

- The boundary is linear and therefore, simple and straight forward.
 - The boundary is consistent with other similar town boundaries on the Bellarine Peninsula.
 - The boundary ensures a clearly legible rural break between Barwon Heads and the 13th beach golf course residential development.[Refer Ministerial statement re approval of Amendment C54]
 - The boundary provides a buffer between urban development and the Internationally significant RAMSAR wetlands. This allows the RAMSAR wetlands to be read in a rural context.
 - The buffer created by the location of the existing settlement boundary minimises risk to the RAMSAR wetlands. There are no environmental or biological risks created by urban settlement as a result.
7. Barwon Heads is not only an asset of the Bellarine Peninsula; it is a Victorian asset. It is one of a number of townships in Victoria that are special. It is in much the same category as towns like Macedon, Queenscliff, Point Lonsdale, and others that collectively make up the remarkable places that Victoria is famous for. It is a tourist destination and a place where people live. Its role is well documented in literature mainly policy at all levels from local, regional and state. These important *other* roles of Barwon Heads are sufficient for the town to have to deal with. It is not suited to be a town for growth on account of its important character but also because it has not been planned as a centre for growth. Equally clearly, Barwon Heads, and other similar towns, are clearly documented as not having any material growth role. It has not been identified for infrastructure provision or upgrade to deal with growth.
 8. Nevertheless, the western landowners, have endeavoured to swim against the tide of policy and persuade the panel that it should accede to a change that challenges the written policy and alter the town boundary, save to what we do not know.
 9. It is a very brave submission by the western landowners; an understandable one but ultimately in the context of the scope of this panel hearing, one which is futile. Realising that they cannot achieve what they originally asked for, they now take a slightly different tack; the one outlined by Mr O'Farrell. That is, to seek that the panel recommend that the structure plan be modified to show the western option with a note providing for the preparation of a structure plan for a mix of conservation, recreation, tourism and housing purposes.
 10. Mr O'Farrell submitted that it is desirable that "Council would go into the [structure planning] exercise with an open mind"
 11. The mind of Council or what Council thinks, is set out in the written policy. If you want to know what the Council thinks, then read the policy. It is not logical to suggest that Council, which we say has very clear policies, none of which call for a consideration of the substantial growth of the township, should commence a structure plan to provide for substantial growth and put all of its policy to the one side. Practice Notes on Structure Planning explicitly calls for a consideration of policy.

12. Prior drafts of the Structure Plan are not of any relevance. They are not before the panel. Only the BHSP is before the Panel. [Refer: Panel for the implementation of the Kingston - Highett Structure Plan]
13. The BHSP considered the issue of the settlement boundary. It did not dismiss the issue raised in the submissions. Refer for example to Part 7.4 of the Structure Plan between pages 119 and 129.
14. Mr Cicero's submission for his client goes further urging the panel to recommend the shift of the settlement boundary not merely undertaking structure planning as per Mr O'Farrell's client – notwithstanding that none of the experts Mr Cicero called expressed a view as to where the settlement boundary should be shifted to. (refer Milner and Horsefield)
15. If Council had proposed that based on the level of assessment that the developers had undertaken, it would have met strong resistance not only from the community but we suspect from the panel, and rightly so. This is because there is no way that any assessment against the strategic assessment guidelines could possibly come to such a conclusion. While the policy does not preclude a shift, it certainly does not support a shift. We think that if the settlement boundary was to be moved, it would be necessary to undergo a rigorous assessment of the proposal not on its merits but as to whether there is an appropriate basis to have such a change in policy. If the answer to that question is yes, and the policies are changed so as to actively encourage reconsideration of the boundary, then one can move to the merits of looking at a particular boundary.
16. But this is not what the landowners have put to the panel. They want the boundary shifted or they want a structure plan to do the analysis as to where the boundary is to be shifted to. We submit that the panel should not be attracted to their submission. There is no policy basis to it whatsoever. That ought to be the end of the matter.
17. The western landowners' greatest claim, which we say has been taken out of context, is that the last panel report recommended that Council undertake a comprehensive study. It is clear what the panel recommended and it is clear that Council has not accepted that recommendation. It has not done the sort of studies that the panel recommended because that position is not consistent with any policy and the expenditure of such significant public funds on this sort of assessment is folly. Equally, however, it is clear that the last panel was explicit in saying that it was not its role to determine the growth boundary or whether there should be further growth, noting that there was no policy support for that position. The two statements of the panel do not sit entirely comfortable with each other.
18. Council has focussed its growth planning at a municipal level and identified numerous district towns across the Bellarine Peninsula where some growth can and should be accommodated. Notwithstanding the resistance it received to identifying the northern growth areas in Ocean

Grove some 8 – 10 years ago, Council still persisted with that exercise and the evidence of it is on the ground today. But that exercise was first reflected in policy, growth was consistent with policy and policy since has recognised the advantages that this has brought to Ocean Grove and the region.

