

Wonthaggi growth area precinct

statutory strategy

Amendment C152 to the Bass Coast Planning Scheme

read in conjunction with explanatory report



In collaboration with



October 2020 v4

Version notes

Initial draft and structure – August 2020 1

First draft of rezoning and structure plan implementation – September 2020 2

First full draft for council review – September 2020 3

Consultation draft – November 2020 4

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1 INTRODUCTION

Bass Coast City Council ('Council') commenced structure planning for the Wonthaggi North East growth area precinct during the 2010s. From time to time VPA has assisted Council with structure planning. The *Bass Coast Planning Scheme* envisages the precinct as residential neighbourhoods with associated transport, community and recreation infrastructure and some employment land.

This paper scopes potential Victoria Planning Provisions and local provisions suitable for implementing the structure plan, infrastructure contributions and associated physical constraints. It then sets out a strategy for the statutory implementation of the structure plan into the Bass Coast Planning Scheme.

The recommendations are:

- Incorporate the PSP, DCP and NVPP;
- Leave in place existing GRZ1 and IN1Z zonings in the precinct;
- Rezone land on and around Regency Drive from LDRZ to GRZ1 and apply DPO21.
- Rezone all other land to UGZ1 (with applied GRZ1, C1Z, MUZ and C2Z) and IN3Z;
- Apply the IPO to the industrial precinct south of Inverloch Road to implement the PSP on those properties. Delete the DPO21 from this area to avoid the need for a development plan;
- Apply the DCPO across the precinct to levy contributions and provide exemptions from levies for those with appropriate existing contribution arrangements;
- Apply the NVPP across the precinct and provide exemptions for those who have already satisfied native vegetation obligations.
- Change the DPO21 to:
 - replace the current concept plan with plans from the PSP;
 - Remove provisions relating to the industrial precinct
 - Insert selected objectives from the PSP
 - Remove provisions duplicating the proposed DCP, NVPP and the applicable provisions of the GRZ and Clause 56.
- Apply the EAO to properties with a high risk of potential contamination and proposed for residential uses; and, require preliminary site investigation for properties with a medium risk of potential contamination through Schedules 1 to the UGZ, 2 to the IPO and 21 to the DPO.
- Apply PAOs in favour of Council on land required to create four DCP-funded intersections in the precinct;
- Remove the LSIO within the precinct, or alternatively, leave it in place and except buildings and works that generally accord with the PSP from a permit under that overlay;

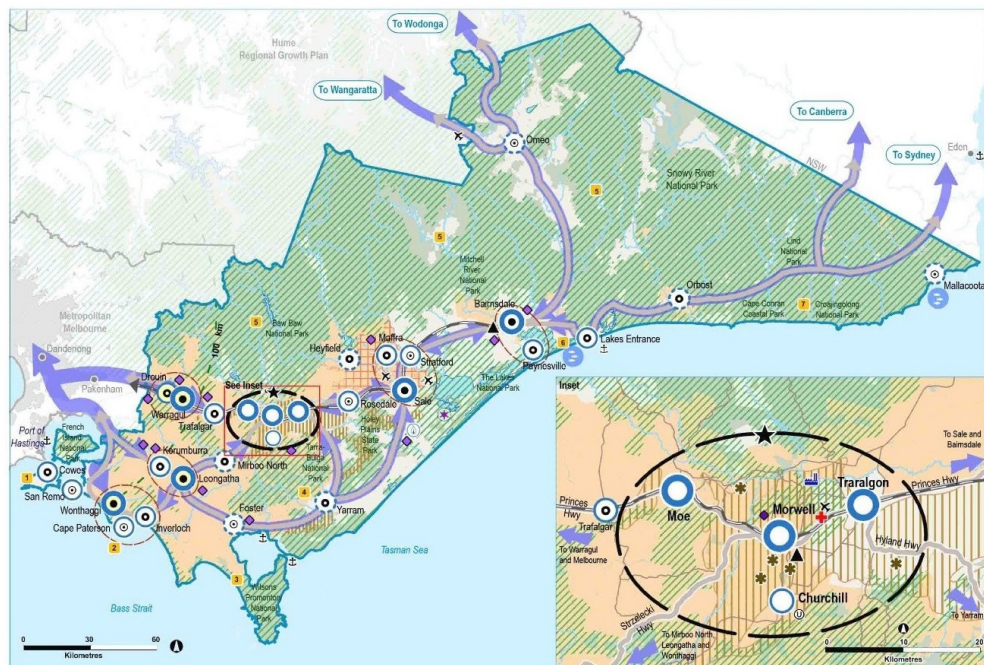
- Leave the existing BMO in place without a schedule;
- Leave the existing ESO in place.

2 STRATEGIC CONTEXT

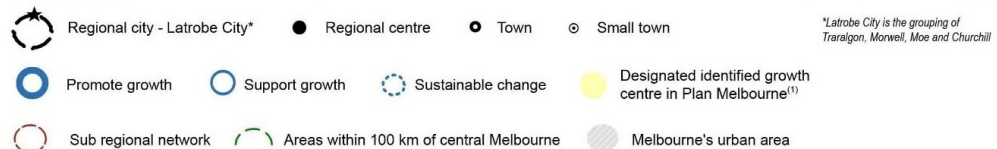
The following strategic plans are drawn from the Bass Coast Planning Scheme. The plans show that both the Victorian government and Bass Coast Shire Council have identified Wonthaggi township as suitable for further growth. The farmland around the northern and eastern edges of Wonthaggi are the preferred area for town growth.

