

**Warrnambool Planning Scheme Amendment C213warr
Planning Permit Application PP2022-0060
Rezoning and subdivision of land, Warrnambool**

Panel Report

Planning and Environment Act 1987

3 October 2024

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority may also recommend to the Minister that a permit that applies to the adopted Amendment be granted. The Minister may grant or refuse the permit subject to certain restrictions. [sections 96G and 96I of the PE Act]

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

3 October 2024



Annabel Paul, Chair

Contents

	Page
Executive summary	6
1 Introduction	8
1.1 Combined Amendment and permit application.....	8
1.2 Procedural issues.....	10
1.3 The Panel’s approach	10
1.4 Limitations.....	11
2 Strategic issues	12
2.1 Planning context.....	12
2.2 Strategic justification	13
3 Vegetation, biodiversity and neighbourhood character	15
4 View Sharing	17
4.2 Building envelope.....	22
4.3 DDO17 provisions relating to Banksia Drive and Acacia Court	24
5 The planning permit	27
Appendix A Submitters to the Amendment	30
Appendix B Document list	31
Appendix C Planning context	32
C:1 Planning policy framework.....	32
C:2 Other relevant planning strategies and policies	33
C:3 Planning scheme provisions	33
C:4 Ministerial Directions, Planning Practice Notes and guides	35

List of Tables

	Page
Table Planning context.....	12

List of Figures

	Page
Figure 1 Land subject to the Amendment, Explanatory Report	9
Figure 2 Land subject to the planning application (outlined in red), Proponent Submission, Myers planning & Associates.....	9
Figure 3 Aerial photo of 32 Riverview terrace and neighbouring land at 2 and 4 Banksia Drive, Nearmap	18
Figure 4 View across the subject site from the front verandah of 4 Banksia Drive, Proponent Submission, Myers Planning & Associates.....	19

Figure 5 View across the subject site from outdoor area of 2 Banksia Drive,
Proponent Submission, Myers Planning & Associates..... 20

Glossary and abbreviations

The Amendment	Amendment C213warr
Application	Planning Permit Application PP2022-0060
Council	Warrnambool City Council
DDO	Design and Development Overlay
DEECA	Department of Energy, Environment and Climate Change
GRZ	General Residential Zone
PE Act	<i>Planning and Environment Act 1987</i>
RLZ	Rural Living Zone
VCAT	Victorian Civil and Administrative Tribunal

Overview

Amendment summary

The Amendment	Warrnambool Amendment C213warr
The Application	Planning Permit Application PP2022-0060
Common name	Rezoning and subdivision of land, Warrnambool
Brief description	Rezoning of land in Riverview Terrace, Serendipity Drive and Casuarina Court and subdivision of land at 32 Riverview Terrace, Warrnambool
Subject land	Land in Riverview Terrace, Serendipity Drive and Casuarina Court, Warrnambool and 32 Riverview Terrace, Warrnambool
The Proponent	Owners of 32 Riverview Terrace
Planning Authority	Warrnambool City Council
Authorisation	26 February 2024, with conditions
Exhibition	18 April and 20 May 2024
Submissions	Number of Submissions: 6

Panel process

The Panel	Annabel Paul, Chair
Supported by	Laura Agius, Panel Coordinator
Directions Hearing	Online, 31 July 2024
Panel Hearing	Warrnambool Council office, 27 August 2024
Site inspections	Accompanied 26 August 2024 and Unaccompanied 27 August 2024
Parties to the Hearing	<ul style="list-style-type: none"> - Warrnambool City Council represented by Louise Lunn, Coordinator City Strategy, Warrnambool City Council - 32 Riverview Terrace owners represented by Steve Myers of Myers Planning Group (Proponent) - Owners of 4 Banksia Drive represented by David King of Kings Lawyers
Citation	Warrnambool PSA CC213warr and PP Application PP2022-0060 [2024] PPV
Date of this report	3 October 2024

Executive summary

A combined application comprising Warrnambool Planning Scheme Amendment C213warr (the Amendment) and Planning Permit Application PP2022-0060 (the Application) seeks to rezone land in Riverview Terrace, Serendipity Drive and Casuarina Court, Warrnambool from the Rural Living Zone to the General Residential Zone Schedule 1 and to subdivide the land at 32 Riverview Terrace into two (2) lots. The Amendment proposes to remove the existing Design and Development Overlay Schedule 2 (DDO2) from the Amendment land and apply a revised version of Design and Development Overlay Schedule 17 (DDO17).

The combined application was exhibited from 18 April to 20 May 2024 and received six submissions. Key issues raised in submissions include:

- impact on flora and fauna resulting in loss of biodiversity and associated impact on neighbourhood character
- impact on views from neighbouring properties associated with the two-lot subdivision of 32 Riverview Terrace
- requests from government agencies to include certain conditions on any permit issued.

The Amendment

The Panel has found that the Amendment is strategically supported and represents a logical extension to the adjoining General Residential zoned land. The Rural Living Zone is no longer considered appropriate having regard to the objectives of the zone and the minimum lot size requirements. The rezoning will allow for a modest increase in housing opportunities, consistent with the settlement and housing policies of the Warrnambool Planning Scheme.

The Panel supports the removal of the DDO2 relating to 'Logans Beach', being no longer appropriate given the size of lots within the Amendment area being substantially smaller than an average of 10,000 square metres and minimum of 6,000 square metres as required by DDO2.

The Panel supports the inclusion of DDO17 relating to the 'Coastal / Hopkins River Environment Growth Area' to the Amendment land, to appropriately guide further subdivision and buildings and works. The minor wording changes recommended by the Department of Transport and Planning at authorisation, including removal of 'Growth' from the title, is appropriate given that the DDO17 is being extended to established urban land rather than applying only to a growth area.

The additional wording in DDO17 proposed in relation to the 'protection of views' from Banksia Drive and Acacia Court is also supported, on the basis that otherwise the extension of this overlay would give rise to unintended consequences, including potentially unreasonably curtailing future development.

The Permit Application for Subdivision

The Panel supports the application for subdivision and considers that the two lots represent an orderly and logical development of the land.

In relation to views, the Panel has found that consideration of sharing of views from neighbouring properties should be subject to a detailed assessment at the development application stage. DDO17 provisions will require a planning permit for a new dwelling on each lot, and provide appropriate and detailed requirements assessing new dwellings, including consideration of view sharing from neighbouring properties.

On this basis, the subdivision is supported with the building envelope as exhibited, but without an overall height restriction or three-dimensional envelope.

The Panel considers that no further restriction on the property title is warranted, with the combination of zone and overlay requirements as well as permit conditions and building envelope adequate to ensure appropriate future development of the land.

