IN THE KAUFLAND STORES IN VICTORIA ADVISORY COMMITTEE
MORNINGTON SITE

Mornington Peninsula Shire Council (Council) Submitter

and

Kaufland Australia Pty Ltd Proponent

and

Others Submitters

SUBMISSIONS ON BEHALF OF MORNINGTON PENINSULA SHIRE COUNCIL

INTRODUCTION

1. This submission for Mornington Peninsula City Council (Council) responds to Kaufland Australia Pty Ltd’s (Proponent) proposal to amend the Mornington Peninsula Planning Scheme (Planning Scheme) to facilitate a supermarket-based use and development on part of land at 1158 Nepean Highway, Mornington (the Planning Unit).

2. The Advisory Committee (the Committee) has been appointed by the Minister for Planning pursuant to section 151 of the Planning and Environment Act 1987 (the Act) to advise on the proposed establishment of six Kaufland stores around Melbourne, including the Mornington proposal.

3. Council opposes the proposal on the following grounds:

1. There is no strategic planning or policy support for a hypermarket in this location having regard to:

a. the planning controls applying to the land;

b. relevant state and local planning policy including clauses 11.03-5S, 17, 21.03, 22.01 and 22.02 in the Mornington Peninsula Planning Scheme;

c. the Mornington Peninsula Localised Planning Statement;

d. the Mornington Peninsula Activity Centres Strategy 2018 adopted by the Council on 30 April 2018;

e. the location of the site outside of a major activity centre and at an interface with the Green Wedge Zone.

2. There is no demonstrable need for the proposed hypermarket in this location.

3. Allowing a hypermarket in this location will significantly impact on the Mornington Peninsula activity centre hierarchy by effectively creating an additional unplanned activity centre.

4. The expansive at-grade car park proposed for the front of the site, together with the minimal breaks between the proposed building and existing neighbouring buildings will leave
inadequate opportunities for meaningful landscaping on the site and will significantly detract from the landscape character of the area and nearby Green Wedge land.

5. The scale of the proposed pole sign is excessive and incompatible with the existing amenity and visual appearance of the area, including the desired future character.

6. Without further road works and widening to Oakbank Road, the proposed development will have a detrimental impact on the safe and efficient operation of Oakbank Road.

7. The proposed development will have a detrimental impact on the safe and efficient operation of Nepean Highway due to the proximity of the proposed access to the existing bus stop adjacent to the site frontage.¹

4. This submission:

4.1. explains and builds on the grounds Council’s Planning Services Committee endorsed on 17 December 2018; and

4.2. responds to the Committee’s Terms of Reference dated 24 July 2018 and the Committee’s directions of 11 February 2019, in particular, direction 19.

5. Council relies on the evidence of:

5.1. Mr Tim Biles, town planning and urban design;

5.2. Mr Brian Haratsis, economics and planning;

5.3. Mr Brendan Papworth, landscape architecture; and

5.4. Mr Aaron Walley, traffic and transport.

KEY ISSUES

6. In Council's submission, the key issues in respect of the amendment are:

6.1. whether the proposal has strategic support;

6.2. whether the proposal’s urban design and landscape response is acceptable;

6.3. whether the proposed signage is acceptable;

6.4. whether the proposed traffic impacts and the proposal’s response to sustainable transport objectives are acceptable;

6.5. whether considering the benefits and disbenefits of the proposal, the proposal would achieve a net community benefit;

6.6. whether there are any other matters relevant to the Committee’s assessment.

7. This submission addresses each of these issues.

PHYSICAL CONTEXT

8. The Planning Unit comprises 19,737 square metres with a frontage of approximately 139 metres to Nepean Highway. It is depicted on the SCO1 Map at tabled document 54.

¹ Grounds endorsed by Council’s Planning Services Committee on 17 December 2018.
9. The Planning Unit forms part of 1158 Nepean Highway, Mornington being Lot 1 on PS630840P (the Land). The Land is located on the south east corner of Nepean Highway and Oakbank Road, Mornington. It has a total area of approximately 60,521 square metres.

10. The Land is currently developed with the Bata Shoe factory. Access is from Oakbank Road. Trees are scattered around the Land with concentrations at the north-east corner and along the southern and eastern boundaries.

11. In August 2018, Council received an application for approval of a development plan for the Land. On 18 February 2019, Council’s Planning Services Committee Meeting refused to approve the development plan on the basis it was inconsistent with the planning policy framework and zone and overlay provisions. This resolution was consistent with the officer’s recommendation.

12. In terms of surrounds:

12.1. To the north of the Land, on the opposite side of Oakbank Road, is land within the Green Wedge Zone. It forms part of the ‘green’ break between Mornington and Mount Eliza. This green break is recognised and protected in the Planning Scheme.²

² Clause 21.06-1.
12.2. Residentially zoned and developed land is located to the east of the Land. Further east is Padua College, a secondary school with a current enrolment of approximately 2360 students. It is zoned partially SUZ2 and GWZ3.

12.3. To the south of the Land, is the Mornington Parkland Industrial Area\(^3\) and Mornington Homemaker Centre. This precinct contains Bunnings Mornington, an Aldi and other speciality stores.

12.4. To the west and north-west, on the opposite side of Nepean Highway, is Mornington Secondary College with a current enrolment of approximately 1560 students. It is zoned Special Use.

**PLANNING CONTEXT**

13. The Land is zoned Industrial 3 Zone (**IN3Z**) and the Development Plan Overlay – Schedule 2 (Mornington Parkland Industrial Areas) (**DPO2**) applies to the Land. The Mornington Parkland Industrial Area, including the Land, is located on the east side of Nepean Highway between Bungower and Oakbank Roads. It is also referred to as Mornington North industrial area in the Council adopted Mornington Peninsula Industrial Areas Strategy 2018 (**Industrial Areas Strategy**).

14. Planning Scheme controls and policies relevant to the proposal are set out in Appendix A.

15. Strategic documents relevant to the proposal are contained in Appendix B.

16. The Committee will be taken to key provisions, policies and strategic documents in submissions below.

**PROPOSAL**

17. The proposed amendment involves:

17.1. applying the Specific Controls Overlay to the Land and updating the schedule to reference the proposed ‘Kaufland supermarket development, 1158 Nepean Highway, Mornington’ incorporated document (**the Incorporated Document**) which contains site specific controls to allow the proposed use and development of the Land subject to conditions; and

17.2. amending the Schedule to clause 72.04 (Incorporated documents) to reference the Incorporated Document.

18. The amendment will in effect allow:

18.1. the use and development of the Planning Unit as shown on Amended Plans (Rev ACP, 13 February 2019) prepared by Leffler-Simes Architects (**Amended Plans**);

18.2. the use of the Planning Unit for a range of retail and commercial uses listed in the Incorporated Document.

19. Key features of the proposed development as shown on the Amended Plans are:

19.1. Building with a gross floor area of 7,554 square metres, comprising:

   - A supermarket (3610 sqm);

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\(^3\) The section of land, including the Land, on the east side of Nepean Highway between Bungower and Oakbank Roads is known as the Mornington Parkland Industrial Area.
Liquor sales (354 sqm);
Food hall (278 sqm);
Two separate shops (total 276 sqm); and
Back-of-house, administration and mall and entry area (excluding services) (2,196 sqm).


19.3. The building is setback:
- 90 metres from Nepean Highway with the car parking area being setback between 16 and 20 metres from the front boundary;
- 8.68 metres from the southern boundary;
- 6.2 metres from the northern boundary of the Planning Unit;
- 9.4 metres from the eastern boundary of the Planning Unit and approximately 60 metres from the eastern boundary of the Land.

19.4. Provision of 380 car spaces at ground floor and within the Nepean Highway setback.

19.5. Provision of seven signs including a 15 metre high pylon sign at the Nepean Highway frontage.

19.6. Customer access via Nepean Highway and Oakbank Road (via an easement over the Land outside the Planning Unit) and a separate delivery access via Oakbank Road (via an easement over the Land outside the Planning Unit).

19.7. Operating hours between 7am and 12am, 7 days (with some deliveries outside these times).

19.8. A 2-6 metre high acoustic wall adjacent to the eastern boundary of the Land.

ACTIVITY CENTRES IN MORNINGTON

20. Council has long recognised the importance of the hierarchy of activity centres in the Peninsula. These centres play an important role in encouraging agglomeration and activity and reinforcing the settlement pattern which gives the Peninsula its unique sense of place.

21. Table 1 to clause 21.07-3 sets out the Peninsula’s hierarchy of centres: Major Activity Centres, large townships, small townships, local centres and convenience centres. The Peninsula contains three Major Activity Centres: Mornington, Rosebud and Hastings.

22. Centres within proximity of the Land are:

22.1. Mornington Major Activity Centre;
22.2. Mount Eliza, a large township;
22.3. Bentons Square, a large township;

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22.4. Beleura Hill Road, Robertsons Drive, Wilsons Road and Dava Drive. Mornington, convenience centres

23. The Peninsula Homemaker Centre, to the south of the Land, is not a recognised activity centre.

Mornington Activity Centre

24. Mornington Activity Centre extends for approximately 1.5 km along Main Street between Nepean Highway and the foreshore reserve. It is the largest activity centre on the Peninsula. The Land is approximately 3 km (via road) east of this centre.

25. It contains three large supermarkets: Coles, Woolworths and Aldi. Along Main Street, there is a range of speciality shops, cafes, restaurants and other uses. South of the Nepean Highway, there are larger format stores, and business uses.

26. The Mornington Peninsula Activity Centres Strategy 2018 adopted by the Council on 30 April 2018 (Activity Centres Strategy) (Tabled Document 71) contains floorspace survey of the centre, finding the centre has:

26.1. approximately 73,100 sqm of retail and commercial floorspace, including 57,000 sqm of shopfront floor space.

26.2. A 3% vacancy rate for shopfront tenancies.\(^5\)

27. The Activity Centres Strategy identifies the key issues for the Mornington Activity Centre as:

27.1. Supporting ongoing growth and intensification of activity in a well-established urban environment;

27.2. Relationship between the homemaker retailing and mixed business areas located east of the Nepean Highway;

27.3. Very low vacancy rates and limited opportunities for new businesses to locate in the centre.

27.4. Continued demand of higher-density residential development.

27.5. Retaining the higher-order role of Mornington in the activity centres hierarchy.

28. The Mornington Activity Centre Structure Plan July 2007 (MACSP), a reference document in the Planning Scheme, identifies a potential ‘major retail store’ site at 1-11 Waterloo Place\(^6\) within the Retail Core precinct. It specifies a building height of up to 3 storeys on this site.\(^7\) This site is approximately 5000 sqm, owned by Council and currently used as an at-grade car park.

Bentons Square

29. Bentons Square is located on the north east corner of Bentons and Dunns Roads approximately 2km south east of Mornington Activity Centre and 4.6 kilometres south of the Planning Unit.

