

[REDACTED]



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[REDACTED]

Re: Bellarine Peninsula Draft Statement of Planning Policy and proposed landscape planning controls
1 Spring Street
MELBOURNE VIC 3000

Via online submission

Dear Sir/Madam,

Submission in respect of the Draft Bellarine Peninsula Statement of Planning Policy

We act on behalf of [REDACTED] in respect of the land at [REDACTED] (Subject Site).

Our client has reviewed the exhibited Bellarine Peninsula Draft Statement of Planning Policy (BPDSPP), including the supporting documents and in summary, makes submission as follows:

1. The Subject Site does not meet the criteria set out in Section 46AP of the *Planning and Environment Act 1987 (Act)*, which are required to be established for it to be declared a distinctive landscape area.
2. There is no threat to the area immediately surrounding or including the Subject Site which would warrant its declaration as a distinctive landscape area.
3. The BPDSPP should not specify the settlement boundary for Barwon Heads. By including this, the BPDSPP precludes any strategic review of any settlement boundary for Barwon Heads which should occur periodically under the Greater Geelong Planning Scheme (**the Scheme**).
4. The nomination of the Subject Sites as a “green break” is unsubstantiated, unnecessary and inconsistent with the objectives of planning in Victoria.
5. The strategic outcomes contemplated by the BPDSPP will unreasonably constrain land supply on the Bellarine Peninsula and particularly, Barwon Heads, and fail to meet the needs of Victorians.

Our clients request that an Advisory Committee be established to consider submissions to the BPDSPP.

Strategic background

Our client relies on its submission dated 12 June 2020 in response to the BPDSPP discussion paper, which sets out the strategic background relevant to the Subject Site. That information is not repeated herein, but the submission is appended for ease of reference given it remains relevant to consideration of the current strategic body of work.

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Current process

In 2019, the Victorian Government declared part of the City of Greater Geelong and all of the Borough of Queenscliffe, which together constitute the Bellarine Peninsula, a “distinctive area of landscape” pursuant to the Act.

In furtherance of that declaration, the Department of Environment, Land, Water and Planning (**DELWP**) have now prepared the BPDSPP for the declared Bellarine Peninsula area, which seeks to establish a framework for the future use and development of land in that area.

At a high level, DELWP advises that the BPDSPP seeks to implement long-term protection for the declared areas, including settlement boundaries and character statements for specific areas.

There are five criteria which must be satisfied for the area to be declared a distinctive landscape area. These can be summarised as follows:

1. Outstanding environmental significance;
2. Significant geographical features, including natural landforms;
3. Heritage and cultural significance;
4. Natural resources or productive land of significance;
5. Strategic infrastructure or built form of significance.

(Five Principles)

In the declaration published in the Victoria Government Gazette published on the 29 October 2019 for the Bellarine Peninsula, a table is provided which sets out the attributes which purportedly qualify the Bellarine Peninsula as a Distinctive Area and Landscape (**DAL**). That table is reproduced below:

Item	Attribute	Distinctive Features
1	Outstanding Environmental Significance	<p>(a) The endangered native flora and fauna located in pockets of this area, particularly along river corridors. This habitat consists of various plant species including the endangered Bitter-Bush, Coast Wirilda and Trailing Coast Poa.</p> <p>(b) The wetlands across the Bellarine Peninsula are Ramsar Protected wetlands and form part of a global network for migratory birds. The wetlands are home to several unique and threatened species.</p>
2	Significant Geographical Features Including Natural Landforms	<p>(a) The Heads at Point Lonsdale are a defining feature at the entrance of Port Phillip Bay. It features on numerous early artworks. It is part of marine National Park that includes high sand dunes, limestone cliffs, and a vast intertidal rock platform that stretches across to Point Nepean.</p> <p>(b) The scenic views across the Bellarine Peninsula or rural landscapes and along the coast are highly valued for their natural beauty.</p>