19. We now turn to the experts.

Mr Milner

20. Mr Milner essentially reiterated the evidence he gave to the first structure plan panel. We submit that generally the same result should follow.

21. We think it is important to note that Mr Milner was not hostile to the notion of the use of rural land or farming land for appropriate non-residential uses but we respectfully submit that he did not properly consider the range of uses available for the western land within the Farming Zone. He seems to have dismissed this on the basis that Council, according to him, had no policy in relation to uses in rural areas.

22. In fact, Council has a long-standing rural policy stemming from the 2007 Rural Land Use Strategy. More recently, Council's *Managing Development in Rural Areas, Planning Policy Review (2015)* was implemented via Amendment C347. CI 22.06 of the Scheme encourages and supports a range of uses in the Farming Zone including tourism development.

23. Further to this, Barwon Heads Rd is an identified tourist route in the Bellarine Peninsula Localised Planning Statement.

24. Some of the non-agricultural uses allowed subject to permit in the FZ are as follows:

- Group accommodation
- Host farm
- Residential hotel
- Restaurant
- Function centre / Exhibition centre
- Market
- Winery
- Camping and caravan park

25. We submit that there is no need to move the settlement boundary to provide for any of these uses.

Mr McNeil

26. Notably, Mr McNeil undertook an assessment of the population of the town notwithstanding that policy clearly states that population growth need not be considered on a town by town basis. He was encouraged in this through questions that referred him to practice note 36 on coastal settlement boundaries. The bullet point referred to there finishes with the words “if any”.
27. The practice note does not on any view suggest that a town by town approach to growth is to be preferred over the (superior) policy at clause 11.02 which calls for a municipal approach.
28. A more consistent and logical view of the practice note is to look at **all** of the coastal settlements within the municipality and not individual coastal settlements. If one adopts the municipal view of the coastal settlements within Geelong, then we are confident that the 10 year supply is exceeded noting what is available in St Leonards, Clifton Springs, Portarlington and Ocean Grove. Of course, even if the practice note did express the view that each town should have 10 years supply, it would be invalid to the extent of the inconsistency with clause 11 of the planning scheme.
29. Mr McNeil justified his methodology and analysis on the basis that it was still necessary to consider what the implications of low growth were on a town. He cited two issues, and could only cite two issues. One was the education facilities and the other was aged care facilities.
30. In relation to education he agreed that the issues facing the school were going to be addressed irrespective of whether the western option took place or not. In relation to the only other advantage he could point to, namely aged care and retirement living, he did not have adequate regard to the extent to which that demand could be provided for in Ocean Grove. A good example of this are the recently constructed/being constructed ‘lifestyle villages’ in Ocean Grove and Mt Duneed. The panel can view these at the following link:

<https://www.lifestylecommunities.com.au/locations/#> .
31. Both facilities are located in growth areas; north Ocean Grove and Armstrong Creek. These areas are close and accessible to critical services such as health facilities. Barwon Heads has none of these services to support such a large increase in population. Clause 21.06-3 of the scheme requires retirement accommodation to be located within urban areas, preferably within close proximity to activity centres and public transport services.
32. It is noted that Council and the community have indicated a very strong preference to the retention of the existing settlement boundary. And while it is true that planning is not a popularity contest, it is also relevant to have regard to the extent of social engagement in a process. The Planning and Environment Act explicitly refers to social considerations and in the context of permit applications, the extent of community opposition to a permit application.

That said, there are two sides to the sword. To some extent, the community will need to live with the consequences of its position on the town boundary. If this means that as one ages, one has to move to Ocean Grove for retirement living or aged care (the two are different) then that is not an unreasonable consequence in our submission.

33. There was nothing else in Mr McNeil's evidence that provided any justification for the western option.

Dr Jempson

34. There were a couple of options identified for the approach to wetland design.

- Option A is to provide for a wetland at the existing levels.
- Option B is to provide an elevated wetland so as to not mix with the groundwater as sea levels rise.

35. Either option involves significant earthworks. It certainly appears to be likely to involve earthworks along the west side of the wetland immediately adjacent to the boundary of the RAMSAR lagoon. This is not some small wheelbarrow and shovel landscaping task. This involves the use of heavy machinery up to the boundary of the RAMSAR lagoon.