Gippsland Regional Growth Plan

Bass Coast Planning Scheme, Clause 11.01-1R



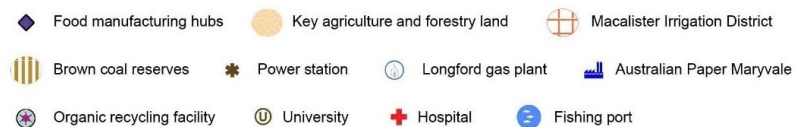
SETTLEMENTS



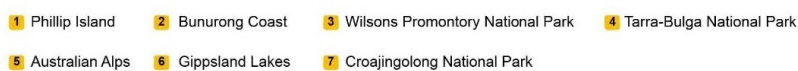
CONNECTIVITY AND TRANSPORT



ECONOMIC DEVELOPMENT



STRATEGIC TOURISM INVESTMENT AREAS

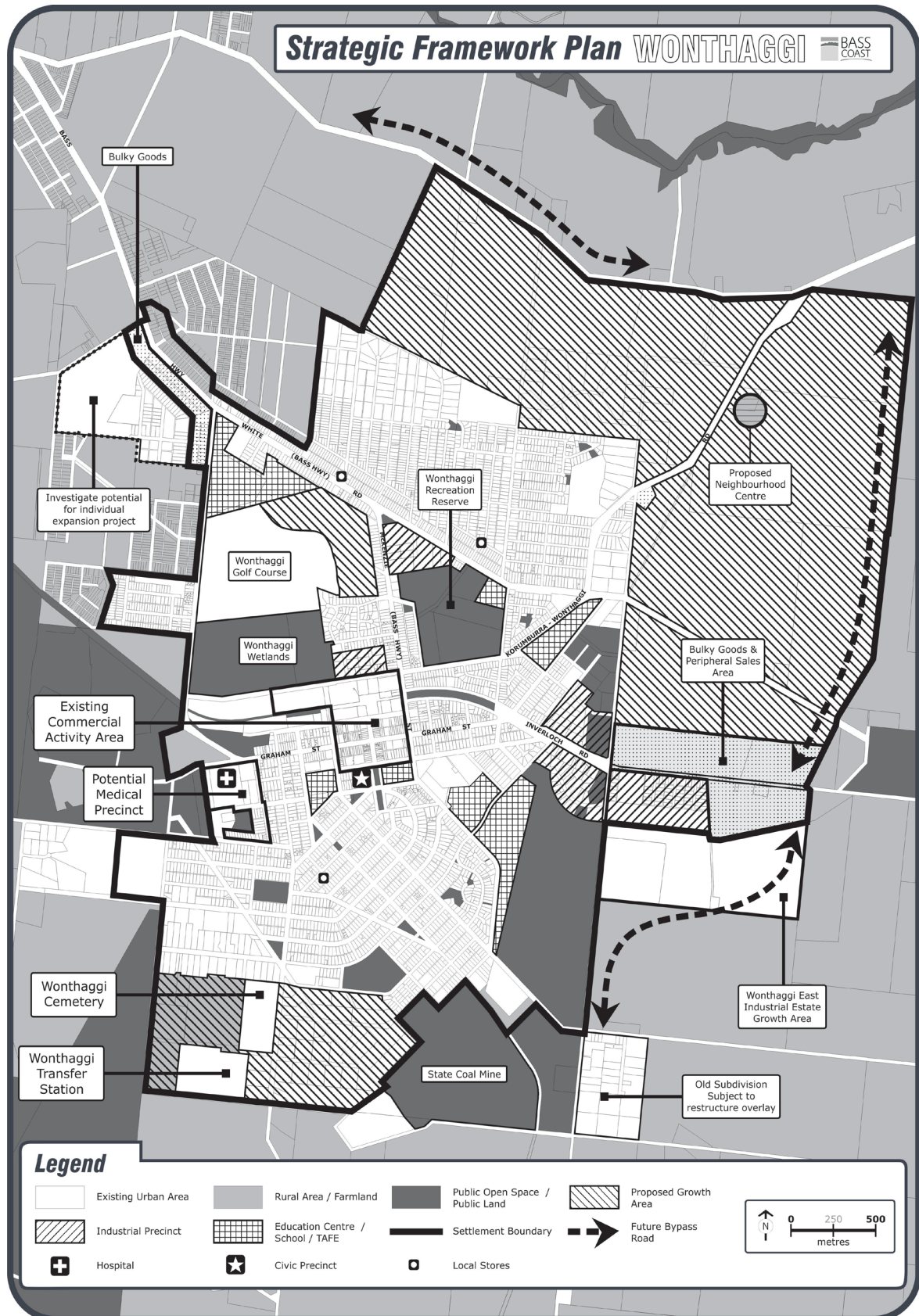


ENVIRONMENT



Wonthaggi strategic framework plan

Bass Coast Planning Scheme, Clause 21.07 High Growth Regional Centre



3 STRUCTURE PLAN FOR WONTHAGGI NORTH EAST

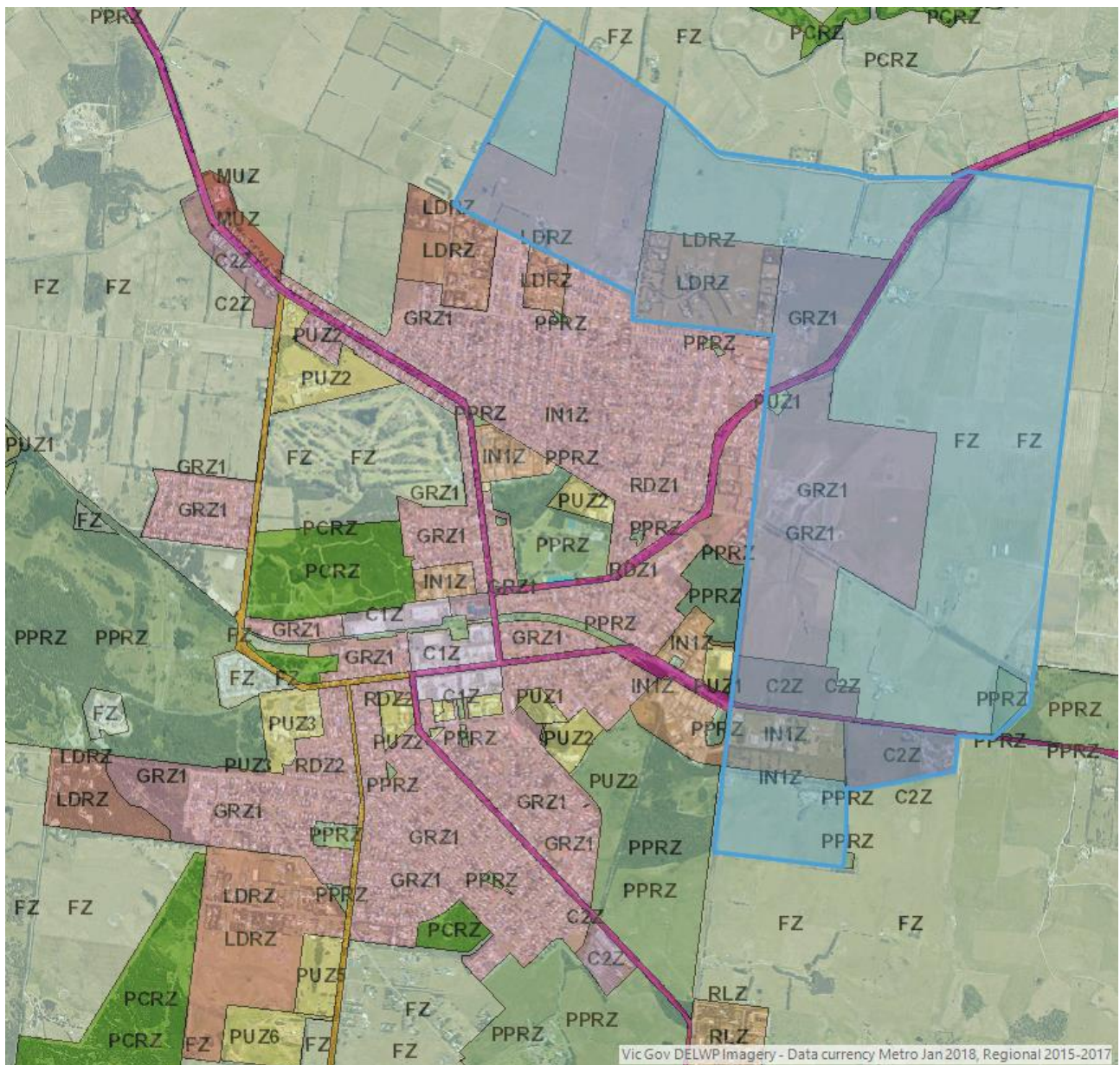
The first plan below shows the existing land use zoning of Wonthaggi overlaid with the preferred growth area.

The structure plan and infrastructure plans following have been drafted by Bass Coast Shire Council with input from the Wonthaggi community and state authorities including the VPA. They describe the proposed residential expansion of the town with allowance for road, drainage and recreation facilities.

The final plan identifies the remaining native vegetation in the growth area and shows which vegetation is proposed to be removed and which is proposed to be retained.