Conclusions

The Panel has concluded:

- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework and is well founded and strategically justified.
- The Amendment and the subdivision application will not have any unreasonable impacts on biodiversity or the character of the neighbourhood.
- The subdivision will not result in built form that unreasonably impacts views from key public viewing points.
- Detailed consideration of view sharing from neighbouring properties should occur at the time of application for buildings and works, and be assessed under the provisions of DDO17.
- The building envelope as exhibited is supported, however that there is no requirement for a three-dimensional building envelope or further restrictions on the property title.
- The additional words to limit the protection of views from Banksia Drive and Acacia Court ‘to be in accordance with an approved development plan under Development Plan Overlay Schedule 13’ is warranted to ensure no unintended consequence.
- Planning permit PP2022-0060 should be granted subject to the conditions.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Warrnambool Planning C213warr be adopted as exhibited, and Planning Permit Application PP2022-0060 issue subject to the following:

- 1. Revise Design and Development Overlay Schedule 17 to include *“in accordance with any approved development plan, as approved under Development Plan Overlay Schedule 13”* after ‘Protect views from existing dwellings in Banksia Drive and Acacia Court’.**
- 2. Issue planning permit PP2022-0060 to subdivide land (Clause 32.08-3 and Clause 43.02-3) generally in accordance with the ‘Panel Version – Draft planning permit, C213warr’ subject to the deletion of Condition 15b.**

1 Introduction

1.1 Combined Amendment and permit application

(i) Combined application description

The Amendment is a combined Planning Scheme Amendment and planning permit application under section 96A of the *Planning and Environment Act 1987* (The PE Act).

The Amendment seeks to rezone land in Riverview Terrace, Serendipity Drive and Casuarina Court, Warrnambool from the Rural Living Zone (RLZ) to the General Residential Zone Schedule 1 (GRZ1).

The planning permit application seeks to allow for a two (2) lot subdivision of land at 32 Riverview Terrace, Warrnambool.

Specifically, the combined Amendment and application proposes to:

- rezone the Amendment land from the RLZ to the GRZ1
- remove the Design and Development Overlay Schedule 2 (Logans Beach DDO2) from the land to be rezoned
- amend Design and Development Overlay Schedule 17 (Coastal/Hopkins River Environment Growth Area DDO17), by removing the word 'Growth' from the title and making minor changes for clarity, and applying the DDO17 to the land to be rezoned
- subdivide the land at 32 Riverview Terrace (Lot 1 317314K) into 2 lots with associated building envelopes.

The Explanatory Report states that the Amendment is required for the following reasons:

The combined planning scheme amendment and planning permit achieve consistency in zoning along the north frontage of Hopkins Point Road, where the land adjoins existing General Residential zoned land to the east and west and will facilitate the subdivision of 32 Riverview Terrace.

The amendment will enable a small increase in the provision of additional General Residential zoned land within the existing settlement of Warrnambool, consistent with the strategic directions of the Warrnambool Planning Scheme.

(ii) The subject land

The Amendment applies to land shown in Figure 1, and includes the following sixteen (16) lots:

- 32 Riverview Terrace, Warrnambool (Lot 1 and Lot 2)
- 31 Riverview Terrace, Warrnambool
- 1/30 Riverview Terrace, Warrnambool
- 2/30 Riverview Terrace, Warrnambool
- 3/30 Riverview Terrace, Warrnambool
- 4/30 Riverview Terrace, Warrnambool
- 5/30 Riverview Terrace, Warrnambool
- 6/30 Riverview Terrace, Warrnambool
- 4 Hopkins Point Road, Warrnambool
- 6 Hopkins Point Road, Warrnambool
- 10-12 Hopkins Point Road, Warrnambool
- 1 Casuarina Court, Warrnambool
- 2 Casuarina Court, Warrnambool

- 3 Casuarina Court, Warrnambool
- 4 Casuarina Court, Warrnambool

Figure 1 Land subject to the Amendment, Explanatory Report



The land subject to the permit application is Lot 1 PS317314K, 32 Riverview Terrace, Warrnambool. It is noted that 32 Riverview Terrace is comprised of two lots, with Lot 2 already developed with a single dwelling. Lot 1 is proposed to be subdivided.

Figure 2 Land subject to the planning application (outlined in red), Proponent Submission, Myers Planning & Associates



1.2 Procedural issues

Kings Lawyers acted on behalf of the owners of 4 Banksia Drive, Warrnambool and made a submission to the combined Amendment / Permit application. This submitter did not request to be heard at the Hearing and did not attend the Directions Hearing.

On 23 August 2024 (two business days before the Hearing), Kings Lawyers wrote to the Panel requesting the opportunity to make a submission to the Hearing and to attend the accompanied site inspection, despite being out of time.

Council and the Proponent did not object to the request.

The Panel agreed to allow the party to attend both the site inspection and to present a submission at the Hearing.

At the Hearing, Submitter 3 recommended additional changes to the draft permit including restrictions on the proposed building envelope, a new condition 1 and changes to proposed condition 13 requiring a section 173 agreement. Given the late filing of this submission and raising of new matters, the Panel gave Council and the Proponent until 30 August after the Hearing to respond in writing.

Council responded in writing on 28 August 2024.

A tracked change version of the draft permit was circulated by the Proponent on the 3 September 2024.

Submitter 3 responded to Council comments and to the draft permit on 4 September 2024.

1.3 The Panel's approach

Key issues raised in submissions were:

- impacts on vegetation and biodiversity and associated impacts on neighbourhood character
- impact on view sharing associated with the two-lot subdivision.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions and other material presented to it during the Hearing. 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
- Strategic issues
- Vegetation, biodiversity and neighbourhood character
- View sharing
- The planning permit.

1.4 Limitations

Submitter 2 raised issues of impact to their mental health associated with the rezoning and financial advantage to the Proponent which are not considerations under the PE Act and therefore have not been discussed in this Report.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix C highlights key imperatives of relevant provisions and policies.

Table 1 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 2
Planning Policy Framework	- Clauses 11.01-1S (Settlement), Clause 11.01-1R (Settlement - Great South Coast), Clause 11.03-2S (Growth Areas), Clause 11.03-4S (Coastal Settlement), Clause 11.03-5R (The Great Ocean Road Region), Clause 11.03-6S (Regional and Local Places) - Clauses 12.01-1S (Protection of Biodiversity), Clause 12.01-1L (Warrnambool Biodiversity), Clause 12.02-1L (Coastal Landscapes), Clause 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs) - Clauses 15.01-1S (Urban Design), Clause 15.01-1L-01 (Urban Design), Clause 15.01-3S (Subdivision Design), Clause 15.01-5S (Neighbourhood Character) - Clause 16.01 (Residential Development), Clause 16.01-1L (Housing Supply), Clause 16.01-2S (Housing Affordability) - Clause 19.03 (Development Infrastructure)
Other planning strategies and policies	- Plan Melbourne Direction 7.1, Policies 7.11 - Great South Coast Regional Growth Plan - Coastal/Hopkins River Environment Structure Plan (2008) - Logans Beach Framework Plan (2017) - Warrnambool Affordable Housing Policy (2012) - Warrnambool City-Wide Housing Strategy (2013)
Planning scheme provisions	- Rural Living Zone - General Residential Zone, Schedule 1 - Design and Development Overlay, Schedule 2 - Design and Development Overlay, Schedule 17 - Environmental Significance Overlay, Schedule 2
Ministerial directions	- Ministerial Direction s7(5) (Form and Content of Planning Schemes) - Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 40: Using the Residential Subdivision provisions of Clause 56: Residential Subdivision - Planning Practice Note 46: Strategic Assessment Guidelines, September 2022 - Planning Practice Note 90: Planning for Housing

2.2 Strategic justification

(i) Submissions

Council submitted that the Amendment is well supported by planning policy and addresses an anomalous zone.