30. It contains a Woolworths, Dan Murphys, other smaller retail uses, a medical centre and petrol station.

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\(^5\) Activity Centres Strategy, p.33.
\(^6\) MACSP, pp. 23, 29.
\(^7\) Ibid, p. 37.
31. The Planning Scheme and the Activity Centre Strategy classify Bentons Square as a ‘Large Township Centre’.\(^8\) It has a total commercial floor space of approximately 9,400 sqm of which 95% is occupied.\(^9\)

Mount Eliza Activity Centre

32. Mount Eliza Activity Centre is located approximately 5km (via road) north of the Planning Unit.

33. The Planning Scheme and the Activity Centre Strategy classify Mount Eliza as a ‘Large Township Centre’. It comprises primarily shop-front retail including a Woolworths, Ritchies IGA and a mix of other retail offerings. It has a total commercial floor space of approximately 18,200 sqm of which 1% is vacant.\(^10\)

Peninsula Homemaker Centre

34. The Peninsula Homemaker Centre is located to the south of the Planning Unit at the south west corner of Nepean Highway and Bungower Roads. It contains Bunnings Mornington, an Aldi and other speciality stores.

35. It is not an activity centre within the Mornington Peninsula activity centre hierarchy. It is an area of primarily bulky goods and trade supplies and is classified as ‘restricted retail’. It comprises approximately 13,900 sqm of floorspace.\(^11\)

SUBMISSIONS

36. In Council’s view, the proposal cannot be justified. It does not respond appropriately the current Planning Scheme. It fails, on a first-principles assessment, to respond to context and constraints of the Land. A net community benefit assessment of the proposal weighs heavily against it.

37. The key issues that Council will address below are:

37.1. whether the proposal has strategic support;

37.2. whether the proposal’s urban design and landscape response is acceptable;

37.3. whether the proposed signage is acceptable;

37.4. whether the proposed traffic impacts and the proposal’s response to sustainable transport objectives are acceptable;

37.5. whether considering the benefits and disbenefits of the proposal it would achieve a net community benefit;

37.6. whether there are any other matters relevant to the Committee’s assessment.

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\(^8\) Classified as generally comprising around 10,000 to 25,000 sqm of commercial floor space and including significant retail facilities, office-based commercial activity and some community infrastructure (Activity Centre Strategy, p.26).

\(^9\) Activity Centres Strategy, p.37.

\(^10\) Ibid, p.36.

\(^11\) Activity Centres Strategy, p.41.
STRATEGIC SUPPORT

38. The large retail offer proposed (being 4,518 sqm\(^\text{12}\)) is:

38.1. an out-of-centre commercial development in an industrial zone; and

38.2. effectively creates or is likely to create a new activity centre.

39. Neither of these outcomes are supported by the Planning Scheme nor are they consistent with proper and orderly planning.

40. State policy encourages concentration of major retail development into activity centres that are highly accessible.\(^\text{13}\) It contemplates a range of centres that vary in function and size and provides that centres give clear direction for preferred locations for investment.\(^\text{14}\)

41. Clause 17.02-S concerns out-of-centre development. It discourages proposals for single use retail and commercial facilities outside activity centres and seeks to ensure that out-of-centre proposals are only considered where the proposed use or development:

41.1. is of net benefit to the community in the region served by the proposal; or

41.2. provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

42. It sets a threshold requirement to be met before an out-of-centre proposal for a single use retail can be ‘considered’ at all. In Council’s submission, the proposal will not provide (nor is it intended to provide) only small scale shopping opportunities that meet the needs of local residents and workers in convenience locations. This is consistent with the evidence of Mr Haratsis. Accordingly, the outstanding question is whether the proposal is of net benefit to the community in the region serviced by the proposal.

43. The importance of the activity centre hierarchy and of avoiding out of centre development is also made clear in the Mornington Peninsula Localised Planning Statement (LPS). The LPS is a statement of policy adopted by the Minister for Planning and for which the SPP at clause 11.03-S directs consideration of. It is also a matter which the Minister’s Direction No. 17 directs a planning authority must have regard to and requires an explanatory report for an amendment to include a discussion of how the amendment implements the LPS. It is telling that there is not even a passing mention of the LPS in the explanatory report here.

44. The LPS recognises the special character of the Peninsula, as distinct from Melbourne, and the importance of preserving and enhancing this distinction. The contains policy directions to respond to development pressures placed on the Peninsula. Importantly, these directions include supporting a strong land-use planning framework to provide certainty for landowners and the community.\(^\text{15}\) It also seeks to protect the role and character of the Mornington Peninsula’s settlements, towns and villages.\(^\text{16}\) To achieve this objective, the LPS encourages commercial development which is located to reinforce the role of different townships and activity centres on the Peninsula.

45. Local policy identifies a hierarchy of activity centres on the Peninsula in Table 1 to clause 21.07-3. It specifically:

45.1. directs additional retail development primarily to Major Activity Centres

45.2. states there is no need for any new activity centres on the Peninsula; and

\(^\text{12}\) Comprising the supermarket, liquor, food hall area and tenancies 1 and 2.

\(^\text{13}\) Clauses 11.03-1S and 17.02-1S.

\(^\text{14}\) Clause 11.03-1S.

\(^\text{15}\) LPS, p. 1.

\(^\text{16}\) LPS, p. 6.
45.3. recognises out-of-centre retail developments are detrimental to the hierarchy of centres.\textsuperscript{17}

46. The recently prepared and Council adopted Activity Centre Strategy Review supports maintaining the existing activity centre hierarchy in the Planning Scheme. Relevantly to the proposal, it contains objectives which seek to continue to support the activity centre hierarchy and to ensure that commercial development away from activity centres does not undermine activity centre policy. The Activity Centres Strategy acknowledges there are circumstances where retail uses may be appropriate out-of-centre but only for a limited range of uses for example, where they serve a tourism purpose or are associated with primary production.\textsuperscript{18} However, it suggests that any proposal for out of centre development should include consideration of various matters including why the proposed out of centre location is being considered and the proposals contribution to net community benefit including impact on exiting activity centres.\textsuperscript{19}

47. Further, the Activity Centres Strategy emphasises the need to maintain the integrity of the activity centre hierarchy and ensure achievement of a net community benefit without undermining the activity centre hierarchy.

48. Importantly, the Activity Centre Strategy Review does not identify a need for a new activity centre.

49. It is clear from the overwhelming direction in the Planning Scheme and the more recent strategic work that:

49.1. the Peninsula has a well-defined activity centre hierarchy;

49.2. there is no need for additional centres within this hierarchy;

49.3. new retail should be directed to existing centres; and

49.4. fragmentation of commercial activity and out-of-centre development is discouraged.

50. The purpose of the Planning Scheme is to provide a clear and consistent framework in which decisions about the use and development of land can be made.\textsuperscript{20} There is specific discouragement for single use retail outside activity centres. Only where retail offers a net benefit to the community in region it serves should out-of-centre proposals be considered.\textsuperscript{21} Council submits that this net benefit is not provided.

51. Clause 21.07-3 in describing the hierarchy of activity centres on the Peninsula refers to a small township activity centre containing a leasable floor area of between 3,000 – 10,000 square metres. This level of activity centre is the same classification as Mount Martha and Sorrento. The retail floor space proposed and combined with the Peninsula Homemaker Centre is commensurate with a small township activity centre.

52. Council acknowledges that Amendment VC100 to the Victorian Planning Provisions has provided more opportunity for retail uses to establish in Commercial 2 and Industrial 3 Zones. However, this does not extend to a large retail anchor of over 6000sqm. A supermarket is only permissible (as-of-right) in the Industrial 3 Zone if the leasable floor area does not exceed 1800 square metres and adjoins or is within 30 metres of a road in a Road Zone.

53. In \textit{Vicinity Centres Pty Ltd v Mornington Peninsula SC} [2017] VCAT 1802, the Tribunal acknowledged the State strategic policy decision to provide greater flexibility and growth opportunities for Victoria’s commercial and business centres. In that case, the Tribunal

\textsuperscript{17} Clause 21.07-3.
\textsuperscript{18} Activity Centres Strategy, page 75.
\textsuperscript{19} Activity Centres Strategy, page 77.
\textsuperscript{20} Clause 01.
\textsuperscript{21} Clause 17.02-2S.
considered a review of Council’s decision to approve restricted retail and a supermarket at the former Masters site at 61 Mornington-Tyabb Road, Mornington. The Tribunal found the proposed supermarket would not adversely impact the activity centre hierarchy and would achieve a net community benefit. The following factors were relevant to the Tribunal’s decision:

53.1. The site’s location in Commercial 2 Zone (in which a supermarket under 1,800sqm is as-of-right and a supermarket over 1,800sqm requires a permit) as distinct from a new commercial site or greenfield site.

53.2. The site’s location as ‘a discrete commercial precinct that is associated with the Mornington Major Activity Centre’.

53.3. The absence of commercial land adjoining the review site, meaning that the retail uses would not agglomerate outside of centre.

53.4. The re-use of a former large business premises;

53.5. The proposal included a significant bulky goods use in addition to the supermarket.

54. In contrast:

54.1. The Land is zoned for industrial purposes and the proposed use is prohibited;

54.2. The Land is adjacent to other Industrial 3 Zoned land which could potentially be re-developed for another small supermarket and shop uses;

54.3. The proposal does not involve the re-use of an existing large building; and

54.4. The proposal is not for a bulky goods use but for a supermarket with a small percentage of homeware type goods which will not necessarily be bulky.

55. It is also fair to acknowledge that the current zoning and development of 61 Mornington-Tyabb Road were not of Council’s own making. Rather, they were a legacy decision of another Planning Minister.

ECONOMIC IMPACT

56. Activity centres focus economic activity, business synergies and investment to the benefit of the community. The Planning Scheme, and planning principles more generally, recognise this and direct commercial development into centres. The Scheme discourages commercial development locating out-of-centre to:

56.1. avoid the development of unplanned centres;

56.2. support economic performance of planned centres;

56.3. concentrate diversity of commercial, service and administrative activities;

56.4. maximise choice in commercial and service offerings in one location; and

56.5. avoid confusion regarding where new investment should be focussed.

57. Council acknowledges that the proposal will generate some positive economic benefits but it submits that these benefits do not outweigh the known and potential adverse economic impacts to Mornington Activity Centre, centres within the proposal’s trade area and the Mornington Peninsula activity centre hierarchy.

22 Vicinity Centres Pty Ltd v Mornington Peninsula SC [2017] VCAT 1802, [90].
58. Mr Haratsis in undertaking an economic impact assessment has considered the impact of the proposed supermarket floorspace within the trade area of the proposal. Mr Haratsis defines the proposal’s trade area as being an area comprising 240,000 people in the catchment around the Planning Unit. This trade area is defined having regard to the Land’s location on an arterial road, the scale and offer of the proposal and the network of retail anchors surrounding the proposal. There is no significant difference in the physical designation of the primary trade area between the economic experts, noting that Mr Haratsis defines a secondary trade area (surrounding the primary trade area) and Messrs Dimasi and Shipp do not.