Current zone map with precinct boundary (blue)

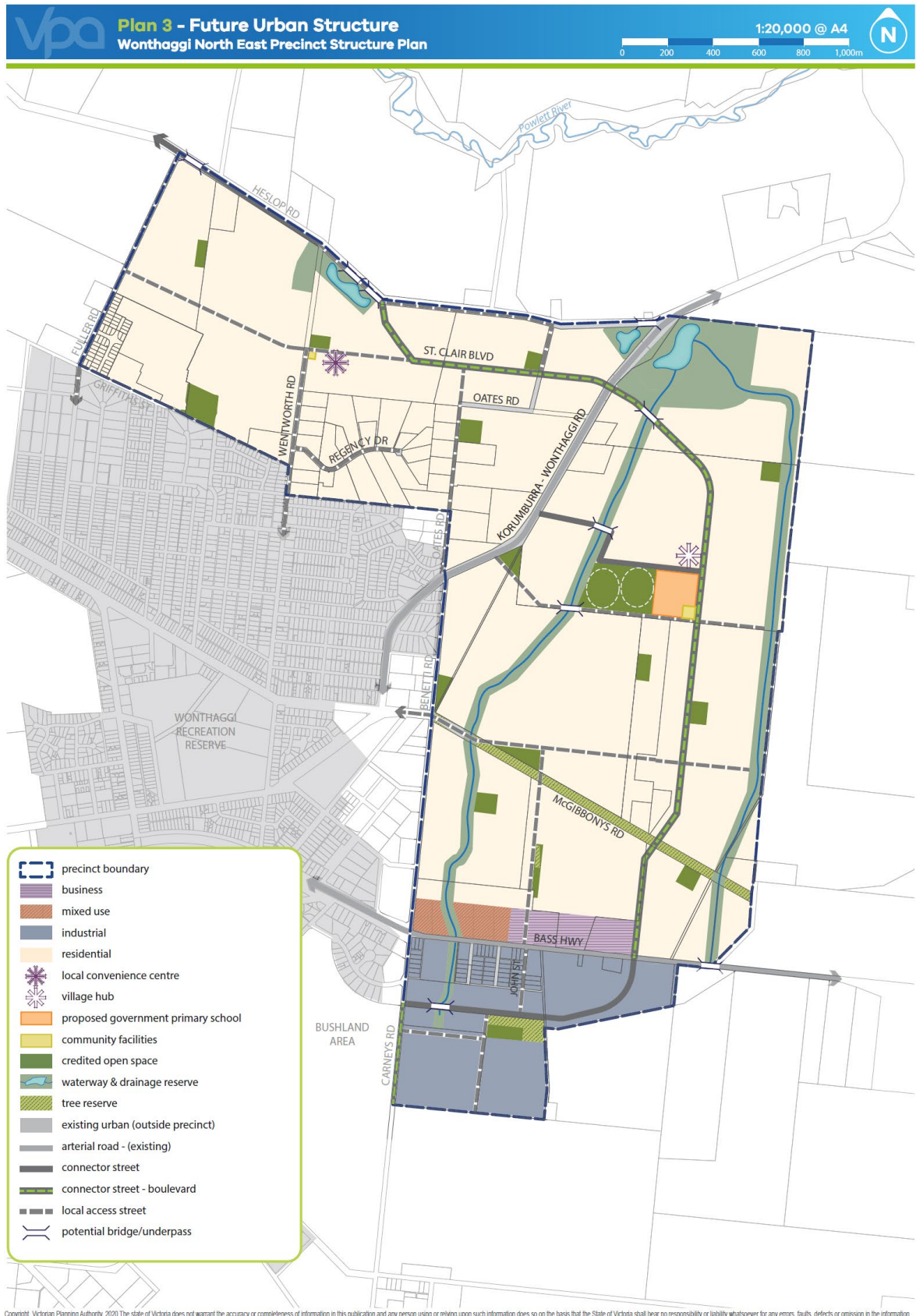
Bass Coast Planning Scheme, 10 June 2020



Source: VicPlan, aerial and zoning layers, 10 June 2020

Draft future urban structure, March 2020

Bass Coast Shire Council



4 SCHEME DRAFTING: RULES AND GUIDES

4.1 Powers, directions and practice notes

Established practice in creating Victorian planning schemes as relevant to this precinct area include:¹

- Facilitate development in accordance with the objectives of planning in Victoria;²
- Only regulate matters of land use and development that require regulation;
- Draft planning schemes within the powers and restrictions of section 6 ‘What can a planning scheme provide for?’ of the *Planning and Environment Act 1987* as well as sections:
 - 6A Easements, restrictions, etc.;
 - 7 Structure of planning schemes
 - 10 Restrictions and powers relating to the preparation of amendments
 - Part 3B development contributions plans (part. Sections 46I through 46M).
- Wherever possible use zones, overlays and provisions of the Victorian Planning Provisions that are not special purpose zones.
- Prefer performance-based regulation over prescriptive regulation.

Ministerial directions applying to the amendment are:

- Ministerial Direction - The Form and Content of Planning Schemes
- Direction No. 1 Potentially Contaminated Land
- Direction No. 11 Strategic Assessment of Amendments
- Direction No. 18 Victorian Planning Authority Advice on Planning Scheme Amendments
- Direction No. 19 Ministerial direction on the preparation and content of amendments that may significantly impact the environment, amenity and human health, and Ministerial requirement for information for authorisation or preparation of amendments that may significantly impact the environment, amenity and human health
- Preparation and Content and Reporting Requirements for Development Contributions Plans.

DELWP practice notes that may inform drafting of the amendment include:

- PPN13: Incorporated and background documents

¹ See also *A Practitioner's Guide to Victorian Planning Schemes*, Version 1.0, September 2018 (Victorian Department of Environment, Land, Water and Planning) Chapters 4 and 5. Some relevant extracts are shown overleaf.

² See section 4 of the *Planning and Environment Act 1987*.

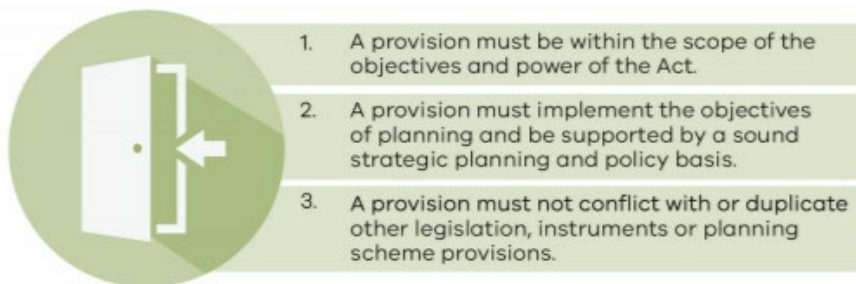
- PPN23: Applying the Incorporated Plan and Development Plan Overlays
- PPN30: Potentially Contaminated Land
- PPN59: The Role of Mandatory Provisions in Planning Schemes
- PPN64: Local planning for bushfire protection
- PPN91: Using the residential zones
- PPN92: Managing buffers for land use compatibility.

4.2 Drafting ‘rules’

Extracts from *A Practitioner’s Guide to Victorian Planning Schemes*, Version 1.3, January 2020 (Victorian Department of Environment, Land, Water and Planning), p 20.

4.2 Entry rules

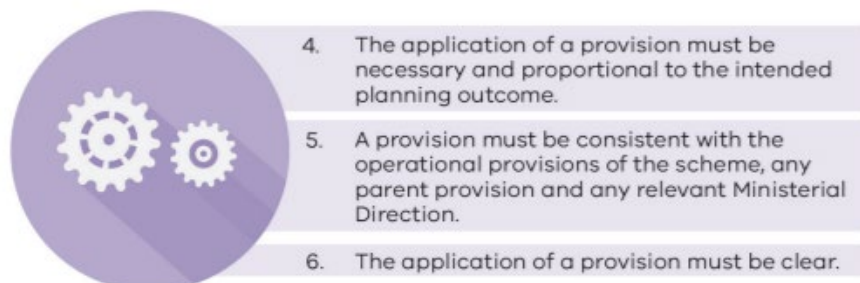
The intended outcome must be within the scope of the objectives and power of the Act and have a sound basis in strategic planning and policy.



...

4.3 Application rules

A provision must be necessary and proportional to the intended outcome and apply the VPP in a proper manner.



...

...

4.4 Drafting rules

A provision must be clear, unambiguous and effective in achieving the intended outcome.



7. The requirements of a provision must be clear and unambiguous.
8. A provision must be structured to be clear and unambiguous.
9. A provision must be written to be clear and unambiguous.

