IN THE MATTER OF SURF COAST STATEMENT OF PLANNING POLICY
ADVISORY COMMITTEE PROCESS

CLOSING SUBMISSIONS ON BEHALF OF THE MINISTER FOR PLANNING

Background

1. These submissions outline the Minister’s response to the evidence filed by the other submitters in the Advisory Committee hearing process.

2. These submissions will first deal with several broader issues concerning the role of the Advisory Committee and the role to be played by the final Statement of Planning Policy and proposed planning controls and will then respond to the key submissions of other submitters where necessary.

3. The Minister is yet to form a position on the matters raised by submitters and awaits the Advisory Committee’s report prior to making any decisions regarding amending the draft Surf Coast Statement of Planning Policy and proposed landscape controls. These submissions therefore comment on aspects of the evidence called by other submitters only to the extent necessary to appropriately contextualise them for the Committee’s consideration.

Role of the Standing Advisory Committee: response to the advice from Counsel for the Committee

4. As the Committee will be aware, in the Part B submissions it was submitted that insofar as the draft Surf Coast Statement of Planning Policy provides two options for the future of the Spring Creek Area – the Committee is confined to formally recommending the adoption of either of those options. The Committee cannot therefore formally recommend a third option not contained in the material it is required to consider but may provide commentary or advice regarding a third option should it consider either of the options provided unsatisfactory.¹

¹ Paragraphs 10 and 11 of the Minister’s Part B Submissions
The Surf Coast Shire Council and the Greater Torquay Alliance agree with this submission whilst several other parties contend that the Advisory Committee’s role is not so confined.

5. The Committee sought advice from its Counsel Mr Nick Tweedie on this issue.

6. The advice of Counsel for the Committee is to the effect that the Minister’s prior submissions regarding the role of the Committee are incorrect and have no basis in the Act, Terms of Reference or Referral Letter.

7. With respect, this advice cannot be agreed with in its entirety. The function of the Committee is not to consider whether the particular policies contained in the draft Statement of Planning Policy or proposed landscape controls (or any other proposed policies or controls that are presented to it) would result in a net community benefit or whether when weighed against a broad range of competing policies within Planning Schemes they result in an “acceptable planning outcome”. That is not a test in the Planning and Environment Act 1987 (the Act) but is in fact a test expressed within the Victoria Planning Provisions which is triggered when a responsible authority is assessing a planning application.

8. Further, the reference to the Court’s assessment of the role of a planning panel in Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101 at [86] to [88] is not, with respect ‘apposite’. A planning panel’s role is very different to that of an Advisory Committee. The latter’s role is more confined and is circumscribed by the terms of reference provided to it. In this regard, it is accepted that the Terms of Reference may be too broad.

9. Ultimately however, it is submitted that it is of little consequence whether the Committee can make formal recommendations (or simply provide advice) on options for the Torquay-Jan Juc settlement boundary at Spring Creek which are not identified in the draft Statement of Planning Policy. At no point has Counsel for the Minister sought to preclude or object to the Committee hearing submissions or evidence from parties advancing alternative ‘options’ (or even in the case of the submissions on behalf of the Macedon Ranges Shire Council relating to an entirely different Statement of Planning
Policy). To the extent the Committee wishes to consider these matters and provide advice on them, as noted by Counsel for the Committee, an Advisory Committee does not make binding legal rulings. Instead, the essential role of an Advisory Committee is to provide advice to the Minister on matters that are referred to it. That advice may ultimately be accepted or rejected (either wholly or in part) by the Minister.\(^2\)

**The effect of the declaration pursuant to part 3AAB of the Act**

10. Several parties have made submissions with respect to the *effect* of the declaration of the Surf Coast as a distinctive area and landscape pursuant to Part 3AAB of the Act.\(^3\)

11. These submissions have asserted that the mere fact of the declaration itself does not change the status of the declared area and the nature of the assessment that is to be undertaken in relation to the declared area. The submission from Christian College Geelong in particular argued that the mere fact of the declaration does not change the innate value of the land within the area - either the landscape within the Spring Creek area is significant or it is not. These submissions argue that the only consequence of the declaration and the operation of Part 3AAB of the Act is to establish a process of integrated decision-making with respect to the declared area as mandated by s46AV(2) of the Act.

12. The declaration has not altered the innate quality of the land within the declared area. Any submission to the contrary is illogical and untenable. Nor is there a quarrel with the contention that Part 3AAB mandates integrated decision-making with respect to the declared area – that is a clear requirement of the legislative scheme.

13. The direct and clear consequence of the declaration is the prioritisation of the protection of distinctive attributes including landscape, within the integrated decision-making process. The effect of Part 3AAB is to shift the focus of decision-making, in respect of declared areas, to landscape centric considerations. In light of this, the Christian College’s submission that the declaration does not alter the status of the declared area or

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\(^2\) see paragraph 20 of Mr Tweedie’s Advice to the Committee.

\(^3\) See the submissions of the Christian College Geelong, Zeally Investments Pty Ltd and Mack Properties.
the nature of the assessment that is to be undertaken in relation to the declared land, cannot be correct. That is precisely what Part 3AAB is designed to do and must do.

14. By virtue of its clear objectives in section 46AN, Part 3AAB of the Act gives landscape considerations an elevated status and this necessarily affects the balancing exercise that must be engaged in pursuant to the Statement of Planning Policy. Both Mr Milner and Mr Crowder, planning experts called by other submitters, agreed that this was a strategic planning consequence of the provisions of Part 3AAB.

15. The process of integrated decision-making required by Part 3AAB does not preclude landscape matters from being given priority or given greater weight. It simply requires that there is joint consideration given to all of the factors enumerated in s 46AV(2)(a) when making decisions concerning declared areas.

16. Whilst the declaration does not alter the innate landscape qualities of the declared area, it does necessarily shift the focus of any assessment of the future development prospects of the area to questions of landscape significance and protection and enhancement. Put another way, with respect to the Spring Creek area, it acts as a trigger for the revisiting of the strategic planning outcomes for the declared area with an eye to prioritising significant landscapes.

