



**Panel Submission
South Gippsland Shire Council**

AMENDMENT C90 – HOUSING AND SETTLEMENT

Part A Submission

Hearing Date 12 & 13 November 2018

Submission by
South Gippsland Shire Council

1. INTRODUCTION

2. South Gippsland Planning Scheme Amendment C90 introduces into the South Gippsland Planning Scheme a series of new township framework plan maps, Restructure Overlay plans and related planning policy changes in line with the Housing and Settlement Strategy (HSS) adopted by Council in September 2013. In accordance with the Panel's Directions, this is Council's Part A Submission that will consider:
 - The Background to the Amendment
 - The chronology of events
 - The strategic context and assessment
 - An outline of how the Restructure Overlay Plans and Framework Plans were formulated and the considerations were taken into account
 - Details of how the Restructure Overlay and associated proposed Incorporated Document are intended to operate for affected land, including an analysis of how/whether other provisions of the Planning Scheme such as the underlying zone provisions, overlay controls and particular provisions would continue to apply
 - Identification of the issues raised in submissions, and a response to the identified issues
 - Changes to the amendment documentation proposed
3. The Part B Submission will be presented to the Panel at the Hearing and will address all other matters set-out by the Panel in its Directions dated 7 September 2018.

4. **BACKGROUND TO THE AMENDMENT**

5. Planning Scheme Changes Proposed by Amendment C90

6. The Planning Scheme changes proposed by Amendment C90 seek to implement the key recommendations of the South Gippsland Housing and Settlement Strategy 2013 as follows:
 - Amend the Municipal Strategic Statement at Clauses 21.01 - 21.06, 21.08 – 21.12 and 22.05 – 22.06 to include policies recommended by the *South Gippsland Housing and Settlement Strategy 2013* and to make procedural corrections.
 - Amend the Municipal Strategic Statement by inserting new Clauses 21.15 to 21.23 to implement the settlement hierarchy recommended by the *South Gippsland Housing and Settlement Strategy 2013*. Existing Clause 21.15 Local Areas is updated to become clauses 21.15-21.23, and clause 21.16 is renumbered as Clause 21.24.
 - Amend Clauses 22.05 and 22.06 to update policy on rural dwellings and rural subdivision in relation to historic subdivisions being restructured, and to correct procedural errors.
 - Amend the Schedule to Clause 45.05 to insert details of the revised and new Restructure Plans for Restructure Overlays 1- 21.
 - Amend the Schedule to Clause 52.03 to add the Restructure Overlay areas to the Specific Sites and Exclusions particular provision and to delete a redundant area at 176 Simons Lane Leongatha.

- Amend the Schedule to Clause 61.03 to include reference to mapping of the Restructure Overlay;
- Amend the Schedule to Clause 81.01 to insert incorporated document *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire July 2017* and to delete an expired incorporated document *176 Simons Lane Leongatha, November 2013*.
- Rezone land at 14 and 24 Lynn Street, 6 and 12 Herring Lane and 30 and 37 Cruickshank Road Jumbunna from Farming Zone to Township Zone and delete the Environmental Significance Overlay 5 (Areas susceptible to erosion) for applying planning controls suited to urban use land within the Jumbunna Framework Plan settlement boundary and to remove a split zoning.
- Rezone land at 2-20 Black Avenue Venus Bay from Commercial 1 Zone to Township Zone, apply the Restructure Overlay, the Design and Development Overlay 5 and the Environmental Significance Overlay 7 (Coastal Settlements) and delete the Environmental Significance Overlay 3 (Coastal Settlements) to implement the Venus Bay Framework Plan policies.
- Delete parts of Restructure Overlays 1 and 2 at Venus Bay as the conditions to create Restructure Lots according to the Restructure Plans have been completed.
- Introduce 21 Restructure Plans into the planning scheme under Incorporated Document *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire August 2017*. The plans are for areas at Venus Bay (Juno Road, Aitken Avenue and Black Avenue), Jeetho, Outtrim, Whitelaw, Jumbunna, Tarwin, Meeniyah West, Korumburra, Hoddle, Bennison (Durston Road and Port Franklin Road), Hedley (Salmon Road and Todds Road), Toora Coastal Area, Buffalo, Darlimurla, Port Welshpool, Stony Creek and Dollar.
- Delete application of some sections of Road Closure Overlay (RXO) at and near Rees Road and the Korumburra-Wonthaggi Road Jumbunna on grounds of redundancy (road reserve has been closed) or need to retain the road reserve for access.

7. CHRONOLOGY OF EVENTS

8. Amendment C90 has a long history, which it is beneficial to briefly review for the purpose of demonstrating the time, resources and importance Council has invested in this process.
9. On 25 September 2013 Council at its Ordinary Council Meeting resolved to adopt the *Housing and Settlement Strategy 2013*. The four components of the strategy were the Housing and Settlement Strategy, Urban Design Frameworks for 17 settlements, a shire-wide review of the Rural Living Zone, and the restructure of 11 old crown townships. This work was undertaken by planning consultants, Planisphere as guided by the Project Control Group comprised of Council staff and Councillors.
10. On 24 August 2016 Council adopted the draft South Gippsland Planning Scheme Amendment C90 (Housing and Settlement Strategy), supporting a request to the Minister for Planning to authorise preparation of South Gippsland Planning Scheme Amendment C90 (Housing and Settlement Strategy).
11. On 23 August 2017 Council resolved at its Ordinary Meeting of Council to adopt the additional Restructure Overlay maps and plans and changed planning provisions and explanatory report for the revised Planning Scheme Amendment. Council also resolved to seek authorisation from the Minister for Planning to prepare a revised Planning Scheme Amendment C90 and to exhibit the amendment. The locations added to the amendment were in the townships of Buffalo, Darlimurla,

Dollar, Hedley, Port Welshpool, Stony Creek and Toora. The changes to the amendment were proposed so that Council could reduce the cost and complexity in processing two separate amendments addressing similar matters.