3	Heritage and Cultural Significance	<p>(a) Bellarine Peninsula has outstanding examples of Victorian era architecture offering a unique insight into the area's development as a holiday destination.</p> <p>(b) Queenscliff has rich maritime and military history characterised by Victoria and early twentieth century architecture including For Queenscliff. A large proportion of Queenscliff is under a heritage overlay, or is heritage-listed, which indicates its state significance.</p> <p>(c) Significant Aboriginal cultural sites exist, including shell middens archaeological sites and The Bluff at Barwon Heads for the Wadawurrung People.</p>
4	Natural Resources or Productive Land of Significance	<p>(a) The Bellarine winery area between Clifton Springs and Portarlington has a cluster of wineries that support the tourism industry</p> <p>(b) Identified Extractive Industry Interest Area (EIAs) including Murradoc Hill to Portarlington area and the Lonsdale Lake surrounds.</p> <p>(c) Land in the Bellarine Peninsula is ranked with some capability for soil-based agriculture at moderate to high intensity.</p>
5	Strategic Infrastructure or Built Form of Significance	<p>(a) Queenscliff and Portarlington Harbor are important assets for the local economy.</p> <p>(b) Barwon Heads Road and Bellarine Highway form part of a significant corridor, critical to the function of the region.</p> <p>(c) The Queenscliff -Sorento ferry is a state significant transport and tourism link. The Bellarine heritage rail is a popular attraction, important to the local tourism economy.</p>

It is our clients' submission that the Subject Site does not display any of the attributes necessary in order to satisfy the DAL criteria in Section 46AP of the Act.

Moreover, the Minister must also be satisfied pursuant to section 46AP(2) of the Act that an area is under threat of significant or irreversible land use change that would affect the environmental, social or economic value of the area before he can recommend that an area be declared as a distinctive area and landscape.

These matters simply have not been established and it is simply fanciful to suggest that the Subject Site (and its strategic future) will significantly or irreversibly effect the environmental, social or economic value of the area should the declaration or BPDSP not be approved.

In response to each of the criteria required to establish the Subject Site as a DAL, we make comment as follows

1. Outstanding Environmental Significance

The Subject Site does not comprise any of the endangered native flora and fauna referred to as a distinctive feature nor does it comprise any other endangered flora and fauna.

Previously, it has been suggested that urban development of the Subject Site may have an impact on the Murtnaghurt Lagoon.

This was considered by independent planning Panels in Amendments C159 and C375 to the Scheme, which heard expert evidence and detailed discussion on this matter. The Panel in Amendment C375 noted in its report (see page 19 to 23) as follows:

“4.2 Environmental matter

(i) Background

The Port Phillip Bay Ramsar site comprises eight component areas. The Lake Connearre and Reedy Lake area includes both these lakes, the Barwon River estuary and Murtnaghurt Lagoon which is connected to the river through an overflow channel. Following floods in 1995 a levee was built across the channel restricting flows between these waterbodies. Murtnaghurt Lagoon is a saline wetland that supports significant Coastal Saltmarsh community.

████████████████████ and Mid-West Group own land west of the current settlement boundary and east of the Ramsar wetlands. They each requested that the settlement boundary be changed to include their land within the town. ██████████████████████ provided a concept plan for residential development of their land to the Panel in support of its submissions.

(ii) The issue

The issue is whether changing the settlement boundary to include land between the existing alignment and the Ramsar wetlands may impact the Ramsar wetlands.

(iii) Evidence and submission

Council did not support submissions which sought to move the settlement boundary. It referred to relevant State, regional and local planning policy to support its position. Council submitted that reinforcing the existing settlement boundary achieved relevant environmental planning policy objectives because it protected the sensitive environmental assets and landscapes surrounding the town. Council submitted:

The Structure Plan states that the Environmental Planning and Engineering units of Council do not support extending the settlement boundary and that the greatest concern “is the impact to the internationally recognised Ramsar wetlands at Murtnaghurt Lagoon and overflow channel”. Key impacts identified include those related to stormwater drainage from developments and “indirect impacts of domestic animals and the like”. Council submitted that approvals may be required through

the Environment Protection and Biodiversity Conservation Act 1999 and Environment Effects Act 1978 and these have not been contemplated.

'There is a lack of policy support for expansion of the settlement boundary, and there are significant environmental sensitivities and constraints surrounding the township.'

DELWP's key concern was the potential of development to create hydrological changes to the Ramsar site at either Murtnaghurt Lagoon (with respect to land south of Barwon Heads Road) or the Barwon River (with respect to land north of Barwon Heads Road). Based on recent experience with new stormwater outlet structures into the Barwon River, DELWP submitted the scope for further outfalls in the River is limited and circumstances in which DELWP would be able to recommend any new outfalls was difficult to envisage.

Regarding development closer to the Ramsar Wetlands, Mr Brooks noted:

- *the Wildlife Act 1975 requires consent from the Secretary of DELWP for new or changed water inputs proposed into the Ramsar site, being a wildlife reserve*
- *the Water Act 1989 sets parameters for consideration of how reasonable any proposed changes to waterways might be*
- *there may be conflict between urban development and permitted duck hunting in the State Game Reserve, including Murtnaghurt Lagoon.*

Most submissions supported the current settlement boundary because of potential environmental impacts. Geelong Field Naturalists Club supported the 'unambiguous and well-reasoned decision to retain the settlement boundary in its current location'.

