



**Submission by**  
**Community Advisory Group**  
**of**  
**Bellarine Community Health**

**Bellarine Peninsula Distinctive Area and Landscape**  
**Draft Statement of Planning Policy**

**August 2021**

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

The drafters of the SPP are to be congratulated for having produced a document which expresses many of the important values of the Bellarine community and which provides a means of protecting and preserving the most important attributes of the region. The latest draft incorporates some of the most significant recommendations made during the public consultation process.

There are, nonetheless, some important remaining areas of concern:

Enforceability: There are very serious concerns that the structure of the SPP might have made many of its provisions unenforceable or (at best) discretionary. This is because the parts of the document which are declared to be either ‘binding’ or ‘recommendatory’ are very limited, and the vast majority of the document does not fall into either category. There is a substantial risk that the SPP will suffer the same fate as the Bellarine Localised Planning Statement and will be treated as an irrelevance by planners and tribunals. We have made recommendations designed to overcome this problem, which we perceive to be a general problem of the DAL scheme rather than limited to the Bellarine SPP.

Settlement boundaries and non-urban green breaks: These interrelated features of the SPP require strengthening. As presently drafted the SPP inadequately expresses the notion of temporal stability which is the essence of and justification for ‘protected’ township boundaries. Likewise the sections of the SPP which most clearly express the need to preserve ‘green breaks’ are not in the ‘binding’ or ‘recommendatory’ segments of the document, substantially weakening their legal effect.

Recycled water: The SPP deals inadequately with this issue, which is critical to achievement of a number of DAL objectives. DELWP appears to have embedded in the SPP the very limited perspective and ambitions of Barwon Water in relation to supplying recycled water to the Bellarine – a perspective which appears to be driven by the aesthetics of its balance sheet rather than an appreciation of its obligations as a responsible public entity at a time when climate change will make availability of recycled water a critical need.

Health and wellbeing: It is gratifying that health and wellbeing has been given specific recognition in the SPP, in the Vision statement. This appears to be response to BCH’s previous submissions pointing out the significance of health and wellbeing as a planning consideration. However this response has not been sufficiently expressed in either the binding Objectives or the recommendatory Strategies, and thus is at risk of being disregarded by planners and decision-makers.

We make the following recommendations:

1. The following provision should be inserted into the SPP:

*“The following principle of interpretation shall be binding in construing the terms of this Statement of Planning Policy:*

*A construction that would promote the purpose or object underlying the SPP shall be preferred to a construction that would not promote that purpose or object. In determining that purpose or object consideration shall be given to the Vision Statement in this SPP together with any other matter or document that is relevant.”*

2. DELWP should clarify the circumstances in which it is envisaged that ‘principles’ under Ss. 46AZL(d) might be prescribed; and identify the status of such ‘principles’ in relation to the Objectives and Strategies contained in a SPP.
3. The Vision Statement be amended so that it refers to “stable and well-defined settlement boundaries” rather than merely “well-defined settlement boundaries”.
4. The Vision Statement be amended to the following effect:  
*“The areas between settlement boundaries perform a primary role as non-urban green breaks, supporting agriculture and other non-urban activities consistent with that role.”*
5.
  - (a) The Framework Plan maps 3 and 7 be amended to reflect an intention that all agricultural areas of the Bellarine be supported by the availability of recycled water.
  - (b) Objective 1 in the “Environmental risks and resilience” domain be amended as follows:  
*“To achieve a zero-carbon future and support the resilience of the declared area’s distinctive attributes by taking sustained measures to mitigate greenhouse gas emissions, **to provide recycled water to the agricultural areas of the Bellarine, and adapt to the impacts of climate change and natural hazards**”.*
  - (c) Support Objective 1 with the inclusion of an additional strategy in the “Environmental risks and resilience” domain:  
*“Provide capacity and distribution infrastructure for recycled water sufficient to meet the needs of the community while increasing resilience to climate change.”*

- (d) Objective 7 in the “Community infrastructure and essential services” domain be amended as follows:  
*“To ensure the integrated provision of transport, **urban and agricultural water supply, other** essential services and community infrastructure meets the needs of the community while increasing resilience to climate change.*
  - (e) Include an additional Strategy in the “Tourism, agriculture and natural resources” domain, as follows:  
*“Provide water-supply resilience to the agricultural industry by making recycled water available and accessible in all agricultural areas of the declared area”.*
6. DELWP consider specific proposals to contract the proposed settlement boundaries in those instances where doing so would enhance the DAL values without having a disproportionate effect on availability of land for housing development.
  7. Individuals and groups within each township will be entitled to be heard before the zones in the township maps become formalized as the basis for planning decisions.
  8. The proposed legislative amendment to the Residential Tenancies Act relating to permissible “dwellings” within caravan parks be implemented as a matter of urgency.
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    - (a) Objective 7 be amended to read: “To ensure the integrated provision of transport, **health and wellbeing and other** essential services and community infrastructure ....”.
    - (b) Strategy 7.4 be amended to read: “Reinforce the timely delivery of infrastructure and services to meet community needs, **including needs for health and wellbeing services** ....”.
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## **1. INTRODUCTION**

### **1.1 Participating organisations**

This submission responds to the Draft Bellarine Peninsula Statement of Planning Policy (“SPP”) prepared by the Department of Environment, Land, Water and Planning (DELWP”).