The Municipal Planning Strategy (Clause 2) of the Warrnambool Planning Scheme, recognises that Warrnambool is Victoria's largest coastal regional city and is the fastest growing economy and population centre in South West Victoria. The population is forecast to grow at 1.4 percent per annum until 2040, requiring about 250 new dwellings per year to meet demand.

Council submitted that the rezoning and subdivision are consistent with policies that encourage infill housing on sites well serviced by existing infrastructure and in a town experiencing significant growth.

The Amendment land is recognised as being part of an established urban area, with excellent access to services. It also adjoins the Coastal Hopkins Growth Area immediately to the west, being one of seven identified growth areas within the municipality.

Council said that the current RLZ is inappropriate when considered against the existing pattern of development within the area; the zoning of the adjoining land; and the purposes of the RLZ that include:

- To provide for residential use in a rural environment
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.

It was submitted that the GRZ is consistent with the zoning of surrounding land to the west and east and will provide some landowners with modest development opportunities.

The Proponent submitted that the Amendment is well supported by a range of strategic frameworks and policies, reflecting its alignment with the broader objectives for growth within Warrnambool and the surrounds by:

- Plan Melbourne's recognition of Warrnambool as one of ten regional cities to support housing and economic growth
- The Great South Regional Growth Plan that earmarks Warrnambool as a principal population and employment centre in the region and forecasts significant residential growth
- The Planning Policy Framework (Clause 11.01-1S, Clause 16.01-1S) that supports the development of diverse housing options within established urban areas.
- The Logans Beach Strategic Framework Plan (2017) by recognising the logical extension of the GRZ1.

Submitter 2 considered the rezoning would have a detrimental impact on the character of the neighbourhood contrary to Clause 11.03-2S that seeks to retain unique characteristics of established areas impacted by growth. They also considered the subdivision would destroy biodiversity contrary to Council's strategic directions for biodiversity at Clause 2.03-2.

Submitter 3 stated that they did not object to the concept and strategic justification of rezoning the RLZ land to the GRZ or the concept of the subdivision permit as proposed.

(ii) Discussion

The Panel agrees with the Proponent and Council that the proposed rezoning represents a logical extension to neighbouring land in the GRZ1, and that the land to be rezoned is no longer consistent with the objectives or subdivision standards of the RLZ.

The lot sizes of the land to be rezoned are an average of 2,570 square metres. This is well below the minimum lot size as specified in the schedule to the RLZ of 0.6 hectares and average of 1 hectare for the Logans Beach / Hopkins Point Road Area. Accordingly, the rezoning is considered a more appropriate zone and a logical extension of the GRZ to the east and west of the subject land.

The DDO2 applies to the Logans Beach Area and currently applies to land generally in the RLZ. With the rezoning this DDO2 is to be removed, and the DDO17 is to be applied, reflecting the DDO that applies to the General Residential Zone to the east.

The Panel agrees that this is an appropriate change to the planning controls affecting the Amendment land.

Warrnambool is experiencing considerable growth and there is an imperative to provide opportunities for increased housing in established areas. The land is located approximately 2.7 kilometres east of the central business district of Warrnambool and within the urban growth boundary. The rezoning will allow for a modest increase in housing opportunities in a location well serviced by established infrastructure.

While recognising that the rezoning will allow for some increased development opportunities, the Amendment itself will not impact on biodiversity or change the character of the area, and native vegetation impacts will be considered at the time of any future application for subdivision and/or housing. Given the existing subdivision pattern; location of housing and access; as well as other constraints such as covenants on some lots, it is not anticipated that the rezoning will lead to substantial greater development with associated vegetation loss, but rather will provide some modest opportunities for development on some lots.

On this basis, the Amendment is considered consistent with the key policy objectives relating to settlement and housing within the Planning Scheme and future development will need to have regard to policies relating to neighbourhood character and biodiversity.

Overall, the Panel is satisfied that the Amendment will deliver net community benefit and sustainable development as required by Clause 71.02-3.

(iii) Conclusions

For the reasons set out in this Report, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework and is well founded and strategically justified.

3 Vegetation, biodiversity and neighbourhood character

(i) The issue

The issue is:

- Whether the Amendment and proposed subdivision will unreasonably impact on vegetation and biodiversity, with associated impacts on neighbourhood character.

(ii) Background

Clause 02.02-2 (Biodiversity) highlights that the Warrnambool coastline supports a range of environmental values, including areas of coastal vegetation that provides wildlife habitat and corridors for vulnerable and threatened flora and fauna species.

It states that the Merri River, Hopkins River and associated wetlands and floodplains form a highly significant coastal wetland system that provides important habitat for listed species of flora and fauna.

Local strategic directions for biodiversity are:

- Protecting and enhancing sites of biodiversity conservation significance.
- Providing wildlife habitat and corridors for vulnerable and threatened flora and fauna species in coastal reserves.
- Arresting the decline and fragmentation of native vegetation to minimise land and water degradation issue.

Clause 02.03-5 Neighbourhood character seeks to integrate infill development with existing architectural, historic and landscape character of the neighbourhood.

Clause 11.03-2S (Growth Areas) seeks to retain unique characteristics of established areas impacted by growth.

Clause 12.01-1S (Protection of Biodiversity) seeks to protect and enhance Victoria's biodiversity.

Clause 12.01-1L (Warrnambool Biodiversity) strategies include:

- Discourage development that compromises the ecological integrity of the Merri River, Hopkins River and Russells Creek corridors and the coastal reserves.
- Protect habitat corridors and areas identified as habitat for rare and threatened flora and fauna species.
- Improve biodiversity through the integration of landscaping / revegetation and retention of stormwater treatment for habitat.

Clause 12.01-2S (Native vegetation management) seeks to ensure that there is no net less to biodiversity as a result of the removal, destruction or lopping of native vegetation.

