable soakage pits for the onsite disposal of stormwater on the lot,
  - b) submit engineering plans, calculations and percolation test results for the proposed soakage pit to be approved by Council's Engineering Department prior to the construction of the soakage pits
  - c) ensure plans and calculations for the soakage pits are carried out by a suitably qualified consultant and design of the soakage pits is to take into account the soil structure, percolation rate, level of the water table and the extent of future building(s).

When constructing habitable buildings, the owner of the lot must:



- d) On each lot created, there can be no buildings constructed outside the building envelope as shown on the plans endorsed under Planning Permit 2016/180 except for eaves, gutters, decks, steps, driveways, single and double car garages, sheds up to 10sqm in size, pathways, retaining walls and fencing, unless with the written consent of the Responsible Authority.

~~On each lot to be created, habitable buildings may only be constructed within the nominated building envelopes as shown on the endorsed plans of the permit.~~

The owner must pay the reasonable costs of the preparation, execution and registration of the section 173 Agreement. The section 173 Agreement must be registered prior to the issue of a Statement of Compliance.

7. Before the Statement of Compliance is issued under the *Subdivision Act 1988*, the owner must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. The agreement must state:
- a) Incorporate the Bushfire Management Plan and Vegetation Management Plan approved under this permit.
  - b) Ensure that any vegetation management at the site is undertaken in accordance with the Bushfire Management Plan and Vegetation Management Plan.
  - c) State that it has been prepared for the purpose to give effect to the bushfire mitigation measures set out in the approved Bushfire Management Plan and the requirements of Clause 44.06-3.

The owner must pay the reasonable costs of the preparation, execution and registration of the section 173 Agreement. The section 173 Agreement must be registered prior to the issue of a Statement of Compliance.

#### **Mandatory Clause 66.01-1 Telecommunications – for Township Zone and Low Density Residential lots**

8. The owner of the land must enter into an agreement with:
- a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
9. Before the issue of Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and

- b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

### **South Gippsland Shire Council Engineering Department**

10. Unless stated otherwise, the following conditions must be complied with to Council's satisfaction prior to the issue of Statement of Compliance for the relevant stage of the approved subdivision.

- a) Prior to the issue of Statement of Compliance of the relevant stages of the approved subdivision, engineering plans and computations (based on the Infrastructure Design Manual) are to be submitted to and approved by the South Gippsland Shire Council.

As minimum, engineering design to address:

- i) Relevant internal road works in accordance with the I.D.M or as stipulated in conditions above.
  - ii) Required external works in Ockenga Court.
  - iii) Control of stormwater overflow from building envelopes.
- b) Construction works associated with the relevant stage of the approved subdivision must be in accordance with Councils Infrastructure Design Manual (I.D.M.), unless otherwise agreed by Council. Construction work includes, but is not limited to;
    - i) All internal roads constructed and sealed to a rural standard (5m seal with concrete edge strips both sides, wide shoulders and grassed table drains, including court bowl 9m minimum radius sealed with concrete edge strip).
    - ii) Ockenga Court gravel surface re-sheeted to satisfaction of council, including suitable turning area for waste and emergency vehicles.
    - iii) Street lighting at the new intersection, the new court, linemarking and street signs.
  - c) Appropriate easements are to be created for existing and future stormwater infrastructure.
  - d) Upon approval of construction plans by Council for the relevant stage, pay to Council an amount equivalent to 0.75 % of the estimated cost of construction for checking of engineering plans and computations. A certified cost estimate is to be provided by the applicant.
  - e) A Site Management Plan showing the proposed erosion control measures is to be submitted to and approved by council prior to construction works commencing on site.
  - f) Number of and timing of inspections of construction work to be as agreed with Council's Engineering Department. A minimum of twenty four hours notice is required for inspections.
  - g) Scaled "As Constructed" plans for each stage are to be forwarded to Council in paper, "pdf" and AutoCAD compatible format, to the satisfaction of the Responsible Authority.

- h) "As Constructed" measurements/survey enhanced details of the drainage component of the approved works shall be provided in accordance with the current version of D Spec.
- i) Upon agreed practical completion of civil works for the relevant stage, pay to Council an amount equivalent to 2.5 % of the actual cost of construction, being for supervision of works. A certified final cost is to be supplied by the applicant.
- j) A twelve months Defects Liability Period shall apply to all civil engineering and landscaping works which will become responsibility of South Gippsland Shire Council.
- k) Upon agreed practical completion of civil works for the relevant stage, pay to Council an amount equivalent to 5 % of the actual cost of construction of infrastructure to be handed to Council (including landscaping), being for Guarantee of Works during Defects Liability Period. The amount to be refunded upon release from Defects Liability Period by Council.
- l) If the subdivision is to be staged, the appropriate conditions must be complied with for each stage before consent to Certification or issue of a Statement of Compliance for that stage.
- m) All work must be carried out to the satisfaction of the South Gippsland Shire Council.