12. Public exhibition of revised Amendment C90 – Housing and Settlement Strategy commenced on Tuesday 14 November 2017 and concluded on Monday 8 January 2018.
13. Exhibition of Amendment C90
14. Extensive exhibition of the revised Planning Scheme Amendment C90 occurred. Public exhibition of revised Amendment C90 – Housing and Settlement Strategy commenced on Tuesday 14 November 2017 and concluded on Monday 8 January 2018. Exhibition notice was provided by:
 - Postal notification to all affected landowners inviting them to an individual meeting (to be held in person or via telephone if desired) to discuss the potential effect of the proposed Restructure Plan on their property and for guidance in making a submission.
 - Drop-in sessions were held at various locations across the Shire. These sessions were well attended by the community.
 - The amendment was also exhibited online via Council's webpage and via newspaper articles and advertisements.
15. At the conclusion of exhibition, Council considered the submissions to the amendment at its Ordinary Council Meeting on 26 April 2018. Council resolved to defer the consideration of a report seeking the adoption of the revised version of the Planning Scheme Amendment C90. The report was deferred until the Ordinary Meeting of Council on 25 July 2018 so that Councillors had further time to consider submissions and other matters relating to the Municipal Statement.
16. On 25 July 2018 Council resolved at its Ordinary Meeting of Council to adopt the Planning Scheme Amendment C90 and request that the Minister for Planning appoint an independent planning panel to consider all submissions. Council's resolution also required that Council request that special consideration be given to the Restructure Overlay component of the Planning Scheme associated with the Port Welshpool Restructure Overlay, the objectors' submissions, and their wish to be exempted.
17. In general the community response to Amendment C90 was positive with many landowners agreeing within limiting the expansion and increase in dwelling density around townships. Much of the positive feedback provided to Council was verbal, with some residents in agreeing feeling that making a written submission to the amendment was unnecessary.
18. Amendment C90 has undergone extensive community consultation which exceeded the statutory requirements of the *Planning and Environment Act 1987 (the Act)*. Approximately 2,000 letters and emails were sent to landowners/occupiers, Government agencies, prescribed Ministers, service authorities, community groups and neighbouring councils and staff answered over 220 phone and counter enquiries.
19. **STRATEGIC CONTEXT AND ASSESSMENT**
20. The following is an assessment of the Amendment against the Objectives of Planning in Victoria and the most relevant State and Local planning policies. Also included is a brief discussion of other relevant major strategic work that has been undertaken by Council since the adoption of the *Housing and Settlement Strategy 2013*.
21. Objectives of Planning in Victoria

22. The objectives of planning in Victoria are:
- a) to provide for the fair, orderly, economic and sustainable use, and development of land;
 - b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
 - c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
 - d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
 - e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
 - f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
 - g) to balance the present and future interests of all Victorians.
23. The implementation of the key policies of the *South Gippsland Housing and Settlement Strategy 2013* meets objectives a), b), c), e), f) and g) by inserting Framework Plans identifying settlement areas preferred for growth, infill or no growth on the basis of environmental, social and resource factors, as well as improving policies for housing and settlement development.
24. The applications of the Restructure Overlay and the related Restructure Plans will meet objectives (a) and (f) as the Amendment will result in more transparent and certain decision-making framework for the old and inappropriate subdivisions in the municipality.
25. The Amendment is expected to have a positive environmental effect as the settlement framework plans, restructure plans and policies have taken environmental constraints such as susceptibility to inundation, erosion, bushfire risks, sensitive water catchments, Giant Gippsland Earthworm habitat, coastal conservation and climate change processes, and areas of environmental and landscape significance into consideration when applying settlement and restructure overlay boundaries and configuring restructure lots.
26. The Amendment is anticipated to have positive social and economic effects for the municipality by enabling efficient service and infrastructure provision for settlements relevant to their role and capacity, by providing certainty and a direction for development in the old and inappropriate subdivisions. The revised policies apply the principles of the *Livable Housing Design Guidelines*, the *Domestic Wastewater Management Plan 2016-2020* and the *South Gippsland Shire Council Siting and Design Guide – Dwellings and associated buildings in the Rural Activity and Farming Zones* and introduces them as reference documents to the Planning Scheme. The Amendment inserts policies to support provision of housing suitable for special needs and changing household needs.
27. Environmental Risks
28. Bushfire and flood risk are two of the environmental constraints that were taken into consideration in:
- Determining which settlements are capable of population growth
 - Definition of settlement boundaries in the Framework Plans; and

- Limiting the amount of development potential of the old and inappropriate subdivisions.

The views of the Country Fire Authority, West Gippsland Catchment Management Authority and Melbourne Water were taken into account in development of the *Housing and Settlement Strategy* and their views were also considered in the exhibition of C90.

29. Planning Policy Framework

30. Clause 11.01-1S 'Settlement' contains a number of strategies, two of which are to '*Guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks*' and to '*Create and reinforce settlement boundaries*'.
31. Amendment C90 is consistent with Clause 11.01-1S as the settlement framework plans clearly delineate settlement boundaries.
32. Clause 12.02-1S 'Protection of Coastal Areas' has the following objective – '*To recognise the value of coastal areas to the community, conserve and enhance coastal areas and ensure sustainable use of natural coastal resources*'.
33. The amendment is consistent with Clause 12 by:
- Defining settlement boundaries for the coastal villages to prevent expansion into the rural landscape buffers and areas of high conservation value;
 - Limiting development in the Restructure Areas at Bennison, Hedley (2), Port Franklin, Port Welshpool and Toora Coastal Area which drain to the Corner Inlet (Ramsar Convention) wetlands.
 - Limiting development and applying rural dwelling design and siting principles to Restructure Areas to minimise landscape impacts.
34. Clause 13.02-1S 'Bushfire Planning' has a strategy that is '*Ensuring that strategic planning documents, planning scheme amendments, planning permit applications and development plan approvals properly assess bushfire risk and include appropriate bushfire protection measures*'.
35. Amendment C90 is consistent with Clause 13 as the delineation of settlement boundaries and configuration of restructure lots was based on a risk management approach. Requirements for development of dwellings in the Restructure Areas includes (as appropriate) environmental assessment and ability to access and locate dwellings on restructure lots safely from hazards such as erosion and inundation. Some Restructure Lots have been defined as 'no development' due to difficulty in sufficiently minimising bushfire risk.
36. Clause 14.01-1S '*Protection of Agricultural Land*' has the objective '*To protect the state's agricultural base by preserving productive farmland*'. A strategy identified to assist in achieving this strategy seeks to '*Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land*'.
37. Amendment C90 is consistent with the objective and strategies listed under Clause 14.01-1S of the Scheme as South Gippsland Shire contains agricultural land which is of state and perhaps national strategic significance in terms of the dairy production and dairy product manufacturing. Agricultural land in the Shire also benefits from good rainfall, which is of increasing importance due to climate change. One of the prime aims of the Amendment is to protect productive farmland from encroachment of rural residential development and from land use conflicts, both by defining settlement boundaries and applying 21 new and/or updated Restructure Plans. The

configuration of Restructure Lots and requirements of the incorporated document seek to protect agricultural activity.