59. It is the evidence of Mr Haratsis that:

59.1. The development of the proposal will result in 429 square metres of commercial floorspace per 1000 residents in the primary trade area at 2021. This floor space allocation is significantly higher than the Melbourne Metropolitan average at 312 square metres per 1000 residents and an overprovision within the primary trade area.

59.2. The existing supermarket floorspace supply is already serving the needs of the resident and visitor population, even allowing for future population growth.

59.3. The forecast impact to retail turnover within the primary sector will be in the order of -5 to -6%.

59.4. The proposal combined with the Peninsula Homemaker Centre, including Aldi, effectively creates a new activity centre. This has the potential to disrupt and negatively impact the existing activity centre hierarchy.

60. Mr Quick in evidence for Vicinity Centres and ISPT expresses the view that the proposal will impact the Mornington Activity Centre in the order of -4.3%. Mr Quick acknowledges the proposal will have some economic benefits to the community and generate employment. However, in his view these benefits would be magnified if the proposal was located within an activity centre. In his opinion, the proposal represents a potential loss of economic value to the Peninsula.

61. Furthermore, Mr Quick identifies the use and development of land zoned IN3Z for retail will negatively impact the diverse employment opportunities within the municipality.

62. The exhibited amendment documents included an Economic Impact Assessment November 2018 prepared by Mr Dimasi. In this report, Mr Dimasi considers the proposal will not have an adverse economic impact on any centre within the trade area. He repeats this conclusion in his evidence statement.

63. Council raises the following concerns with Mr Dimasi’s assessment:

63.1. It does not undertake an impact assessment on specific centres;

63.2. It does not assess the impact of the alienation of industrial land.

64. The peer review of Mr Dimasi’s economic impact assessment undertaken by Mr Shipp provides that the Mr Dimasi’s assessment lacks scope and depth.

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23 Primary trade area referred to as the ‘primary sector’ in Document 27b, paragraph 4.3 and map 4.1.
24 Ibid, paragraph 4.9.
26 Ibid, paragraph 4.17.
27 Ibid, paragraph 4.25.
28 Mr Dimasi’s trade area is generally consistent but slightly smaller than the primary trade area identified by Mr Haratsis.
65. Mr Shipp’s assessment also fails to consider the impact on individual centres and the proposal’s impact on industrial land supply. Importantly, Mr Shipp in effect acknowledges that the combination of the proposal with the existing retail within the Peninsula Homemaker Centre will create a new activity centre by virtue of the retail floorspace.\(^\text{29}\)

66. Council submits that the benefit of greater competition and customer choice relied upon by the Proponent is overstated. Kaufland will not add significantly to competitive tension as Aldi (similarly offering retail food at discounted rates) has entered the market and we are now seeing a deflation in retail food prices.

67. The absence of an analysis of alternative sites that could accommodate the proposal in or on the edge of an existing activity centre, is a fundamental failing of this proposal. Instead the unquestioned needs of the Proponent are dictating how the planning controls should be implemented. This is not proper planning.

RETAIL USE OF INDUSTRIAL LAND

68. Industrial areas support economic activity, create diversity of employment opportunities and contribute to the well-being of Mornington Peninsula residents. The Land is zoned IN3Z. There is a limited supply of industrial land within the municipality.\(^\text{30}\) Facilitating a site-specific amendment which effectively rezones the Land to a commercial zone without an analysis of the supply and demand for industrial land is poor planning.

69. The Planning Policy Framework actively supports retaining industrial land and discourage approving non-industrial development in industrial area because this will prejudice availability for future industrial use. This direction is repeated throughout the Planning Scheme:

69.1. Clause 11.02-1S (Supply of urban land) seeks to ensure a sufficient supply industrial land.

69.2. Clause 17.01-1S (Diversified economy) and 17.01-1R (Diversified economy – Metropolitan Melbourne) strategies seek to protect and strengthen existing and planned employment areas and to plan for industrial land in suitable locations to support employment and investment opportunities.

69.3. Clause 17.03-1S (Industrial land supply) objective is to ensure availability of land for industrial use.

69.4. Clause 17.03-2 (Industrial development siting) strategy is to protect industrial activity in industrial zones from the encroachment of commercial development.

69.5. Clause 21.07-4 (Industrial areas) objective 1 is to ‘facilitate the expansion of existing industries and to attract new industries.’ Strategies to achieve this objective include to:

- Ensure that adequate areas are available in appropriate locations for a range of industrial development.
- Support retail or office activity in industrial areas only if:
  - It is ancillary to an industrial use on the same site (such as manufacturing sales).
  - It is intended primarily to provide services to the industrial area (such as food premises or industry supplies).
  - It consists of restricted retail premises, which require large display and storage areas, and where it is shown that the use cannot be reasonably located in existing commercial activity centres.

69.6. Clause 22.01 recognises the economic role industrial areas play within the Peninsula, the scarcity of land suitability located for industrial use and the potential for

\(^{29}\) Document 76c, paragraph 105.

\(^{30}\) Clause 22.01-1 and Document 76c.
commercial development to restrict the availability of industrial land. A key objective of this policy is to ‘prevent out-of-centre commercial developments in the industrial zones that undermine the activity centres policy at Clause 22.02, particularly along main roads.’

70. The IN3Z contemplates limited retail opportunities in both the purpose and table of uses. In the purpose the type of retail contemplated is small-scale supermarkets and associated shops. This is translated in the use control which:

70.1. prohibits use of land for a supermarket unless the leasable floor area does not exceed 1800 square metres, the site adjoins a road in a Road Zone and is within an urban growth boundary; and

70.2. limits the floor area for Shop use.

71. So while there are circumstances that justify commercial use of industrial land, these are limited by the provisions of the zone. A supermarket of the size proposed is prohibited.

72. In these circumstances, the development of the site for non-industrially purposes must be supported by a strategic analysis. This must include an analysis of current and projected supply of and demand for industrial land. The Proponent has not provided this analysis in support of the proposal or in evidence. In the absence of such analysis, it cannot be said that the proposal will not prejudice the availability of industrially zoned land for industrial use and development.

73. The recent Council adopted Mornington Peninsula Industrial Areas Strategy 2018 (Industrial Areas Strategy), in its assessment of industrially zoned land, identifies a key issue as:

‘If occupied industrial land increases by an average of 2.9ha per year on the Mornington Peninsula, without additional industrial land supply the rate of unoccupied industrial land would fall from 25% in 2015 to 14% by 2026. This is a level where the overall industrial land market in the Shire can be considered ‘constrained’.

74. The Industrial Areas Strategy links a constrained industrial land supply with adverse economic impacts to the community. In effect, constrained industrial land supply constrains supply of land for employment, business growth and economic development.

75. Mr Harastis, in his evidence for Council, says industrial land supply is likely to be constrained in the medium-term future and this will have economic disbenefits. He has reviewed and updated the analysis of industrial land supply in the Industrial Areas Strategy. In relation to IN3Z across the municipality, he finds at paragraphs 3.26-3.27:

‘On this basis, there is circa 6% unoccupied land and approximately 4-6 years of readily developable land available. Both of these metrics indicate a significant shortage of industrial land across the municipality, where constrained supply of industrial land could result in a range of economic and other community costs.

In this context, sites zoned IN3Z, in particular ‘prime’ sites such as the subject site, which are strategically located with high market visibility, have the necessary infrastructure and can be delivered affordably, are critical to the Mornington economy, facilitating retention of the general service industry base while accommodating new business development opportunities going forward.’

76. The evidence of Mr Quick supports this conclusion. At paragraph 89 of his evidence, he states:

‘There is a limited supply of industrial land within the Shire of Mornington Peninsula. The conversion of the subject site, zoned Industrial 3, from industrial to retail will see more land removed from the available supply, impacting on the ability of the Shire to provide a diverse range of employment.’

31 Issue 6, p. 54.
Specifically, the Industrial Areas Strategy identifies the IN3Z land between Oakbank and Bungower Roads (including the Land) as ‘Mornington North’. It recognises the precinct does not function as a wholly industrial area given the business and land use mix. It presents two options for this land: subject to further assessment, rezone the area to Commercial 2 Zone or retain the current IN3Z to provide opportunity for industrial use and avoid pressure for further major out-of-centre development.

The Proponent in its Part B submission asserted that Council’s adoption of the Industrial Areas Strategy amounted to endorsement of the proposition that the Mornington North area should be commercially rezoned. This is simply incorrect. The Industrial Strategy does not ultimately recommend commercial rezoning of the Land. It acknowledges that given the restricted retail and other commercial uses within this area, a Commercial 2 rezoning ‘may potentially be considered by Council in the future having regard to the current land use pattern’ but alternatively recognises that ‘…in view of the limited opportunities to increase IN3Z land supply in Mornington, the BATA site could be retained in IN3Z to provide a specific future opportunity, e.g. for factory-based use, and to avoid pressure for further major out-of-centre retail development.’

Ultimately, it makes no specific recommendation. Rather, it recommends that ‘[a]ny detailed zoning changes (if any) should be determined subject to further site specific analysis and policy review, at Council’s own discretion’.

The Proponent further asserts that the officer’s assessment of the Industrial Areas Strategy is tantamount to an endorsement by Council that the Land should be commercially rezoned. Council disagrees. The officer recommends that Action 7 in the Industrial Areas Strategy be revised to provide for ‘a consideration of potential rezoning to C2Z of the industrial land at the Mornington Parkland Industrial Area’. This is reflected in the adopted strategy. Council’s resolution was not to prepare a planning scheme amendment to rezone the land, but rather to amend the Industrial Area Strategy to enable the prospect of such an amendment to be considered. Consistent with the Strategy, Council’s position is that further strategic work needs to be undertaken in respect of Mornington North to determine whether it is best retained as industrial land or commercial rezoning is appropriate. This should involve a comprehensive strategic assessment for the whole of the land concerned, which has not been undertaken either by Council or the Proponent in justifying the proposed amendment.

As it is, this proposal seeks to leap-frog the strategic planning process for the Mornington North precinct which would assess the precinct on a holistic basis. Even for the subject site, the proposal involves no assessment of the impact of the Amendment on the demand and supply for industrial land in the area. In any case, the impact assessment undertaken in the evidence of Mr Harastis suggests that the loss of IN3Z land will contribute to a constrained supply of industrial land on the Peninsula. In the absence any other analysis or evidence to the contrary that would support a reduced availability of industrial land in this location, there is no strategic support in respect of this issue for the amendment.