This submission has been prepared by the Community Advisory Group (“CAG”) of Bellarine Community Health (“BCH”). A number of other community organisations have provided substantial input to and/or support for the positions set out herein. Some of those organisations have made their own principal submissions to DELWP in addition to broadly supporting this submission: (Ocean Grove Community Association; Combined Bellarine Community Association; Queenscliffe Community Association; Drysdale Clifton Springs Curlewis Association). Others have expressed themselves as adopting this submission jointly as their own in lieu of preparing a separate submission: (Friends of Buckley Park; Swan Bay Environment Association). CAG supports the views expressed by those organisations which have made separate submissions. Hence this submission expresses the integrated views of a wide segment of the Bellarine community.

### **1.2 General response to SPP**

DELWP is to be congratulated for having prepared a draft SPP which expresses a vision, objectives and strategies which reflect many of the important aspirations and wishes of the Bellarine community in relation to their distinctive and unique region. That reflects the thorough process of public consultation undertaken by DELWP and its willingness to attempt to give effect to the core community wishes expressed via that process.

When the DAL scheme was first announced it was seen by this community as the “best and last chance” to preserve and protect the highly valued features of the region. That is still the case, but now as the process enters its final stage there is a sense of optimism about the achievement of that result. There remain several elements of the SPP which we believe should be further amended. These are set out below, and in the individual submissions of some participating organisations. Some are matters of detail but others are of considerable importance to the achievement of the goals of the DAL scheme for this region. Both the legal structure and the content of the SPP must provide a robust protection against attempts to dilute or circumvent its provisions. That such attempts will be made is beyond doubt because of the conflicting interests of those who seek to protect the unique features of the region versus those whose economic interests would be advanced by a weakened level of protection.

## **2. LEGAL STRUCTURE OF THE SPP**

### **2.1 The Vision Statement – legal status**

There is uncertainty about the legal status of the Vision Statement in the SPP. Unless that uncertainty is resolved in a way that gives the Vision Statement appropriate legal effect the SPP will be at risk of having its provisions interpreted and applied in a manner which was unintended and which defeats its purpose.

S. 46AV of the Act requires that a SPP must contain a 50-year vision identifying the values, priorities and preferences of the Victorian community for the declared area. It also requires that the SPP must state which parts of the SPP are binding on Responsible Public Entities (“RPE’s) – including municipal councils - and the parts that are recommendations to which RPE’s are required to have regard, but which are not binding. The draft SPP now under consideration contains the required 50-year Vision statement. It also includes under each of a number of policy ‘domains’ one or more ‘Objectives’ which are stated to be binding, and a set of ‘Strategies’ which are said to be non-binding recommendations. That seems to satisfy the requirements of the Act.

The problem is that no part of the SPP except the Objectives and Strategies is identified as either binding or non-binding-but-recommendatory: only the Objectives and Strategies in each domain (and the protected settlement boundaries when declared) have any legal status. The Vision Statement, and all the preamble and explanatory material relating to the Framework Plan and each policy domain, have no legal status at all. For legal purposes they are an “irrelevant consideration” and a decision-maker (including a review tribunal such as VCAT) might be debarred from giving them any weight or taking them into account at all.

This risk is informed by bitter experience, because it is the same problem which caused the Bellarine Localised Planning Statement to be treated as legally irrelevant. It was not a document which had binding force and was thus either completely ignored or given only ‘token’ acknowledgment by planners and tribunals. This view of the likely fate of much of the SPP, including the Vision Statement, is confirmed by recent public comments by DELWP officers that the Vision Statement is no more than an ‘aspirational statement’ which was useful in developing the Objectives and Strategies but which has no continuing legal effect. Those words are chilling, as a prediction of the approach to be adopted by decisionmakers.

The reduction of the Vision Statement to the status of an aspirational set of ‘motherhood’ propositions without any legal effect is potentially disastrous for the achievement of the DAL objectives. It means that whenever the meaning and effect of one of the Objectives or Strategies is being considered by a decision-maker, that meaning will be determined in a vacuum, with consideration being given only to the literal words of the provision divorced from any context which might identify what was intended by those words. The ‘literal’ interpretation might be

different from or even antithetical to the purpose which might have been evident if the decision-maker had been permitted or required to consider contextual documents such as the Vision Statement which identify the underlying purpose of the SPP.