17. Ms Scott’s analysis of the significance of the landscape within the declared area is apposite in this regard. Ms Scott’s assessment of landscape significance is focused on considerations of landscape to the exclusion of other relevant considerations, and this is not a weakness in her evidence. Rather, the Committee is invited to treat Ms Scott’s evidence as the consideration of landscape in the context of its role on advising as to the contents of the draft Statement of Planning Policy and proposed landscape controls.

**Statement of Planning Policy as an overarching policy document**

18. Several of the Committee’s questions to the expert witnesses called by other parties suggest that the Committee is grappling with how the draft Statement of Planning Policy will be applied by responsible public entities and how it is reconcilable with the current efforts being made to streamline the Victorian planning framework.
19. Part 3AAB of the Act is a vital area of reform to the planning system. Among other things, it seeks to provide a stronger mechanism to identify and preserve significant landscape attributes that are under threat from factors such as land use change.

20. To that end, the draft Statement of Planning Policy is designed to clearly express significant landscape character attributes, to facilitate integrated decision-making within declared areas and to gear planning policy towards more robust protection of significant landscape attributes. In this sense, it can be seen to be contributing to the streamlining of the Victorian planning framework, rather than undermining it, insofar as it is positioned to address complex issues around landscape protection in areas experiencing pressures associated with land use change.

21. Because of this important role which a Statement of Planning Policy plays, it is designed to be an overarching policy document aimed at providing guidance for more detailed decision-making at the proposal level. Mr Crowder agreed with this characterisation of the Statement of Planning Policy during cross-examination.

22. As set out in the Part B submissions, a Statement of Planning Policy has greater weight than other planning scheme provisions and policies.4

Inconsistencies between provisions in a Statement of Planning Policy and provisions within a planning scheme

23. Throughout the hearing the Committee has been interested in understanding how potential inconsistencies between provisions of a Statement of Planning Policy and the provisions within a planning scheme will be resolved.

24. Please refer to paragraphs 33-38 of the Part B submissions which deal with this issue.

25. During the course of the hearing, the Committee sought further information in relation to resolving potential inconsistencies between the final Statement of Planning Policy and

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4 Part B submissions paragraphs [30]-[31].
specific planning scheme provisions and sought a response on the following specific queries:

a. When preparing a planning scheme amendment, how is it determined up front whether there is inconsistency; and

b. Who is the final decision-maker of whether there is an inconsistency at the proposal stage?

26. In response to these queries, it must be noted that there are several points at which prospective planning scheme amendments must be tested for their consistency with an operational Statement of Planning Policy:

a. the initial preparation stage (by a planning authority or responsible public entity);

b. the authorisation stage (by the Minister or the Department acting under delegation); and

c. the final approval stage (also by the Minister or the Department acting under delegation).

27. During the initial preparation stage the relevant planning authority or responsible public entity must comply with s 46AZC(2) of the Act which requires it to consider carefully those elements of the Statement of Planning Policy which are binding on a responsible public entity.

28. A proposed planning scheme amendment will also be tested against the provisions of a Statement of Planning Policy at the authorisation stage. At this stage, a prospective amendment will be assessed for consistency with any approved Statement of Planning Policy, together with any relevant state policy, ministerial directions, practice notes, requirements of the Act, and any other relevant considerations. In essence, any approved Statement of Planning Policy will become an elevated part of the assessment of a proposed amendment that occurs at the authorisation stage.

29. An amendment may be authorised for exhibition by the DELWP Regional Planning Manager, the Director State Planning Services or the Executive Director Statutory
Planning Services (under delegation). When necessary, an authorisation application can be elevated to the Minister.

30. Finally, a proposed amendment will also be assessed for compliance with an approved Statement of Planning Policy at the approval stage. The Minister cannot approve an amendment to a declared area planning scheme if the amendment is inconsistent with a Statement of Planning Policy for that declared area.5

31. In light of the above, whilst a responsible public entity may (and should) make an initial determination in relation to a proposed amendment’s compliance with an approved Statement of Planning Policy, the ultimate decision with respect to the question of consistency rests with the Minister and/or those officers from within the Department who are empowered to act with his delegated authority.

10 year review of Statements of Planning Policy pursuant to s 46AZI of the Act

32. Several submitters made submissions concerning s 46AZI and the process involved in reviewing the final Surf Coast Statement of Planning Policy and queried the extent to which this review process would facilitate the review of settlement boundaries.

33. The draft Statement of Planning Policy includes a section on monitoring and review. It states that such a review will be conducted by the Minister in collaboration with the Surf Coast Shire Council, the Greater Geelong City Council, the Wadawurrung and in consultation with the Victorian Community. It also provides that the final Surf Coast Statement of Planning Policy may be reviewed at an earlier date if strategic planning work (such as landscape assessments, biodiversity assessments or review of township frameworks or structure plans) identify the need for an earlier review.

34. Section 46AZI provides that a Statement of Planning Policy must be reviewed no later than 10 years after the commencement of the Statement. Accordingly, there is legislative permission for a review of the final Surf Coast Statement of Planning Policy to occur

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5 Section 46AZC(1) of the Act
earlier than ten years after its commencement. Following a review, a new Statement of Planning Policy can be prepared or the existing one may be amended.

35. The decision as to when to conduct a s 46AZI review of a Statement of Planning Policy and whether to prepare a new Statement of Planning Policy or amend the existing one, rests with the Minister (following consultation with the responsible public entities).

36. The Department is in the process of preparing a Practice Note to provide guidance in relation to the s 46AZI review process as well as the process required to amend a Statement of Planning Policy. Any suggestions the Committee may have as to the contents of such a Practice Note are welcomed.

37. In relation to the question of the extent to which the s 46AZI review of the final Surf Coast Statement of Planning Policy may be focused on changing any of the protected settlement boundaries proposed in the draft Statement of Planning Policy, whilst the Act permits the review to recommend such changes it is not envisaged that this will be the focus of the review process. This is because the protected settlement boundaries proposed in the draft Statement of Planning Policy are intended to provide long-term certainty for the community. In circumstances where the Committee or the Minister is of the view that there may be compelling reasons to change any of the proposed protected settlement boundaries within 10 years, these boundaries should instead be identified as settlement boundaries as distinct from protected settlement boundaries.

**Possible pathways for progressing the proposed Spring Creek PSP**

38. Following the submissions of the Christian College Geelong, the Committee asked questions regarding the possible pathways for progressing the proposed Spring Creek Precinct Structure Plan (PSP) in the event that the Committee advises that Option 1 is acceptable.