38. The Amendment proposes to rezone and review zoning of a minimum land within existing small settlement urban areas from Farming Zone to Township Zone, so that agricultural land would not be encroached upon.
39. Clause 14.02-1S 'Catchment Planning and Management' and Clause 14.02-2S 'Water Quality' emphasise objectives of protecting water quality, potable water catchments, waterways and the marine environment.
40. The Amendment addresses these policies by restricting settlement development in sensitive catchments that drain to potable water supplies, Cornet Inlet or Andersons Inlet.
41. The objective of Clause 16.01-1S 'Integrated Housing' is *'To promote a housing market that meets community needs'* and the objective of Clause 16.01-2S 'Location of Residential Development' is *'To located new housing in designated locations that offer good access to jobs, services and transport'*.
42. New policies contained in the Amendment support diversity of housing choices including social housing and age-appropriate accommodation choices as well as higher density in walking distance of the town where appropriate, and encourages sustainable design.
43. Clause 16.01-5S 'Rural Residential Development' contains strategies such as:
 - *'Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.'*
 - *'Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.'*
 - *'Discourage development of small lots in rural zones for residential use or other incompatible uses.'*
 - *'Encourage consolidation of existing isolated small lots in rural zones.'*
44. The settlement policies and Framework Plans, combined with the Restructure Plans aim to achieve the strategies identified at Clause 16.01-5S.
45. A strategy listed at Clause 17.02-1S 'Business' seeks to 'Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure' whilst Clause 17.02-2S 'Out-of-Centre Development' seeks to *'Discourage proposals for expansion of single use retail, commercial and recreational facilities outside activity centres'* and Clause 17.03-1S 'Industrial Land Supply' seeks to *'Provide an adequate supply of industrial land in appropriate locations including sufficient stocks of large sites for strategic investment'*.
46. The Amendment supports Clause 17 by identifying and consolidating commercial activity in the Framework Plans relevant to the function of the settlement. Marine-related economic activity is identified in the policies for Port Welshpool and Port Franklin. Tourism is consistently encouraged across the Shire's settlements in association with to nature-based and environmental attractions, local agricultural produce, the arts and rail trails. Provision of 15 years supply of industrial land is supported.
47. The objective of Clause 19.02-4S 'Social and Cultural Infrastructure' is *'To provide fairer distribution of and access to, social and cultural infrastructure'*. A strategy at Clause 19.03-3S

'Water Supply, Sewerage and Drainage' seeks to 'Ensure water quality in water supply catchments is protected from possible contamination by urban, industrial and agricultural land uses'.

48. The Amendment inserts a settlement hierarchy and 24 new and/or updated settlement Framework Plans supporting an approach that ensures the provision of social and physical infrastructure in an efficient, equitable, accessible and timely manner, with growth supported in settlements locations where such efficiency is maximized. The Restructure Plans enable very limited development of areas unsuitable for development to their full subdivision potential, partly due to lack of, or inefficiencies of, service provision.
49. Local Planning Policy Framework
50. The proposed Amendment strengthens and improves the Municipal Strategic Statement (MSS) and Local Planning Policy Framework as detailed in the sections below.
51. Applying a hierarchy to the municipality's settlements by categorising them into described levels of function, service, infrastructure and environmental setting at Clause 21.02 Settlement (the current list of settlements and descriptions is located at Clause 21.05). The new policy closely implements recommendations from the *South Gippsland Housing and Settlement Strategy 2013*.
52. Thoroughly revising the order and format of the local settlement policies into a new series from Clauses 21.12 to 21.19. The settlements and their policies are grouped according to the settlement hierarchy position identified for each location. This ranges through eight functional and descriptive categories from 'Municipal Centre' down to 'Locality'. The relevant settlements are listed alphabetically in each clause. While an amount of rewording has been undertaken to improve consistency, existing policies have been transferred where possible.
53. Inserting new policies to cover 19 additional settlements that lacked attention in the Planning Scheme. This has resulted in 21 new Framework Plans being included. The Plans clearly identify locations where growth, limited development and no growth should occur, and highlight preferred areas for commercial land uses. This will assist expectations of residents, guide developer investment and enable service authorities to plan for efficient provision of infrastructure.
54. Revising three existing Framework Plans. These are for:
 - Nyora, to recognise areas identified by the *South Gippsland Housing and Settlement Strategy 2013* for investigation for rezoning to RLZ;
 - Port Welshpool, to include mapping of the Restructure Area in the immediate vicinity; and
 - Venus Bay, Estate Two, to acknowledge the Amendment rezoning and restructuring of the undeveloped, original commercial subdivision at Black Avenue.
55. Improving the strategy and policy guidelines at Clause 21.05 Natural Resource Management (currently Clause 21.08) applying to development of houses in old Crown township areas so that agricultural land resource and agricultural activities curtailed is not adversely impacted by increasing development of the many small land parcels old and inappropriate rural subdivisions.
56. Expanding policy considerations to encourage sustainable design, siting and diversity in housing at Clause 21.07 Housing (currently Clause 21.10) in order to meet the varied and changing accommodation needs of the current and future population.
57. Updating policy at Clause 21.08 Economic Development (currently Clause 21.11) in association with the *South Gippsland Housing and Settlement Strategy 2013* recommendations so that the

industries related to the municipality's productive sources (primary industries) and facilities (ports) are specifically encouraged and provided for.