**URBAN DESIGN AND LANDSCAPE RESPONSE**

The landscape of the Land and its surrounds is not typical for an industrially zoned site or bulky good retailing precinct. The Mornington Parkland Industrial Area is defined by generous and consistent setbacks to Nepean Highway and mature vegetation which creates a setting where landscaping and sense of openness is dominant rather than the built form. This sense of openness is particularly evident at the Land due to its corner location at the entry to the Mornington township and its interface with the Green Wedge to its north.

The Scheme recognises and seeks to protect this special character. It has done so for many years. Mr Biles in his evidence describes the evaluation of the controls which give effect to the longstanding Council strategy of a ‘green break’ between Mount Eliza and Mornington and to protect the sense of openness and landscape character at the arrival to Mornington.

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33 Industrial Areas Strategy, page 66.
34 Planning Services Committee Minutes, 30 April 2018, page 9.
35 Document 27c, paragraph 2.2.2.
83. Council submits that the proposal fails to appropriately respond to its context by reason of:

83.1. The expansive at-grade car park within the Nepean Highway setback;
83.2. The inadequate landscape opportunities within the Planning Unit;
83.3. The reliance on landscaping outside the Planning Unit;
83.4. The size, height and dominance of the proposed building.

84. Relevantly to the proposal, the Planning Scheme:

84.1. At clause 2.0 of DPO2 requires a development plan to provide:
   - A minimum building setback of 90 metres from the Nepean Highway frontage and 58 metres from any Bungower Road frontage.
   - A minimum setback from side and rear boundaries of 15 metres.
   - A maximum plot ratio of 0.35.
   - A minimum of 50 percent of any site set aside for landscaping.
84.2. At clause 11.03-5S seeks development that enhance valued characteristics of the identified distinctive of the Mornington Peninsula.
84.3. At clause 11.03-6S seeks development which responds to the distinctive characteristics and needs of local places.
84.4. At clause 12.05-2S seek to protect and enhance significance landscapes and ensure development does not detract from the natural qualities of significant landscape areas.
84.5. At clause 15.01-2S seeks development responds to its site constraints and surrounding landscape, enhances the amenity of the public realm and protects valued views and vistas and minimises detrimental impact on neighbouring properties.
84.6. At clause 15.01-5S seeks development which contributes to existing or preferred neighbourhood character and the natural landscape character and significant vegetation.

85. The Land, and Planning Unit, are particularly visually exposed to Nepean Highway due to the corner location, elevated topography and the lack of built form within the north west portion of the Land.

86. In this policy and physical setting, Council submits that together the following design elements create an unacceptable impact:

86.1. The car park is setback 3 metres from the northern boundary of the Planning Unit and 2.8 metres from the southern boundary. These relatively narrow setbacks allow for only limited landscaping that is not commensurate with the outcomes sought by the Planning Scheme and will result in the car parking and building dominating the landscape from Nepean Highway.
86.2. The front setback of the car park varies between 16.2 and 20 metres. Although this will allow for landscaping, it not consistent with the extent of landscaping area within frontages provided properties south of the Land.
86.3. Internally, within the car park there is very limited opportunity for planting of trees that would soften the extensive hard surface and contribute to the landscaped appearance of the site.
86.4. Although the building is setback from side boundaries, there are only very confined planting opportunities, setbacks are almost entirely occupied by accessways.

86.5. The zoning and policy context of the Land anticipate boxy, utilitarian buildings. However, in this case, the minimal and poorly placed landscaping opportunities will result in the building being visually exposed and prominent within the landscape, contrary to the outcome sought.

86.6. There is significant removal of vegetation proposed in the eastern portion Land to provide for service and loading access. Mr Papworth estimates up to 40 mature trees would need to be removed. Widening of this accessway to allow for two-way traffic would increase the extent vegetation removal required. Removal of vegetation which makes a valuable contribution to the landscape in circumstances where the replacement opportunities are poor is an unacceptable design response. Furthermore, the removal of vegetation reduces the visual buffer to a sensitive residential interface.

86.7. The portion of the Planning Unit set aside for landscaping is 15.6%. This is well below the DPO2 requirement of 50%. Such design relies on the balance of the Land contributing a high proportion of its area to landscaping. This cannot be assured.

86.8. Even if the current Planning Scheme is disregarded, the proposal fails to acceptably respond to its physical context:

a. within inadequate landscaping within the Nepean Highway and side setbacks;

b. extensive and visually dominant car parking; and

c. loss of vegetation which could be avoided with a design which responded to constraints.

87. Mr McWha in giving oral evidence for the Proponent conceded that in effect:

87.1. His opinion that the proposal’s landscape response is acceptable relied on the north west corner of the Land remaining free from development;

87.2. His independence as an expert witness is limited by his commercial relationship with the Proponent involving the preparation of landscape concept plans for the Proponent.

88. Council submits that the evidence of Mr McWha is flawed because of its reliance on the north west corner of the Land, the future of which cannot be assured. It should not be relied upon.

89. Mr Blades in his expert report also relies on the cumulative extent of landscaping including the balance of the Land to meet the 50% landscaping requirement in DPO2. As stated above, the landscape response of the proposal must achieve on its own site.

90. Council disagrees with Mr Blades’ contextualisation of the proposal. He states that the design of the proposal has been driven by specific functional requirements of the Proponent rather than response to the existing context. This is not proper planning.

91. Council submits the better analysis is that identified in the evidence of Mr Papworth. He states:

‘The combination of the proposed vehicle breakdown lane, the prominent signage, the proposed carpark as well as the 13-14 metre high supermarket building would replace what is currently an open grassed landscape and place a significant building and carpark on the site with a landscape that will not be sufficient to replace or counter this proposed new condition. In addition, the existing large eucalypt trees and other vegetation proposed to be removed for the proposed access road across the front of the Bata Shoes building will also strip the frontage of
the property of significant existing vegetation that currently assists in receding existing built form into the landscape.  

92. This is analysis consistent with that of Mr Biles. He says the paucity of space for landscaping on the Planning Unit and the extensive car parking respond inappropriately to the site’s exposure at a gateway location. At 2.2.5, he states:

‘The location of the site at a topographically low point, on approach from the north, means that views across the car parking area from the north will be overt.

Similarly, on approach from the south, the development site plays a catalyst role as a departure point in transitioning into the Green Wedge Zone.

… the ability to provide for adequate spacing for landscape planting appears to be limited and as such will exacerbate views of the car park and building from the public realm presenting an inappropriate response in this location.

Given the importance of the site as a key arrival point I do not consider that the site planning resolution adequately responds to the established landscape character of buildings set behind a forecourt of canopy vegetation.’

93. The Proponent’s unwillingness to appropriately respond to the Planning Scheme is further demonstrated by its refusal to adopt Mr Blades’ recommendations in respect of built form and materiality. It seeks to rely of Mr Blades’ evidence, but it will not adopt his recommendations, which he says are necessary to achieve an acceptable outcome.

SIGNAGE

94. The proposal seeks approval of seven signs containing Kaufland’s red and white logo. Council is concerned about the proposed Pylon Sign – Type 2 at the Nepean Highway frontage to the north of the proposed vehicle access. This sign has a height of 15 metres and displays the Kaufland logo and tenancy sign. The display area is 12.25 square metres and at its lowest point sits 10.39 metres above ground level.

95. Council submits that the scale of this sign is excessive and incompatible with the existing amenity and visual appearance and the desired future character of the area.

96. Clause 52.05 regulates signage. As it stands, a permit is required for business identification signs which have a display area exceeding 8 square metres. In essence, clause 52.05 allows signage but only where it ‘compatible with the amenity and visual appearance of an area, including the existing or desired future character.’

97. Clause 22.10 relates to advertising signage. It seeks to ensure that signs do not dominate or detract from streetscape and landscape areas particular along main roads and are commensurate with surrounding buildings, streetscape and other signs.

98. The existing and desired character for the Land and the Nepean Highway frontage of the Mornington Parkland Industrial Area is one where vegetation and landscape free from built form predominates.

99. The pylon sign will dominate the front setbacks and the wider landscape having regard to:

99.1. its 15 metre height, substantially higher than the tree canopy;

99.2. its stark colouring;

36 Document 27d, p. 34.
37 The Amended Plans reduced the height of the sign to 15 metres from 22 metres as shown on the exhibited plans.
38 Ground 5 of Council’s submission to the Committee (Document M48)
99.3. Its visibility from long range views.

100. Such a response is not acceptable and inconsistent with the purpose and decision guidelines of clause 52.05 and supporting policy in the Planning Policy Framework which seeks to protect landscape character, ensure development minimises detrimental impacts on amenity, natural and built environments and protect and enhance valued views and vistas.39

101. Mr Biles in his expert urban design evidence on behalf of Council describes roadside signage character as generally limited to low-lying signs which have limited impact on the landscape character.40 While there are examples pylon signs within front setbacks of this section of Nepean Highway, they are set lower than the existing tree canopy and do not unduly detract from the landscape character.

102. In Mr Biles’ view, the sign dominate the established character and will read as significantly higher than other signs in this section of Nepean Highway. He considers this an unacceptable planning outcome.41

103. Mr Papworth in his expert landscape evidence is of a similar view. He considers this sign will be ‘extremely prominent’ in the Nepean Highway landscape and will be visible in long range views from north along Nepean Highway, within the Green Wedge. In his view the sign is not consistent with landscape objectives in clause 15 of the Planning Scheme and the objectives in the Mornington Localised Planning Statement which seeks to prevent intrusive commercial development, including signs on highways.42

104. Mr Blades, in his urban design evidence statement for the Proponent, agrees that this sign ‘will constitute a departure from the existing scale of signage in proximity to the subject site.’43 Despite this, he says that it is contextually responsive because the height of the sign will be ‘consistent with the maturation height of the proposed canopy planting and existing canopy planting.’44 This fails to recognise much of the existing vegetation on the Land will be removed to facilitate the project, assumes that the proposed vegetation will reach its mature height and relies on retention of vegetation on adjoining properties.

105. Mr McWha in giving landscape evidence for the Proponent acknowledged that he had been instructed not to consider the impact of this sign on the landscape. He conceded that, in his view, it would be a dominant element in the landscape.

TRAFFIC IMPACTS AND SUSTAINABLE TRANSPORT

106. Council submits the location of proposal does not support sustainable transport and the access arrangements are poorly resolved.

Sustainable transport objectives

107. State and local transport related policies seek to:

107.1. Promote and facilitate sustainable and active transport through its integration with new development;45

107.2. Encourage co-location of uses to increase multi-purpose trips;46

39 Clauses 12.05-2S, 15.01-1S, 15.01-5S.
40 Document 27a, p14.
41 Ibid.
42 Document 27d, pp 41-12.
43 Document 16b, paragraph 71.
44 Ibid, paragraph 72.
45 Clause 18.01-2S.
46 Clause 21.07-1.
reduce the number of private of motor vehicle trips by concentrating activities that
generate trips in activity centres;\textsuperscript{47}

improve availability and accessibility of walking, cycling and public transport services.\textsuperscript{48}

The Land is not located within an activity centre nor is located within a concentration of retail
and service offerings. This limits the opportunity for multi-purpose trips and fails to contribute
to a reduction in private motorised vehicle trips.