5 PRECINCT STRUCTURE PLAN IMPLEMENTATION

Recommendations

- Incorporate the PSP by listing it in the Schedule to Clause 72.04;
- For Farming Zone land intended for new residential neighbourhoods, mixed use and business apply the PSP through the Urban Growth Zone;
- For existing IN1Z and proposed IN3Z land, apply the Incorporated Plan Overlay – naming the PSP as the incorporated plan.
- for existing zoned GR1Z land subject to DPO21 and the Regency Drive LDRZ – insert the future urban structure and selected PSP content into the DPO requiring development plans to generally accord with the future urban structure.

5.1 The precinct structure plan

Council and the VPA have prepared a precinct structure plan (PSP) to describe the intended future use and development of the Wonthaggi North East precinct. The PSP generally follows the layout and format of a metropolitan growth area PSP and contains an 'outcomes' section with a written vision and objectives and a graphic 'future urban structure'. Further sections address the elements making up the future urban structure and include plans, requirements, guidelines, tables and figures.

Generally, a strategy such as a structure plan may be implemented by wholly or partly incorporating the document into the planning scheme or, using the structure plan as a reference document to inform the drafting of the Planning policy framework and application of zones and overlays.

In Wonthaggi North East the precinct structure plan is a comprehensive document that addresses the range of land use and development issues relevant to the establishment of new neighbourhoods. Subject to the ordinary final review for duplication and consistency with the planning scheme and relevant legislation, the structure and intent of the plan is clear, relevant and proportional. In addition to the overall 'Outcomes' the plan sets out provisions for:

- Township image and character, heritage, land contamination and housing
- Village Hub and Employment
- Open Space, Community Facilities and Education
- Bushfire resilience, Biodiversity, Threatened Species and Native Vegetation Retention
- Transport and Movement
- Integrated Water Management and Utilities
- Sequencing, staging and infrastructure delivery.

Each element in the plan depends on implementation of the other elements to create the neighbourhood. For example, open space sets out the necessary local parks but also takes account

of the open space opportunities of waterways and existing trees. A further example is the location of community and retailing uses along connector streets which recognises that these streets carry buses, provide direct walking and cycle access from other parts of the neighbourhood, and provide good on-street carparking.

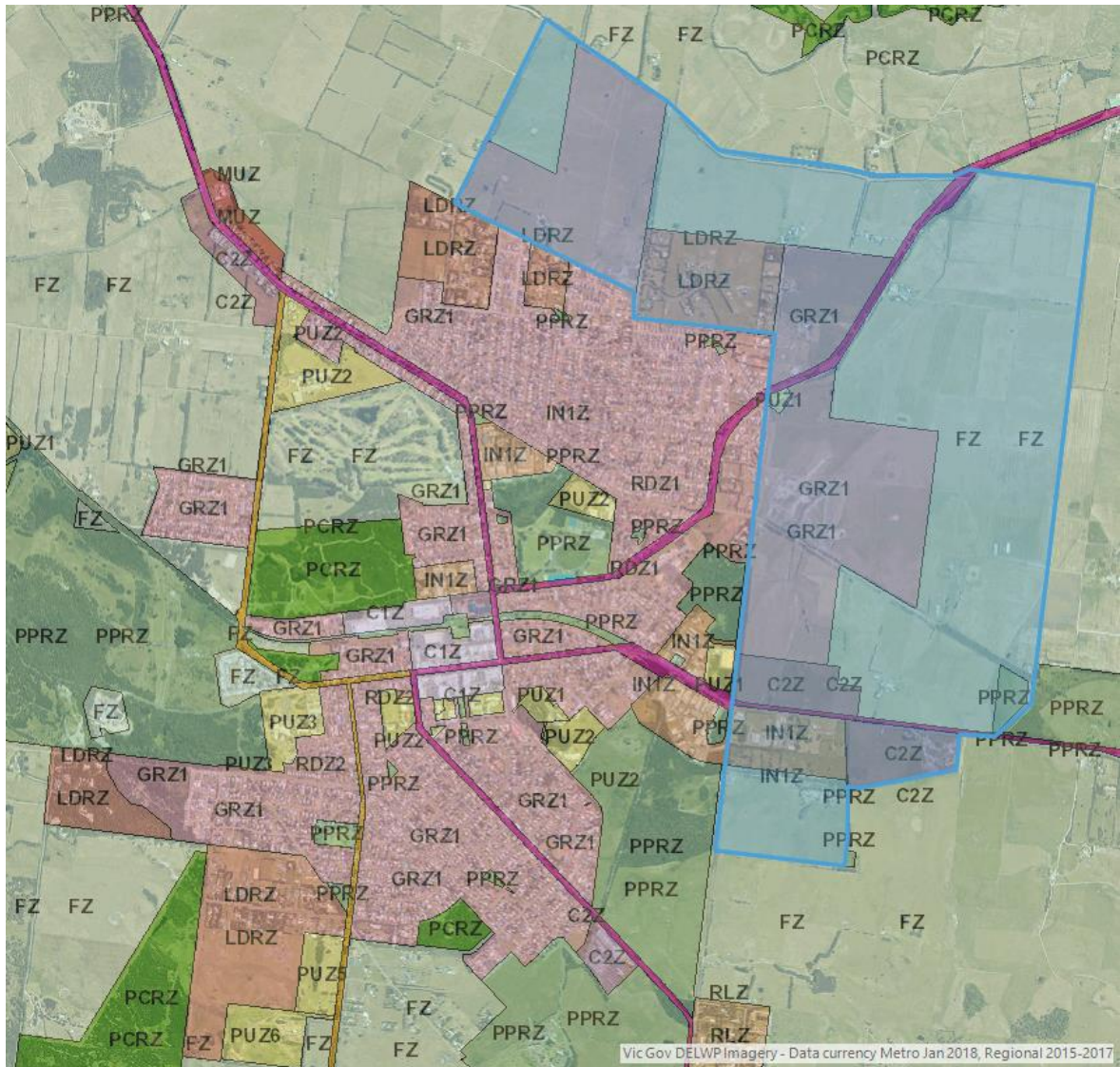
The PSP also seeks to integrate and balance plan elements across many individual properties. The plan locates some elements within individual properties and in some cases uses road boundaries as element boundaries. However, most structural elements of the plan cross multiple property boundaries to create a coordinated outcome for the planned new neighbourhood.

The above characteristics of the plan lend themselves to incorporation of the whole PSP. This will ensure the whole-of-plan outcomes are considered in an integrated and logical manner when planning permit applications are decided. Incorporation requires listing the PSP in the Schedule to Clause 72.04. The discussion below recommends using a combination of applying the PSP through the Urban Growth Zone and the Incorporated Plan Overlay.