58. Separating out the Landscape Character Areas policies from the 'Local Areas' policies (currently at Clause 21.15) and relocating them into a new Clause 21.20.
59. Relocating the Reference Documents list from Clause 21.16 to re-numbered Clause 21.21 and removing the repetitious listing of reference documents from clauses throughout the MSS and LPPF.
60. Clarifying the Rural Dwellings policy at Clause 22.05 regarding development potential in old and inappropriate subdivisions, and tying the ability to develop to the conditions and Restructure Plans contained in the newly inserted incorporated document *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017*. The policy improvements also require planning applications for rural dwellings to consider the sustainability, design and siting requirements contained at Clause 21.07 so that development impact on the landscape, the environment and energy consumption is minimised.
61. Clarifying the Rural Subdivision policy at Clause 22.06 regarding excision of land containing an existing dwelling in old and inappropriate subdivisions in order to limit the development of new dwellings in unsuitable locations.
62. Clarifying tourism policy in the Rural Activity Zone at Clause 22.07 regarding development potential in old and inappropriate subdivisions in order to minimise risk from environmental hazards and negative impacts on landscape and environmental values.
63. Inserting an Incorporated Document containing 19 new and two revised Restructure Plans at Clause 81.01 to give practical effect to the MSS and LPPF policies guiding development in old and inappropriate subdivisions. Some of these subdivisions were identified by locality name in the MSS but prior to the Incorporated Document, the boundaries of the 19 new areas were not defined and no restructure plans had been identified. The Incorporated Document supports consistent decision-making and removes the effective freeze on development. The Restructure Plans provide a clear basis for decision-making by the Planning Authority and highlight the special planning conditions to prospective land purchasers. The two updated Restructure Plans at Venus Bay reflect the successful implementation of the restructure conditions.
64. Local Policy Clause 22.05 Rural Dwellings
65. The policy basis for the Local Policy is:

'South Gippsland Shire contains some of the most productive agricultural areas in Victoria and provides a substantial proportion of Victoria's milk as well as beef, prime lamb and vegetables. Agriculture and its associated processing and service industry underpin the Shire's economy. The future outlook for agriculture in the Shire is strong with the advantages of high rainfall, soil and land types suited to producing a wide range of agricultural commodities. With issues of climate change and water scarcity at hand, there is likely to be increasing demand for the Shire's high quality agricultural land from producers in less fertile areas. Existing farming activities in the Shire will need to have the capacity to grow and expand and will require access to affordable land unencumbered by unwanted infrastructure.'

The settlement and subdivision history of the Shire has left a legacy of small lots scattered amongst larger farming lots. There are approximately 12,000 lots in the Farming Zone, including a large number of small lots in old Crown Townships and remnant vacant lots arising from early subdivisions. These lots are often isolated, or in strips along road sides

and surrounded by agricultural uses. Multi-lot farms (tenements) are the most common structure of land tenure in the Shire, with commercially viable production areas being formed by the aggregation of smaller lots.

The Shire's significant environmental and landscape assets make the area attractive for rural residential lifestyles. The northern and western areas of the Shire are particularly popular for rural living, primarily due to the proximity to Melbourne and the area's attractive pastoral and forested landscapes. There is a significant level of ad hoc rural lifestyle development already in the rural areas of the Shire. The conversion of agricultural land into rural residential land use activities results in a net loss to agriculture due to permanent land use changes. In the absence of a planned approach to rural residential development, detrimental impacts on the landscape, environmental and agricultural values of the Shire may arise.'

66. A number of objectives are identified at Clause 22.05, such objectives include:

- *'To discourage the proliferation of dwellings not associated with agriculture on lots over 4.1 hectares*
- *To discourage the proliferation of dwellings on lots over 4.1 hectares where the agricultural use of the land does not require the presence of a land manager*
- *To ensure that the development of dwellings on rural land does not prejudice existing agricultural activities on surrounding land*
- *To ensure that agricultural land is maintained for the cost-effective production of food and raw materials*
- *To retain the open farmed landscape as the defining visual characteristic of the Shire*
- *To ensure the cost-effective servicing of towns and communities across the Shire by avoiding the impacts of a dispersed population base*
- *To provide a consistent basis for considering planning permit applications for the use and development of dwellings in rural areas'.*

67. Furthermore, under Clause 22.05 it is policy that a permit must not be granted to use land for a dwelling under Section 2 of the Table of uses to Clause 35.07-1 if the lot is within a historic Crown township or settlement. This includes the following Farming Zone areas:

- Welshpool / Hedley
- Port Franklin
- Hoddle
- Whitelaw
- Newcastle
- Bennison
- Jeetho
- Jumbunna

- Outtrim
68. Amendment C90 is consistent with the provisions of Clause 22.05. The intent of the restructure lots is to ensure that lots in the Farming Zone are of a suitable size so as to allow for productive agricultural activities, protection of property and life and ensuring that lots can be adequately serviced and contain and treat their own waste without impacting on Special Water Supply catchments.
69. Local Policy Clause 22.06 Rural Subdivision
70. The policy basis for Clause 22.06 is:
- ‘The rural areas of South Gippsland have experienced a high level of land fragmentation, arising from both historical settlement patterns and less stringent planning policies under earlier planning schemes. Left unchecked, further fragmentation through land subdivision could have considerable implications for agricultural production, landscape, and the servicing of populations in outlying areas.*
- The agricultural sector dominates the economy of South Gippsland, with food production and processing accounting for significant employment. With high quality soils and generous rainfall relative to other parts of the State, this sector is likely to continue to dominate the local economy and further expand as farmers and processors seek secure land for the production of food and materials. It is necessary that farmers have access to sufficient areas of land to carry out food and fibre production in a cost-effective manner. The subdivision of land into smaller lots, including house lot excisions, can have ongoing implications for the supply of affordable agricultural lots by driving up land prices beyond the productive value of the land.*
- South Gippsland already has a considerable supply of lots at a range of sizes, such that further subdivision for genuine agricultural reasons will rarely be necessary. Many areas that have experienced high levels of fragmentation may require consolidation or restructure through boundary realignments in order to create economically competitive land units. Likewise, expanding farming businesses may find it necessary to remove surplus dwellings from the land through house lot excisions. There is a compelling need for clear and robust planning criteria around such practices in order to ensure the fair, sustainable and economic use and development of rural land’.*
71. An objective of Clause 22.06 is ‘*To encourage the consolidation of rural lots*’.
72. Amendment C90 is consistent with the provisions of Clause 22.06 as the restructure lots propose to retrospectively create allotments that are of a more appropriate size considering the intent of the applicable zoning and the environmental constraints at each site. The consolidation of land under the restructure overlays recognises environmental constraints whilst acknowledging the strategic significance of farming land in South Gippsland.
73. Other Policy Directions
74. The following is a brief overview of other State provisions considered relevant to the Amendment. While not specifically required as part of the Strategic Assessment process, some of the following comments justify why some actions have been taken.
75. Ministerial Direction – The Form and Content of Planning Schemes
76. The changes proposed to the South Gippsland Planning Scheme as part of Amendment C90 are consistent with the directions provided within the Ministerial Direction. The clauses are