Council acknowledges that trips to supermarkets favour use of a private vehicle. However,
when a supermarket is located within an activity centre there is opportunity for convenient
parking that supports pedestrian access to multiple shops and services. Although the Planning
Unit is proximate to Peninsula Home, the lack of connectivity will limit options for pedestrian
access between the shops.

The evidence of Mr Walley supports this conclusion. He states:

‘The site is located in proximity to a number of restricted retail uses, which may encourage
some level of shared trips. Such shared trips will still likely rely on private vehicles and will rely
on the external road network (Nepean Highway) given the lack of interconnectivity to the
Kaufland site.’\textsuperscript{49}

… Were the site located within an activity centre, that would typically offer a broader mi of retail
and service offerings that the abovementioned restricted retail, there would greater opportunity
for shared trips.’

Mr Davies of GTA in giving evidence for the Proponent agreed that the Planning Scheme
encourages sustainable transport options. He conceded that in effect locating the proposal
within an activity centre would maximise the multi-destination trips and thereby provide a more
sustainable transport option.

Oakbank Road

It is one of Council’s grounds that ‘Without further road works and widening to Oakbank Road,
the proposed development will have a detrimental impact on the safe and efficient operation of
Oakbank Road.’

It is evidence of Mr Walley that:

113.1. If double right turn lanes are not provided, vehicle queues on Oakbank Road during
the School pm peak will likely extend across the easement location. He recommends
the Nepean Highway/Oakbank Road intersection is remodelled to include double right
turn lanes from Nepean Highway south.\textsuperscript{50}

113.2. Widening of Oakbank Road at its intersection with Bata Court is warranted on the
basis that Oakbank Road is relied upon for access to Padua College.\textsuperscript{51}

113.3. Bata Court should incorporate a pedestrian footpath and clarify the pedestrian and
vehicles access arrangements to the Bata operation.\textsuperscript{52}

\textsuperscript{47} Clause 11.03-1S.
\textsuperscript{48} Ibid.
\textsuperscript{49} Document 27a, paragraphs 8.1.5 and 8.1.6.
\textsuperscript{50} Document 27b, paragraphs 7.4.2 and 7.4.3.
\textsuperscript{51} Ibid, paragraph 7.4.7.
\textsuperscript{52} Ibid, paragraph 7.4.5.
113.4. The proposed eastern access for service and loading should accommodate two-way access.\textsuperscript{53}

113.5. The length of pedestrian crossings along Oakbank Road should be minimised.\textsuperscript{54}

114. It is Council’s submission that without works recommended by Mr Walley, the queuing and resultant congestion at the Nepean Highway/Oakbank Road intersection and along Oakbank Road will create safety hazards for the relatively high number of pedestrians associated with the two nearby schools.

115. Like Mr Walley, Council’s engineers are concerned about the location of the footpath providing access over the Bata Court and Oakbank Road intersection. They say that the width of Bata Court without a pedestrian refuge creates a potential danger to the many school students using this route. They recommend altering the footpath alignment and providing a splitter island to address this issue.

116. The swept path assessment undertaken by the Proponent’s traffic engineers demonstrates that the eastern access does not allow for two access for service vehicles for its entire length. Council acknowledges that the accessway could be widened to allow for two-way. However, such widening would result in the following impacts:

116.1. further loss of existing vegetation;

116.2. potential adverse amenity impacts to nearby residential, noting that some deliveries are proposed between 12am and 7am;

116.3. exacerbating a poor design response that makes inefficient use of industrial land.

\textbf{Nepean Highway access}

117. Council’s ground 7 is that ‘The proposed development will have a detrimental impact on the safe and efficient operation of Nepean Highway due to the proximity of the proposed access to the existing bus stop adjacent to the site frontage.’

118. The Amended Plans altered the location of the bus stop and, subject to further detailed design and including conditions in the Incorporated Document to make provision for a temporary bus stop, this particular concern is now addressed.

\textbf{NET COMMUNITY BENEFIT}

119. Ministerial Direction No. 11\textsuperscript{55} requires a planning authority (and the Panel) to evaluate and discuss how an amendment addresses specified strategic considerations. Planning Practice Note 46\textsuperscript{56} sets out what should be considered as part of Ministerial Direction No. 11. It lists as a relevant considerations:

119.1. whether the amendment will have a net community benefit;

119.2. whether the environmental, social and economic effects of an amendment will result in a net community benefit; and

119.3. if there are competing planning policy objectives, how they can be balanced in favour of achieving a net community benefit.

120. How do we determine net community benefit?

\textsuperscript{53} Ibid, paragraph 7.3.3.
\textsuperscript{54} Ibid.
\textsuperscript{55} 18 October 2013.
\textsuperscript{56} May 2017.
The Panel in *Hume C154 (PSA) [2013] PPV 16* discussed the application of the net community benefit in the context of planning scheme amendments. At 13.1, the Panel states:

‘In general the establishment of net community benefit is understood to involve an assessment of the net balance of impacts resulting from an amendment. That is to say, the Panel must consider all of the advantages the amendment may deliver against all the disadvantages and make a net assessment of the situation.

In dealing with the issue of net community benefit, the Panel notes the need to measure net community benefit in a holistic sense taking into account a range of factors including planning, social, cultural, recreational and economic issues.

As there are no set measures on which to base its decision, the establishment of net community benefit requires subjective judgements by the Panel.’

The Panel went on to say at 13.3:

‘In advancing this assessment, the Panel notes that there is no ‘magic formula’ to assess and determine net community benefit. The Panel must frequently make findings on conflicting submissions and inconclusive evidence.

The Panel notes the net community benefit test is, by its very name, based on an assessment of whether the ‘community’ will be better off rather than individuals. This is critical as there is little doubt in the Panel’s mind that some individuals may be adversely impacted.’

It is Council’s submission that the disbenefits of the proposal outweigh its benefits. Council acknowledges that the proposal will generate some tangible benefits, comprising employment and rate revenue generating.

Other benefits alleged by the Proponent are less tangible:

124.1. greater competition between supermarkets.

124.2. more choice for consumers.

It is Council’s submission that these intangible benefits have been ill-defined and overstated by the Proponent. Council says that any benefits associated with increase in competition and greater consumer choice are marginal. The Victorian market has already seen the price deflations and greater choice from the introduction of Aldi. Given the Proponent’s offer is similar to that of Aldi, the competition tension and choice benefits cannot be so significant as to justify establishment of a retail anchor outside of the established retail hierarchy and in a zone which prohibits it.

The Proponent relies on the evidence of Mr Biacsi. At page 20 of his witness statement, he opines that benefits of the proposal include ‘availability of land’ in that the Planning Unit is available and of a suitable size to accommodate the proposal and ‘certainty’ in that a substantial area of land will be developed. Council submits that these are not benefits.

Availability of land that suits a proponent’s needs per se cannot intrinsically be a reason to justify a proposal unless that the proposal is dependent on a site for a specific resource or fulfils an important community need (for example, a hospital). To allow planning scheme amendments on the basis of an applicant’s needs without any ‘extraordinary circumstances’, undermines the objectives of planning in Victoria and the planning scheme which has been put in place to

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57 This amendment proposed to incorporate the Greenvale Centre Precinct Structure Plan, Development Contributions Plan and Native Vegetation Plan into the Hume Planning Scheme.

58 Document 26e.

59 Purpose of clause 45.12
provide a clear and consistent framework within which decisions about the use and development of land can be made.\textsuperscript{60}

128. Certainty is a key pillar of the planning system. Orderly and fair planning foster certainty for investment. This is achieved by a robust planning framework that is consistently applied. The LPS recognises the benefit of certainty in planning and seeks to protect the Peninsula’s ‘strong land-use planning framework.’\textsuperscript{61}

129. Certainty is not achieved by facilitating a use and development that is prohibited by the current zone control and is inconsistent with policy. Such an outcome fosters uncertainty in the planning system. What is the purpose of zoning and planning policy, if it can be disregarded? An amendment facilitating an outcome that is not contemplated by the current Planning Scheme and is inconsistent with first principles does not attract a certainty benefit.

130. In Council’s view the disbenefits of the proposal are clear. These disbenefits comprise:

130.1. loss of industrial land for industrial use and employment and associated and loss of diversity of employment;

130.2. undermining the hierarchy of activity centres by locating a significant retail anchor outside a defined centre and effectively creating a new, unplanned centre;

130.3. reduced trading level for existing competitors (a disbenefit agreed by the Proponent’s planning and economic experts) albeit not to a level that is considered likely to affect their viability;

130.4. loss of jobs due to increased competition;

130.5. poor design response in terms of:

- the response to entry into Mornington township and the ‘gateway’ nature of the site;
- the response to site constraints of existing vegetation;
- the response to the landscape character of Nepean Highway between Oakbank and Bungower Roads;
- excessive signage at a prominent location on the Nepean Highway frontage;
- the reliance on land outside the planning unit remaining undeveloped/open/vegetated; and
- inefficient site layout which relies on creation of long easements for access which may comprises future industrial use and development;

130.6. failing to maximise multi-purpose trips and associated reduction in private vehicle trips by virtue of its location outside an activity centre and lack of integration with the Peninsula Homemaker Centre to the south.

131. Mr Biacsi, the Proponent’s planning expert, identifies the disbenefits of the proposal as including:

131.1. Reduced trading level for existing competitors;

\textsuperscript{60} Clause 01 of the Planning Scheme.
\textsuperscript{61} LPS, p.1.
\textsuperscript{62} Document 26e.
131.2. Loss of jobs due to increased competition;

131.3. Loss of industrial land for industrial development;

131.4. Adverse amenity impacts from increased noise, odour and lighting from the proposal.\(^{63}\)

132. Messrs Harastis, Biles, Milner, Rogers and Bromhead, the planning experts for Council, Vicinity Centres & ISPT and Blackbrook support the position that the proposal is inconsistent with the activity centre hierarchy and will not achieve a net community benefit and, therefore, should not be supported.

133. Council submits the Panel should prefer the evidence of the above experts over that of Mr Biacsi. Mr Biacsi acknowledges that the proposal is not consistent with relevant activity centre and industrial policies and the zoning of the Land. He says this is irrelevant. Rather it is the consequences of the proposal that must be acceptable. In effect, this is a net community benefit assessment. He undertakes benefit assessment but the fundamental flaw of this assessment is that it fails to give any weight to non-compliance with unequivocal policy and zone control that discourage commercial development out-of-centre and in industrial zones.