(iii) Submissions

Submitter 1 had concerns in relation to increased development around Casuarina Court and Hopkins Point Road, resulting in loss of native bushland and habitat to native species, as a result of the Amendment. The Submitter values the larger blocks and natural beauty of the area.

Submitter 2, being three households in Riverview Terrace, were also concerned about the potential for loss of biodiversity associated with the rezoning and subdivision. The Submitter

considered the rezoning was contrary to Council's strategic directions for biodiversity at Clause 2.03-2 of the Planning Scheme and neighbourhood character policy at Clause 11.03-2S. They requested that just properties in Riverview Terrace be rezoned.

The Department of Energy, Environment and Climate Action (DEECA) considered that the rezoning was unlikely to have direct or indirect impacts to biodiversity or native vegetation. DEECA supported the DDO17 objective that seeks to re-establish the vegetated setting for the site using indigenous coastal species. It also supported the retention of the ESO2 on the land at 31 Riverview Terrace and considered it unlikely that the proposal would impact on values to be protected by this overlay, given the limited interface of the land with the Hopkins River.

DEECA sought clarification about any native vegetation impacts arising from the proposed crossover to the lot to be subdivided. Following a response from Council confirming that there was no native vegetation in proximity to the proposed crossover, with the vegetation in proximity to the proposed crossover being *Juniperus Conferta*, a plant species native to Japan, DEECA advised in writing that its concerns had been addressed.

Council and the Proponent did not consider that the Amendment or subdivision would give rise to any unreasonable impacts on biodiversity or neighbourhood character.

(iv) Discussion

The Amendment and subdivision application does not seek to remove any native vegetation or change any environmental overlays.

The rezoning will allow for some increased development opportunities, however this is likely be relatively modest. As noted in Chapter 2, based on the siting of existing housing; topography; tree cover as well as restrictions on title, it would appear that only a few lots would have the potential capacity to be further subdivided and accommodate new housing.

The lot to be subdivided at 32 Riverview Terrace does not have native vegetation and as such future housing on these lots is likely to increase rather than decrease vegetation cover. Any future development of other lots will require consideration of biodiversity, native vegetation impacts and neighbourhood character in accordance with the DDO17 and other requirements of the Planning Scheme.

The Panel is satisfied that the Amendment and subdivision will not have any unreasonable impacts on biodiversity or neighbourhood character.

(v) Conclusion

The Panel concludes that the Amendment and the subdivision application will not have any unreasonable impacts on biodiversity or the character of the neighbourhood.

4 View Sharing

(i) The issue

The issue is:

- Does the planning permit application for subdivision of 32 Riverview Terrace appropriately account for the sharing of views?

(ii) Background

There are a range of Planning Scheme provisions that direct development to allow for view sharing.

These include:

- Clause 2.03-5 Built environment and heritage, Urban design
- Clause 11.03-2L-02 Coastal Hopkins Growth Area
- Clause 12.02-1L Coastal Landscapes
- Provisions of the DDO2 that currently applies to the land
- Provisions of the DDO17 that are proposed to apply to the land.

As part of the permit application material, the Proponent undertook a Viewshed Analysis of future development on the land from key public viewing points in the area, namely the whale watching platform and path to car park, Point Ritchie car park and Breakwater car park.

Submissions were received from the owners of 2 and 4 Banksia Drive, located northeast of the land at 32 Riverview Terrace that had concerns about the future development of 32 Riverview Terrace and the impact on views from their properties.

An on-site pole height assessment was conducted on 15 July 2024 with the Proponent, submitters and Council planning officers to understand the impact of future development of the proposed lots on existing views from 2 and 4 Banksia Drive.

A second pole height assessment was undertaken at the accompanied site inspection on 26 August 2024 with the Panel, Proponent, Council and the representative of 4 Banksia Drive. An inspection of the current views from outside (front verandahs) of both properties was undertaken.

Figure 3 Aerial photo of 32 Riverview terrace and neighbouring land at 2 and 4 Banksia Drive, Nearmap



(iii) Submissions

The 4 Banksia Drive owners were concerned that the subdivision application would not ensure a reasonable sharing of views as envisioned by the DDO17.

They described their home as follows:

It is located high on the allotment, which has a steep gradient. The house has sweeping verandas on 3 sides and benefits from panoramic views from the main living areas and verandas. It is these views that the house was built for and forms a major part of the occupant's amenity.

They requested that the permit include further conditions to protect important views and that the subdivision plan include a 'restriction' to prevent the construction of a building and the planting of vegetation which exceeds the maximum height as specified on the building envelope.

The Submitter referred to the concept of reasonable sharing of views as summarised in Healy v Surf Coast SC [2005] VCAT 990, as follows.

- (a) there is no legal right to a view
- (b) views form part of the existing amenity of a property and their loss is a relevant consideration to take into account
- (c) the availability of views must be considered in the light of what constitutes a reasonable sharing of those views
- (d) in addressing the concept of "reasonableness", it is relevant to consider
 - (i) the importance of the view to be lost within the overall panorama available; and
 - (ii) whether those objecting have taken all appropriate steps to optimise development of their own properties.
- (e) added emphasis will be placed on principles (b) and (c) above if the issue of views is specifically addressed in the planning scheme.

They also referred to the further consideration as outlined in *Wright v Greater Geelong CC* [2013] VCAT 2092 stating:

This Tribunal would respectfully add a further refinement, which is that in addressing the question of reasonableness under para (c) above it is also relevant to consider the legitimate expectations of those whose view is being affected.

The 4 Banksia Drive owners said that particular references in the Warrnambool Planning Scheme together with the DDO17 create a legitimate expectation that significant views will not only be reasonably shared but protected. They pointed to Clause 11.03-2L-02 Coastal Hopkins Growth Area; Clause 12.02-1L Coastal Landscapes and the Logans Beach Urban Design Guidelines 2000.

The 2 Banksia Drive owners submitted that they enjoy views to the west, across 32 Riverview Terrace, from their living room and outdoor balcony. They have also entered into a contract for sale for the purchase of Lot 234 of the Hopkins Heights development that is immediately to the south of 2 Banksia Drive.

They submitted that the Viewshed Analysis did not consider views from neighbouring properties and required further consideration of the impact having regard to the provisions of the DDO17 and the impact on existing views and amenity of their property.

The Proponent provided the following images from the pole height site inspections, as viewed from 4 Banksia Drive (Figure 4) and 2 Banksia Drive (Figures 5).

Figure 4 View across the subject site from the front verandah of 4 Banksia Drive, Proponent Submission, Myers Planning & Associates



Figure 5 View across the subject site from outdoor area of 2 Banksia Drive, Proponent Submission, Myers Planning & Associates



Regarding the image from 4 Banksia Drive, the owners said:

It is submitted that this dotted line is somewhat misleading as the existing land has been terraced, which means the dotted line will step up considerably and has the potential to decimate the prized views.