This used to be a perennial problem in statutory interpretation. Parliament would make an Act, but when its provisions were interpreted by a court it was the literal words in the Act which determined its meaning, even if that led to a result which was apparently different from what Parliament intended. This resulted in the *Interpretation of Legislation Act 1984* being amended to force courts or tribunals to have regard to what Parliament intended. S. 35(a) requires that “.. *a construction that would promote the purpose or object underlying the Act .. shall be preferred to a construction that would not promote that purpose or object.*” Courts now must look to the purpose of the Act, whether expressly stated or implicit, as a fundamental aspect of interpretation, and legislative drafters routinely include explicit statements of purpose into Acts so that identifying the purpose is not itself an arena of dispute.

It is submitted that the same approach should be adopted to interpretation of the SPP. There needs to be an identifiable “purpose or object” in the SPP so that if there is doubt or ambiguity about the meaning of one of the Objectives or Strategies there is a proper basis for resolution of the issue. The Vision Statement is ideally suited to play that role. We reiterate what has been said in our earlier submission:

*.. the importance of the Vision Statement should not be under-estimated ..The Vision Statement exists to inform and determine the content and meaning of the detailed planning provisions. It is the ‘touchstone’ from which the detailed provisions obtain their justification and by which their efficacy is to be measured.*

To treat the Vision Statement as exhausted once the SPP is in force is frankly absurd. It is a crucially important part of the SPP because it expresses its core purpose. Without it, the SPP objectives and strategies exist in a vacuum with nothing against which to measure and assess their meaning and applicability. Why develop a 50-year Vision statement and then treat it as an irrelevance? It remains as the ultimate standard against which the objectives and strategies, and decisions made pursuant to them, are to be judged. (See also the opening comments in Part 3 below).

The failure by DELWP to grasp this issue is highlighted by the following passage at page 16 of the draft SPP:

*An RPE should balance any conflicting strategies in favour of an outcome that best promotes the intent of the final Bellarine Peninsula SPP for the benefit of present and future generations.*

That is an excellent sentiment. It is almost exactly what we have been arguing in this and the previous submission – but the problem is that *those fine words are neither binding nor recommendatory, and the standard to which they refer (i.e. the ‘intent’ of the SPP) is nowhere*



*identified*. The words appear in an explanatory section of the draft SPP which has no legal status. It is an empty sentiment unless and until:

- (a) the “intent” of the SPP to which decision-makers are to refer is identifiable; and
- (b) the obligation to refer to it in decision-making is made binding.

It is submitted that the Vision Statement should be identified as a provision to which decision-makers are obliged to have regard in interpreting the meaning or ambit of any of the Objectives or Strategies in the SPP.

### **Recommendation 1**

The following provision should be inserted into the SPP:

*“The following principle of interpretation shall be binding in construing the terms of this Statement of Planning Policy:*

*A construction that would promote the purpose or object underlying the SPP shall be preferred to a construction that would not promote that purpose or object. In determining that purpose or object consideration shall be given to the Vision Statement in this SPP together with any other matter or document that is relevant.”*

That binding provision largely mirrors the provisions in the Interpretation of Legislation Act. It compels decision-makers to adopt an interpretation which upholds the purpose of the SPP, and it identifies the Vision Statement as a primary but not exclusive reference point in identifying that purpose. So for example, a decision-maker would also be permitted to refer to the list of attributes qualifying the Bellarine to be declared a DAL under S. 46AO of the Act, and to explanatory comments in the Framework Plan if that assisted in the interpretation of the Objectives and Strategies. Such a provision would be a substantial buttress to preventing the SPP being undermined by technical or literal interpretations which ignore the purpose of the DAL declaration and the SPP.

## **2.2 Status of ‘principles’ in S. 46AZL**

This section of the Act provides that if a Responsible Public Authority is making decisions or developing policies etc. for a DAL area it should do various things including: *(d) have regard to the principles prescribed to apply to all declared areas and any particular declared area.*

None of the documentation released by DELWP about the Bellarine refers to any such "principles". The focus has been on the SPP containing a Vision plus binding provisions (now described as objectives) and non-binding provisions (now described as strategies). The wording of 46AZL

makes it appear that these principles, whatever they are, are non-binding but are to be "had regard to". Nowhere has there been any explanation of:

- whether any such principles have been prescribed, and if so, what they are and where they may be found;
- if they have not yet been prescribed, under what circumstances is it envisaged they might be prescribed, and what is their anticipated nature; and
- how do they fit into the hierarchy of enforceability in the DAL scheme? Are they at the same level as non-binding "strategies", or at a different level? What happens if there is an inconsistency between a prescribed principle and some element of the SPP?

Decision-makers frequently must deal with apparently conflicting provisions by assessing their relative weight or priority in each case. Hence it is critical to know whether any of the different 'principles' or 'matters to be taken into account' occupy a higher or lower level in the hierarchy of provisions – because that will often be determinative as to which prevails. Thus for present purposes it is important to know not only the nature of any proposed S. 46AZL 'principles' but also whether they take precedence over those parts of the SPP which are 'non-binding recommendations' upon RPEs. If the principles under S. 46AZL have priority a Minister could unilaterally alter the entire balance and effect of a SPP by prescribing some additional 'principles'. That might be advantageous or disadvantageous in any instance, but that fact – if it is a fact – needs to be acknowledged and understood by the community and the RPE's affected by the DAL scheme.