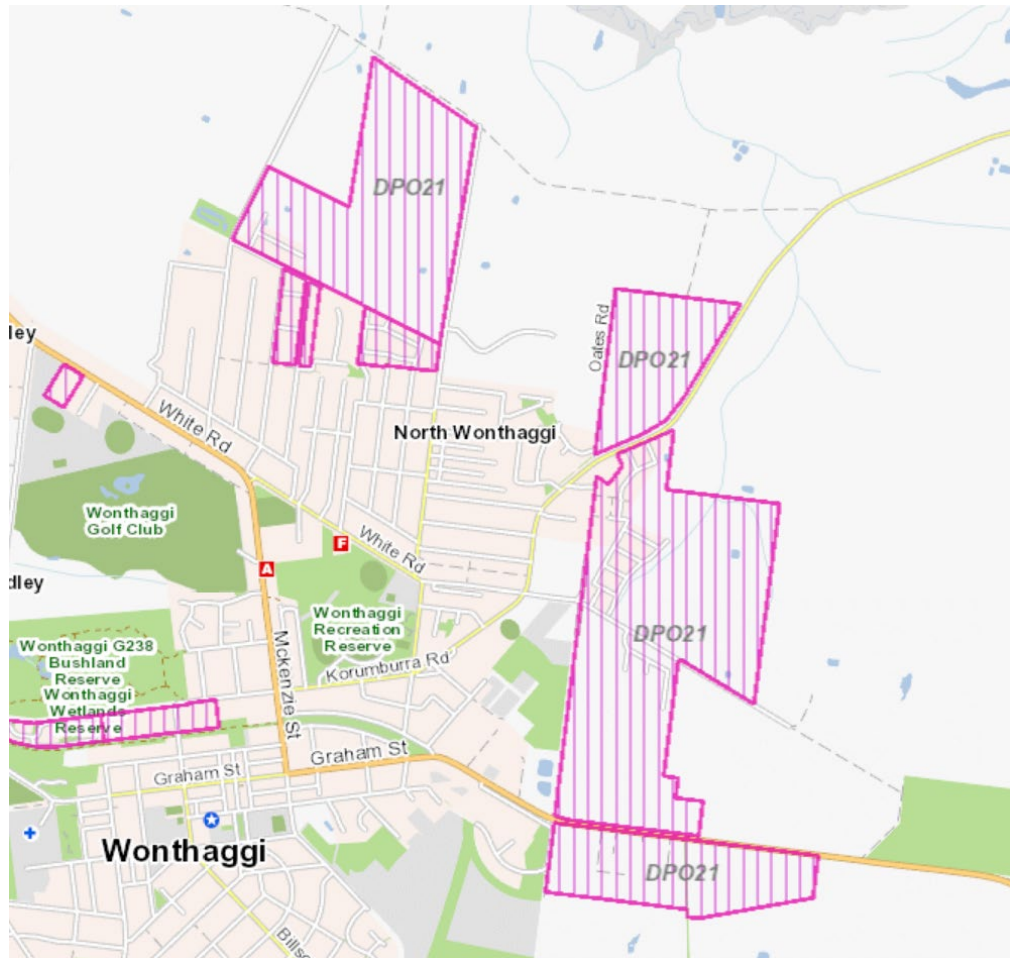
5.2 Zoning and structure plan incorporation

The current zoning map shows around a third of the precinct area already zoned for urban purposes including General Residential Zone 1, Commercial 2 Zone, Industrial 1 Zone. The remainder of the precinct is zoned Farming Zone, with the Regency Drive neighbourhood being Low Density Residential Zone and a small pocket of Public Park and Recreation Zone located in the southeast corner. Two arterial roads traverse the precinct and are zoned Road Zone Category 1.

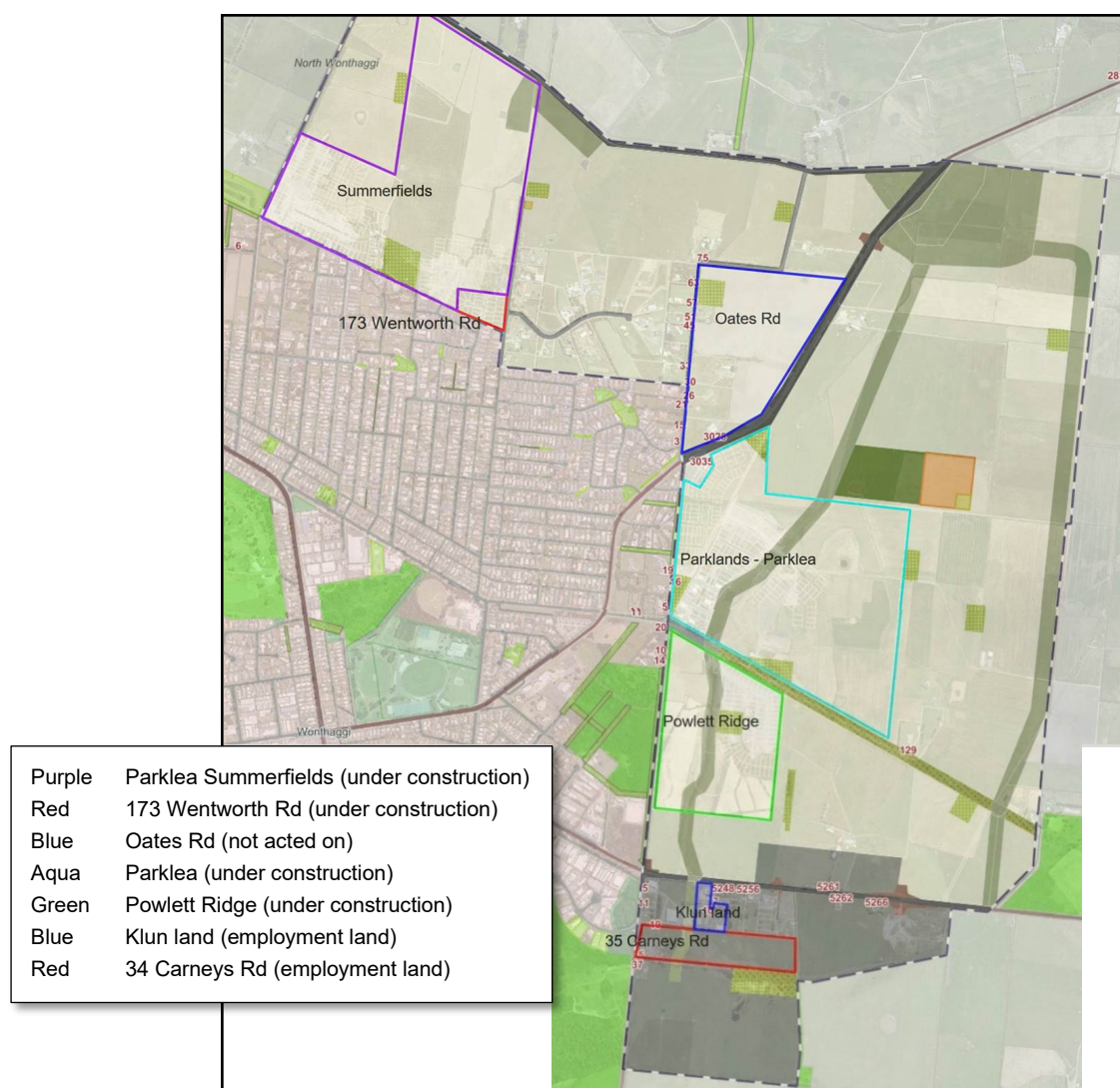
Current zoning: Land on the town edge within the precinct is currently zoned for urban development. Implementation of the PSP requires urban zonings for Farming Zone land along the outer town growth front.



Land currently subject to DPO21: Properties on the town's northern and eastern edges are currently under development for new housing and zoned GRZ1. Commercial and industrial zoned land south of Inverloch Road is partly developed.



Current approvals within DPO21



5.2.1 Residential neighbourhoods

Existing General Residential Zone and Regency Drive land

The existing General Residential Zone areas land in the precinct are progressively being developed for housing. That zone, in concert with DPO21, is broadly carrying out the intent of the structure plan for that land – the structure plan shows that land as ‘residential’ with incidental local parks and drainage areas; see also discussion below regarding application of structure plan to these lands. To reinforce the need for delivery of the PSP, the future urban structure should be referenced into the DPO21 with a requirement that any future development plan or amendment to a development generally accord with the PSP’s Future Urban Structure.

The Regency Drive estate is currently zoned Low Density Residential and developed for housing on lots between approximately 0.4ha and 2.4ha in area. However, the structure plan shows the land as residential with urban densities. The LDRZ is unsuited to providing the outcomes sought by the structure plan. Zoning this area to General Residential Zone would be consistent with the surrounding zones and the intent of the structure plan. There is some need for structural consistency and integration with surrounding land. There is also a need for coordination at the lot level given the

fragmentation – this should be achieved through applying DPO21 with the PSP’s Future Urban Structure referenced in to the DPO21 schedule. This will allow for an interim coordinating plan that addressed the finer grain issues arising from the existing settlement pattern on Regency Drive.