134. This is not a proper application of the net community benefit assessment. To disregard or give no weight to the purpose of a relevant zone and related policy is not proper planning and undermines the objectives of planning in Victoria at the highest level which seeks:

134.1. ‘to provide for the fair, orderly, economic and sustainable use, and development of land’;\(^{64}\)

134.2. to establish a planning framework which:

- ensures ‘sound, strategic planning and co-ordinated action at State, regional and municipal levels’;
- establishes ‘a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land’;
- facilitates ‘development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes.’\(^{65}\)

135. A critical failing of the proposal in Mr Haratsis’ opinion is that it fails to assess its impact on the industrial land. He forms that view that there is a limited supply of industrial land in the municipality without a more detailed assessment, it cannot be said that allowing a retail use and development on a large parcel of industrial land will not adversely impact this supply. The Proponent has no evidence to refute this. Further, its planning expert, Mr Biacsi agrees that a disbenefit of the proposal is the loss of industrial land/opportunity.\(^{66}\)

136. Put plainly, the proposal does not represent properly and orderly planning, fails to respond to the current Planning Scheme, responds poorly to its context and will not result in net benefit for the community having regard to the disbenefits set out above. The issue of why a proposed out of centre location is being proposed goes to the issue of whether there #

137. The sequential test involves an investigation of all possible sites for a proposal within a locality. It is only where a suitable location is not available in an activity centre that a location out of centre or edge of centre may be contemplated. This test is a tool used to assess whether a

\(^{63}\) Ibid, pp. 20-21.

\(^{64}\) Section 4(1) of the Act.

\(^{65}\) Section 4(2) of the Act.

\(^{66}\) Ibid, pp. 21.
proposal responds acceptably to the long-standing and accepted planning principle that retail activity should aggregate in activity centres.

138. It is Council’s submission that proper and orderly planning requires this assessment to ensure that sound planning principles are not undermined. Without establishing whether there are suitable sites within an activity centre, it cannot be said that the proposal before the Committee will achieve a net community benefit and that Proponent has made best efforts to avoid out-of-centre retail development.

139. There is no evidence that this analysis has been undertaken in arriving at the Land. Council itself has identified numerous sites within Council ownership within the Mornington Activity Centre that it considers might accommodate a hypermarket. This includes 1-11 Waterloo Place which is earmarked for a new major retail use in the Mornington Activity Centre Structure Plan.67

140. The Proponent has asserted that none of these sites meet its requirements. However, Council submits that the basis for the Proponent’s assertion about this is its preferences rather than the necessary requirements to establish a hypermarket. The Proponent gives no genuine consideration as to whether all of the floor area and car parking area identified on its plans would be required if it were located in the Mornington Activity Centre. For example, it has not considered whether car parking might be shared with other uses in the Activity Centre. Not has I considered whether it would be truly necessary to provide a mall, food hall are two specialties on the Kaufland site if it were to be located in the Mornington Activity Centre.

OTHER MATTERS

141. There are a number of ‘other’ concerns Council has with the proposal which are symptomatic of the lack of detailed planning undertaken by the Proponent. They relate to the proposed trading hours for the sale of liquor, subdivision, stormwater management and removal of native vegetation. The details of these parts of the proposal were not found in the exhibited document, but have been disclosed via evidence and ‘other’ documents drip fed to the Advisory Committee and Council through the hearing process. It is a classic case of planning ‘on the run’. The expectation that the Advisory Committee and Council ought to simply roll with it is not only disrespectful, it is poor planning.

Proposed trading hours for sale of liquor

142. It is apparent from the exhibited Town Planning Assessment by Planning Property Partners that no serious consideration or detailed consideration was given to the merits of the sale of packaged liquor from the Land. There are but two short paragraphs in the Assessment regarding the proposed use.68 They acknowledge the requirement in clause 52.27 to consider the impact of the licensed premises on the amenity of the surrounding area and assert that the use will be a ‘limited’ impact and is ‘unlikely to have a negative impact on the amenity of the area because:

142.1. It will operate ancillary to the supermarket use; and by virtue of

142.2. The surrounding non-sensitive commercial/industrial uses and consumption off site.

143. The Assessment provides no further justification of the basis for these assertions. Further, the exhibited Incorporated Document included no details of or conditions relating to the trade hours either for the proposed supermarket or for the sale of liquor.

144. The Day 1 Version of the Incorporated Document subsequently circulated provided that the bottle shop use shall only operate between the hours of 7am and midnight each day of the week, unless with the written approval of the Responsible Authority.

67 The MACSP specifies a building height of up to 3 storeys for this height.
68 Town Planning Assessment, Kaufland Supermarket Network – Victorian Entry Proposal, Part Seven – 1158 Nepean Highway, Mornington, at 5.4.5.
Again, no detailed justification has been provided for these proposed hours, noting they exceed ‘ordinary trading hours’ as defined in section 3 of the Liquor Control Reform Act 1988 for a packaged liquor licence or late night (packaged liquor) licence as:

i. the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and

ii. the hours between 10 a.m. and 11 p.m. on Sunday; and

iii. the hours between 12 noon and 11 p.m. on ANZAC Day;  

Again, no detailed justification has been provided for these proposed hours, noting they exceed ‘ordinary trading hours’ as defined in section 3 of the Liquor Control Reform Act 1988 for a packaged liquor licence or late night (packaged liquor) licence as:

iv. the hours between 9 a.m. and 11 p.m. on each day, other than Sunday, Good Friday, ANZAC Day or Christmas Day; and

v. the hours between 10 a.m. and 11 p.m. on Sunday; and

The proposal makes no reference to or is responsive to the Liquor Control Reform Act 1988, Decision-Making Guidelines issued pursuant to section 5 of the Victorian Commission for Gambling and Liquor Regulation Act 2011 in relation to the grant of licenses for sale of packaged liquor, or to the objects of the Liquor Control Reform Act including to contribute to adequate controls over the supply and consumption of liquor and ensure as far as practicable that the supply of liquor contributes to and does not detract from the amenity of community life.

In the circumstances, Council does not support proposed trading hours for the liquor store beyond 10pm.

Subdivision and the Planning Unit

To date, the Proponent has been silent on the issue of subdivision of the land. The notion that the land will be subdivided has been advanced only via its experts. Even then there has been no detailed planning assessment of the merit of such an application.

Further to this point, the Proponent has consistently sought to redefine the planning unit as and when it suits it. For the purpose of its landscape proposal, the Proponent seeks to rely on the provision of landscaping on the Bata Land and but on the other hand it asserts the Planning Unit’s does not directly interface with the Green Wedge Zone. This is an artificial nonsense.

Native Vegetation

With its Part B submission, the Proponent tabled arboricultural advice stating that the vegetation to be removed on the Planning Unit is exempt from requiring a permit under clause 52.17 on the basis of the planted vegetation exemption. Further this assessment did not consider the vegetation required to facilitate the widening of Oakbank Road.

Council submits that the assessment is incorrect and that a permit is required for the removal of vegetation pursuant to clause 52.17. There is no exemption which applies to the vegetation on the Land. The vegetation permit exemption only applies to ‘Native vegetation that is to be removed, destroyed or lopped that was either planted or grown as a result of direct seeding.’ However, there is no expert or lay evidence before the Panel about that. All that is before the Panel is a letter from James Garden of Eco Logical Australia to the Proponent and dated 31 January 2019 (Tabled document 112). In the letter, Mr Garden states that he conducted a site assessment on 5 April 2018 but provides no further details about that. If such an assessment

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69 Section 3, Liquor Control Reform Act 1988.
70 Victoria Government Gazette, G23, 7 June 2012, page 1176.
was undertaken, the details should be provided to the Advisory Committee. In the circumstances, this permit exemption cannot be relied upon.

**Stormwater Management**


154. The SWMP proposes:

154.1. an onsite in-ground piped stormwater system designed for a 1 in 10 year ARI storm event;

154.2. an on-site overland flow stormwater system designed for a 1 in 100 year ARI storm event; and

154.3. an on-site stormwater retention in bioswale and retention ponds design for a 1 in 100 year ARI storm event.

155. The SWMP assumes a legal point of discharge at the Nepean Highway frontage of the Planning Unit and shows stormwater retention basins and a bioswale within the Nepean Highway setback.

156. In his review of the SWMP, Mr McWha comments:

156.1. Council must confirm the size and capacity of the stormwater retention basin and bioswale shown on the *Drainage and Pavement Layout Plan* Dwg No. 19015-C02 Rev P2;

156.2. the bioswale proposed in the south-east corner of the site must be altered to avoid excavation within the Tree Protection Zone of a large remnant manna gum.

157. Council has concerns with the SWMP. The assumed discharge point has a limited capacity of a 1 in 10 ARI storm event. However, in Council’s engineers have advised that the proposal requires a detention capacity of 1 in 100 ARI storm event. Council’s engineers are concerned that, without a 1 in 100 year detention, the proposal will result in unacceptable flooding impacts which will adversely affect residential properties to the east of the Land.

158. Council is uncertain how the 1 in 100 year detention of stormwater could be accommodate on the Land without significant changes to proposal.

**CONCLUSION**

159. For the reasons contained in this submission, Council respectfully requests the Committee recommend the proposed amendment be abandoned.

Kate Morris
HARWOOD ANDREWS
on behalf of
Mornington Peninsula Shire Council

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*71 Document 41 is labelled Stormwater Management Plan – Oakleigh South but contains the SWMP.*
Appendix A
Key Planning Scheme Provisions and Policy

Zone

1. The Land is zoned Industrial 3 Zone (I3Z), the purpose of which is:

   To implement the Municipal Planning Strategy and the Planning Policy Framework.

   To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.

   To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.

   To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.

   To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

2. Pursuant to clause 33.03-1, a permit is not required for a supermarket use provided:
   - The leasable floor area must not exceed 1800 square metres;
   - The site must adjoin, or be within 30 metres of, a road in a Road Zone.
   - Must be on land within an urban growth boundary and in metropolitan Melbourne.

3. Where these conditions are not met, use of land for a supermarket is prohibited.

4. Pursuant to clause 33.03-1, a permit is required to use land for Retail premises (other than Shop and Takeaway food premises).

5. Pursuant to clause 33.03-4, a permit is required to construct a building or constructor or carry out works.

6. Decision guidelines which must be considered as appropriate are:


   Any natural or cultural values on or near the land.

   Streetscape character.

   Built form.

   Landscape treatment.

   Interface with non-industrial areas.

   Parking and site access.

   Loading and service areas.

   Outdoor storage.

   Lighting.

   Stormwater discharge.

   The effect on nearby industries.

   The effect of nearby industries.
Overlay

7. The Development Plan Overlay – Schedule 2 (DPO2) applies to the Land. DPO2 applies to the ‘Mornington Parkland Industrial Area’ which is defined as ‘the Parkland Industrial area located on the Nepean Highway, between Oakbank Road and Bungower Road, Mornington.’

8. Schedule 2 requires the preparation of a development plan ‘to ensure an appropriate standard of development for this prominent area, including a consistent building setback from the Nepean Highway frontage.’