### **Recommendation 2**

DELWP should clarify the circumstances in which it is envisaged that 'principles' under Ss. 46AZL(d) might be prescribed; and identify the status of such 'principles' in relation to the Objectives and Strategies contained in a SPP.

### **3. CONTENT OF THE VISION STATEMENT**

As stated in Part 2.1 above, the Vision Statement is a critically important part of the SPP. In a few years' time when administration of the DAL scheme has inevitably become a largely-bureaucratic exercise and the present level of enthusiasm and sharpness of focus exists mainly in memory, the Vision Statement will remain as the constant reminder of what this community values and what it demands be protected. It is the fixed point in the planning firmament, to which resort not only can be had but must be had in making decisions about the Bellarine for the foreseeable future.

The Vision Statement necessarily must be expressed in general terms: it should not be overly-detailed lest the detail become a limitation on its scope. But equally it cannot be so general that it

does not clearly capture and include important specific issues. The dominant features of the vision must be clearly identified and expressed even if its precise contours remain subject to interpretation with the passage of time.

Two of the critical ‘dominant features’ of the vision are inextricably interlinked. They are:

- the confinement of urban development within *inflexible township boundaries*; and
- the preservation of *non-urban “green” breaks* between townships.

In some respects they are two sides of the one coin: without one, the other cannot be achieved. They are also crucial to achievement of other aspects of the vision – landscapes, environment and biodiversity, tourism, and agriculture. Hence those two aspects of the vision need to be clearly identified in the Vision Statement so that there is no prospect of their being diluted or marginalized under the various pressures of the next 50 years.

These observations inform our recommendations hereunder.

### **3.1 Settlement boundaries**

We note that in the present draft SPP the Vision Statement contains the same form of words as the previous draft from April 2020: “.. well-defined township boundaries”. That expression fails to convey the temporal notions of ‘stability’ or ‘continuity’ which are the essence of what is required. A ‘clearly defined boundary’ relates only to the moment in time when its clarity is considered – it contains no notion of temporal stability or continuity.

The fact that protected settlement boundaries are specified in the Framework Plan is, self-evidently, a massive step forward in protecting the DAL values. However when those boundaries are challenged (as they will be over time) and when pressure is brought to bear for Parliament to expand them (as will happen over time) there needs to be a fundamental provision which specifies the stability of township boundaries as a key part of the vision for the Bellarine.

#### **Recommendation 3**

The Vision Statement be amended so that it refers to “stable and well-defined settlement boundaries” rather than merely “well-defined settlement boundaries”.

We consider that the word ‘stable’ sufficiently conveys the required temporal concept without straight-jacketing future generations, and it both supports and justifies the imposition of protected boundaries via the Framework Plan.

### 3.2 Non-urban green breaks

We are concerned to note that all reference to non-urban breaks has been removed from the present draft Vision Statement. The previous (April 2020) draft contained the words “Green breaks are visible between settlements”. CAG was critical of the inadequacy of that formulation, because requiring no more than ‘visibility’ of green breaks was setting the bar so low that it provided virtually no requirement for genuine non-urban breaks. We are unable to understand why even that appallingly low level of protection has been removed from the Vision Statement.

We acknowledge – and are gratified - that non-urban green breaks have been given a much more prominent place in the Objectives and Strategies than they occupied previously, and we do not doubt that this reflects DELWP’s understanding of the importance of this feature of the DAL scheme. However in our opinion this does not remove the desirability of including appropriate reference to green breaks in the Vision Statement. As we have submitted above, the Vision Statement is the “fixed point” for interpretation of the requirements of the DAL scheme for the next half-century, and the omission from it of a critical feature such as green breaks might well be used to dilute or downgrade its importance in future. Looking at the issue from a different perspective: is there any legitimate reason why such an important matter should be excluded from the Vision Statement? No reason has been advanced, legitimate or otherwise. Hence it should be included.

#### **Recommendation 4**

The Vision Statement be amended to the following effect:

“The areas between settlement boundaries perform a primary role as non-urban green breaks, supporting agriculture and other non-urban activities consistent with that role.”

### 3.3 Health and wellbeing

BCH is very pleased to see that the draft SPP now includes, as part of the Vision statement, express reference to “health and wellbeing”. The absence of any such reference from the previous draft was a significant weakness of that document, and the fact that DELWP has corrected that problem deserves to be acknowledged. This appears to be a direct consequence of the submissions made by BCH, identifying “health and well-being” as a legitimate and important aspect of urban planning but one which was often not recognized by planners. The issue is now identified expressly under the “strategic infrastructure” heading although it is also implicit in the approach which has been adopted to other issues such as retention and protection of non-urban green breaks. We are gratified that “health and well-being” and community health are now an express part of the DAL scheme,

but remain concerned that this is insufficiently expressed in the relevant Objective and Strategy. We address this under the specific domain, below.