appropriately numbered and structured and are written in plain English. Image requirements are met when considering the Framework Plans and Restructure Overlay lot maps. It is acknowledged that Amendment C148 proposed reconfigurations to the layout of the MSS and LPPF (to be referred to as the Municipal Planning Statement). However, South Gippsland has been advised by DELWP that South Gippsland have not been identified as a priority council for the transitioning to the new format Planning Scheme. The advice of DELWP was to proceed with the amendment in the format in which it was prepared. Any changes to the current Amendment required by Amendment VC148 are to be undertaken as the one non-consequential GC amendment in partnership with DELWP at a later date.

77. Ministerial Direction No. 1 Potentially Contaminated Land

78. The EPA was consulted in regards to potentially contaminated land and wording to satisfactorily address this issue in the incorporated document *Restructure Plans for Old and Inappropriate Subdivisions in South Gippsland Shire, August 2017*.

79. Ministerial Direction No. 11 Strategic Assessment of Amendments

80. The preparation of Amendment C90 has been consistent with the requirements provided within Ministerial Direction No. 11.

81. Ministerial Direction No. 15 The Planning Scheme Amendment Process

82. The preparation and management of Amendment C90 is consistent with the directions provided within Ministerial Direction No. 15.

83. **MAJOR STRATEGIC WORK UNDERTAKEN FOLLOWING THE ADOPTION OF THE HOUSING AND SETTLEMENT STRATEGY 2013**

84. In the five years since the adoption of the Housing and Settlement Strategy 2013 Council has undertaken other strategic projects, some of which will need to be considered so as to ensure consistency between the Housing and Settlement Strategy 2013, Amendment C90 and any other strategic work.

85. Future Nyora - Nyora Development Strategy

86. The updates proposed to the Nyora Framework Plan under Amendment C90 is consistent with the areas identified by the South Gippsland Housing and Settlement Strategy 2013 for investigation for rezoning to Rural Living Zone. This is consistent with the future directions for Nyora identified in the Future Nyora – Nyora Development Strategy 2016.

87. Mirboo North Structure Plan Refresh

88. The Framework Plans prepared are consistent with the information contained in the Mirboo North Structure Plan Refresh 2017.

89. **SUBMISSIONS TO AMENDMENT C90**

90. A total of 131 submissions were received to Amendment C90. Details of the issues raised in submissions and responses to these concerns can be found at Appendix A.

91. Further to these submissions, discussions have been held with VicRoads so as to ensure there are no issues with access of proposed Restructure Overlay lots, particularly in regards to Lot 1 at Figure 10 Newcastle Restructure Plan – Korumburra. Access to this restructure lot will be achievable via the South Gippsland Highway, subject to negotiation with VicRoads.

92. Discussions with the Country Fire Authority (CFA) post submissions

93. As per the directions of the Panel, further discussions have been held since the Directions Hearing on 3 September 2018. During these discussions, each of the proposed restructure areas were reviewed. It was confirmed that the restructure lots will not result in increased risk to property or life. The lots either contain an existing dwelling; have appropriate features and dimensions to achieve a BAL 12.9 on Bushfire Management Overlay affected lots; or have areas outside of the Bushfire Management Overlay that are appropriate to build on (i.e. appropriate setbacks can be met from any vegetation and in an area not affected by any other significant environmental risks); or are identified as “No dwelling development restructure lots”.

94. Given the above, the CFA have confirmed that they are supportive of Council’s intention to reduce the number of lots in areas susceptible to bushfire and are therefore supportive of Amendment C90.

95. Discussions with the West Gippsland Catchment Management Authority (WGCMA) post submissions

96. Discussions were also held with the WGCMA following the Directions Hearing of 3 September 2018. The lots in the restructure areas were reviewed with the WGCMA, with particular attention turned towards Port Welshpool and Toora. Following these discussions the WGCMA confirmed in writing that they were satisfied with the restructure lots proposed, reducing the number of lots in flood prone areas and subsequently avoiding risk to property and life. The WGCMA were also satisfied that concerns regarding access to towns in flood events is appropriate to address under Council’s upcoming Coastal Strategy. It has been agreed that the WGCMA will be engaged throughout the formulation of this Coastal Policy.

97. Given the above, the WGCMA have confirmed that they are supportive of Council’s intention to reduce the number of lots in areas susceptible to flooding and are therefore supportive of Amendment C90.

98. HOW THE RESTRUCTURE OVERLAY PLANS AND FRAMEWORK PLANS WERE FORMULATED AND THE CONSIDERATIONS TAKEN INTO ACCOUNT

99. The C90 Restructure Plans are in most parts based on the adopted Housing and Settlement Strategy.

100. Each restructure area has its own characteristics in term of subdivision & existing development pattern, topography, agricultural viability, land use risk and history. Due to the broad range of differing factors it was not possible to apply a standard set of considerations to formulate restructure lots based on a consistent methodology. However, each RO lot that has dwelling development potential has been assessed against the factors that are normally considered when assessing a dwelling application. This includes:

- Access to all weather road frontage or a requirement that it be achieved before development may occur.
- A potential dwelling site in a location not subject to flooding and with a reduced or manageable bushfire risk that does not involve the clearing of native vegetation.
- The potential to contain waste water on site in accordance with SEPP requirements.
- The potential to develop without undue impact on the agricultural viability of adjoining lands.