Mr Tuisku submitted it is not possible to achieve a net environmental benefit with development due to the complexity of relationships that have evolved within the environment and its vulnerability to boundary effects and the introduction of foreign influences, in this case water through seepage and runoff. Similarly, Geelong Field Naturalists Club submitted:

'Loss of habitat is generally permanent and can often become the new norm from which future discussions are pivoted. Issue by issue, development by development, the habitat and ecosystem losses and impacts are cumulative and rarely does the overall strategic impact get considered (for example the cumulative impact on the ecological functioning of the entire Connewarre wetland complex) as this is deemed to fall outside of the scope of any specific development that may be up for consideration.'

Mr Bade challenged submissions calling the channel 'dead' and referred to a State Government Flood Information brochure which stated, 'no levee is flood proof'.

Mr McMahon, on behalf of the Save Barwon Heads Alliance, gave evidence supplementing his 2009 Flora and Fauna assessment with a review of key changes to biodiversity policy, legislation and other strategic

documents relevant to the Structure Plan, and to the Murtnaghurt Lagoon and channel. Key policy changes included:

- the listing of the Coastal Saltmarsh as a vulnerable ecological community under the Environment Protection and Biodiversity Conservation Act 1999
- a greater understanding of saltmarsh and mangroves across Victoria through the 'Victorian Saltmarsh Study (2011)'
- a greater understanding of potential impacts of climate change through the 'Climate Change Vulnerability Assessment and Adaptive Capacity of Coastal Wetlands' report
- clear identification of environmental stressors in the Port Philip Bay (Western Shoreline) and Bellarine Peninsula Ramsar Site Management Plan (2018)
- additional overarching policy in the Victorian Coastal Strategy 2014 and Marine and Coastal Act (June 2018).

Together these documents provided understanding that:

- key threats to the wetlands include freshwater inflows to the saline ecosystem, invasive species and climate change
- the nature of potential impacts from climate change is very uncertain due to complex hydrology and sea level-groundwater interactions which are not well understood
- the future survival of saltmarsh in relation to climate change impacts may rely on its capacity for inland migration.

Mr McMahon concluded:

'In summary, the evidence suggests that the bar has been raised. With respect to development proposals in general, it is not necessarily the case that limited development can have a net environment benefit, and while this may be theoretically possible, any proposal would need to be assessed on its merits.'

██████████ submitted 'there are no inherent environmental reasons as to why urban development on part of the subject land could not occur' and that development would 'have the potential to result in a net environmental improvement.'

██████████ called ecological evidence from Mr Lane of Brett Lane and Associates. Mr Lane stated that, based on the concept plan provided by Barwon Heads Lifestyle Group, it is possible to have development which 'will not result in significant impacts on important flora and fauna attributes on and adjacent to the site'. Mr Lane added that the key concern for the Coastal Saltmarsh community was freshwater intrusion affecting the saltwater balance of the Ramsar wetland supporting it.

██████████ called climate and flooding evidence from Mr Jempson of Venant Solutions. Mr Jempson stated that stormwater runoff from hard surfaces introduced from urban development could be controlled through the development of a waterbody running parallel to the

Ramsar wetland which could contain additional freshwater runoff from entering the saline environment of the Ramsar wetland.

DELWP submitted that the concept plan was 'incomplete and premature in respect of the consideration of hydrological and ecological changes to the adjoining Ramsar site that are likely to follow urban development of the sites.' Other than a preliminary query, DELWP has had no detailed engagement with proponents to the west regarding potential development or how stormwater may be disposed of. DELWP submitted water table depth and groundwater movement had not been considered by the concept plan.

Mid-West Group submitted that the potential need for environmental approvals was 'not a legitimate reason not to test the location of a settlement boundary' and considered such an approach 'denies the real prospect that environmental improvement of the channel could be achieved in association with the movement of the settlement boundary'. It added:

'The obvious geographic boundary is the paleo channel. Such geographic features are typically used in forming town planning boundaries. In this respect, the Council's Urban Growth Strategy 1996 reinforces this 'Planning 101' premise:

Where possible natural boundaries should form the edge of urban areas to assist in reinforcing the edge of urban centres ...'

DELWP responded that, as discussion had not yet commenced regarding a reasonable buffer between settlement and the Ramsar wetland, the starting point would be that the current boundary is abutting the natural geomorphic boundary. DELWP added that any discussion about a suitable buffer would need to be informed by detailed hydrological investigations which include consideration of groundwater interactions.