New residential neighbourhoods – currently Farming Zone

The broader new residential areas outside of the above includes two community facilities, a school, public reserves and a convenience centre and village hub. All but the latter two uses can be accommodated in a residential zone. However, the retail and business uses planned for the convenience centre and village hub require a Commercial 1 Zone or Mixed Use Zone.

There is difficulty associated with applying a conventional zone to these uses. This lies with the unspecified extent and shape of the two centres and their relationship with surround elements. It is appropriate for a structure plan at this scale to allow for the location and shape of those centres to be determined at the subdivision stage together with the layout of adjoining elements. Prescribing that level of detail in the structure plan – particularly absent any natural or lot boundaries as is the case here – runs a high risk of triggering a further untimely planning scheme amendment. Layout and design changes often arise at the detailed subdivision design stage in response to the more detailed site and market knowledge at that stage.

In this plan the centres are intended to have a strategic arrangement with adjoining streets, community facilities, a school and sports reserve. All these elements have capacity for rearrangement at the subdivision stage within the constraints of generally according with the structure plan.

The only realistic conventional zone approach is to rezone the whole of the new residential neighbourhoods, including the centres, to a residential zone. For a subdivision permit to generally accord with the structure plan the centres would need to be set aside on the relevant residential subdivision plan. Once this is achieved the centres would require a further planning scheme amendment to zone the land commercial, mixed use or other zone deemed suitable at the time.

One further approach, although not recommended, would be to approximate the area within which the centres are to occur. This would involve zoning an area of Commercial or Mixed Use Zone larger than necessary for the actual centre but large enough to allow for movement at the subdivision design stage.

The alternative, and more workable statutory strategy, is to apply the Urban Growth Zone to the whole of the residential neighbourhood area including the non-residential uses. Within the zone schedule the Commercial 1 Zone and General Residential Zone can be applied – in the manner provided for in the Urban Growth Zone – to the centres and the balance of the residential neighbourhoods respectively. This strategy allows for the subdivision design process to appropriately settle the centres’ location and makes available to appropriate zoning immediately to facilitate the desires commercial use and development.

It is true that the Urban Growth Zone practice note envisages a planning scheme amendment to regularise Urban Growth Zoned land to conventional urban zones as soon as practicable e.g. after

the relevant subdivision pattern is established. This suggests that whether conventional or a special purpose zone are used, a regularising scheme amendment would be required for the centres. However, the lengthy timeframes often required for rezoning amendments militates against the desire to efficiently facilitate development in line with the structure plan. The conventional zoning approach would force centre development to wait for a further rezoning, whereas the Urban Growth Zone approach allows permit applications and development to proceed even where the regularising amendment is not complete. Given the centres are a crucial community-making element for the new neighbourhoods, minimising any foreseeable administrative delays to their development is a prudent approach by using the Urban Growth Zone.

5.2.2 Inverloch Road industrial and business/mixed-use areas

Approximately two thirds of existing Industrial 1 Zone land on the southeast corner of Inverloch Road and Carneys Road is subdivided and serviced – some premises have been constructed. The only physical structure plan element affecting this land is a drainage line which appears yet to be established.

Areas of Commercial 2 Zone are located on the north and south sides of Inverloch Road. The structure plan describes the south side Commercial 2 Zone land as ‘industrial’. In the structure plan ‘Industrial’ should be read in the context of land on the north side of Inverloch Road labelled ‘business’. There is no description or guidance in the structure plan on the ‘industrial’ area. The ‘business/mixed-use’ area is described as:

The role of the Business/Mixed Use area is to provide a concentrated precinct of employment and services with an element of residential living.

In the business area the range and size of lots will provide opportunities for existing businesses in the town to relocate and expand as well as attracting new employers to Wonthaggi. Whilst the mixed use area provides an interface between the core business and residential uses and caters for a broad range of employment and higher residential densities.

This suggests that there is a distinct industrial intent for the south side of Inverloch Road with a more commercial, non-industrial ‘business’ area on Inverloch Road’s north side. This is reinforced by Industry strategies 1.1 and 1.2 at Clause 21.03-3:

- *Encourage new industrial development to locate in Wonthaggi to build on the existing infrastructure and industrial base.*
- *Encourage new and existing industries to locate within existing and planned industrial estates where all physical infrastructure is available, and which are readily accessible to transport networks.*

And local area implementation at 21.07-2:

Industrial

- *Supporting a consolidated industrial precinct located south of Inverloch Road, as shown in the Wonthaggi Strategic Framework Plan.*
- *Encouraging the relocation of existing industrial uses to appropriate areas as shown in the Wonthaggi Strategic Framework Plan.*

This policy context leans towards the current Commercial 2 Zone land at the eastern extent of the 'industrial' area shown in the structure plan being zoned Industrial 1 Zone. In combination with application of the Commercial 2 Zone to the 'business' area, this would signal the intent of the structure plan to use Inverloch Road as the northern boundary of the industrial precinct. Industry, office and non-shop retailing are available in the Industrial 1 and Commercial 2 Zones – this will allow for those uses to be established in either the industrial or business areas while signalling the intended dominant 'industrial' or 'business' use for each area.

The existing Industrial 1 Zone land south of Inverloch Road has developed consistent with the structure plan and the existing zoning is suitable to remain in place. If the structure plan is necessary to implement the drainage element planned for the land the structure plan can be incorporated through the Incorporated Plan Overlay.

Land south of Inverloch Road can be conventionally zoned Industrial 1 given the existing property boundaries align with the areas shown on the structure plan.

There appears to be no significant structural work, beyond the PSP content, required south of Inverloch Road. In that light it is proposed that the DPO21 applying to these areas be replaced with an IPO that incorporated the PSP. This removes an unnecessary intermediate development plan approval and streamlined approvals for this employment area – development in these areas can then proceed to planning permit application having regard to the PSP.

for the reasons outlined above under 'residential neighbourhoods', the UGZ should be used to apply the Mixed Use Zone to the mixed-use area and the Commercial 2 Zone to the business area.

5.2.3 Post-rezoning administration

Residential Neighbourhoods

As discussed above all zoning options for the residential neighbourhoods involves a further scheme amendment at some point in time. As the preferred option for the residential neighbourhoods is Urban Growth Zone, this recommends that Council and DELWP consider progressively rezoning properties from the Urban Growth Zone to the appropriate underlying zone when the first phase of subdivision and development is complete.

These rezonings would 'decommission' the structure plan and put the new neighbourhoods on the same footing as the existing urban area to facilitate ongoing redevelopment and change of use applications. All thing being equal such rezonings could be considered under 20A of *the Act*.

Inverloch Road industrial and business/mixed-use areas

Areas south of the Bass Coast Highway will not require rezoning as their underlying zone will be put in place through this amendment. As the mixed use and business areas north of the highway are proposed for Urban Growth Zone, they will require the same monitoring and progressive rezoning as per the residential neighbourhoods.

5.3 Management of physical hazards

Recommendations

- Delete the LSIO from the precinct area or insert an exemption from the need to obtain a building or works permit where the buildings or works 'generally accord with the PSP' or are constructed in a subdivision approved generally in accordance with the PSP.
- Retain the BMO in its current form as it affects the precinct area.

A small area of Land Subject to Inundation Overlay affects the northern edge of the precinct (in blue), while a thickly forested conservation reserve and a scattering of local parks on the west side of Carney Roads have generated a Bushfire Management Overlay in the southern part of the precinct. There are no Environmental Audit Overlays in the precinct.