36. The impermeable layer required by Option A could generate ongoing management problems.

37. Further, with Option B, it potentially involves significant importation of fill or alteration to surface levels so as to lift the wetland. This poses further risk to the RAMSAR lagoon. It also results in a higher extent of works to the west on the boundary of the RAMSAR lagoon.

38. We accept that in engineering terms, it is likely that appropriate wetlands and retarding systems can be created to deal with stormwater. But, the risks that this poses are not insubstantial. There are risks involved in the construction of such wetlands and there are risks that flow from the adjacent location of those wetlands to the RAMSAR lagoon. Things do not always go as planned especially in construction and subdivisional projects.

39. Furthermore, the panel will recall that it heard from the DELWP that the RAMSAR wetlands management plan assumes that wetlands are able to migrate over time with sea level rise. That option would no longer be available at all with the construction of the bunds, mounds or earthworks created to keep the new detention systems in place.

40. It is not clear from Dr Jempson's evidence whether the construction of the wetland would result in a net environmental gain. For example the reduction in 45% phosphorus would still leave an amount of phosphorus flowing into the wetland at some point. We concede however, that the development could comply with and possibly exceed the WSUD and Best Practice Requirements. The question is whether this is adequate when the site next door is a

RAMSAR site? We assume, reasonably, we think, that the best practice guidelines did not assume that the neighbouring property was a RAMSAR site.

Mr Lane

41. Mr Lane's evidence is hypothetical. It admits of a range of potential impacts but assumes that these would not transpire into actual impacts. He formed his views on the basis of a series of assumptions. Accepting the veracity of Mr Lane's evidence, the evidence is somewhat precarious.
42. It relies on a series of assumptions about how potential impacts would be avoided which are of themselves somewhat fragile. The key concern of course is that there are a range of things and actions which must go right for there to be nothing go wrong. If something does go wrong, the risk is that there will be an adverse impact to the ecological processes – precisely the type of thing which the Management Plan for the Wetlands is designed to avoid.
43. In this context, we submit that this is a classic case of where the precautionary principle applies. The EP Act provides:

1C The precautionary principle

(1) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

44. The principle is written in an unusual way. It is written in such a way so as to place an emphasis on postponing measures that is, the actions which are sought to be taken that creates the threat. This is so that the *potential* (that is the threat) for environmental degradation is avoided. The lack of full scientific information should not be used as a reason for *postponing* the measure to prevent the degradation.
45. Here, the measure would be to avoid the development of the land adjacent to the RAMSAR site because that is the measure that Mr Lane has identified as the cause of the threats – during construction and post construction.
46. It is submitted that in the context of the RAMSAR site and Victoria's international obligations, it is highly **unusual** that we are actually discussing a potential change to the settlement boundary before there is scientific certainty that there would not be a threat of serious or irreversible environmental damage to the RAMSAR site. We acknowledge that in many cases, boundaries are changed and then the implications are considered later because they are thought to be manageable. We submit that that approach is not the correct approach here at Barwon Heads with development cheek by jowl to the RAMSAR site where the implications of a threat can be so serious.

Submission of Department.

47. This submission highlighted that the RAMSAR wetland is a very important ecological place which is given the highest protection possible under state and federal laws.
48. The DELWP does not usually appear at panels like this. The fact that it has appeared and made the submissions that it has is of itself notable. The DELWP in its capacity as the primary guardian of the RAMSAR wetland does not support changing the boundary.
49. It is difficult to imagine the extension of the town boundary right up to the area of the wetland. It clearly increases risks to the RAMSAR site there is no doubt about that. One only has to read the reports of the experts for the proponents that clearly acknowledge the risks. (Lane) We note also the experts say the risks can be managed or may lead to better outcomes. However, the point is that the movement of the settlement boundary leads to the potential risks if not actual impact. There is no need to take these risks and potential impacts should be avoided. The community benefit of the development is marginal. The so called continuous pathway that was initially touted was not supported by Mr Lane as a continuous path at all.
50. All the boundary change does is provide additional housing which is unlikely to present any particular social benefits that would outweigh even the potential let alone actual negative aspects. A net community benefit has not been established.
51. Mr Lane agreed that the action would need to be referred under the EPBC Act. We agree. The DELWP referred to the possibility that the action would be an action that comes within the EE Act. We note that that Act provides as follows, as relevant at section 3:
- (2) The Minister must not make an Order in respect of works under subsection (1) unless the Minister is satisfied that the works **could reasonably be considered to have or to be capable of having a significant effect on the environment.**
52. The EE Act does not require a definite effect but merely an act which *is capable of having a significant effect on the environment* before the assessment could be required. Having regard to even Mr Lane's evidence, there are clearly works which are capable of having a significant effect on the environment.