(iv) *Discussion*

The Murtnaghurt Lagoon and overflow channel are clearly significant aspects of the Bellarine Peninsula Ramsar site which must be considered for any proposal to expand the settlement boundary or any specific development proposal on the adjacent land.

The Panel accepts that there are high-level policy issues and future approvals which would need to be resolved before determining the settlement boundary alignment. Such work would determine whether a net environmental benefit is the appropriate test, or whether there ought to be a higher standard. The outcome of this work would test whether the existing settlement boundary should be changed. Without this work, there is insufficient evidence to determine whether the settlement boundary should be changed on environmental grounds. There is also insufficient evidence to determine that any westward expansion of the settlement boundary is feasible or desirable on environmental grounds.

The hydraulic connectivity of the Ramsar site and adjoining lands is not well understood and would need further investigation to better understand how potential development on adjacent land might affect the water balance. Evidence of Mr Lane and Mr Jempson indicated that potential

impacts to the Ramsar wetland and onsite flora and fauna values could be avoided, managed or mitigated to avoid significant effects.

The Panel considers that there may be an opportunity to develop some land west of the existing settlement boundary with a suitable buffer distance from the Ramsar wetlands to assist in its management. The extent of development and buffer distance would have to be informed through further information including hydrological investigations and any potential inland migration of the saltmarshes due to climate change. Changing the settlement boundary ahead of that further information would, however, be premature.

(v) *Findings*

The Panel finds:

- *There may be an opportunity to change the settlement boundary to include land between the existing alignment and the Ramsar wetlands without adversely impacting the Ramsar wetlands.*
- *The extent to which the boundary can be extended should be further investigated through a separate strategic planning process. “*

On the basis of the above, it is submitted that there is nothing to suggest that the site or any future urban development will threaten the Ramsar Wetlands. Rather, development of the site will provide an opportunity for the currently unmanaged interface between privately owned land and the Ramsar Wetlands to be managed.

2. Significant Geographical Features Including Natural Landforms

The Subject Site does not contain any distinctive geographical features or natural landforms.

3. Heritage and Cultural Significance

The Subject Site does not contain any heritage or cultural significance that would support it forming part of a DAL.

4. Natural Resources or Productive Land of Significance

The Subject Site comprises grazing pasture with limited agricultural value. Given its context abutting the existing township and 13th Beach which includes residential development and two golf courses further to the west, it has limited opportunity for use for agricultural purposes and is not a site that can be amalgamated with other nearby or adjoining productive land to create a critical mass of productive agricultural land.

5. Strategic Infrastructure or Built Form of Significance

The site is not proximate to any strategic infrastructure which would be threatened by its inclusion as part of the settlement boundary of Barwon Heads.

On this basis, it is submitted that there are no features of the Subject Site which warrant its inclusion in the DAL.

Turning now to the second limb of the requirement for land to be declared a DAL, it is submitted that there is simply no threat to the Subject Site which warrants its exclusion from a future settlement boundary for Barwon Heads, as the BPDSP contemplates.

The Minister, in making the declaration, must have been satisfied that the area is under threat of significant or irreversible land use change that would affect the environmental, social or economic value of the area.

Pursuant to the Act, that threat can only be satisfied in one of three ways, namely –

1. Land use conflict;
2. Multiple land use changes that are occurring; or
3. Any other land use threat prescribed for the purposes of Section 46AP(2).

Part 5 of the Declaration published in Victoria Government Gazette identified the threat to the Bellarine Peninsula as being:

1. Threats to areas of significant biodiversity, including Swan Bay and surrounds, Lake Connewarre and wetlands, Ocean Grove Nature Reserve and Lonsdale Lakes Wildlife Reserve from weeds and pests, climate change, natural hazards such as bushfires, and urban development;
2. Threats to natural landscapes and landforms, including visual impact on view lines and topography of the rural landscapes through the Bellarine Peninsula, from intensity of land use and urban development;
3. Threats to preservation of heritage and cultural attributes from the cumulative impact of development and land use practice and increased tourism activity and recreation;
4. Threats to natural resources, water catchments and productive land from land use conflicts (including intensity of uses) between conservation, catchment management, agricultural use, residential use and recreational activities; cumulative impacts of development; and natural hazards, including bushfire and flooding;
5. Threats to future effectiveness of strategic infrastructure from climate change impacts, expanded tourism activity, and the loss of road reservations due to development.