- Access to basic development infrastructure including power

101. In relation to the individual nature of the restructure areas the following comments are provided to demonstrate the methodology applied.
102. Land ownership patterns have been considered in RO lot formulation. In some cases this has led to clear outcomes such as at Whitelaw where the existing ownership pattern lends itself to the creation of two logical and workable RO lots. The fact that both lots already contain a dwelling furthers the case that this is a logical and workable outcome that has minimal impact on the landowners.
103. Land ownership was also a leading rationale in relation to RO8 (Tarwin), RO9 (Meeniyah), RO10 (Newcastle), RO12 (Bennison) RO16 (Buffalo) RO17 (Darlimurla) RO18 (Hedley), RO20 (Stony Creek) and RO21 (Dollar). In these cases, the RO lots have been created so that only one landowner (based on current ownership) is in each proposed RO lot. Reducing the burden of the RO on landowners has been considered in the formulation of the RO plans.
104. RO areas that are in single ownership, however it is proposed to create more than one lot are found at RO4 (Jeetho), RO13 (Port Franklin) and RO14 (Hedley). Regarding RO14, this area has recently been issued a subdivision planning permit which (when registered) will consolidate all these lots into a larger lot. This plan will be presented at the panel hearing.
105. RO4 creates two lots from land that is currently in one ownership. This site has a history of negotiations with the landowner (although in one ownership, two families have an interest in the land) over many years. Prior to Council considering application of the Restructure Overlay it was common practice for Council to consider dwelling development in the areas now proposed for RO application if the landowners were willing to consolidate their lots to create one, two, or more larger lots. This notably occurred in Jumbunna to which examples will be presented at the Panel Hearing for discussion. The RO4 lot configuration is based on long standing attempt between Council and the landowner to resolve the restructuring of this area.
106. When the subdivision planning permit for RO14 is acted on, RO13 will become the only green field RO area where it is proposed to create additional lots from the one ownership. In this case 172 lots are reduced down to three lots.
107. The most complex restructure areas are RO5 (Outtrim), RO7 (Jumbunna), RO15 (Toora) and to a lesser RO19 (Port Welshpool).
108. Regarding RO5 and RO7, the ownership patterns are complex, the lot configurations are irregular and both areas could be considered to be rural residential in nature. For these reasons, a more lenient approach has been taken to the creation of RO lots with dwelling development potential. However, wherever possible, existing dwellings form the heart of RO lots to reduce the number of new dwellings. The complexity of this area required lot by lot analysis and justification at the Panel Hearing.
109. RO15 (Toora) is also complex however the existing lot configuration is more regular and the agricultural values of the land could be considered to be higher. This area, commonly referred to as the Grip Road Area has been a source of concern to Council and landowners over many years. The area is complicated by the application of the LSIO and potential future impacts of climate change. More so than at Jumbunna and Outtrim the approach taken by Council has been one of seeking to reduce the number of new dwellings in the area, and where new dwellings are possible, ensure that the option exists to site a dwelling outside of the LSIO in a location that maintains road access during flooding. As stated above, this is a complex area and a lot by lot discussion at the Panel Hearing is required to explain how RO lot configuration was determined.

110. The larger and more complex RO areas are in the Farming Zone. The default minimum lot size for a dwelling is 40ha and the minimum subdivision lot size is 80ha. By necessity the RO lots proposed to be created are less than 80ha and dwellings will be permissible on many lots less than 40ha. This situation does not mean that Council has not considered the Purpose of the Farming Zone. Council argues that the RO plans represent a greatly improved outcome on what otherwise may occur if the RO's were not enacted and that the RO plans reach an appropriate balance between resolving a long standing problem while reducing the further loss of agricultural land and impacts on adjoining farming.
111. Regarding the Framework Plan maps, the maps are based on the recommendations of the Housing and Settlement Strategy and have not generated any community concern, other than some requests for changes in Fish Creek. The key element of the Framework Plans is the identification of a township boundary. The boundary is mapped to the existing extent of urban zoned land, or the existing extent of development in the smaller townships and hamlets. These townships are unsewered (some in declared catchments), have limited or no services (development of community infrastructure) and are not suitable for population growth.

112. Inclusion of Port Welshpool in Amendment C90

113. Panel Direction 12e requests an "Outline of the process by which Port Welshpool came to be included in the Amendment, including relevant DELWP documentation".
114. As noted above, the Restructure Overlays are primarily drawn from the Housing and Settlement Strategy (HSS). Not included in the HSS are the proposed RO's at Toora (RO15), Buffalo (RO16), Darlimurla (RO17), Hedley (RO18), Port Welshpool (RO19), Stony Creek (RO20) and Dollar (RO21). Also not included in the RO's are the Restructure Plans at Venus Bay, however these plans are already in the planning scheme, so they did not specifically require inclusion in the HSS.
115. The RO's identified in the HSS are what may typically be called classic restructure plan candidate areas in that they are clusters of small, mostly township sized lots in historic townships that no longer exist. Following adoption of the HSS, and preparation of the first iteration of Amendment C90, the decision was taken to include the additional areas in the RO. The new areas are not 'classic' RO candidate areas because they are either (currently) crown land lots, or larger privately owned lots that are historic subdivisions created for small lot farming activity. This is the case at Toora, which was created in the 1890s under the *Settlement on Lands Act 1893*. The aim of the Act was to create small lots for agricultural production. The scheme mostly failed however the lots remained.
116. The new areas were included because development interest was growing in some of these areas (especially Toora) and the WGCMA were routinely recommending that dwellings not be approved if the land was in the LSIO or access to the land was lost during flooding. This prompted Council to review its position, search the cadastre, and include all other historic subdivision areas that have new dwelling development potential that is likely to not be supported by Council. Essentially, if Council is going to introduce RO's it may as well be comprehensive. DELWP reauthorisation of Amendment C90 was required to achieve this outcome and that was the only dealing that DELWP had regarding Port Welshpool specifically.
117. The only possible RO candidate area not now included in Amendment C90 is a historic subdivision west of RO10 (Newcastle) at Korumburra. This land is affected by the RXO and a PAO (VicRoads). The specifics of this site can be discussed at the Panel Hearing if required.