5.3.1 Floods

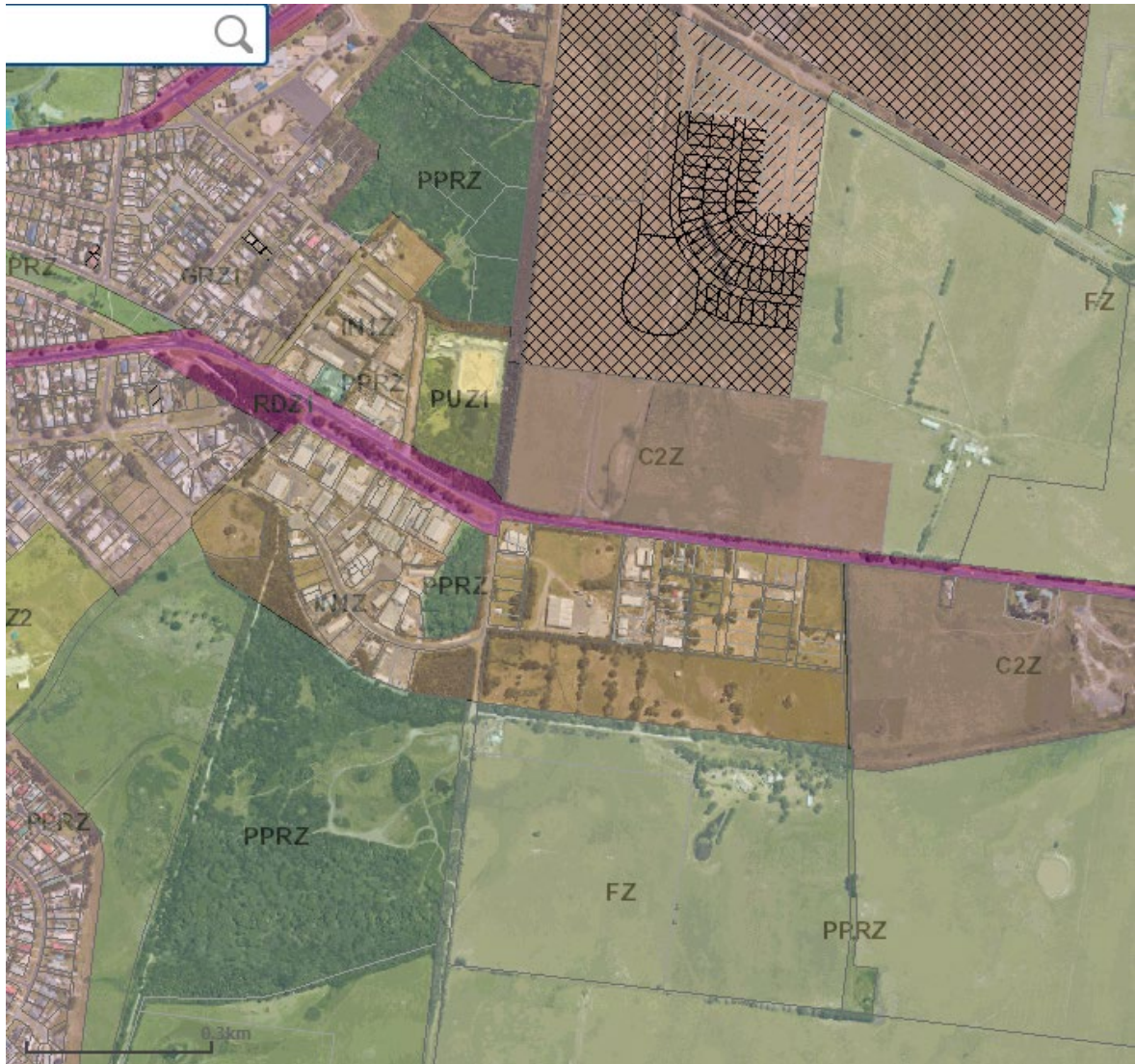
The PSP, with the regional floodplain management authority's support, proposes a comprehensive urban drainage strategy for the precinct. For this reason, the Land Subject to Inundation Overlay (LSIO) could be removed on the basis that the PSP will provide satisfactory regulation of flooding issues.

Removing the LSIO runs a small risk of non-urban works on the LSIO-affected property not being appropriately regulated before urban development commences. However, the property is at the edge of the overall extent of the LSIO and is south of Heslop Road which acts as a physical barrier to runoff continuing north from the property resulting in a low risk of any impact on the land and waterway to the north which the LSIO seek to protect.

If it is more prudent to retain the LSIO to protect against this risk, an entry should be made in the LSIO schedule exempting buildings and works 'generally in accordance with the WNE PSP' from the need for a permit under the LSIO – this will prevent ordinary homes requiring a permit subsequent to urban subdivision. There is no ability to schedule out the LSIO requirement for a subdivision permit – however as a subdivision permission will be required for urban development including referral to the drainage authority, there is no material regulatory burden imposed on subdivision by retaining the LSIO.

5.3.2 Bushfires

The current Bushfire Management Overlay is a modelled shaped extending up to 180m from its bushfire hazard. The hazard is the Wonthaggi Bushland Reserve – a non-contiguous, but relatively dense scrubland with a small area of woodland west of Carneys Road (see dense dark green vegetation marked PPRZ and PUZ1 below).



Development is already occurring within the BMO, suggesting that bushfire risk can be brought within acceptable levels through use of the BMO. As described by the bushfire report³ for the area:

The landscape setting of the WNEPSP area accords best with the low risk Landscape Type 1. Apart from the relatively small area of Woodland and Scrub

³ Bushfire Development Report for Wonthaggi North East Precinct Structure Plan (Terramatrix October 2018) pp 36-7.

within the Wonthaggi Bushland Reserve, immediately west, there is little hazardous vegetation beyond 150 metres of the precinct except grassland.

The Wonthaggi Bushland Reserve is relatively small and would therefore not support a large 100m wide bushfire moving at a quasi-steady-state rate of forward spread directly at buildings, as envisaged in the AS 3959-2009 methodology.

Access for people in the precinct would be readily available to reliably low threat or non-vegetated areas that can provide shelter from bushfire

Bushfire Management Overlay – application and extent

The PSP proposes mixed use and industrial opposite the bushland reserve. To manage any bushfire risk to this development, retention of the BMO is proposed.

No change to the BMO area is proposed. The bushfire report was prepared using an earlier version of the precinct structure plan. The report proposed a potential contraction of the BMO to the west based on a planned open drainage area, a potential buffer against bushfire spread, extending to the southern boundary of the precinct. This waterway is now truncated much closer to Inverloch Road than the southern precinct boundary. Further, the proposed contraction was marginal and in the context of a bushfire policy that seeks to prioritise human life above other policy considerations, this marginal reduction in regulation does not appear warranted.

Whether to apply Schedule 1 to the BMO

The bushfire report also recommends potential application of Schedule 1 to the BMO to the BMO within the precinct. That schedule sets out specific requirements for construction of dwellings that largely default to the standards of Clause 52.03. In the context of a greenfield development where subdivision will precede dwelling construction, the mandatory subdivision condition at Clause 44.06-5 will achieve these outcomes.

In the absence of gaining any permit exemptions, the predominant industrial and mixed use development proposed in the BMO areas, and Schedule 1's limited guidance beyond that provided in Clause 52.03, there appears little to be gained from applying Schedule 1 in this instance.