By way of example if the eave height to the adjoining 2 story house shown in figure 10¹ was used as a reference and angled down to the highlighted height pole, it shows that the majority of the ocean view would be lost.

The Proponent submitted:

- future development at 7.5 metres in height would have minimal impact on views towards the coast from 4 Banksia Drive
- at a standing position on the front porch (not seated), views to the dunes and the ocean would remain clearly visible across the site.

In relation to 2 Banksia Drive, the Proponent acknowledged that any development of the subject land exceeding 5 metres in height will impact on current views from this property towards the Hopkins River. Given the subject is vacant, they submitted that some development of the land is reasonable, and it would be impractical to limit development to maintain current views.

They stated:

We contend that the Amendment does not enable buildings and works on the Permit Land beyond what was already anticipated. The Amendment preserves the existing opportunities for notice and review. DDO17 includes provisions for considering view sharing, in line with the current DDO2 that applies to the land.

¹ Note the image was Figure 10 in the Proponents submission however Figure 4 in this report

The Proponent noted that the land to be acquired by 2 Banksia Drive owners, being Lot 234 within the Hopkins Height development, is located southwest of the subject land, with intervening development. On this basis there would not be any impact.

Council submitted:

- a planning permit will be triggered by the DDO17 for future development of the subdivided lots at 32 Riverview Terrace and concerns about built form will be addressed at that stage
- the DDO17 provides design objectives and buildings and works requirements that require consideration of the 'reasonable sharing of views'
- on the basis of the height pole analysis and the application of the DDO17, that future development of the site would not unduly impact on viewing lines nor amenity of neighbouring properties.

(iv) Discussion

From the Viewshed Analysis, it is evident that the subject site is some distance and largely hidden from key public viewing points, such as the whale watching platform and Point Ritchie and Breakwater car parks and the existing dwelling (on Lot 2) is likely to block views. The Panel is satisfied that development will not result in any unreasonable impact on any of these key public viewsheds.

Regarding impact on views from neighbouring properties, the Panel notes that the permit for subdivision is triggered under both the proposed GRZ and the parent clause of the DDO. The GRZ and DDO decision guidelines do not include consideration of views.

DDO17 includes a range of design objectives and requirements that relate to the consideration and sharing of views, however these are associated with assessing 'buildings and works' and not subdivision.

The Panel considers that the appropriate time for a detailed assessment of views is at the time of application for buildings and works. The DDO17 provisions provide a detailed framework for the consideration of view sharing, which will require consideration of building siting on each block; setbacks from boundaries and between future housing; building heights across various parts of the lot; how the dwellings will respond to the slope; consideration of roof form etc. The decision guidelines include:

The impact of the development on views to, from and across the development site.

The Panel disagrees with the 4 Banksia Drive owners that their expectation should be for the 'protection of views' rather than one of 'view sharing'. The Planning Scheme refers to allowing for '*the reasonable sharing of views to the Ocean and / or Hopkins River from adjoining properties*' (Clause 11.03-2L-02); and promotes '*view sharing between properties along the coast*' (Clause 12.02-1L). DDO17 also seeks '*to provide for the reasonable sharing of views to the ocean, coastal dunes, river and the surrounding landscape*'. At Clause 2.03-5, strategies for urban design seek to facilitate '*the sharing, rather than protection, of views from the public realm and private areas*'.

None of these provisions require total protection of views, and as outlined in the VCAT case Healy v Surf Coast SC, there are well established principles having regard to assessing the impact of development on views.

Finally, it is relevant that 32 Riverview Terrace is currently vacant and even without the proposed subdivision, there is a reasonable expectation that this land will be developed. This would be

subject to a permit however any form of development will have some impact on the existing views enjoyed by the neighbours across this vacant land. The introduction of the DDO17 to the subject land will provide additional guidance for the assessment of view sharing when future development applications are made.

(v) Conclusion

The Panel concludes:

- The subdivision will not result in built form that will have any unreasonable impact of views from key public viewing points
- View sharing from neighbouring properties should be considered during application for buildings and works, and be assessed under the provisions of DDO17.

4.2 Building envelope

(i) The issue

The issue is whether:

- The subdivision should proceed with the building envelopes as exhibited or with the three-dimensional building envelope as provided on the 'Day 1' version of the Plan of Subdivision.

(ii) Background

The proposed Plan of Subdivision was advertised with 'concept building envelopes' on each block, containing 10 metre setbacks from Riverview Terrace and 3 metre side and rear setbacks. No overall maximum building height was specified.

The Proponent provided a Day 1 version of the proposed Plan of Subdivision, that included a three-dimensional building envelope. This maintained the 10 metre front and 3 metre side and rear setbacks and also included a note that the overall building height is to be limited to 7.5 metres above natural ground level as shown.

(iii) Submissions

The Proponent submitted that while they did not oppose a 7.5 metre height limit being imposed on the building envelopes as shown on the Day 1 version of the Plan of Subdivision, they considered the DDO17 provides sufficient guidance to ensure that view sharing is carefully considered during the development application stage. They noted that the Amendment maintains notice and appeal rights to potentially affected landowners.

The Proponent submitted that having a 7.5 metre building height may imply to future landowners an inferred right to develop to 7.5 metres without due consideration of view sharing.

At the Hearing, the 4 Banksia Drive owners acknowledged the Day 1 three-dimensional subdivision plans and draft permit went some way to address their concerns, however they considered further refinements were needed to both the building envelope and permit conditions.

They requested that a restriction, as defined in the *Subdivision Act 1988*, should be imposed on the Plan of subdivision with a maximum building height of 7 metres. They considered it should also include a lower height at the frontage of a maximum of 5 metres for the first 5 metres. They recommended that this restriction be achieved by including the following new condition 1:

Before the plan of subdivision is certified under the Subdivision Act 1988, plans must be approved and endorsed by the responsible authority. The plans must:

- a) be prepared to the satisfaction of the responsible authority
- b) be drawn to scale with dimensions and submitted in electronic form
- c) be generally in accordance with the plans forming part of the application, but amended to show a building and vegetation height restriction over the hatched building envelope area limiting the building and vegetation to a maximum height of 5.0 m for the first 5.0 metres from the northern boundary of the hatched area and then increasing to 7.0 metres for the remainder of the hatched area, above the AHD levels shown on the All Spatial Proposed Plan of Subdivision, reference W24210, dated. 14/08/2024. The burdened land is to be all lots on PS 927305J and the benefited land is to be numbers 2 & 4 Banksia Drive Warrnambool.

The 4 Banksia Drive owners supported permit condition 13 that required a section 173 agreement to be entered into as follows:

Before the plan of subdivision is certified 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 provide for the following:

- a) on each lot to be created, buildings may be constructed only within the building envelopes as shown on the endorsed plans of this permit.
- b) these envelopes must not be altered without the written consent of the responsible authority.