Others

53. We note that Mr Tuisku a private submitter was fully supportive of the boundary.
54. Jason Black made a submission for a developer in Ocean Grove. The submission highlighted that people rely on what is set out in policy to make investment decisions. Planners ought not deviate from policy settlements too quickly.

Barwon Heads Association.

55. We agree on the submission of the Association on the boundary issues.

THE REZONINGS

Warrenbeen Court Area

56. The proposal is to apply the NRZ rather than the GRZ with Schedule 7 which provides for a minimum lot size of 4000 m2.

57. Mr Bittmead for his client, another owner in Warrenbeen Court, spoke strongly for the minimum lot size but sought stronger controls in relation to removal of vegetation.

58. He was supportive of the NRZ Schedule 7 with the 4000 sq metre minimum lot size. But he wants the ESO6 tightened so as to require that all buildings and works within the ESO 6 to require a planning permit.

42.01-2 Permit requirement

A permit is required to:

- *Construct a building or construct or carry out works.*

This does not apply if a schedule to this overlay specifically states that a permit is not required.

59. Under ESO6, a building is exempt from a permit if it is not within a tree canopy area nor within 2 metres of the drip of vegetation. By reference to aerial photography, basically any significant building will require a permit for the buildings and works.

60. Mr Bittmead also made the point that if minimum lot size was discretionary, and lots were created which were less than 4000 m2, then an owner could end up with a lot but with no ability to put a building on the lot because of the building envelope covenant. They would need to seek a variation to the covenant. It's not so much the subdivision that matters but what you can put on it.

61. While we note Mr Bittmead's comments, and we agree with their correctness, Council is primarily concerned with permits for public issues. While it is responsible for issuing permits for variations to covenants, the decision guidelines are very different to those relevant to public policy issues. So, we do also think (and we think Mr Bittmead agrees) that the minimum lot size for subdivision should remain.

62. We note the Panel question and observation about a possibility of people wanting to split a house in two and then sell half the house

63. We suspect that few if any of the houses are likely to be constructed so as to provide dual facilities so as to effectively contain 2 dwellings. But if it did happen it would need extra driveways and garages and associated dwelling facilities such as pools sheds and of course trenching for services.
64. On the other hand, Mr Tamblyn, a resident of Warrenbeen Court opposed the proposed changes.
65. He says that a reasonable way forward is to apply a maximum 2 lot subdivision and the application of the VPO rather than the ESO Schedule 6.
66. In relation to the ESO 6, we submit that this is the overlay that as applied to the site currently and will cease to have effect on 30 June 2019. The amendment will apply the overlay permanently. We are not sure why the VPO overlay is proposed by a submitter. The VPO is relevant to more generic vegetation. The ESO is more suited to vegetation of significance in a biological sense. Thus the statement of environmental significance in the existing ESO.
67. We note that the submitter Mr Tamblyn agreed with the stated environmental objective of the ESO Schedule.

Incremental Change Area

68. The change to this area is to rezone the land to NRZ(Schedule 6) and to apply DDO Schedule 41. The height provisions do not change. The DDO introduces a lower site coverage at 40% rather than 60%.
69. There were few submissions which oppose this issue although the submission of Mr Brewster (who is an architect) was critical of certain aspects of the quantitative and qualitative provisions of the DDO. A number of the aspects of what he was critical of have been addressed in the post exhibition version of the amendment documents as set out in the attachment to the council officer report of 26 June 2018.
70. Council expects that in the incremental change area older dwellings will continue to be replaced by newer dwellings and on a proportion of those lots, there would be two dwelling developments. The 40% site coverage and the garden area requirements do not preclude the development of the land for two dwellings although we do not expect this to be common based on the historical trend.

IHDA

71. The IHDA area is rezoned from RGZ to GRZ Schedule 1 and DDO 42 is applied. The height changes from 10.5m to 11 m. The rezoning addresses an anomaly in the RGZ which currently provides for a 10.5m height limit when the zone provides for a 13.5 metre height limit. The objectives of the zone are not consistent with the character aspirations of Barwon Heads.

There is a mismatch between the town and this current zone. The GRZ with an appropriate schedule is the proper zone to use here.