39. The following additional information is provided to assist the Committee’s consideration of this potential issue.
40. In the event that the Committee advises that Option 1 is appropriate for the Spring Creek area, the proposed Spring Creek PSP (included within proposed Planning Scheme Amendment C114 to the Surf Coast Planning Scheme) will need to be reviewed. The contents of any ensuing PSP will depend heavily upon the land use and development objectives for the area. The objectives will influence the suitability of the various statutory mechanisms that can be deployed to progress a PSP.

41. Further, the Minister’s final decision with respect to Amendment C114 and the subsequent planning controls (which may not necessarily include a PSP) for the Spring Creek area, will be informed by the Committee’s report and in turn the final Statement of Planning Policy.

Submissions of the Surf Coast Shire and City of Greater Geelong

42. No comment is made with respect to the factual matters raised in the submissions of the City of Greater Geelong Council and the Surf Coast Shire Council. However, it is important to recognise that the preparation of the draft Statement of Planning Policy and proposed landscape controls were the result of a collaborative effort with both the City of Greater Geelong and Surf Coast Shire Councils.

43. The Committee is referred to the Minister’s response to the Committee’s request of 19 April 2021 which outlines in detail the working relationship between the Department and both Councils.

Submission of the Macedon Ranges Shire Council

44. On 25 March 2021 the Committee heard a submission from the Macedon Ranges Shire Council (MRSC) in relation to the preparation and implementation of the Macedon Ranges Statement of Planning Policy.6

45. The Committee is reminded that is has no power to provide advice or recommendations in relation to any of the issues raised by the MRSC in respect of implementing the Macedon Ranges Statement of Planning Policy. To do so would go beyond the

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6 Document number 122
Committee’s Terms of Reference. The Committee is equally aware of this limitation in its Terms of Reference, based on the comments made to MRSC following its submission.

46. The Department has worked closely with the MRSC both in the course of preparing the Macedon Ranges Statement of Planning Policy and also with respect to arrangements for its implementation. Both parties agreed to a two-stage implementation process. The first stage was led by the Department and involved the preparation of a VC Amendment to give effect to the Statement of Planning Policy in the Planning Scheme and to remove any inconsistencies between the Statement of Planning Policy and other provisions of the planning scheme.

47. This work resulted in Amendment VC185 which is due to be gazetted imminently. This amendment resolves the point of conflict between the SPP8 direction as it currently stands in the Macedon Ranges Planning Scheme and Statement of Planning Policy. It also formally brings the Statement of Planning Policy into the planning scheme. VC185 will therefore resolve the issues identified under heading 2 of the MRSC’s submission to the Committee, and shows how the SPP will be introduced into the Victoria Planning Provisions and planning scheme. As indicated in the response to the Committee’s direction of 19 April 2021, the Department undertakes to provide a copy of the gazetted version of Amendment VC185 to the Committee at the earliest possible opportunity.

48. The second stage of the implementation process will be led by the MRSC and will be focused on any changes to the local provisions of the planning scheme that are required as a result of the Macedon Ranges Statement of Planning Policy.

49. The MRSC’s submission also raised the issue of the tension between landscape protection policy and bushfire management. This is not new to planning in high-amenity landscapes in Victoria. Having said that, it is considered that the expert evidence before this Committee from Mr Hazell is incisive and persuasive on this issue and therefore provides insights that are transferrable to the Macedon Ranges context.

50. Any suggestion made by the MRSC that there was a lack of transparency by the Department in relation to the work required to support a request for authorisation of an amendment is refuted. The Department had several briefings, workshops and meetings
with Councillors and staff throughout the duration of the process of preparing the Statement of Planning Policy.

Submissions and evidence of the Surf Coast Energy Group

51. The Surf Coast Energy Group (SCEG) presented to the Committee on 22 April 2021 and relied on the evidence of Mr Prendergast, Mr Trengrove and Mr Dutson. Counsel for the SCEG also sought to call evidence from Mr Stockton who is the chairman of the SCEG however the Committee correctly determined to characterise his presentation as a submission.

52. A primary aspect of SCEG’s submission to the Committee was that Option 2 with respect to the future of the Spring Creek area ought be preferred on the basis that it would potentially facilitate SCEG’s proposal for a community woodland precinct comprising an estimated 40 hectares within the Spring Creek area.

53. No comments are made on the merits of such a proposal and the proposal has not been the subject of any detailed discussions with the Department or the Minister.

Spring Creek Area

54. The majority of the evidence and submissions before this Committee concerned the future of the Spring Creek area.

55. As the Committee will be aware, the draft Statement of Planning Policy includes two options for the Spring Creek area. The Minister looks forward to receiving the Committee’s advice and recommendations with respect to the development future of the Spring Creek area.

Zeally’s proposed framework

56. Paragraph 33 of the primary submission of Zeally and Duffields Road offers a framework for the Committee to adopt in advising on the contents of the draft Statement of Planning
Policy and proposed landscape planning controls and the development outcome for Spring Creek.

57. The purported framework lists several considerations in order of their suggested consideration as follows:
   a. A consideration of the Act;
   b. Bushfire considerations;
   c. Relevant growth plans;
   d. Consideration of any adopted plans or planning scheme amendments i.e. Amendment C66 and C114;
   e. A balancing exercise of relevant (and competing) planning considerations (within which landscape will be given emphasis and greater elevation) (bushfire aside) only in situations where potential development or a proposal has the ability to bear upon a declared distinctive attribute (i.e. an attribute of state or national significance);
   f. The declaration and its emphasis on protecting distinctive attributes that are of state or national significance; and
   g. Contested opinions about landscape significance.

58. This framework and the hierarchy of considerations it seeks to impose is not accepted. It does not accurately capture the decision-making task which the Committee faces in advising on the robustness of the draft Statement of Planning Policy. Zeally and Duffields Road make no attempt to provide a justification for the hierarchy inherent in the framework and it is contended that it lacks basis and misinterprets the import of the provisions of Part 3AAB.

59. Further, to say that the declaration ought to be considered second last makes no sense in the context of the framework itself which requires the requirements of the Act to be considered first. The declaration and its consequences are a requirement of Part 3AAB of the Act. It also ignores the need for an integrated decision-making framework of this nature which is only enlivened following a declaration.