The owner of the land must pay all of the responsible authority's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

However, the Submitter did not support the words, '*these envelopes must not be altered without the written consent of the responsible authority*', allowing for a secondary consent mechanism to be entered into. They requested that this be deleted.

In response to the Proponent's submissions that there could be an inferred expectation that a permit would be issued to the height of a three-dimensional envelope, they suggested a further recital/covenant be applied noting that the restriction is a maximum height only and provided suggested wording.

(iv) Discussion

Having regard to submissions and the site inspection with the height poles, the Panel supports the inclusion of a building envelope on the proposed lots as exhibited, that carries across the DDO2 requirements in relation to front, side and rear setbacks. The Panel however does not support the inclusion of a three-dimensional building envelope.

While there were discussions about whether the building envelope should include maximum height limitations of 7.5 metres or 7 metres, and for parts of the site be limited to 5 metres, the Panel considers that the overall height and massing across the site should be left to consideration at the development stage.

From the pole assessment, a building built to 7.5 metres or even 7 metres may not be acceptable for all parts of the site, and a lower height may be required to ensure the reasonable sharing of views from 2 and 4 Banksia Drive.

Towards the rear of the site, which is also at an elevated level, a height of 7.5 metres or even of 7 metres would appear to impact on the narrow view corridor to the river mouth from 4 Banksia Drive. A greater setback from the rear boundary would likely allow for the retention of this view,

or at least a reasonable portion of this view, while also meeting objectives in relation to building separation. However, this was not put to the Panel in submissions, and without a detailed assessment, it is unclear how far a rear setback would be required to achieve the desired outcome.

Regarding 2 Banksia Drive, large parts of the current view (particularly to the Hopkins River) would appear to be lost with even a single storey development of the land, and again, detailed design should be assessed to ensure that there is some sharing of views.

Another response would have been to establish a view corridor, given its limited and narrow view to the ocean / river mouth from the adjoining properties. However, the Panel accepts that there are other views such as to the river itself that also requires consideration.

As discussed in the previous chapter, the DDO17 provides a range of objectives and built form provisions in relation to future siting and design having regard to view sharing and other matters. They also include a requirement that development be kept below the future mature tree canopy height to a maximum of 7.5 metres above natural ground level, and therefore provides some guidance about preferred maximum building heights. As previously noted, these relate to applications for development, however are not considerations relating to subdivision.

The Panel agrees that including a three-dimensional envelope at this stage may imply that the height has been determined to be acceptable. The 4 Banksia Drive owners suggested a covenant to temper this expectation, however overall, the Panel agrees with the Proponent that the detailed work and views assessment is best undertaken at the stage of application for development. As highlighted by the Proponent, the notice and review provisions ensure rights to neighbours if they disagreed with Council's assessment.

Victoria's planning system is performance based and the use of controls beyond the Planning Scheme and permit (such as restrictions on title and covenants) should be used sparingly. The Panel does not consider they are required in this instance.

(v) Conclusion

The Panel concludes that the building envelope as exhibited should apply without the need for a three-dimensional building envelope or further restrictions on the property title.

4.3 DDO17 provisions relating to Banksia Drive and Acacia Court

(i) The issue

The issue is:

- Whether the DDO17 provision relating to the 'protection of views' from Banksia Drive and Acacia Court require qualification with the extension of the overlay to the Amendment land.

(ii) Background

DDO17 includes a buildings and works requirement, under the sub-heading Views, that states:

- Ensure that the height, siting and setback of development provides for the reasonable sharing of views.
- Site and design buildings and structures to:
 - Take into account existing views to the coast and river from nearby dwellings.
 - Maximise building immersion when viewed from the Logans Beach car park, the whale platform, Point Richie car park and Deakin University boat ramp.

- Protect views from existing dwellings in Banksia Drive and Acacia Court.

The issue relates to the last sub-dot point that relates to dwellings in Banksia Drive and Acacia Court.

(iii) Submissions

The Proponent submitted that an unintended consequence of applying the DDO17 across the rezoned land, had the implication of applying controls that were not envisaged for land outside the Hopkins Height Estate where the DDO17 currently applies. In particular, the provision relating to the ‘protection’ of views from dwellings in Banksia Drive and Acacia Court.

The Proponent submitted that the provision to protect views from existing dwellings in Banksia Drive and Acacia Court stems from the implementation of the Coastal / Hopkins Growth Area Structure Plan, which aimed to protect the existing views from established dwellings across the growth area (Hopkins Heights Estate).

A similar provision is included in the Development Plan Overlay Schedule 13 (DPO13) that relates to the Growth area, that includes:

Area 3 – Specious Residential Lots

- Dwellings adjacent to the shared east-west boundary with lots fronting Banksia Drive and Acacia Court are to where possible be built to the 38 metre contour line or lower, or alternatively be staggered between the view lines of existing dwellings, to ensure that current views to the coast especially at the Hopkins River opening are fully retained.

To address this unintended consequence, the Proponent requested to amend the DDO17 provisions (shown in bold) to:

- Protect views from existing dwellings in Banksia Drive and Acacia Court (**in accordance with any approved development plan, as approved under Development Plan Overlay, Schedule 13**).

The 4 Banksia Drive owners did not support the additional wording and noted that this provision was applied when the growth area land was rezoned to GRZ1 and DDO17, as is proposed by this Amendment.

Council was concerned that the additional wording was not exhibited with the Amendment and that this issue was only raised at the Hearing.

(iv) Discussion

The Hopkins Heights Estate is a growth area located to the east of the Amendment land. The DDO17 was introduced as part of the suite of planning controls when this area was rezoned from the Farming and Rural Living Zones to the GRZ1, together with the development plan requirements in DPO13.

At the time this growth area land was earmarked for urban development, there were existing dwellings in Banksia Drive and Acacia Court that enjoyed views to the ocean across the growth area. The DDO17 was designed to protect these existing views when the growth area was established and therefore directed dwellings to be built to a certain contour and between view corridors.

The Amendment proposes to extend the DDO17 beyond the growth area to the established area in Riverside Terrace, Casuarina Court and Serendipity Drive. The ‘protection’ of views from Banksia Drive and Acacia Court would then extend not only to the east across the growth area but also

west across the Amendment land. The Panel agrees that this is an unintended consequence of the Amendment.

The 4 Banksia Drive dwelling does not have views to the ocean across the growth area land given an intervening house, and the views from 2 Banksia Drive to the east will not be affected by the Amendment or permit application.

Therefore, the Panel supports the additional wording in the DDO17 relating to the protection of views from Banksia Drive and Acacia Court to retain the original intent, that being to the east across the growth area, but not to elevate this 'protection of views' to other areas. Without these additional words, there is the prospect that the currently vacant land at 32 Riverview Terrace could not be developed at all, as there will be a change of view from these dwellings in Banksia Drive even with a single storey development of this land and even if it was not to be subdivided. This would also expand the control beyond protection of ocean views to the east, to views in general, which could relate to the river and other areas, again clearly being beyond the original intent of the control.