118. HOW THE RESTRUCTURE OVERLAY AND INCORPORATED DOCUMENT WILL OPERATE FOR THE AFFECTED LAND

119. Panel Direction 12(f) requires “Details of how the Restructure Overlay and the associated proposed Incorporated document are intended to operate for affected land, including an analysis of how / whether other provisions of the planning scheme such as the underlying zone provisions, overlay controls and particular provisions would continue to apply.”
120. Before responding more directly to the Panel’s direction, Council notes that the exhibited Incorporated documents has elements that require addressing should the amendment be recommended for adoption. The structure of the provisions at the start of the document lack clarity and the mapping of the RO lots is overly complex. For example, regarding the less complex RO areas, the plans could be mapped on one page without the need for additional maps for individual restructure lots. The map tables (detailed as ‘Table to Figure XX’) include extraneous information (zones, overlays, vegetation descriptions etc) and statements such as “This is a no dwelling development restructure lot” are listed in the column headed ‘*Restructure Lot NO. Address and Total Area*’, which lacks correlation.
121. Despite these issues, the intent of what the document is seeking to achieve is evident to affected parties. With the assistance and direction of the Panel, the Incorporated document can be reformatted to improve its ease of use and enforceability. The Mount Alexander Shire Council Restructure Overlay Incorporated document presents a template from which to work from. The maps are cleanly drafted and the table includes a column “What is allowed” which provide a clear statement regarding the restriction imposed on a lot. The Mt Alexander document also uses vinculum to join RO areas to lots not in an RO. This approach raises questions that Council would like to explore with the Panel.
122. An amended Incorporated document (written provisions and sample maps and tables) will be presented at the Panel Hearing for discussion.
123. Amendment C90 proposes to restructure old and in appropriate subdivisions by the application of the Restructure Overlay (RO) in combination with the introduction of an Incorporated Document to be included in the Schedule to Clause 72.04. The approach taken by C90 is largely consistent with the approach taken by other councils in recent years that have applied or amended RO’s. For the purpose of comparison and analysis (including discussion of panel report recommendations) the following discussion will refer to Wellington Amendment C71 and Mount Alexander Amendment C63 & C69. Both amendments have panel reports that provide commentary and make recommendations that are relevant to C90 especially in relation to the use and structure of an Incorporated document and the option to use Clause 51.01 Specific Sites and Exclusions in combination with an Incorporated document.
124. Some of the following comments build on, or amend, comments made in Council’s Part A submission. In relation to this, Council is open to discussions with the Panel on the need to use Clause 51.01 to achieve its objectives, or whether the same outcomes can be achieved by the use of the Incorporated document alone? Council is also open to discussions on options to simplify the form and content of the Incorporated document to make it easier for members of the public and planners to use.
125. How the Restructure Overlay and Incorporated document will operate
126. Amendment C90 proposes to apply the RO’s by a combination of the use of the RO Schedule and an Incorporated document. The precedent for this approach is well established and does not require further discussion in this submission. It is sufficient to note that the size and complexity of the issues addressed in the restructuring of lots do not lend themselves to capture in the RO

schedule alone (a schedule may run to a hundred pages to achieve its objectives) and that using a 'Reference document' would not provide the legal head of power required to compel the restricting of lots. The recently updated Practice Note on the use of Incorporated documents and Background documents (PN13 Sept 2018 – Note: Reference documents are now called Background documents) comments on the use of Restructure Plans in its discussion of the use of Incorporated documents.

127. While Council is confident in the workability of its combined use of the RO Schedule and an Incorporated document, where C90 differs to other recent RO amendments is in its use of Clause 51.01 Specific Sites and Exclusions (formerly Clause 52.03). The implications of VC148 and the continuing rollout of Smart Planning mean that the use of Clause 51.01 requires consideration. These issues are not straightforward and will require discussion with the Panel however the following comments inform the Panel of the issues we intend to raise for discussion and how the amendment provisions may benefit from some reconsideration.

128. Clause 51.01 Specific Sites and Exclusions

129. The following is a discussion of the reasons why Council included the Clause 51.01 provisions in the amendment and if the provisions are necessary to achieve the outcomes being sought? Central to this is the question of the powers of an Incorporated document and the implications of VC148 and Smart Planning.

130. In reviewing the RO Incorporated documents in other planning schemes it is clear that there is no consistent approach to how these documents are structured. Significant variations exist in how they are laid out and how decision making is guided. To illustrate this point it is noted that the Mt Alexander document seeks to 'prohibit' some forms of development in a policy statement while the Yarra Ranges document allows variations to the RO lot configuration with the consent of the responsible authority. These points are not directly relevant to C90 (*however the benefits of the 'consent to vary' requires discussion with the Panel*) other than to demonstrate that the different approach being taken by this Council is not inherently flawed on the basis that it is different. To Council's knowledge, the C90 Incorporated document is different to other similar document because of its use of Clause 51.01 and also because of its planning permit exemptions at Clause 5.0. Both of these provisions require discussion especially in light of the impending changes initiated by VC148.

131. Council has used Clause 51.01 to exempt a restructured lot from requiring a planning permit for the use of the land. The rationale for this exemption related to the South Gippsland Rural Land Use Strategy and its key policy implementation provisions at Clause 22.05 'Rural Dwellings'. The local policy strongly discourages the use and development of dwellings on lots between 4.1ha and 40ha unless it can be clearly demonstrated that a dwelling is required in association with commercial agricultural production. The historic pattern of small lot rural subdivisions, combined with South Gippsland's picturesque landscape and close proximity to Melbourne have created high demand for rural lifestyle lots which if left uncontrolled would incrementally erode the Shire's agricultural viability. While importance is placed on protecting agricultural land, the RO plans do create vacant lots between 4.1ha and 40ha on which a dwelling is proposed to be supported. This is typically (but not exclusively) the case where a high level of rural lifestyle development has already infiltrated an area and it is unlikely that the area will transition back to commercial agriculture – for example Jumbunna and Outtrim.