#### **4. THE FRAMEWORK PLAN AND POLICY DOMAINS**

As a preliminary point, we understand that the legal status of the Framework Plan is that its maps can be taken into account by decision-makers but it is not binding unless (a) it specifies protected township boundaries or (b) is an ‘Objective’ which is declared to be binding. Since it has not been identified as either binding or recommendatory, all other parts of the Framework Plan appear to lack any legal status. If DELWP has a different understanding of the status of the Framework Plan we would appreciate being informed as soon as practicable.

##### **4.1 Recycled water**

###### **(a) Background**

The topic of recycled water is dealt with under the policy ‘domains’ of ‘Environmental Risks and Resilience’, ‘Strategic Infrastructure’, and ‘Tourism Agriculture and Natural Resources’, but is also reflected in the Framework Plan Maps 3 and 7. We will deal with this as a single issue although it crosses-over those policy domains.

It is an issue which has taken on even more importance with the recent publication of the 6<sup>th</sup> report of the Intergovernmental Panel on Climate Change (IPCC), highlighting the increased likelihood of serious effects from climate change including longer and hotter seasons, more frequent and more severe droughts, and increased risk of calamitous fires. Water supply is self-evidently a critical consideration in responding to those prospects, particularly for the Bellarine which is likely to become markedly drier in the future.

Recycled water for agricultural and drought-resilience purposes was a major theme of CAG’s previous submission. At that time we were urging that recycled water from the Black Rock treatment plant, presently being pumped out to sea, should be provided to the agricultural areas of the Bellarine. We suggested that the two unused water reservoirs in Grubb Road should be reopened as part of a recycled water distribution system. This submission was strongly resisted by Barwon Water, which wants to dispose of those reservoirs. Without reciting the long history of communications on this issue the result is:

- i) The major unused reservoir at the corner of Grubb Road and Swan Bay Road is being converted to a community park. The fate of the smaller unused reservoir next to Oakdene winery is still undetermined, but it will not be returned to use as a reservoir. We have made the point that its proximity to the Ocean Grove Nature Reserve provides an opportunity to incorporate it within that reserve for the benefit of future generations;

- ii) Barwon Water is determined not to provide recycled water from Black Rock to the Bellarine for non-residential purposes (or for residential purposes other than new developments abutting the Surf Coast). Rather, it believes that it can meet all future demand for recycled water in the agricultural areas of the Bellarine by progressively expanding the existing small treatment plant near Portarlington and gradually extending a pipeline system from there into part of the rural hinterland.
- iii) We have been provided by Barwon Water with its estimates of the demand and supply for recycled water on the Bellarine, with the supply theoretically able to be met from a progressively-expanded Portarlington treatment plant. By treating at that plant some of the sewerage and wastewater which is presently pumped to Black Rock, enough recycled water could be produced at Portarlington to meet the projected agricultural needs of the Bellarine. However, although Barwon Water has assured us that this is a concept which they support in principle, they have declined to elevate it to the status of a ‘plan’ or even a specific element in their future strategy. Hence *there is no real assurance that this will ever happen, and there are strong indications within the SPP itself that it is unlikely to happen. Barwon Water will commit to nothing other than the ‘first stage’ of an expansion of the Portarlington plant and a very limited expansion of the existing (mainly privately owned) pipeline system supplying the wineries area on the northern coastal strip.*

It is against this background that we now comment on how recycled water is dealt with in the present draft SPP.

#### **(b) Framework Plan**

The present draft SPP deals with this issue inadequately.

The first and most obvious deficiency is reflected in the Framework Plan Maps 3 and 7. Those maps identify two “strategic water assets”, being the Black Rock and Portarlington treatment plants. They also identify the area of the Bellarine in which there will be “support for recycled water use”. *That area is limited to the north-east corner of the Bellarine - north of Murradoc Road and east of Drysdale: that is, it covers only the existing “wineries” strip plus a very limited extension of the existing pipeline system from the Portarlington plant. The entire remainder of the Bellarine non-urban areas is to be unsupported by recycled water.*

The Framework Plan adopts Barwon Water’s limited and inadequate intentions in relation to supplying recycled water to the Bellarine, and reinforces the view that its vague ‘in-principle-but-don’t-hold-us-to-it’ support for supplying the Bellarine from the Portarlington plant is not matched by an actual expectation or commitment that it will do so. The fact that DELWP has capitulated to Barwon Water’s limited perspective and allowed it to be reflected in the Framework Plan for the region is disappointing. It creates a real risk that some primary objectives of the DAL scheme will not be achieved. We refer to, and reiterate, our previous detailed submission on that issue.