9. Requirements for the development plan in clause 2.0 are:
   - A minimum building setback of 90 metres from the Nepean Highway frontage and 58 metres from any Bungower Road frontage.
   - A minimum setback from side and rear boundaries of 15 metres.
   - A maximum plot ratio of 0.35.
   - A minimum of 50 percent of any site set aside for landscaping.

10. These requirements may be varied by the responsible authority.

11. Pursuant to clause 43.04-2 of the parent provision, a permit must be not granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority. Schedule 2 provides a permit may be granted in respect of change of use within an existing building, construction of a caretakers dwelling signage before a development plan has been approved.

12. There is no current approved development plan for the Land.

Particular and General provisions

Clause 52.05 – Signs

13. The Land is within Category 2 - Office and Industrial.

14. A permit is required for:
   - a business identification sign or pole sign exceeding 8 square metres; and
   - an internally illuminated sign with the display area more than 1.5 square metres and where the sign is within 30 metres of a residential zone or pedestrian or traffic lights.

15. The purpose of this clause is:

   To regulate the development of land for signs and associated structures.

   To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.

   To ensure signs do not contribute to excessive visual clutter or visual disorder.

   To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.

16. Key decision guidelines which must be considered as appropriate are:

   - The character of the area including:
     - The sensitivity of the area in terms of the natural environment, heritage values, waterways and open space, rural landscape or residential character.
     - The compatibility of the proposed sign with the existing or desired future character of the area in which it is proposed to be located.
- The cumulative impact of signs on the character of an area or route, including the need to avoid visual disorder or clutter of signs.
- The consistency with any identifiable outdoor advertising theme in the area.

- Impacts on views and vistas:
  - The potential to obscure or compromise important views from the public realm.
  - The potential to dominate the skyline.
  - The potential to impact on the quality of significant public views.
  - The potential to impede views to existing signs.

- The relationship to the streetscape, setting or landscape:
  - The proportion, scale and form of the proposed sign relative to the streetscape, setting or landscape.
  - The position of the sign, including the extent to which it protrudes above existing buildings or landscape and natural elements.
  - The ability to screen unsightly built or other elements.
  - The ability to reduce the number of signs by rationalising or simplifying signs.
  - The ability to include landscaping to reduce the visual impact of parts of the sign structure.

- The relationship to the site and building:
  - The scale and form of the sign relative to the scale, proportion and any other significant characteristics of the host site and host building.
  - The extent to which the sign displays innovation relative to the host site and host building.
  - The extent to which the sign requires the removal of vegetation or includes new landscaping.

- The impact of structures associated with the sign:
  - The extent to which associated structures integrate with the sign.
  - The potential of associated structures to impact any important or significant features of the building, site, streetscape, setting or landscape, views and vistas or area.

- The need for identification and the opportunities for adequate identification on the site or locality.

- The impact on road safety.

Clause 52.06 – Car parking

17. Car parking requirements are contained in clause 52.06. The purpose of this provision is:

To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

To support sustainable transport alternatives to the motor car.

To promote the efficient use of car parking spaces through the consolidation of car parking facilities.

To ensure that car parking does not adversely affect the amenity of the locality.

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.
18. Table 1 in clause 52.06-5 sets out the required number of car parking spaces for various uses.\(^\text{72}\)
   In this case:
   - the supermarket component requires 276 car spaces (based on 5.0 spaces to each 100 sqm of leasable floorspace); and
   - the other retail uses component requires 22 spaces (based on 4.0 spaces to each 100 sqm of leasable floor space).

19. The proposed 380 car spaces exceed the statutory required rate and, therefore, no permit is required in respect of car parking.

**Clause 52.34 – Bicycle facilities**

20. Table 1 to clause 52.34-5 contains the required bicycle facilities. The proposal requires 11 employee spaces and 12 visitor spaces. The proposed 22 employee spaces and 12 visitor spaces exceeds the statutory requirement.

**Clause 52.27 – Licenced Premises**

21. A permit is required if a licence is required under the *Liquor Control Reform Act 1998*. A licence is required to supply liquor on the licenced premises in sealed containers, bottles or cans.

**Clause 52.29 – Land Adjacent to a Road Zone, Category 1**

22. A permit is required to create or alter access to a road in a Road Zone, Category 1. Nepean Highway is in a Road Zone, Category 1 and a new access point is proposed, as such, a permit is required.

**Clause 65.01 – Approval of an application or plan**

23. Clause 65.01 contains decision guidelines which must be considered before determining an application. Relevantly to the proposal, the decision guidelines are:

   - *The purpose of the zone, overlay or other provision.*
   - *Any matter required to be considered in the zone, overlay or other provision.*
   - *The orderly planning of the area.*
   - *The effect on the amenity of the area.*
   - *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
   - *The extent and character of native vegetation and the likelihood of its destruction.*
   - *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
   - *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
   - *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

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\(^\text{72}\) Column A applies as the Land is not within a Parking Overlay or the Principal Public Transport Network.
State Planning Policy Framework

24. State planning policies relevant to the proposal in summary are:

- Clause 11.01 relates to settlement and contains strategies which encourage the development of compact urban areas that are based around existing or planning activity centres and ensure retail and office-based employment are concentrated in central locations.

- Clause 11.02-1S (Supply of urban land) seeks to ensure a sufficient supply of residential, commercial, retail, industrial land.

- Clause 11.03-1S (Activity centres) encourages the concentration of major retail, residential and commercial development into activity centres. Strategies to achieve this objective seek to support the role and function of a range of centres, give clear direction on preferred location for investment and encourage economic activity and business synergies.

- Clause 11.03-5S (Distinctive areas and landscapes) seeks to protect and enhance the valued attributes of identified distinctive areas and landscapes. The Mornington Peninsula is recognised as a distinctive area to which the Mornington Peninsula Localised Planning Statement applies.

- Clause 12 relates to environmental and landscape values. The objective of clause 12.05-2S is to protect and enhance significant landscapes and open spaces that contribute to character. Strategies include to ensure development does not detract from the natural qualities of significant landscapes and to improve the landscape qualities in significant landscapes, including green wedges.

- Clause 15 relates to built form, urban design and heritage. Clause 15.01-1S seeks to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. Clause 15.01-2S seeks building design outcomes that contribute positively to local context and enhance the public realm. Clause 15.01-5S seeks to recognise, support and protect neighbourhood character, cultural identity and sense of place.

- Clause 17.01-1S (Diversified economy) and 17.01-1R (Diversified economy – Metropolitan Melbourne) objective is to strengthen and diversify the economy. Strategies to achieve this objective include to protect and strengthen existing and planned employment areas and to plan for industrial land in suitable locations to support employment and investment opportunities.

- Clause 17.02-1S (Business) encourages development that meets the community’s needs for retail, office and other commercial services. Strategies include to Locate commercial facilities in existing or planned activity centres.

- Clause 17.02-2S (Out-of-centre development) seeks to manage out-of-centre development. Strategies to achieve this objective are:
  - Discourage proposals for expansion of single use retail, commercial and recreational facilities outside activity centres.
  - Ensure that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

- Clause 17.03-1S (Industrial land supply) objective is to ensure availability of land for industry. Strategies seek to provide an adequate supply of industrial land in appropriate locations including large sites, to protect existing industrial areas and to avoid approving non-industrial land uses that will prejudice the availability of industrial land.
Clause 17.03-2 (Industrial development siting) seeks to facilitate sustainable development and operation of industry. This includes protecting industrial activity in industrial zones from the encroachment of commercial, residential and other sensitive uses that would adversely affect industry viability.

Clause 18.01-1S (Land use and transport planning) objective encourages integration of land use and planning and clause 18.01-2S (Transport system) objectives seek coordination of all transport modes for specific developments and more generally.

Local Planning Policy Framework

25. The Municipal Strategic Statement and local planning policies relevant to the proposal in summary are:

- Clause 21.02 (Profile of the Mornington Peninsula) identifies the distinctive built form and character of the Peninsula’s townships is due to the balance between natural features and built form. Vegetation is often the dominant visual element in the landscape rather than buildings.

- Clause 21.03-3 summaries strategic challenges and opportunities facing the Peninsula. Relevantly these are to strengthen commercial activity centres economically, functionally and environmentally and ensure industrial responds to its context, especially where located on a ‘gateway’ site.

- Clause 21.04 concerns the Mornington Peninsula Strategic Framework Plan which provides a framework for balanced development and sustainable land use on the Peninsula. It aims to maintain the long-term economic, social and environmental values that have been identified in previous sections of this statement. Mornington is identified as a major town on the plan in this clause. Key strategic directions in the framework plan are to support and strengthen the hierarchy of towns, recognise and protect strategic landscape areas between and around townships due to their strong influence on the Peninsula’s sense of place.

- Clause 21.06 (Strategic Framework and the Peninsula’s Settlement Pattern) expands on how the Strategic Framework Plan in clause 21.04 is to be effectively implemented. It recognises the importance of maintaining clear settlement boundaries and directing growth into these established townships so that ‘green breaks’ are protected. Strategies include reinforcing the clear separation between Mt Eliza and Mornington.

- Clause 21.07-3 (Activity centres) provides that the hierarchy of activity centres in the Peninsula plays an important role in reinforcing the settlement pattern which gives the Peninsula its unique sense of place. Table 1 to clause 21.07-3 sets out the hierarchy of centres: Major Activity Centres, large townships, small townships, local centres and convenience centres. Mornington is recognised as a Major Activity Centre. The Land is not identified within an activity centre. Relevantly to the proposal, this clause provides:

  - Under directions for commercial growth:
    - Additional retail and office development should be directed primarily to Major Activity Centres.
    - Additional retail and office development in Small Township Activity Centres and Local Activity Centres should be of a limited extent only.
    - No material extension of Convenience Centres should take place.
    - There is no need for any new major, township or local activity centre on the Peninsula in addition to the activity centres shown in Table 1 to this clause and on the map to this clause.
    - Fragmentation of commercial activity is not in the long term interests of the community.
Strengthening the existing hierarchy of activity centres is sustainable, equitable and achieves net community benefit.

- Out-of-centre retail, service station and office developments detract from compact urban patterns. This is detrimental to the established hierarchy of centres and should be avoided.
- Bulky goods retailing (restricted retail premises and trade supplies) directed to the edge of the three townships with major activity centres.

Objective 1 seeks to ‘strengthen the hierarchy of activity centres on the Mornington Peninsula shown on the map to this clause and in Table 1 to this clause.’

Strategies to achieve Objective 1 are:
- Encourage additional retail premises (not including restricted retail premises), service stations and office developments to locate in Major Activity Centres and Large Township Activity Centres. Ensure the extent of additional commercial floor area for individual activity centres is commensurate with their role and function within the hierarchy.
- Encourage restricted retail premises to locate in clusters on the edge of townships with Major Activity Centres.
- Strongly discourage retail, restricted retail, service station and office developments from locating in out-of-centre residential, industrial and nonurban locations.