72. The 60% site coverage is the standard site coverage. The standards are not binding like the objectives. The garden area requirements are state government provisions not local government.
73. As for the concern expressed in her off the cuff comments on the IHDA, Ms Horsefield, who we respectfully submit did not properly review the provisions but only touched on them in the context of her concerns about the settlement boundary, can be shown to be incorrect based on the decision of the Tribunal in the Flinders Parade. In that case the Tribunal considered the proposal against the then proposed planning provisions and said that the proposal measured up well against the provisions. That was an apartment development providing for a number of dwellings.
74. On the other hand, there was a fair amount of opposition against the retention of the IHDA from the Association.
75. We disagree with the Association in relation to the removal of IHDA. The IHDA is a policy that applies to all towns including Barwon Heads. Given the constraints to outward growth as a result of the settlement boundary, it is necessary to ensure that there is some capacity for albeit low growth through consolidation within the town boundaries. Furthermore, Council is of the view that this can occur while maintaining the characteristics that are distinctive about the township.
76. In this context, the DDO that applies to the IHDA addresses a number of critical issues that go at least some way to ensure that those characteristics are maintained.
77. We are concerned that the Association's revisions to the DDO schedules for the most part upset the methodology used by the draftsperson in putting the DDO together. The DDO contains requirements. Some of those are qualitative. Others are quantitative. The DDO groups those requirements into two. The text and the table. The revisions proposed confuse this distinction. We do not want to see that occur.
78. It is important to note that the suite of planning provisions proposed by Council provides significant oversight in relation to the IHDA. For instance:
 - The zone
 - The overlay
 - The policy.
79. We say that this is an appropriate approach to take.

- 80. The chief concern of the Association relates to the issue of height. Under the current RGZ, the maximum height is 10.5 metres. However, this existing position is not consistent with the RGZ as it is proposed. The RGZ provides for a 13.5 metre height limit. Thus, Council is rezoning the land from RGZ (schedule 3) to GRZ and applying schedule 1. This provides for a maximum 11 metre height or 3 stories.
- 81. Council does not think it is good practice here to provide for a height provision set out a DDO which is less than the height set out in the zone. DELWP supports this position. This is the current position of the planning scheme which Council is endeavouring to rectify.
- 82. It is certainly not possible to do that within the zone itself by applying a lower height in a schedule to the zone which is less than the default height in the zone itself.

OTHER MATTERS

Traffic & Parking

- 83. Submitters raised concerns about the extent of traffic in Barwon Heads. This issue is addressed in the 2017 BHSP at pages 15-16 and 102-110. A number of the recommendations of the 2010 GTA Study have since been implemented. A Parking Overlay was not recommended in the BHSP.
- 84. At the 26 June 2018 meeting, Council resolved to undertake a new traffic study. It should be noted that the emphasis of the BHSP is on land-use and development rather than on traffic management.
- 85. Noting the tourist destination that Barwon Heads is, and also Ocean Grove, which attracts people through Barwon Heads, the reality is traffic tends to get funnelled through Barwon Heads going to Ocean Grove and beyond and visa-versa. Obviously the situation is worse in the warmer season and the holiday season. The constraint seems to be the bridge crossing of the Barwon. This has tended to be an extremely controversial issue.
- 86. This completes the submissions in reply for the Planning Authority.

.....
Terry Montebello
Partner Maddocks Lawyers.
For the Planning Authority.

30 August 2018

Amendment C375 to the Greater Geelong Planning Scheme



Maddocks

Hi Peter,

The direction we have is that the zones should be setting the height.

If there is strategic justification for a lower height limit than the GRZ, then the land should be rezoned to the NRZ.

I have no news at this stage on PPN78.

Where there are examples of inconsistencies in planning schemes, then updates will be required to bring overlays into consistency with the zones and State policy.

I hope this information is of assistance.

Regards

Bart

Bart Gane | Senior Regional Planner - Barwon South West, Regional Planning Services | Statutory Planning Services
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From: Peter Schembri
To: "bart.gane@delwp.vic.gov.au" ,
Date: 23/08/2018 10:07 AM
Subject: RE: FW: Applying the residential zones practice note

Hi Bart,

Any word on the release of the new PPN78?

Also, can you please advise on the Department's position on a Design & Development Overlay Schedule including a Section 2.0 Buildings & works requirement of a height limit less than the permitted maximum height limit in the zone.

For example, in the GRZ, can a DDO schedule specify a height limit less than 11 metres?

We are in the middle of a panel hearing for C375 Barwon Heads Structure Plan and your advice would assist the panel.

Regards



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