The Panel agrees that it is important that any land owner/occupier materially impacted by a change to the DDO17 should have the opportunity to comment. In this case, there do not appear to be any other dwellings in either Banksia Drive or Acacia Court that would be materially affected by the provision. This is given that the Amendment land is to the southwest rather than to the east of Banksia Drive and Acacia Court, and therefore will have no impact on views that the control was intended to protect. The Panel is satisfied that further notice is not required.

(v) Conclusion and recommendation

The Panel concludes that the additional words to limit the 'protection of views' from Banksia Drive and Acacia Court to be in accordance with an approved development plan under Development Plan Overlay Schedule 13 is warranted to ensure no unintended consequence.

The Panel recommends:

- 1. Revise Design and Development Overlay Schedule 17 to include *"in accordance with any approved development plan, as approved under Development Plan Overlay Schedule 13"* after 'Protect views from existing dwellings in Banksia Drive and Acacia Court'.**

5 The planning permit

(i) Relevant considerations

Clause 71.02-3 of the Planning Scheme requires a responsible authority considering a permit application to take an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development.

Clause 65 of the Planning Scheme states:

Because a permit can be granted does not imply that a permit should or will be granted. The Responsible Authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

Clause 65.01 requires the Responsible Authority to consider, as appropriate:

- the Municipal Planning Strategy and the Planning Policy Framework
- the purpose of the zone, overlay or other provision
- the orderly planning of the area
- the effect on the environment and amenity of the area
- the extent and character of native vegetation, the likelihood of its destruction, and whether it can be protected, planted or allowed to regenerate

Considerations for subdivision under the GRZ are:

- the pattern of subdivision and its effect on the spacing of buildings.
- for subdivision of land for residential development, the objectives and standards of Clause 56.

Considerations for subdivision under the DDO17 are:

- Whether subdivision will result in development which is not in keeping with the character and appearance of adjacent buildings, the streetscape or the area.

Other matters to be taken into account include:

- objections
- comments and decisions of referral authorities
- other matters a Responsible Authority must and may take into account under section 60 of the PE Act, including the Victorian planning objectives and the economic, social and environmental impacts of the proposed use and development
- adopted government policy.

(ii) Discussion

The permit triggers for subdivision with the proposed rezoning and application of the DDO17 to the permit application land, are under the parent clauses of the GRZ and DDO. The applicable decision guidelines relate to the pattern of subdivision and whether the subdivision will be in keeping with the character of the area and the objectives and standards of Clause 56.

Matters relating to biodiversity and neighbourhood character have been discussed in the preceding chapters, and it is noted that there is no removal of native vegetation associated with the proposed subdivision. 32 Riverview Terrace is a vacant lot with no trees and limited no native grass/shrub vegetation.

The key issue raised in relation to the planning permit application related to impact on views from neighbouring properties at 2 and 4 Banksia Drive. This issue and impacts have been discussed in chapter 4 of this Report in which the Panel concluded that detailed considerations of view sharing should be considered at the development stage, rather than associated with a permit for subdivision. DDO17 will guide consideration and assessment of view sharing when details of siting and design of the future dwellings are known.

The Proponent provided a Clause 56 assessment in the application material that found the subdivision was compliant with the relevant standards, noting:

- the proposed lots at 1098 square metres and 1292 square metres responds to the character of the area and are capable of containing a rectangle of 10 metres by 15 metres (Standard C8).
- the lots would have excellent access to solar access (Standard C9)
- vehicle access can be provided from Riverview Terrace in accordance with Councils requirements (Standard C21)
- reticulated drinking water will be supplied to the lots as per the requirements of Wannon Water (Standard C23)
- the lots will be connected to the existing reticulated wastewater system as per the requirements of Wannon Water (Standard C24)
- site drainage will be designed and managed in accordance with Council requirements (Standard C25)
- the lots will be connected to electricity, telecommunications and gas in accordance with the requirements of the relevant servicing authorities (Standard C28).

The referral authorities did not object to the application, however commented as follows:

- Wannon Water requested inclusion of permit conditions if a permit were to issue to ensure that the developer provides water supply and sewerage works to serve each lot at their own expense. This includes an extension of the sewer main to service Lot 2. These have been included at conditions 8-12 on the draft permit.
- DEECA queried whether any native vegetation was required to be cleared to create access to Lot 1, however were satisfied with Councils response that no native vegetation was required to be removed.

In relation to conditions of permit, a 'Day 1' version was provided at the Hearing from Council that included the Wannon Water conditions.

The Proponent also provided a 'Day 1' version of the permit that varied from the exhibited draft permit.

The key changes were:

- The format of the draft planning permit has been updated to reflect the 'Writing Planning permits, May 2023' guidance, including Appendix 2, Model Conditions.
- New condition 1 requiring compliance with documents approved under the permit (standard condition).
- New condition 5 – subdivisions that do not require referral (mandatory condition).
- New condition 13 – Building envelopes, requiring the registration of building envelope restrictions in the form of an agreement under section 173 of the PE Act
- New condition 14 – commencement of permit (standard condition).
- New condition 15 – expiry has been included as a condition rather than a permit note.

- The Wannon Water referral conditions included.

A further post hearing version was provided by the Proponent titled, 'Panel Version – Draft planning permit, C213warr' to incorporate comments at the hearing. This re-numbered some conditions.

Submitter 3 requested deletion of condition 15b, that allowed for building envelopes to be varied through a secondary consent process. Given the PE Act provides a mechanism to amend or end a s173 agreement, the Panel accepts that these words should be deleted.

The Panel has previously commented in Chapter 4 that neither a three-dimensional building envelope nor a further restriction on title is warranted, and therefore do not require associated conditions of planning permit.

The Panel considers that a permit should be granted. The permit for subdivision will allow for an additional dwelling to be developed within the established area of Warrnambool with the future siting and design of housing subject to further planning permit approval.

The lots are appropriately sized to integrate with the character of the area; will be connected to services; and the building envelope will ensure housing has appropriate setbacks to Riverview Terrace to reflect the streetscape character. There will be no native vegetation lost as part of the future development of these lots and there is likely to be a net improvement to biodiversity with future planting required associated with development approvals. Overall, the permit will provide for a net community benefit.

(iii) Conclusion and recommendation

The Panel concludes that planning permit PP2022-0060 should be granted subject to conditions.