Objective 2 seeks to ‘facilitate well-designed activity centres that… promote business and employment opportunities.’

- Clause 21.07-4 (Industrial areas) recognises industry is a significant employer in the Peninsula and recognises the importance of retaining a sufficient supply of industrial land. Relevantly to the proposal, this clause provides:

Objective 1 seeks to ‘facilitate the expansion of existing industries and to attract new industries that provide services to the Peninsula community, contribute to the local employment base and that are compatible with the Peninsula’s character and environment.’

Strategies to achieve Objective 1 are:
- Ensure that adequate areas are available in appropriate locations for a range of industrial development.
- Provide areas for industrial development on the basis of current and anticipated demand, where possible in locations that provide separation from major residential and commercial areas and do not generate industrial through traffic on residential roads. The area of industrial land should be in proportion to the anticipated population growth of the township, unless other factors are identified.
- Support retail or office activity in industrial areas only if:
  - It is ancillary to an industrial use on the same site (such as manufacturing sales).
  - It is intended primarily to provide services to the industrial area (such as food premises or industry supplies).
  - It consists of restricted retail premises, which require large display and storage areas, and where it is shown that the use cannot be reasonably located in existing commercial activity centres.

Objective 2 seeks to ‘ensure appropriate development of industrial areas which:
- Meets best practice environmental management guidelines.
- Contributes to the efficient function of industrial area, in terms of traffic movement, car parking, and loading.
- Ensures development design and built form which complements and contributes to the township environment.
- Maintains the safety and efficiency of main roads.'
Mornington Peninsula Submission - draft1014 - 13 March 2011 (1362078.1)P.34 - S.2/P.14/03/19 3:18 km

- Provides and maintains appropriate buffers between residential areas and other land uses which are incompatible with industrial activity.

- Clause 22.01 (Industrial Areas) applies to all land in I3Z. Relevantly to the proposal:
  - Clause 22.01-1 (Policy basis) recognises the economic role industrial areas play within the Peninsula, the scarcity of land suitability located for industrial use and the potential for commercial development to restrict the availability of industrial land.
  - Objectives under clause 22.01-2 are:
    - To achieve orderly design and development in industrial areas by maintaining consistent standards for buildings in relation to siting, height and building materials.
    - To prevent out-of-centre commercial developments in the industrial zones that undermine the activity centres policy at Clause 22.02, particularly along main roads.
    - To provide for the establishment of landscaping, using native vegetation of local provenance where appropriate, which contributes to the appearance of industrial development and provides screening where necessary.
    - To protect the amenity of residential and commercial areas in proximity to industrial land and the amenity, safety and efficiency of main roads.
  - Policy under clause 22.01-3 is:
    - The design of new industrial development positively contributes to local urban character and enhances the public realm while minimising detrimental impact on neighbouring properties.
    - Proposals for out-of-centre commercial developments that undermine the activity centres policy at Clause 22.02 will not be supported.

- Clause 22.02 (Activity Centres) applies to all land within Business 1, 4 and 5 Zones. Relevantly to the proposal:
  - Objectives under clause 22.02-2 are:
    - To ensure that the provision of additional commercial development strengthens the hierarchy of activity centres on the Mornington Peninsula shown on the map to Clause 21.07-3 and in Table 1 to Clause 21.07-3.
    - To ensure any activity centre achieves the highest level of commercial and non-commercial services to the community in its catchment and to visitors and tourists, commensurate with the role and function of that activity centre in the activity centres hierarchy on the Mornington Peninsula.
    - To facilitate the provision of additional retail (excluding restricted retail) and office floor space in major and township activity centres.
    - To optimise commercial business (including tourism) and employment opportunities in activity centres on the Mornington Peninsula.
  - Policy under clause 22.01-3 is:
    - The design of new industrial development positively contributes to local urban character and enhances the

- Clause 22.10 (Advertising Signs) applies to all land. Relevantly, to the proposal:
Clause 22.10-1 (Policy basis) recognises signs are necessary for business identification however poorly designed or located signs can significantly detract from visual amenity and character of an area.

Objectives under clause 22.10-2 are:

To ensure that advertising signs do not detract from the amenity and streetscape /landscape character of the surrounding area, particularly in sensitive and strategic landscape areas, residential areas and along main roads.

To ensure that advertising signs compliment rather than dominate streetscapes.

To ensure that the size and height of advertising sign is compatible with the scale of the building or the site on which they are displayed, the surrounding streetscape and the size and scale of other signs in the area.

Clause 22.13 (Township Environment) applies to all residentially, commercially and industrially zoned land. Broadly, it seeks to ensure that all new development is appropriately serviced and limits impact on indigenous vegetation.

Clause 22.18 (Mornington Activity Centre Policy) applies to all land in the Mornington activity centre as defined on Map 1 in this clause. The Land is located over 2km outside this centre. Relevantly, objectives of this policy are:

To strengthen Mornington’s role as a major activity centre and facilitate additional retail and commercial developments, as well as a range of other activities that support this role.

To broaden the diversity of land uses in the centre and facilitate additional residential development that contributes to housing diversity.
Appendix B
Strategic policy documents

Reference Documents

Mornington Activity Centre Structure Plan July 2007 (MACSP)

The MACSP is a reference document in the Planning Scheme. It outlines a vision for the Mornington Activity Centre which provides that by 2030 the centre will be:

- The heart of the district. A place that retains its distinct village ambience and seaside atmosphere;
- A centre that people in the district identify with. It gives them a sense of place and belonging. It is their favourite destination to meet, shop, be entertained, work and do business;
- An exciting place to live that is integrated with surrounding residential areas; and
- A reflection of ongoing community consultation and sustainability principles.

The centre is defined into the following precincts:

- Foreshore precinct;
- Retail Core precinct (north end of Main Street);
- Professional services precinct (south of Eastern Ring and east of Main Street);
- Residential precincts (to the east and west of Main Street outside the Retail Core and Professional services precincts); and
- The highway precinct (north and south of Nepean Highway at the southern end of the centre).

It identifies a potential ‘major retail store’ site at 1-11 Waterloo Place73 within the Retail Core precinct. It indicates a building height on this site of up to 3 storeys.74 This site is approximately 5000 sqm, owned by Council and currently used as an at-grade car park.

Mornington Peninsula Activity Centres Strategy September 2005 (2005 Activity Centre Strategy)

The 2005 Activity Centres Strategy is a reference document in the Planning Scheme and is the basis for the current Mornington Peninsula activity centre hierarchy. It contains a commercial floor space analysis, provides an assessment of the commercial floorspace requirements in the short, medium and long terms and sets policy objectives and strategies for the planning and management of activity centres in the municipality.

Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Plan Melbourne)

Plan Melbourne is the current long-term plan to accommodate Melbourne’s future growth in population and employment. It identifies Mornington as a Major activity centre.75

Relevantly to the proposal, Plan Melbourne contains the following directions and policies:

- Plan for industrial land in the right locations to support employment and investment opportunities (Policy 1.1.6).
- Plan for adequate commercial land across Melbourne (Policy 1.1.7).
- Improve access to jobs across Melbourne and closer to where people live (Direction 1.2).
- Support the development of a network of activity centres linked by transport (Policy 1.2.1).
- Facilitate investment in Melbourne’s outer areas to increase local access to employment (Policy 1.2.2).
- Protect and enhance valued attributes of distinctive areas and landscapes (Policy 4.5.2). This includes Green Wedge land.
- Support a network of vibrant neighbourhood activity centres (Policy 5.1.2).
- Improve neighbourhoods to enable walking and cycling as a part of daily life (Policy 5.2.1).

73 MACSP, pp. 23, 29.
74 Ibid, p. 37.
75 Plan Melbourne, p. 53.
Mornington Peninsula Localised Planning Statement 2014 (LPS)

Plan Melbourne at policy 4.5.2 and State planning policy at clause 11.03-5S seek to protect and enhance distinctive areas of State significance, including the Mornington Peninsula. The Localised Planning Statement has been prepared to recognize and protect the special character and distinct role of the Peninsula. It is relevant consideration as a reference document to clause 11.03-5S.

The Localised Planning Statement contains objectives and strategies in relation to integrated planning, conservation, character, landscape and cultural values and recreation and tourism. Relevantly, strategy 22 (b) encourages commercial development that contributes to local employment opportunities, vitality of town centres, economic wellbeing of the community and located to reinforce the hierarchy of activity centres on the Peninsula.

**Adopted Council Documents**

**Mornington Peninsula Activity Centre Strategy 2018 (Activity Centres Strategy)**

Council adopted the Activity Centres Strategy on 30 April 2018. It contains:

1) the background report which reviews the 2005 Activity Centre Strategy, sets out population trends, updates economic analysis and summaries key issues for the strategy to address; and

2) the strategy which sets a vision, policy framework and implementation plan.

Relevantly to the proposal, the Activity Centres Strategy:

- supports maintaining and enhancing the current activity centre hierarchy;
- recognises the benefits of focussing new retail development in activity centres;
- does not classify the Peninsula Homemaker Centre an activity centre;
- recognises the risks out-of-centre commercial development poses to the attraction and performance of existing and recognises centres;
- contains objective 3 which seeks to consolidate a diverse range of activities in activity centres and action 3.1 which discourages out-of-centre development.

**Mornington Peninsula Industrial Areas Strategy 2018 (Industrial Areas Strategy)**

Council adopted the Industrial Strategy on 30 April 2018. It contains an overarching strategic framework for the planning of all industrially zoned land on the Peninsula. The principles of the strategy are:

- **Recognise the importance of industrial areas as critical components of the Mornington Peninsula’s economy, and as an important source of the goods and services required to support business and the general community.**
- **Ensure that planning for industrial areas has due consideration for, and is complementary to, the Mornington Peninsula Activity Centres Strategy, given the crossover between land uses relevant to both policy frameworks.**
- **Support the growth of industrial and appropriate commercial activities on the Mornington Peninsula through the provision of serviced and readily-developable land at appropriate locations which support jobs, investment, business growth and economic prosperity.**
- **Manage and plan for industrial areas which operate in a manner that reflects the importance of liveability and amenity to residents of the Mornington Peninsula.**

The Land is located in the identified Mornington North industrial area. The strategy acknowledges that given the restricted retail and other commercial uses within this area, a Commercial 2 rezoning ‘may potentially be considered by Council in the future having regard to the current land use pattern’. However such a rezoning would require further detailed assessment. Alternatively, the strategy provides ‘...in view of the limited opportunities to increase IN3Z land supply in Mornington, the BATA site could be retained in IN3Z to provide a specific future opportunity, e.g. for factory-based use, and to avoid pressure for further major out-of-centre retail development.’

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76 Industrial Areas Strategy, p. 66.
77 Industrial Areas Strategy, p. 66.