### **Country Fire Authority**

11. The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

### **Bushfire Management Plan**

12. Before Certification and Statement of Compliance is issued under the *Subdivision Act 1988*, the Bushfire Management Plan (BMP) prepared by *Jardine Johnston Environment and Planning* must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority. Plans that must be endorsed and form the BMP for the site are:
- *Bushfire Management Plan Lots 1-6, Date August 2016, latest Revision 3/2/17 and Drawing BMP01*
  - *Bushfire Management Plan Lots 7, Date August 2016, latest Revision 31/1/17 and Drawing BMP02*
  - *Bushfire Management Plan Lots 1-6, Date August 2016, latest Revision 31/1/17 and Drawing BMP03*
13. When endorsed the BMP must be included as an annexure to the section 173 agreement prepared to give effect to Clause 44.06-3 of the South Gippsland Planning Scheme.

### Vegetation Management Plan

14. Before Certification and Statement of Compliance is issued under the *Subdivision Act 1988*, the Vegetation Management Plan (VMP) prepared by Jardine Johnston Environment and Planning (Date August 2016, latest Revision 2/2/17 and Drawing VMP01) must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority.
  
15. When endorsed the VMP must be included as an additional annexure to the section 173 agreement prepared to give effect to Clause 44.06-3 of the South Gippsland Planning Scheme.

### Plan of Subdivision

16. Before Certification and Statement of Compliance is issued under the *Subdivision Act 1988*, a plan of subdivision must be submitted to the Responsible Authority that shows habitable building envelopes in accordance with the building envelopes shown on the BMP endorsed under Condition 12 of this permit, unless otherwise agreed in writing by CFA and the Responsible Authority.

### Maintenance of defensible space

17. Before the Statement of Compliance is issued under the *Subdivision Act 1988*, defensible space on every lot in the subdivision must be implemented and maintained as specified on the endorsed Bushfire Management Plan, unless otherwise agreed in writing by the CFA and the Responsible Authority.

### **Department of Environment, Land, Water and Planning**

18. To offset the removal of 0.947 hectares of native vegetation the permit holder must secure a native vegetation offset, in accordance with the Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013) and Native vegetation gain scoring manual (DEPI 2013) as specified below:

A general offset of 0.357 general biodiversity equivalence units with the following attributes:

- a) Be located within the West Gippsland Catchment Management Authority boundary or South Gippsland municipal district
  - b) Have a strategic biodiversity score of at least 0.432.
19. Prior to the issue of Statement of Compliance, evidence that the required offset for the project has been secured must be provided to the satisfaction of the Responsible Authority. The offset evidence can be:
    - a) a secure agreement signed by both parties, to the required standard, for the offset site or sites, including a 10 year offset management plan and/or
    - b) an allocated credit extract from the Native Vegetation Credit Register.
  
  20. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the

Responsible Authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

21. In the event that a security agreement is entered into as per condition 19, the offset provider must provide the annual offset site condition report to the Responsible Authority by the anniversary date of the execution of the offset security agreement, for a permit of 10 consecutive years. After the tenth year, the offset provider must provide a report at the reasonable request of the statutory authority.

### **AusNet Electricity Services**

22. The plan of subdivision submitted for certification must be referred to AusNet Electricity Services Pty Ltd in accordance with Section 8 of the *Subdivision Act 1988*. The applicant must:
- a) Enter in an agreement with AusNet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
  - b) Enter into an agreement with AusNet Electricity Services Pty Ltd for the rearrangement of the existing electricity supply system.
  - c) Enter into an agreement with AusNet Electricity Services Pty Ltd for the rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by AusNet Electricity Services Pty Ltd.
  - d) Provide easements satisfactory to AusNet Electricity Services Pty Ltd for the purpose of "Power Line" in favour of "AusNet Electricity Services Pty Ltd" pursuant to Section 88 of the *Electricity Industry Act 2000*, where easements have not been otherwise provided, for all existing AusNet Electricity Services Pty Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
  - e) Obtain for the use of AusNet Electricity Services Pty Ltd any other easement required to service the lots.
  - f) Adjust the position of any existing AusNet Electricity Services Pty Ltd easement to accord with the position of the electricity line(s) as determined by survey.
  - g) Provide to AusNet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
  - h) Agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AusNet Electricity Services Pty Ltd. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the *Electricity Safety Act 1998*.
  - i) Ensure that all necessary auditing is completed to the satisfaction of AusNet Electricity Services Pty Ltd to allow the new network assets to be safely connected to the distribution network.

### **Expiry**

This permit will expire if either of the following applies:

- a) The subdivision is not certified within two (2) years of the date of this permit; or
- b) The registration of the subdivision is not completed within five (5) years of the date of certification.

## Notes

1. This permit allows the above land to be used or developed for the purpose specified. It is the permit holder's responsibility to ensure that any other relevant approvals are obtained prior to the commencement of the use or development.
2. The appropriate "Consent to work within the Road Reserve" permit must be obtained from Council for all work carried out in Ockenga Court.
3. The applicant should carry out a "Dial Before You Dig" enquiry to check the location of underground services before any works are commenced on-site.
4. Appropriate design checklist must be forwarded with engineering plans and computations with all relevant items addressed. Failure to address all relevant items or forward appropriate information will lead to delay in the assessment of engineering plans and computations.
5. Pursuant to the provisions of Section 69 of the Planning and Environment Act 1987 the Responsible Authority may extend the time to certify a plan under part (a) of the expiry condition, if the request is made before the permit expires or within 6 months afterwards.
6. The Responsible Authority is not able to extend the time to register the plan under part (b) of the expiry condition from the original date of certification, irrespective of whether the plan is re-certified or a new plan is certified under the provisions of the Subdivision Act 1988.