In relation to each of these “threats”, our client submits as follows (adopting the numbering attributed to each threat above):

1. The Subject Site does not form part of any of the areas referred to as being under threat. Whilst, it is accepted that those areas do not comprise an exhaustive list of the threats to areas of significant biodiversity, the Subject Site has not been identified in any document as an area of significant biodiversity nor is there any evidence to support the view that urban development of the Subject Site will pose a threat to any adjoining or nearby area identified as having significant biodiversity qualities.
2. The Subject Site does not form part of any view lines to a rural landscape which is highly valued for its natural beauty.
3. There is no evidence to support a proposition that the Subject Site comprises any heritage or cultural attributes that would be threatened if the settlement boundary of Barwon Heads was expanded to include the Subject Site.
4. The Subject Site does not comprise any natural resources or water catchment and is not productive agricultural land. Nor would its development for urban purposes pose a threat to natural resources or water catchment on any abutting or adjoining productive agricultural land.

5. The Subject Site has no features which would justify a conclusion that such threats would materialise in the event of its inclusion within the settlement boundary of Barwon Heads.

On this basis, it is submitted that the Subject Site does not meet any of the attributes required to declare an area as a DAL nor is there any threat which warrants the inclusion of the Subject Site in such an area.

Drafting of the SPP generally

The BPDSPP seeks to nominate the Subject Site as a 'green break' and proposes a number of strategies which any responsible public entity will have to consider when contemplating a planning permit application for any sites within the DAL nominated as green breaks.

This includes the following policy:

Objective 2 – Landscape

The objective is to protect and enhance the identified landscape character, physical features, view corridors and natural and cultural values of the declared area's significant landscapes. To achieve this, RPEs must consider, where relevant, the following strategy:

- *Reserve green breaks between settlements for conservation, agriculture, nature-based tourism and natural resource purposes that prioritise the protection and enhancement of the significant landscapes and landscape characters.*
- *Ensure any development allowed in green breaks between settlements responds to the surrounding landscape character and maintains the visual dominance of the natural landscape by:*
 - o Being sited so buildings are responsive to the landscape and use established vegetation or new vegetation buffers to screen development when viewed from the public realm*
 - o Providing setbacks from road corridors and publicly accessible land*
 - o Using building forms, design detailing and materials and colours that immerse buildings within the landscape, so they are not visually dominant.*

Objective 6b.3 – Tourism, agriculture and natural resources

This objective is to facilitate a strong regional economy, including agriculture and natural resource industries, that protects the declared area's green break. This can be achieved by the following strategy:

Direct urban use and development to within settlement boundaries and ensure development outside settlement boundaries does not compromise the rural, environmental and landscape values of the green breaks.

It is submitted that designation of the Subject Site as a green break and outside the settlement boundary will have the effect of sterilizing the site and any development potential for years to come and is entirely inconsistent with the role of the Scheme to change/adapt to changing demand, which will no doubt change over the next 50 years, during which the BPDSPP is to have effect.

Moreover, we note that there already exists development in the vicinity of the Subject Site in the form of the 13th beach resort/residential development which contains some approximate 300 dwellings and which undermine both the concept of the green break and sterilization of this area for future urban development. From a strategic planning perspective, co-locating development in this area in the future makes sense and the BPDSPP unreasonably forecloses on such an outcome for the next 50 years.

Conclusion

There is significant concern that the opportunity for strategic change in Barwon Heads, particularly review of the existing settlement boundaries, would be lost if the BPDSP was approved as exhibited.

Given that the agricultural productivity and ecological assets of the land are not significant enough to warrant inclusion in the DAL, the exclusion of this land from the DAL area would be insignificant. Conversely, for the same reasons should the Subject Site be sterilized in the manner contemplated by the BPDSP, the loss to strategic outcomes for the immediate area and the Bellarine Peninsula generally would be significant.

Accordingly, our clients request that an Advisory Committee be appointed to enable them to appear before such committee and to present submissions and evidence in support of their position that the most appropriate path forward is to:

1. Remove the Subject Site from the declared area in totality; or
2. Amend the BPSPP to remove reference to the Barwon Heads settlement boundary and nomination of the Subject Site as a green break; or
3. Amend the BPSPP to explicitly acknowledge that the settlement boundary nominated therein is subject to any amendment contemplated by further strategic work.
4. If there is to be a protected settlement boundary, the Subject Site should be included within that boundary.

An advisory committee was appointed and heard submissions and evidence in relation to the Surf Coast DAL. There are no different circumstances applying to the Bellarine DAL to justify a process which does not include a hearing before an advisory committee so that our clients, as affected parties, can appear and present submissions and evidence. To not provide that opportunity would amount to a denial of procedural fairness.

Should you have any queries, please do not hesitate to contact the undersigned.

Yours faithfully