We infer that Barwon Water’s apparent reluctance to commit to a more extensive role in providing recycled water to the Bellarine is because it perceives that doing so would have a negative impact on its profitability and balance sheet: i.e. the new investment required would not meet targeted return-on-investment criteria. While we have some sympathy for its need as a quasi-independent authority to meet financial standards, Barwon Water also has ‘public interest’ standards as a Responsible Public Entity which are sometimes in conflict with its financial targets. That conflict will only be resolved by governmental direction – and the Framework Plan suggests that DELWP has not grasped the nettle of elevating the public interest as the primary criterion in this instance.

The Framework Plan will be used by policymakers and decision-makers to guide future infrastructure development on the Bellarine. The exclusion of most of the Bellarine from a “recycled water support area” in the SPP will establish a self-fulfilling prophecy, because it will be used to justify an argument against extending a recycled water system to the remainder of the Bellarine.

(c) **‘Environmental risks and resilience’ domain**

This domain deals with environmental risks including those resulting from climate change and human impacts. One aspect which is mentioned is water security, and it acknowledges that increasing demand for both potable and agricultural quality water will have to contend with decreased availability of water from natural sources. The draft SPP also acknowledges that there will need to be government support for “the infrastructure to provide more recycled water”.

Those words are entirely unobjectionable. The problem is that they occur in a section of the SPP which is neither binding nor recommendatory. They occur in the explanatory preamble of the domain which has no legal status. When one looks at the binding Objectives and recommendatory Strategies under this domain one finds that the promising language in the preamble is not given any force. It is only by straining the meaning of language that one could find any hint of a reference to water-security in the Objective. Of the eleven Strategies, two mention the word “water” but only in the context of urban design for new settlements and developments. *It is as if the whole issue of ‘water-resilience’ has been airbrushed out of the only parts of the SPP which have legal force.* We are presently unable to identify any part of the Objectives and Strategies in this domain which could be called in aid of a proposal to provide recycled water on the Bellarine – but we see a Framework Plan which clearly excludes most of the Bellarine from access to recycled water. And this at a time when climate scientists are beseeching government to increase climate resilience! Really?

(d) **‘Strategic Infrastructure’ domain**

Detailed comments in the (non-binding) preamble to this domain deal with ‘water security infrastructure’. Those comments are *prima facie* very promising, referring to the Black Rock and Portarlinton plants having their capacity extended to provide alternative water sources for agriculture across the declared area. One is, however, struck by the assertion that the Black Rock

plant presently “supplies recycled water to an increasing number of properties in the declared area”. In fact that appears to be limited almost entirely to ‘purple pipe’ systems in new residential areas on the margin of the declared area, and as mentioned above there is a confirmed determination not to supply recycled water from Black Rock to any agricultural area of the Bellarine. Moreover, the proposed expansion of the Portarlinton plant is presently very limited in scope, and reflects Barwon Water’s intention that water from Portarlinton not be used to support any area south of Murradoc Road. Hence the promising words of the preamble ring hollow upon examination.

Turning to the Objective and Strategies, one finds only very indirect language which might possibly apply to recycled water – other than Strategy 7.3 which calls for the protection of water infrastructure and assets such as the Black Rock and Portarlinton plants *but makes no reference to distribution systems outside a very limited area*. Once again the language of the preamble is not carried through into the parts of the SPP which a decision-maker either must or may consider.

**(e) Tourism, agriculture and natural resources domain**

This domain continues the trend of expressing genuinely admirable sentiments in the preamble but then not including a critical aspect in either the Objectives or Strategies. In this case the importance of rural landscapes and viable agriculture is handsomely acknowledged, but neither the Objectives nor the Strategies mentions the single most critical requirement of a viable agricultural industry – access to water in a time of diminishing natural supply.

**(f) Recommendations**

For reasons fully set out in our previous submission we regard the provision of a recycled water distribution system across the Bellarine as critical to achievement of several the DAL objectives. We acknowledge that in various preamble sections of the present draft SPP, DELWP has substantially increased its recognition of the importance of the issue by comparison with the previous draft. We commend and support that recognition, but unfortunately it appears that DELWP has not given effect to it in the Objectives and Strategies. Consequently the admirable sentiments expressed are at risk of being ignored by decisionmakers in the future. Similarly it appears that Barwon Water has managed via the SPP to constrain its own future role and obligations as the relevant water authority, so that much of the Bellarine is to be left unsupported. To overcome those deficiencies we recommend as follows:

**Recommendation 5**

- (a) The Framework Plan maps 3 and 7 be amended to reflect an intention that all agricultural areas of the Bellarine be supported by the availability of recycled water.