60. If objects of the Act are said to be paramount then surely the specific provisions in the Act regarding declared areas must also be elevated. That is not to say that other objectives are to be ignored in the assessment, but when balancing the objectives of the
Act, having regard to the specificity of the landscape provisions in the Act they should be given greater weight as compared to more general objectives.

‘Orderly and proper planning’

61. Submissions on behalf of landowners opposed to the draft Statement of Planning Policy and proposed SLOs, particularly insofar as they relate to Spring Creek, have made a great deal of the objective in s 4(1)(a) of the Act relating to fair and orderly planning.

62. The focus on the protection of distinctive areas and landscapes mandated by the introduction of Part 3AAB further changes the planning landscape with respect to the Spring Creek area and it is considered it appropriate that the Committee determine the balance to be struck between these often competing policy, community and planning factors.

63. Parliament is taken to have intended that all statutory provisions have some meaning and effect. Further, general provisions (such as the overarching planning objectives) should be subject to specific provisions such as those in Part 3AAB.

64. The words of the Act insofar as they relate to declared areas and landscapes must be considered significant (as would not be the case if one accepted that the declaration and relevant provisions of the Act are last and of less weight than others on a long list of considerations, as is submitted by Zeally and Duffields Road).

65. It should also be emphasised that the reference to providing for the ‘fair, orderly, economic and sustainable use, and development of land’ (s 4(1)(a)) is only one of the objectives. Even within the objectives of planning, reference is made to providing ‘for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity’ (s 4(1)(b)); and to ‘conserve and enhance those buildings, areas or other places which are of scientific, aesthetic architectural or historical interest, or otherwise of special cultural value’ (s 4(1)(d)).
66. Importantly, the objectives relating to the protection and conservation of natural and cultural features and resources are further emphasised in the objects of Part 3AAB (s 46AN) and significant and greater weight must be attributed to those objectives (over the more general objectives in s 4 relating to ‘fairness’ and ‘orderly planning’) when assessing the draft Statement of Planning Policy. The objectives in s 46AN are primarily directed to the preservation, conservation and enhancement of those features and characteristics of distinctive areas and landscapes and their biodiversity (ss 46AN (a) and (b)).

67. In any case, it is not accepted that submissions to the effect that the declaration of the declared area and landscape and the preparation of the draft Statement of Planning Policy are not conducive to ‘orderly and proper planning’. Nor is it accepted that the process has been unfair to landowners and occupiers and the broader community.

68. Orderly and proper planning requires the exercise of discretion within the planning context to be conducted in an orderly way. That is, in a way which is logical and systemic as opposed to haphazard or capricious.

69. It is submitted that there is nothing whatsoever that is disorderly or improper with following the procedure identified in the Act for the preservation and enhancement of distinctive areas and landscapes.

70. While landowners and occupiers may feel aggrieved at the imposition of another planning process (in which it is emphasised they have been afforded and taken the opportunity to participate fully) this is not to accept that they have been unfairly treated in this regard or that the process has been capricious or lacking in rigour.

Evidence before Amendment C66 and C114 Panel

71. The submissions on behalf of Zeally Properties and Duffields Road argue that as part of Amendment C66, there was landscape evidence before the Panel from Mr Wyatt and Mr Murphy.
72. Neither witness was called by Spring Creek landowners notwithstanding their prior assessments of parts of Spring Creek (and Mr Wyatt at least was clearly available to give evidence, having been called by Fortress Holdings).

73. It is submitted that from this fact it can be inferred that their evidence is unlikely to have been helpful to Zeally Properties and Duffields Road.

74. It is important to note that like this Advisory Committee, the Amendment C114 Panel did not have the benefit of the evidence of Mr Wyatt and Mr Murphy on this precise issue. Further, it is apparent that their recommendations (which were highlighted in the submissions on behalf of Zeally and Duffields Road i.e. that visual impact of development could be managed by adopting certain screening and buffer planting options and development outcomes) seem not to have been put to the Amendment C114 Panel.

75. Certainly, when the proposed Spring Creek PSP is analysed, there are no landscape buffers identified to address views from main road corridors (see the Future Urban Structure Plan, Plan 3) (Appendix 1 to these submissions). It is therefore unsustainable to claim that the Amendment C114 Panel considered and implemented measures directed to addressing the landscape of Spring Creek in any detail at all. Indeed, the proposed Spring Creek PSP is silent on measures directed to protecting key landscape features let alone views from main roads.

**Landscape evidence**

76. As was anticipated, the issue of the location of the protected settlement boundary with respect to Spring Creek has attracted the greatest interest and level of attention during the course of this hearing.

77. As noted in opening submissions on behalf of the Minister, the Minister does not have a preconceived view as to the preferable option of the two options identified in the draft Statement of Planning Policy. The consideration of the submissions and evidence on this issue and recommendations by the Committee will inform the final form of the Statement of Planning Policy to be put before responsible public entities and responsible Ministers
for endorsement and for the Minister’s recommendation to the Governor in Council for decision.

78. The fact that there are two options exhibited for the proposed alignment of the Torquay-Jan Juc protected settlement boundary at Spring Creek area is a recognition that there is a significant history of polar community views on the matter and there has been extensive strategic planning work undertaken with respect to this area (i.e. Amendment C114 and the proposed Spring Creek Precinct Structure Plan).

79. Both the two options presented as part of the draft Statement of Planning Policy, for submission by all persons with an interest in planning for Spring Creek have been explored at length during the course of this hearing as have variants on those options. In the course of doing so, a number of themes have emerged which have been common to the parcels of land falling within the locality of Spring Creek.

80. As predicted in opening submissions, much of this hearing has been concerned with seeking to undermine the landscape significance of various parcels of land within the declared area – most notably by Spring Creek landowners. That has been the case despite all parties conceding that the declaration and its content are not matters which may be the subject of challenge as part of the Advisory Committee’s deliberations.

81. It is inevitable that across such a broad and variegated area, levels of landscape significance will vary. Ms Scott’s report and her evidence to the Committee accepted that this was the case.