The Panel recommends:

- 2. Issue planning permit PP2022-0060 to subdivide land (Clause 32.08-3 and Clause 43.02-3) generally in accordance with the 'Panel Version – Draft planning permit, C213warr' subject to the deletion of Condition 15b.**

Appendix A Submitters to the Amendment

No	Submitter
1	Warrnambool City Council
2	32 Riverview Terrace owners (Proponent)
3	4 Banksia Drive owners
4	2 Banksia Drive owners
5	Graeme Hays, Neil Welton and Yolanda Bennoun
6	Jonathan and Kathryn Emeny
7	Wannon Water
8	Department of Energy, Environment and Climate Action

Appendix B Document list

No.	Date	Description	Provided by
1	2 Aug 24	Panel Directions and Timetable (version 1)	Planning Panels Victoria (PPV)
2	19 Aug 24	Council submission with attachments: <ul style="list-style-type: none"> - Chronology of events - Response to submissions - Minutes of Council meeting - Council response to DEECA - DEECA's response to Council 	Warrnambool City Council (Council)
3	22 Aug 24	Council Day 1 version of planning permit and	Council
4	26 Aug 24	Proponent Submissions including: <ul style="list-style-type: none"> - Day 1 version of proposed planning provisions - Day 1 version of planning permit 	Proponent
5	26 Aug 24	Submission on behalf of 4 Banksia Drive owners	4 Banksia Drive owners
6	28 Aug 24	Council response to Kings Submissions	Council
8	3 Sep 24	Proponent tracked change version of planning permit	Proponent
9	4 Sept 24	Kings Response to updated draft permit	4 Banksia Drive owners

Appendix C Planning context

C:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by providing for the fair, orderly, economic and sustainable use and development of land.

Clause 2 (Municipal Planning Strategy)

The Amendment supports the Municipal Planning Strategy by:

- Clause 02.01 Context that states: *Warrnambool is Victoria's largest coastal regional city and is the fastest growing economy and population centre in South west Victoria. Warrnambool has a steadily growing population of about 35,200 in 2019 (ABS) that is expected to increase to 43,000 people by 2031. The majority of the population is in Warrnambool, Dennington, Allansford, Bushfield and Woodford.*
- Clause 02.02-1 – Settlement Urban Growth states: *Warrnambool's urban settlement boundaries and growth areas are identified on the Warrnambool Strategic Framework Plan at Clause 02.04. Warrnambool is forecast to grow at 1.4 per cent per annum until 2040 requirement about 250 new dwellings per year to meet demand.*
- Clause 02.03-2 Environmental and Landscape values acknowledges the environmental significance of the coastline, Hopkins and Merri River systems, estuaries and wetland and that these areas provide habitat for listed species of flora and fauna. The Scheme encourages more intensive forms of residential development to be located away from sensitive areas and on sites with proximity to open space, activity centres and public transport routes. The site is not located within a wildlife corridor nor has any evidence been provided that the site provides refuge for endangered flora or fauna.
- Clause 02.03-5 Built environment and heritage. Promotes sustainable development that allows people to walk or cycle to access services and for social interaction.
- Clause 02.03-6 Housing that seeks to provide infill opportunities to accommodate residential development, and to provide for a diverse range of housing options.

The Amendment supports Clause 11 by:

- Clause 11.01-1S Settlement that seeks to facilitate sustainable growth; limit urban sprawl; and direct growth into existing settlements.
- Clause 11.01-1R Settlement – Great South Coast seeks to attract more people to the region.
- Clause 11.02-1S Supply of urban land, to ensure sufficient supply of land is available to meet forecast demand.
- Clause 11.03-2L-02 Coastal Hopkins Growth Area – with the subject land adjoining this area, and ensuring that the rezoning and subdivision is not contrary to the built form guidelines of this clause.

Clause 12

The Amendment supports Clause 12 by:

- Clause 12.01-1S Protection of biodiversity.
- Clause 12.01-1L Warrnambool biodiversity that discourages development that compromises the ecological integrity of the Merri River, Hopkins River and Russell's Creek corridor and coastal reserves. The building envelopes provide opportunities for landscaping and the DDO17 will ensure landscaping and biodiversity are considered through future permit applications.

Clause 15.01 Built Environment

The Amendment supports Clause 15 by:

- Clause 15.01 Built Environment to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and culture.
- Clause 15.01-3S Subdivision design that seeks to ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods.

Clause 16 Housing

The Amendment supports Clause 16 by:

- Clause 16.01-1S Housing supply, including to increase housing in designated urban areas.
- Clause 16.01-1L Housing supply that support increased residential densities in growth areas and established urban areas within proximity to existing or planned transport corridors, activity centres and open space.

C:2 Other relevant planning strategies and policies

i) Great South Coast Regional Growth Plan

The Great South Coast Regional Growth Plan provides broad direction for land use and development across the south coast region, as well as more detailed planning frameworks for the key regional centre of Warrnambool

Council submitted that the Amendment supports the Great South Coast Regional Growth Plan because as it recognises that Warrnambool is the key population and employment centre, and expected to absorb a substantial portion of the regions residential growth. It directs growth to designated growth areas and established urban areas to limit urban sprawl, preserves the regions valuable environmental assets and ensure the sustainable development of Warrnambool.

ii) Coastal / Hopkins River Environment Structure Plan

The Coastal / Hopkins River Environment Structure Plan provides background to the Design and Development Overlay, Schedule 17. It includes objectives to enhance the landscape quality and provide for environmental benefits, and the background to the design controls in the DDO17 relating to building height, setbacks, view sharing etc.

C:3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

i) Zones

The land is in the Rural Living Zone. The purposes of the Zone are:

- To provide for residential use in a rural environment.
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

It is to be rezoned to the General Residential Zone. The purposes of the GRZ are:

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

ii) Overlays

The land is subject to the Design and Development Overlay, Schedule 2. The purpose of the parent clause of the Design and Development Overlay is:

- To identify areas which are affected by specific requirements relating to the design and built form of new development.

Schedule 2 relates to Logans Beach and has the following design objectives:

To set design, subdivision and development parameters:

- To ensure the proper protection and management of the whale viewing area and its environs.
- To protect the local environment and significant views.
- To provide generous separation between dwellings to enable revegetation of the landscape.
- To limit intrusion on the skyline and ridgeline.

To encourage the designation of Appropriate Building and Access Areas at the time of subdivision.

To provide for a thorough permit application assessment process for buildings, particularly on the southern side of Hopkins Point Road in relation to landscape and environmental issues, by using as appropriate the Logans Beach Urban Design Guidelines (including the associated computer model).

The land is to include the Design and Development Overlay, Schedule 17.

Schedule 17 relates to Coastal / Hopkins River Environment Growth Area. This schedule includes design objectives relating to vegetation; landscape setting; views; siting; height and building form; site coverage; environmental sustainable design; and materials and design detail.

iii) Other provisions

Relevant particular provisions include:

- Clause 56 – Residential Subdivision
- Clause 65 – Decision Guidelines

C:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.