### **Recommendation 5 (cont.)**

- (b) Objective 1 in the “Environmental risks and resilience” domain be amended as follows:

*“achieve a zero-carbon future and support the resilience of the declared area’s distinctive attributes by taking sustained measures to mitigate greenhouse gas emissions, **to provide recycled water to the agricultural areas of the Bellarine, and adapt to the impacts of climate change and natural hazards**”.*

- (c) Support Objective 1 with the inclusion of an additional Strategy in the “Environmental risks and resilience” domain:

*“Provide capacity and distribution infrastructure for recycled water sufficient to meet the needs of the community while increasing resilience to climate change.”*

- (d) Objective 7 in the “Community infrastructure and essential services” domain be amended as follows:

*“To ensure the integrated provision of transport, **urban and agricultural water supply, other essential services and community infrastructure meets the needs of the community while increasing resilience to climate change.**”*

- (e) Include an additional Strategy in the “Tourism, agriculture and natural resources domain, as follows:

*“Provide water-supply resilience to the agricultural industry by making recycled water available and accessible in all agricultural areas of the declared area.”*

## **4.2 Settlements**

### **(a) Protected settlement boundaries**

The proposed establishment of protected settlement boundaries for all townships is perhaps the single most important step in protecting the values of the Bellarine and achieving the objectives of the DAL scheme. DELWP is to be congratulated for recognizing the crucial nature of this protection and for responding appropriately to the very high level of community feedback urging this step in the face of strong opposing representations by the development industry. Every community group which has participated with CAG in developing this submission has expressed strong support for the measure, either in its own submissions or in supporting this submission or both. It has overwhelming community support.

Likewise, the proposal to establish protected boundaries in exactly or almost exactly the same place as the existing boundaries established under the various township structure plans is – with one exception mentioned below- another major relief. The community feared that the existing boundaries would be expanded. No doubt DELWP was pressured to expand township boundaries either generally or in specific locations. No doubt that pressure will be maintained in the period before publication of the final SPP. CAG and all participating community groups strongly urge DELWP to resist any such pressure. CAG endorses the view of the Ocean Grove Community Association in rejecting the argument that protected boundaries will cause a substantial increase in the price of housing stock.

The exception referred to above is that some existing township boundaries are already too extensive, and at least some of them should be contracted. The rationale for contraction is that the existing boundaries were set at a time when the Bellarine was regarded as a growth area for residential development and boundaries were set with a view to maximizing population capacity without regard for the impact on the Bellarine environment. The reversal of that policy by CoGG and by the DAL scheme means that some of those boundaries are inappropriate and should now be contracted. Minor contractions of the Ocean Grove boundary have already been included in the Framework Plan by DELWP and there is clear justification for contractions elsewhere – especially on land which is still zoned for rural or farming use despite being inside the township boundaries.

An example demonstrates the point. The western and southern boundaries of Curlewis include extensive undeveloped “greenfields” areas, the development of which will substantially alter the character of the townships. Of particular concern is the area between Jetty Road and Tivoli Drive south of the rail trail. Development of that area will have a disproportionate effect because it will extend the “visual limit” of the township by about 3 km by encroaching over the top of a hill. At the moment one drives east through a rural area along Portarlington Road with virtually no sight of the residential areas of Drysdale/Curlewis until cresting the hill at the start of the Drysdale bypass. The proposed development of the area on the western slope of that hill will extend the physical limit of the township by only about ½ km but will make it visible from as far back as Hermsley Road 3 km away. The ‘visual’ non-urban break on the western approach to Drysdale will be reduced by that distance – contrary to the objectives of the DAL scheme. There are many similar examples: for example the planned residential development of olive groves on the western approach to Portarlington, substantially altering the visual character of that scenic approach, and destroying the landscape values looking inland from Point Richard. We note that the valued landscapes identified on the Framework Plan maps are almost all “seascape” views, with little or no identification of valued views looking inland or across the inland landscape.

### **Recommendation 6**

DELWP consider specific proposals to contract the proposed settlement boundaries in those instances where doing so would enhance the DAL values without having a disproportionate effect on availability of land for housing development.

#### **(b) “Zones” within each township**

For each township, the framework plan identifies various zones within which different types and styles of residential and non-residential activity are to be permitted or encouraged. The draft SPP states that these zones have been developed based on a document entitled “*Bellarine Peninsula Statement of Planning Policy: Settlement Background Paper*” described as a “technical document with background information for the SPP and implementation actions”. That document has been explicitly excluded from the process of public consultation (page 17 of SPP) and, to the best of our knowledge, was prepared without the opportunity for input from community groups. If that is the case it is highly regrettable and detracts from what otherwise appears to have been an admirable process of public consultation. It is not acceptable that the reasoning and conclusions of such a document are only made known *ex post facto*.

Of great importance is that it is unclear what legal status is held by each of the township maps in the Framework Plan. It appears that they might be regarded as ‘recommendatory’ for municipal councils and RPE’s but the nature of the document means that they will probably be regarded as the ‘default’ position to be adopted. Each township might have different concerns: for example, building height limits might well be a sensitive and urgent issue in some townships (and the Ocean Grove Community Association has flagged such concerns); and rezoning from Rural Living or Farming to General Residential within the township boundary has been and remains a focus of community concern and action in Drysdale. Recent studies showing the environmental thermal effects of dense housing development and impermeable surfaces in townships provide an additional area of argument, as does the retention of the character of the townships. These concerns are particularly relevant where existing “green” zones within township boundaries are being rezoned to permit intensive housing development.