82. Certainly, it can be seen that within the declared area, there are parts of the landscape which self-evidently have a higher level of significance than others. For example, Ms Scott identified the area of state significance to the west of Torquay, the landscape on the coastal side of the Great Ocean Road is considered of high state significance, due to its visual values, views and proximity to the coast, and its contiguity with the nationally significant Bells Beach and Point Addis landscape. Land on the inland side of the Great Ocean Road is generally considered to be of low to moderate state significance, with the heavily vegetated and undulating areas of coastal woodland closer to the Otway foothills
rating higher (moderate state significance) than the semi-cleared rural landscapes elsewhere in the significance area (low).

83. Further evidence of the variations within the significance level is included in the detailed written assessment of the landscape against the visual values criteria\(^7\), which includes two ratings of high (regional significance) to exceptional (state significance), illustrating that not all components of the landscape meet the state significance threshold, when measured against all criteria.

84. The evidence of Ms Scott remains the only landscape significance and landscape character assessment before the Committee. Whilst several submitters have called landscape related evidence and have been critical of Ms Scott’s methodology and aspects of her findings, none of the other submitters have engaged a similarly qualified expert to engage in a landscape significance and landscape character assessment along the lines conducted by Ms Scott. Accordingly, Ms Scott’s evidence should be accorded significant weight.

85. Mack Property Development Group relied on the landscape architecture evidence of Mr Papworth. Mr Papworth considered that the Spring Creek Valley, as seen looking west from Duffields Road, is a relatively attractive example of a creek valley set in a rural landscape with patches of native trees and exotic windbreaks, but ‘the landscape is not exceptional and is typical of similar examples of rural creek valleys that can be found in many other parts of Victoria.’ Mr Papworth’s assessment is of such a confined and vague nature as to be of little use to the Committee. Every component of a landscape does not have to be identified as ‘exceptional’ to warrant its protection and Mr Papworth’s approach is an example of the fragmentation of landscape within an assessment process, which leads to an untenable situation where a fragmented area of land is assessed in isolation from its wider landscape context. As identified by Ms Scott in her evidence, this often results in a consequent undermining in significance. During cross-examination by Counsel for the Minister, Mr Papworth disclosed the following limitations to his evidence:

\(^7\) Volume 1 p 90-91.
a. Mr Papworth’s assessment is more properly characterised as a landscape impact assessment rather than an assessment of landscape character or significance; and

b. Mr Papworth agreed that his assessment of the visibility of the Spring Creek valley landscape is limited to its visibility from the roadside and from within a travelling vehicle, it also does not extend to the broader UGZ of Spring Creek.

86. Mr Wyatt provided landscape and visual assessment evidence to the Committee on behalf of Fortress Holdings Pty Ltd with respect to land at 125 and 135 Strathmore Drive, Jan Juc. Mr Wyatt has not undertaken a landscape significance assessment just a visual impact assessment for that parcel of land. Fortress Holdings seek to:

a. remove the site from the area identified as “State-significant landscape: Torquay Coast, Coastal Saltmarsh and Woodland” (maps 3 and 5) and from proposed SLO10 Great Ocean Road and Coastal Environs: Bells Beach to Point Addis; and

b. in either Map 10 or Map 11 of the draft Statement of Planning Policy the subject site be removed from the “minimal change area” and included in the “incremental change area”, or; (d) in the alternative, that a new legend be included for “minimal change area (with scope to increase density)”; and

c. that in Map 7 of the draft Statement of Planning Policy the subject site be removed from the area shaded green signifying “Biodiversity values – Darker green areas have a higher biodiversity value”.

87. There has been no planning assessment, landscape significance assessment or ecological assessment that would support the recommended changes to the draft Statement of Planning Policy.

88. To the extent that development of the site in question may be possible (as demonstrated by the evidence of Mr Wyatt) that is a matter that can be addressed following the determination of the Statement of Planning Policy and at the appropriate time during the course of a planning application. The removal of the site from the proposed significant
landscape overlay is therefore not tenable and it is considered that Mr Wyatt’s evidence served to highlight the role played by the relevant site as part of the landscape.

**Strategic planning evidence**

89. Mack Property Development Group relied on the town planning evidence of Mr David Crowder. Relevantly Mr Crowder gave evidence that:

   a. The declaration of the area ‘raises the bar’ when assessing the implications of any strategic approvals process that may impact on those values that are sought to be protected and enhanced by the declaration. Notwithstanding this, any assessment must be balanced against other important outcomes sought by the planning scheme;

   b. With respect to Spring Creek, Option 2 should be deleted. This is because the adopted Spring Creek PSP went through an exhaustive consultation and assessment process and it appropriately responds to those qualities of the declared area that are sought to be protected. All of these qualities were considered as part of Amendment C114.

   c. Option 1 is not required either and the Spring Creek PSP area should simply be defined as part of the existing township area.

90. During cross-examination by Counsel for the Minister, Mr Crowder agreed that the draft Statement of Planning Policy is intended to act as a strategic policy document which contains a long-term vision for the declared area. To that end it should contain performance-based policy objectives and strategies, consistent with the Victoria Planning Provisions and not be too prescriptive.

91. In reaching his view, Mr Crowder relied heavily on clause 11.02-1S of the planning scheme. Mr Crowder considered that without the development of the Spring Creek area, this strategy would not be realised. This is also a fundamental aspect of the evidence of the Minister’s planning expert Mr Woodland.
92. However, during cross-examination Mr Crowder agreed that clause 11.02-1S and the accommodation of projected population growth over a 15-year period applies across the entire local government area and is not confined to a specific township. He also agreed that it is only one strategy out of many that are listed in the policy and that one particular strategy within the clause should not be given disproportionate weight in applying the policy.

93. In relation to the effect of the declaration, Mr Crowder agreed with Counsel for the Minister that the declaration “raises the bar” insofar as it targets the protection of significant landscapes within the declared area and that this represents a change in focus. Further, he agreed that by virtue of the declaration landscape considerations have been given elevated status and that this elevation affects the weight to be attributed to these considerations when assessing the draft SPP.

94. In respect of Mr Crowder’s contention that the proposed Spring Creek PSP adequately responded to those qualities of the declared area which the draft Statement of Planning Policy seeks to protect, he agreed that the proposed PSP does not contain any descriptions of landscape character or significance, it does not identify key views or viewlines nor does it identify significant landscape elements.