132. Identifying these lots as 'Specific sites and exclusions' means that a permit is not required for the use of the land under the zone and draws a distinction between the RO lots and other lots of a similar size in the Farming Zone. Identifying the RO lots in this manner means that the approval of a dwelling on a lot between 4.1ha and 40ha cannot be used as precedent to weaken the Rural Dwellings policy. Furthermore, for those lots identified as 'No dwelling lots', the use of 51.01

makes it clear that a dwelling is prohibited. In other planning schemes where an Incorporated document identifies a 'No dwelling lot' it may be open to argument if an Incorporated document on its own can prohibit a permissible use in a zone (Council would like to explore this issue with the Panel as it has consequences for the structure of the Incorporated document).

133. The use of 51.01 also requires consideration in relation to the provisions at 'Dwellings and other buildings' (Clause 5.0 at page 9). These provisions are drafted in the same form as a Schedule to an overlay and list permit requirements and permit exemptions. No other RO Incorporated document does this and it is questionable if these requirements are enforceable as drafted. The reason for this concern is that Clause 45.05-2 'Dwellings and other buildings' states that "A permit is required to construct or extend a dwelling or other building". Unlike most other overlays, the RO does not state that "This does not apply if a schedule to this overlay specifically states that a permit is not required". The C90 RO Schedule is a table identifying the RO areas. No exemptions are provided in the Schedule because no exemption can be provided. By similar reasoning, it is likely exceeding the powers of an Incorporated document to exempt an application from a planning permit? Should the Panel agree that the permit exemptions have merit, they must be moved into the Specific sites and exclusions' section in order to override the requirements of Clause 45.05-2. The draft updated Incorporated document will demonstrate how this may be done.
134. If Clause 51.01 is used, there are implications resulting from the introduction of VC148 and Smart Planning. In short, Clause 51.01 is being transitioned to the Specific Controls Overlay (SCO). DELWP advise that the transition provisions allow Amendment C90 to use Clause 51.01 and that these provisions will be transitioned into the SCO when Smart Planning transitions the South Gippsland Planning Scheme into the new format later in 2019. As of November 2018 the SCO can be used by Council's however DELWP advice against doing this in relation to Amendment C90.
135. If the SCO is used, it will result in planning scheme mapping duplication. The SCO will map the same area mapped in the RO. This is cumbersome, however advice from DELWP is that this can occur and that it is better to have double mapping than just the RO mapping alone which runs the risk that landowners and purchasers are not aware of the special controls applying to land.
136. Impact of Restructure Overlays and the Incorporated document on other provisions of the planning Scheme?
137. It's Council's view that there is no discord between the RO's and the provisions of zones and overlays affecting the RO areas. Consultation has occurred with the WGCMA (LSIO flooding consideration), the CFA (BMO consideration), VicRoads (Road Zones) and South Gippsland Water and Council's Environmental Health Department (ESO2 Water Catchments). The zones and overlays work alongside the RO without any evident problems. The same applies to the Particular provisions. This assumption can be tested at the Panel Hearing by randomly selecting sites in the RO and reviewing the permit triggers in a situation where land has been restructured in accordance with an RO plan and where this has not occurred.
138. The permit exemptions set out in the Incorporated document are important to reduce the burden of applying the RO. Many of the exemptions mirror exemptions provided in the schedule to the LSIO. The exemption to construct a 'non-habitable building or agricultural farm building or structure' has been noted in submissions. The Mount Alexander Panel Report provides commentary around the pros and cons of exemptions and the degree to which landowners should be compelled to restructure their lots before any buildings and works are approved. The argument being that a lack of compulsion means there is no incentive to consolidate lots and the old lots will live on longer than otherwise might be the case. The alternative view is that it is

excessively burdensome on affected landowners to have to consolidate (and potentially acquired road reserves) before you can building a modest extension on your existing dwelling.

139. The RO's lack of flexibility can effectively sterilise land from development. A consequence of this is found in Yarra Ranges Amendment C160 which introduced an Incorporated document into Clause 52.03 specifically to allow a modest extension to an agricultural building on land that did not conform with the RO lot plan. Discussions with Yarra Ranges Council highlighted some issues regarding the lack of flexibility in their RO application.

140. In conclusion, our analysis of the amendment provisions have not highlighted any technical inconsistencies between the provisions and the existing provisions of the planning scheme.

141. CHANGES TO THE AMENDMENT DOCUMENTATION

142. Following the consideration of submissions made by referral authorities and the community, in addition to the impacts of Amendment VC148 and the identification of drafting errors and oversights in the exhibited documentation relevant to Amendment C90, a number of changes to the documents supporting the amendment have been identified.

143. Amendment VC148

144. The adoption of Amendment VC148 sees a number of changes required that are of no consequence to the amendments proposed by C90. The minor changes include a change of clause numbers in line with the new format Planning Scheme. All clauses relevant to Amendment C90 prior to Amendment VC148 are still within the Planning Scheme, however the location and relevant clause numbers of a number of Scheme provisions have changed. The documentation relevant to C90 is to be updated so as to be consistent with the changes imposed by Amendment VC148.

145. Local Planning Policies

146. Following the consideration of a submission made on behalf of the Great Southern Rail Trail Committee of Management changes to exhibited Clause 21.08-11 are proposed. The changes seek to highlight the importance of the Great Southern Rail Trail and the Grand Ridge Rail Trail in the scheme of local of tourism. A new 'Objective 4' with three associated strategies are suggested for inclusion at Clause 21.08-12 as part of Amendment C90.

147. Suggested additions have been identified at Clause 21.09-3 at strategy 3.3 of 'Objective 3'. The changes seek to encourage the expansion of public and flexible community transport services and facilities.

148. Minor changes of limited consequence, but for the purposes of clarification have been identified at Clause 21.17-13. This clarification replaces the term 'self contained tourist development' with small-scale tourism development.

149. Track-changed copies of the amended sections of the Clause 21 may be found at Appendix B.

150. Incorporated Document

151. An updated Incorporate document will be presented at the Panel Hearing.

End of Part A Submission.