It is important that township communities not lose their entitlement to help shape the community in which they live, by having ‘framework’ maps adopted as default positions without proper consultation.

### **Recommendation 7**

**Individuals and groups within each township will be entitled to be heard before the zones in the township maps become formalized as the basis for planning decisions.**

**(c) Quasi- residential developments**

In our previous submission we highlighted the fact that developers are evading the existing zoning restrictions by building what amounts to residential housing estates on land zoned “farming” by taking advantage of loopholes in the Residential Tenancies Act (“RTA”). This allows them to meet the definition of a caravan park whereas what they are actually constructing is a housing estate. We have been told by DELWP that amendments to the RTA are being considered to enable this problem to be better dealt with by municipal councils.

**Recommendation 8**

The proposed legislative amendment to the Residential Tenancies Act relating to permissible “dwellings” within caravan parks be implemented as a matter of urgency.

**4.3 Specific domains**

CAG has relatively little comment in relation to specific domains, other than what has been referred to above. In most cases the binding Objectives appear to capture the main aspects of the domain and the non-binding Strategies appear to be appropriate as a means of pursuing the Objective.

- (a) We reiterate our concern that the rationale for the Objectives or Strategies is located in preamble sections of the SPP which decision-makers may not be entitled to consider, and the fundamental values which are sought by the Objectives are expressed in a Vision statement which is legally irrelevant and probably not even available as an aid to interpretation. The meritorious nature of most Objectives and Strategies is thus vulnerable to being undermined by interpretations which are contrary to their basic intent.
- (b) We note with approval that both in the Vision Statement and in a specific domain the importance of Wadawurrung cultural heritage is acknowledged and promoted, and has been strengthened since the earlier draft. The inclusion in the SPP of a Wadawurrung “statement of significance” is to be applauded. It is noteworthy that the strategies all involve direct involvement by the Wadawurrung people in determining what is needed, rather than being imposed by non-aboriginal planners.
- (c) The direct and indirect impact of implementing the objectives and strategies under the Settlements domain will be profound, because of the flow-on effect in assisting the achievement of the Objectives in almost every other domain. Conversely, any dilution of strategies in this domain (particularly by extending the areas open to urban-style

development) would have a disproportionate effect on the values sought by the DAL scheme, and is to be strongly resisted. As mentioned above there is still a need for community input into the specific detail of zoning within townships rather than defacto adoption of the Framework Plan reflected in the individual township maps.

- (d) As mentioned in paragraph 3.3 above, Health and Wellbeing is referred to in the Vision statement and in the Strategic Infrastructure domain. The domain preamble states that *“To ensure the declared area’s settlements are healthy, sustainable and liveable, health and wellbeing services must be accessible, community based and responsive to the region’s changing demographics”*. That statement is limited but acceptable. But once it comes to the binding Objective all reference to health and well-being has disappeared into a non-explicit comment about “essential services and community infrastructure”. The Strategies are even less able to be read as including health and wellbeing services. Looked at in isolation (as they are likely to be) the Objective and Strategies arguably have no application to health and wellbeing services, despite the preamble. To overcome this problem we recommend as follows:

Recommendation 9

- (a) Objective 7 be amended to read: “To ensure the integrated provision of transport, **health and wellbeing and other** essential services and community infrastructure ...”
- (b) Strategy 7.4 be amended to read: “Reinforce the timely delivery of infrastructure and services to meet community needs, **including needs for health and wellbeing services** ....”.

## 5. CONCLUSION

The draft SPP in many ways meets the expectations of the Bellarine community. It has identified and sought to implement the basic values and wishes of the community, and that is to be commended.

There remain areas of concern and elements which need to be improved.

CAG has particular concern with the structure and legal enforceability of the document. Because only limited parts of the document are identified as “binding” or “recommendatory” there is a real possibility that the remainder of it will be regarded as legally irrelevant for purposes of decision-making, as happened to the Bellarine Localised Planning Statement. That could subvert the whole

intention of the DAL scheme, and CAG has made specific recommendations to overcome that problem.

CAG is also concerned that the SPP reflects an unjustifiably constrained view of the area to be supported by provision of recycled water. We reiterate what was said in CAG's previous submission:

The Barwon Water 'solution' appears to be directed principally at meeting the needs of a relatively few existing large users of recycled water, mainly along the northern rim of the Bellarine. The southern and central portion of the Bellarine is insufficiently catered for, as are smaller users. A consequence is that the Bellarine is likely to be divided into those who can afford to pay for access to a water-supply, and those who either cannot afford to "buy-in" to the pipeline scheme or who are too distant from it to make it viable. It is not difficult to envisage the economic and social difficulties likely to arise from such a divisive and inequitable scheme – particularly as the effects of climate change make the disparity between the haves and have-nots more evident and more extreme.

We would be pleased to address with DELWP any issues arising from this submission.

20 August 2021