95. It was put to Mr Crowder that the proposed PSP and the existing planning controls that apply to the Spring Creek area do not require development to respond to significant landscape attributes. Mr Crowder considered that the current vision for the PSP contains relevant references to landscape features however it is submitted that this falls short of the level of consideration of landscape required by Part 3AAB. It cannot therefore be said that the Spring Creek PSP as currently drafted adequately responds to the elevation of landscape considerations mandated by Part 3AAB.

96. In the context of Spring Creek, the Committee also heard expert planning evidence from Mr Milner who was called by Zeally Properties and Duffields Road. In the course of Mr Milner’s evidence (and his cross-examination by Counsel for the Minister), Mr Milner accepted that:

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8 Mr Milner was also called to give evidence by DF (Sprague Farm) Pty Ltd in relation to the ACUGA.
a. The inclusion of the Spring Creek area within the declared area constituted a significant change in planning direction and warrants a review of the previous regional strategic planning for the Spring Creek area;

b. Part 3AAB of the Act places priority on the management of cultural heritage and landscape and its objects are ‘conservation dominant’; and

c. Whilst consideration of landscape significance is not new its importance has now been elevated. Part 3AAB of the Act tells us that there are some peri-urban areas that we ought to revisit to ensure that landscape is being adequately protected; and

d. There was no material regarding landscape significance before Amendment C66 or Amendment C114 Panel. This was because both panels proceeded from an assumption that the landscape was not significant on the basis that they were not asked to consider any potential SLOs.

97. Mr Milner is critical of the fact that Ms Scott’s work has not been peer reviewed, however Zeally Properties and Duffields Road did not undertake to engage a suitably qualified expert to undertake such a review. Further, he contends that there is inadequate justification for the imposition of SLO8 on Zeally Properties and Duffields Road land but provides no alternative position, nor did he review the PSP in any detail so as to provide the Committee with his opinions on how that either adequately addressed landscape considerations or could be revised to address landscape. This approach is ultimately of little use to the Committee.

Land Supply considerations and evidence

98. The Spring Creek landowners (and to a lesser extent the landowners in Messmate Road) have all placed significant weight on the ‘requirement’ in the Planning Scheme to provide 15 years supply of land for housing.
99. As outlined at paragraph 234 of the Part B submissions, planning policy (which is just that – policy) does not require land supply for 15 years within one particular locality. Further, some municipalities may not have sufficient land available to meet a 15-year supply; or 15 years of projected population growth, due to, for example, environmental constraints. It is simply not the case that because there is demand for development, that this demand must be fulfilled, notwithstanding environmental, heritage or landscape values.

100. For example, in the Alpine Shire, there is not 15 years land supply available in sensitive environmental areas or even in townships like Bright where the scheme provides that there is only 3 years supply. As a result, development is directed to Myrtleford and other large centres where there is 15 years supply (see Clause 21.03 of the Alpine Planning Scheme).

101. Similarly, in the Yarra Ranges – growth is directed to Chirnside Park and Lilydale (see Clause 21.05 of the Yarra Ranges Planning Scheme). No doubt many people would prefer for there to be land made available in Warburton, Millgrove and Yarra Glen and other townships with spectacular landscapes. However, having regard to the landscape and environmental sensitivity of such areas development has been constrained in those areas.

102. There is nothing remarkable in seeking to direct growth to limited locations and seeking to constrain growth where there are specific environmental or landscape reasons for seeking to constrain growth – even if there is unconstrained land available. Similarly, it should not be assumed that land available for development in Torquay is limitless. The dominant development form in Torquay is single dwelling development in greenfield locations. It should not be assumed that this can and will remain unchanged, particularly given the significance of landscapes on the fringes of Torquay-Jan Juc, and the importance of these landscapes to the experience of place, ecology and the socio-economic future of Torquay (as many parties have emphasised during this process).

103. It should also be borne in mind that merely because there is land potentially suitable for development and that people want to live in Torquay (as opposed to the emerging settlement of Winchelsea or in Armstrong Creek), this does not mean that all greenfield
development proposals should be permitted to occur, particularly when the environmental, cultural heritage and landscape values of the Surf Coast have been the subject of reassessment. This is precisely the outcome which Part 3AAB is designed to avoid. Simply put, just because there is a ‘market’ for this type of development does not mean that it should be permitted to occur, particularly in light of the greater knowledge of the landscape significance of the declared area.

104. The Spring Creek landowners have placed great weight on Mr Ganly’s evidence. However, the Committee should not be placing significant weight on the opinions of Mr Ganly. This is because:

a. Mr Ganly’s assessment relates to economic matters only and evidently does not consider or take into account issues such as environmental and landscape sensitivity and cultural heritage considerations; nor the extent to which these factors form a foundation for much economic activity, such as tourism, on the Surf Coast. He did not have regard to the Sustainable Futures Plan for Torquay-Jan Juc which is the most detailed and current plan to address projected population targets.

b. Mr Ganly’s evidence proceeded on an assumption that there was a requirement within the Planning Scheme for 15 years land supply in Torquay, noting that it may not be possible to provide for 15 years supply elsewhere in the Surf Coast municipality.

c. His assessment looks at the ABS Torquay SA2 area. However, this statistical area does not include all areas of the Surf Coast Shire –and does not include Winchelsea.

d. Mr Ganly’s assessment of capacity at Table 8, 9 and 10 of his report looks at greenfield development and does not take into account infill development. The consequence is that the ‘supply’ side of the equation is underplayed. Mr Ganly considered that the attempt to forecast significant amounts of additional infill development in and around the Torquay Town Centre (1600-5100 dwellings in Torquay) was ‘somewhat heroic’ having regard to the fact that in 2007-2018 less than 1% of subdivision applications were for lots of less than 500 sqm. However, Mr Ganly had not sought to analyse land that was available for subdivision, the
degree to which existing planning controls had limited subdivision and the impact that altered controls would have on supply.

e. Mr Ganly’s assumption that low density development was 50% of the proposed Spring Creek PSP capacity of 1940 lots, that is 970 lots; was as he conceded ‘a guess’.

f. Mr Ganly’s assessment disregarded the role of Winchelsea in providing for residential growth for the Surf Coast. That is despite the clear strategies within the planning scheme relating to Winchelsea and its role in housing provision:

i. Clause 21.09-1 of the Planning Scheme identifies Winchelsea as one of two Surf Coast Shire towns identified in the G21 Regional Growth Plan 2013 for growth and that ‘in recent times, significant infrastructure improvements such as the Princes Highway duplication, the provision of reticulated gas and the construction of the Geelong Ring Road have placed the town of Winchelsea on the path towards steady population growth.’ That clause also notes that a key influence for Winchelsea is ‘more affordable housing and rental prices compared to Geelong and coastal settlements in Surf Coast Shire.’

ii. The G21 Regional Growth Plan identifies Winchelsea in Figure 5 (page 17) as a district town with a population of between 2000 and 10,000 people. See also page 27 of the plan which identifies Winchelsea as a town with 10,000 people and as a ‘new targeted growth node’.

iii. At page 28 the strategy notes ‘An opportunity has been identified for Colac and Winchelsea to grow beyond the current planned growth. Colac is the key town in the region’s west and must continue to grow in order to provide a range of services to the surrounding areas. The growth of Winchelsea to a larger town role is a response to its greater accessibility by passenger rail services, planned highway duplication and proximity to Geelong. This allows Winchelsea to provide alternative lifestyle options and rural support services.'
iv. Appendix B of the G21 plan identifies priorities for various settlements including Winchelsea. Planning for identified further investigation area in Winchelsea – page 37. See Priority 2 - Development in identified growth areas within scheme implemented settlement boundaries or identified employment nodes which includes Winchelsea. And Priority 3 - Growth Plan identified further growth centres: which includes Colac and Winchelsea housing & employment growth areas. Page 44 identifies under ‘further work’ Surf Coast Shire to review Structure Plans for Winchelsea to identify residential and employment growth options.

g. Given Mr Ganly indicated he did not review the material relating to Winchelsea in the Planning Scheme, the Outline Development Plan or the recommendations regarding Winchelsea in the G21 report there is simply no basis for his conclusion that ‘there is little or no prospect of Winchelsea – the only other possible growth candidate within Surf Coast – filling the void for additional greenfield land.’

105. It is apparent that Mr Ganly’s disregard for the role of Winchelsea in meeting housing demand has not been informed by any review of the relevant policies and strategies.

106. The Committee should therefore exercise considerable caution in relation to Mr Ganly’s dire predictions regarding supply of land for housing in the Surf Coast municipal area.

107. It is also emphasised that Mr Ganly’s analysis has been undertaken as a purely economic analysis. That is, he has undertaken no consideration of the matters identified in the declaration for the Surf Coast Declared Area as to the threats to landscape and ecological values associated with urban development pressure and the expansion of urban development in Mr Ganly’s assessment.
Ecology evidence

108. The Minister did not call ecology or biodiversity evidence. There is a significant level of agreement between the experts called by the landowners and those called by the Greater Torquay Alliance and others that the Spring Creek Valley exhibits significant environmental and biodiversity attributes.

109. It is important to emphasise that evidence presented on behalf of the landowners does not provide support for either Option 1 or 2 nor the adoption of the draft Spring Creek PSP. Both Mr Harvey and Mr Mueck asserted that there needs to be further work and assessment undertaken in relation to biodiversity matters. This fact alone is sufficient to establish that the draft PSP and Native Vegetation Precinct Plan that sit within proposed Amendment C114 to the Surf Coast Planning Scheme need to be revisited.

Bushfire evidence

110. Besides the bushfire management evidence called from Mr Hazell, the only other party to call bushfire evidence was Zeally Properties and Duffields Road who relied on the evidence of Mr Kern in this regard.

111. Mr Kern’s instructions were much more confined than Mr Hazell’s and he was only asked to assess the bushfire risks within and around the proposed Spring Creek PSP area. He was not asked, and he therefore did not assess, the extent to which the draft Statement of Planning Policy or proposed landscape planning controls respond to any bushfire risk within the broader declared area. Given the nature of his instructions, he conceded during cross-examination by Counsel for the Minister that the assessment of bushfire risk assumed the degree of development in the Spring Creek PSP area would be in line with that contemplated in the proposed PSP.

112. This is to be contrasted with Mr Hazell’s evidence which is submitted is of broader assistance to the Committee because it assesses the extent of bushfire risk across the
entire declared area and examines the responsiveness of the draft Statement of Planning Policy and proposed planning controls to this risk.

113. Mr Kern agreed that the Spring Creek PSP as currently drafted is not sufficiently responsive to bushfire risk. For instance, Mr Kern gave evidence that in his view the full suite of requirements in clause 13.02-1S should be incorporated into the PSP and that the submission from the CFA\(^9\) as well as the Terramatrix report commissioned by the Surf Coast Shire Council contained material which could usefully be included in a potential future PSP to make it more robust in the area of bushfire.

**Messmate Road Future Settlement Area**

114. The submissions and evidence of MAKE Ventures and Anseed Pty Ltd were focused on the future of the Messmate Road Future Settlement Area.

115. The draft Statement of Planning Policy proposes a protected settlement boundary for Torquay-Jan Juc and proposes to include the Messmate Road Future Residential Area within the boundary. The Settlement Background paper indicates that the ridgeline will act as the boundary for urban development and that more work is required to accurately identify the ridgeline.

116. There is a consensus of opinion between Ms Scott and Mr Schutt that given the altered landscape character and relatively low landscape significance of the Messmate Road area, it is suitable for inclusion within the protected settlement boundary for Torquay Jan-Juc.

117. Given the altered character of this area and the low level of its significance, Ms Scott concluded that any proposed development of this area may provide the opportunity for positive landscape change, through the provision of re-vegetation including re-vegetation of the ridgeline with appropriate indigenous species.

118. Both Ms Scott and Mr Schutt agree that it is important that the preferred built form in relation to the ridgeline be resolved prior to the development of this area being permitted.

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\(^9\) Submission number 106.
This would ensure consistency with current local policy and strategy contained in the draft Statement of Planning Policy that high points and ridgelines should remain free from development, such that views to elevated areas of landscape reveal the natural from of topography and vegetation against the sky, rather than being dominated by built form.

119. Ms Scott accepted the revised alternative wording to the strategy relating to the issue of the ridgeline proposed by MAKE Ventures Pty Ltd.

120. The Department does not accept the position advanced in evidence on behalf of Anseed Pty Ltd by Ms Rigo and the submissions by Anseed Pty Ltd in support of including the Anseed Pty Ltd land within an area for future investigation.

121. It is emphasised that when questioned on the extent of development within the Messmate Road area, Mr Schutt opposed the prospect of development extending north of the ridgeline (i.e. so as to include the Anseed Pty Ltd land). The land has not been the subject of any specific landscape assessment or analysis and is located at a highly visible point given its proximity to the highway. Nor has it been the subject of any environmental assessment. Accordingly, it is submitted that it is premature to include the Anseed Pty Ltd land within the settlement boundary or to identify it as an area suitable for future investigation at this time.

**Requested findings and recommendations by the Committee in relation to Messmate Road**

122. That:

a. the Messmate Road future settlement area be included within the protected settlement boundary for Torquay-Jan Juc and that the boundary for this area should be as identified in the evidence of Mr Schutt. The submissions made on behalf of MAKE Ventures Pty Ltd that the area should be included within the defined settlement boundary, but this should not be a protected settlement boundary, should be rejected.

b. the recommendation made by MAKE Ventures Pty Ltd at paragraph 31 (d) that ‘the interface treatment along the settlement boundary being subject to further detailed
work as part of the Outline Development Plan for the Messmate Road Precinct, with consideration of a well-vegetated reserve straddling the ridgeline in the order of 60m in width, potentially incorporating open space, pathways or cycle trails and scattered tree planting at 15-20m spacing’ be made by the Committee.

c. That the revised alternative wording to control development relative to the ridgeline appearing on page 58 of the draft Statement of Planning Policy proposed by MAKE Ventures Pty Ltd in paragraph 31(e) be accepted. That revised wording of the performance objective which was put to and accepted by Ms Scott, was as follows:

Ensure that views to elevated areas of the landscape along the ridgeline reveal the natural form of topography and vegetation against the sky, and are not visually dominated by built form and infrastructure.

d. That the revisions to the draft Statement of Planning Policy proposed in submissions by Anseed Pty Ltd, including the designation of their land as a future investigation area not be accepted.

Armstrong Creek Urban Growth Area

123. The northern boundary of the declared area abuts the Armstrong Creek Urban Growth Area in the City of Greater Geelong. The draft Statement of Planning Policy includes an intent to include a protected settlement boundary for Armstrong Creek once the necessary strategic planning work has been completed and consulted on. It is therefore premature to determine the location of the settlement boundary for this area as its location should be informed by further strategic planning work led by the City of Greater Geelong in collaboration with DELWP, other relevant agencies and authorities, the Wadawurrung and with input from local communities.

124. The submissions for the City of Greater Geelong Council note that the discussion and associated objective and strategies in the draft Statement of Planning Policy will inform the strategic work to be undertaken on a long-term settlement boundary for Geelong.

126. Both Mr Milner and Mr Woodland agree that a logical inclusions process should resolve the long-term settlement boundary to the south of Armstrong Creek. Mr Milner considers that this should be resolved prior to the adoption and gazettal of the final Statement of Planning Policy whereas Mr Woodland considers this can be done afterwards.

127. It is considered that the timing of the further strategic work necessary to properly determine the appropriate long-term settlement boundary may be a matter that the Committee wishes to provide advice on.

128. It is maintained, contrary to the submissions made by other parties, that it was appropriate to include the land to the north of Mt Duneed Road/Lower Duneed Road within the Surf Coast declared area and to direct strategies to address the planning issues arising in this area. The Minister notes that the submissions on behalf of the City of Greater Geelong Council, which appended as Appendix 2 correspondence from the Council to the Department, supported the inclusion of this area within the Surf Coast declared area to ‘manage the development pressures in the Thompson Valley as it is identified as an important settlement break in local and state policy’.

129. It is considered important for there to be a protected settlement boundary for the Armstrong Creek Urban Growth Area. However, as the draft Statement of Planning Policy makes clear, there is a need for further strategic work including consideration of the role of the unbuilt landscape to the north of Mt Duneed/Lower Duneed Road in the wider Thompson Valley green break and measures to mitigate the visual impact of development, not just from the Surf Coast Highway, but also from Mt Duneed/Lower Duneed Road (also a Road Zone Category 1).

130. It is accepted (as did Ms Scott when it was put to her in cross examination) that the indicative outline development plan in Mr Czarny’s evidence which proposed ‘buffering’ standard urban density development with larger lots so as to provide a buffer and to define the green break is one way of addressing development within this area. That is an option which could be further explored at the appropriate time.
131. In short, it is submitted that all options ‘should be left on the table’ at this time so that they can all be analysed as part of the further work flagged by both the Geelong Planning Scheme and the draft Statement of Planning Policy.

**Requested findings and recommendations by the Committee in respect of the Armstrong Creek Urban Growth Area**

132. That the manner in which the northern boundary of the declared area with the Armstrong Creek Urban Growth Area in Geelong is addressed in the draft SPP is appropriate and that:
   a. It is premature to seek to determine the location of the protected settlement boundary at this time.
   b. That further strategic work and landscape impact assessment will be required before the protected settlement boundary of Armstrong Creek for Geelong can be finalised.

**The imposition of a Significant Landscape Overlay**

133. It is important to emphasise that all planning and landscape witnesses accepted that the proposed landscape planning controls put forward as new and amended SLOs will not prevent or prohibit development. The application of the SLO to a site zoned for urban growth (UGZ for example land within parts of the Spring Creek locality) does not prohibit its development. It provides additional guidance on the siting and design of development within a significant landscape.

134. It provides a permit trigger (where one does not already exist), and the opportunity to assess buildings and works within a significant landscape setting. It provides the benefit of additional guidance in the form of a statement of nature, landscape character objectives, decision guidelines to assist in the assessment of the landscape impact of particular development.

135. The purpose of an SLO is to more closely assess and guide the siting and design of proposed buildings and works. The SLO should be viewed as a tool which is complementary to the zone.
Conclusion

136. The Minister thanks the Committee for the opportunity to provide these closing submissions and looks forward to receiving the Committee’s report.

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28 April 2021