5.3.3 Ground contaminants

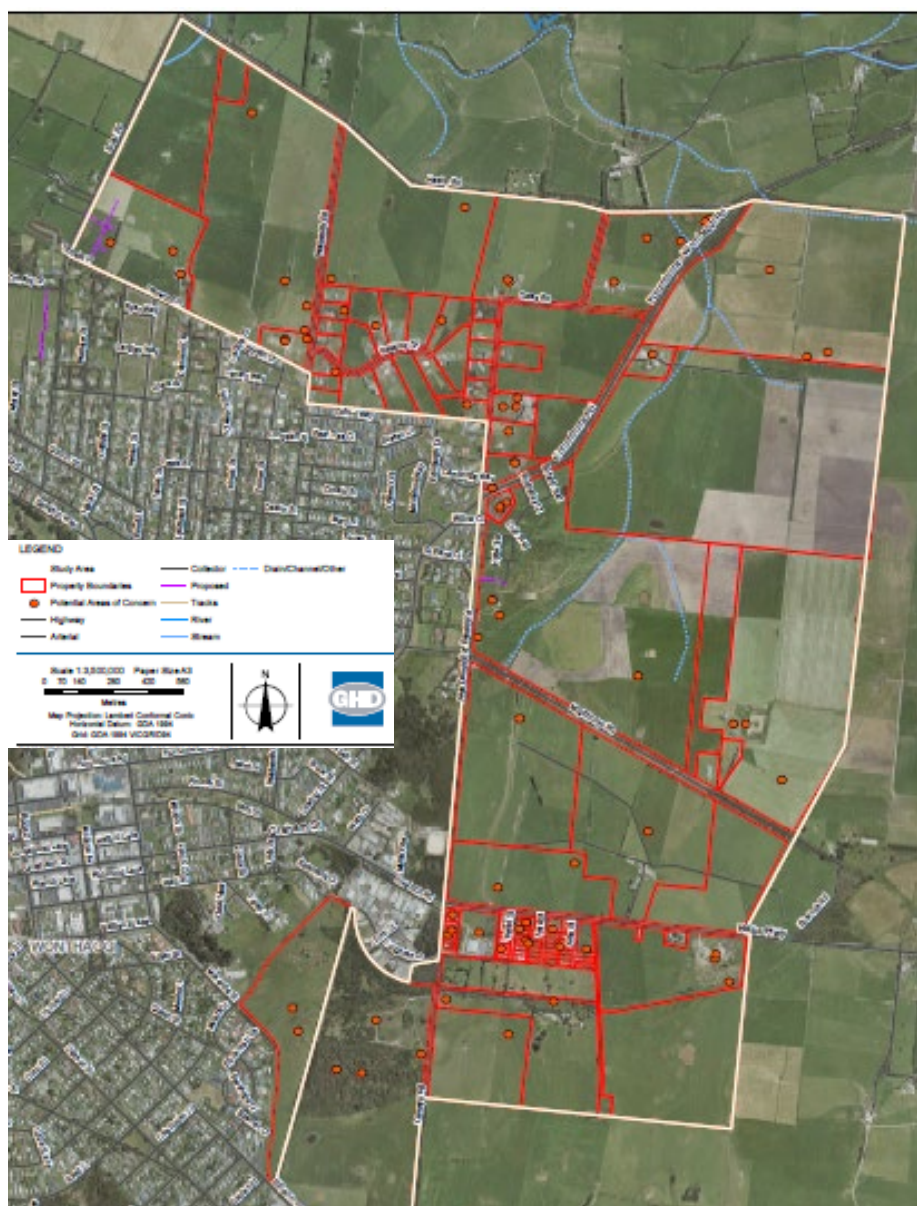
The project proposes to rezone some farmland to facilitate residential uses. Bass Coast Shire Council commissioned an environment site assessment ('the ESA')⁴ of potential ground contaminants associated with historic activity on the land. Council commissioned a Preliminary Site Assessment

⁴ Wonthaggi North East Growth Area Planning Studies: Contaminated Land Investigation (GHD, April 2016).

(‘the PSI’)⁵ of the thirteen properties identified in the ESA as having a high risk for potential contamination.

The land and ‘areas of concern’

GHD assessed each property against a variety of historical land use record databases, records on the EPA register and followed up with a visual inspection from adjoining public roads and reserves. GHD identified spot areas for concern as described in the map below. Each area is described on Table 8 of GHD’s report.



⁵ Phase 1 preliminary site investigation: Wonthaggi Precinct Structure Plan - North East Growth Area (GHD, May 2019)

5.3.4 Statutory guidance and direction

Planning and Environment Act 1987

The VPA and Bass Coast Shire Council intend to recommend to the Minister for Planning that he act as planning authority for C152 to the Bass Coast Planning Scheme. Section 12 of *the Act* requires that a planning authority preparing a planning scheme amendment:

- (b) must take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment⁸; and
- S. 12(2)(b)
amended by
No. 86/1989
s. 25(d).

Potential contaminants associated with previous and current uses of farmland and incidental industry in the precinct might have significant effects on future residential and school users of the land. This proposed amendment takes account of those potential effects while having regard to the ESA and the PSI.

Ministerial Direction No. 1: Potentially contaminated land

This direction applies as the amendment proposes to allow residential uses on land currently used for industry. The relevant requirement that a planning authority must consider is:

*“a planning authority must satisfy itself that the environmental conditions of that land **are or will be suitable** for that use.”*

To be satisfied that environmental conditions **are suitable** for a sensitive use **before** the amendment is approved the direction is to:

“Before it gives a copy or notice of the amendment under Section 17, 18 or 19 of the Act, a planning authority must ensure that:

- a) A certificate of environmental audit has been issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- b) If the amendment allows a sensitive use only in accordance with plans included or referred to in the amendment an environmental auditor appointed under the Environment Protection Act 1970 has made a statement in accordance with Part IXD of that Act that the environmental conditions are suitable for the sensitive use in accordance with those plans.”*

To be satisfied that environmental conditions **will be suitable** for a sensitive use **after** the amendment is approved the direction is to:

“A planning authority must include in the amendment a requirement to the effect that before a sensitive use commences or before the construction or carrying out of buildings or works in association with a sensitive use commences:

- a) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- b) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of that land are suitable for the sensitive use.”*

The explanatory note expresses a preference that a planning authority is satisfied that environmental conditions **are suitable** for sensitive uses, before exhibiting a planning scheme amendment. However, it also explains when it is appropriate for a planning authority to be satisfied that the amendment itself ensures environmental conditions **will be suitable** for sensitive uses:

“If testing of land before a notice or copy of the amendment is given is difficult or inappropriate, a planning authority may alternatively require a certificate or an auditor’s statement at a later date. Under this option, the requirement for a certificate or statement to be issued before a sensitive use commences or buildings or works associated with a sensitive use commences must be included in the amendment.”⁶

The ESA and PSI have been undertaken at a precinct level on behalf of Bass Coast Shire Council. Full and direct access to all land in the precinct was not available. However, all land in the precinct was surveyed for its historical uses and at least an over-the-fence inspection as reported in the ESA. Those properties identified in the ESA with high potential for contamination were assessed in further detail as reported in the PSI.

Given the size and varied ownership of the precinct it is not practicable to carry out a full end-to-end identification and remediation of contamination before approval of a planning scheme amendment. All urban development facilitated by the amendment will require planning permits before development or occupation can occur. Most requirements seeing to further identify and remediate potential contamination are appropriately enforced at that stage – that is as close to the point in time before works or occupation commence.

General Practice Note: Potentially Contaminated Land (June 2005)

This practice note refers to the legislative and Ministerial Direction provisions noted above. It then illustrates practices that will assist in appropriately identifying and regulating any potentially contaminated land in accordance with the legislation and direction.

Identifying potentially contaminated land

Research techniques for identifying potential contamination sources include:

⁶ Under ‘How must a planning authority satisfy itself?’.

- Site inspections with a focus on any evidence of contamination or historical activities that may give rise to contamination (for example, fuel tanks).
- The current and previous zoning, ownership or activities carried out on the site (for example council, rail, other utility or defence). Council rate records are a useful record of this information.
- Any previous investigations or site assessments conducted.
- Any potential contamination from surrounding land uses (for example, an adjacent service station known to be causing off-site contamination).
- Review the EPA Priority Sites Register for information about sites with a current EPA Notice (for example, clean-up notice or pollution abatement notice).
- A suitably qualified environmental professional may provide an opinion on whether land intended for a sensitive use, is potentially contaminated.
- Information from landowners⁷

Determining the appropriate level of assessment

A risk matrix is then provided suggesting the appropriate level of regulatory response for three categories of land at different potential contamination levels. The appropriate level of response in this precinct is 'sensitive uses' for residential and mixed-use land, and 'other uses' for all other land.

| Proposed Land-Use | Potential for Contamination (see Table 1 of practice note) | | |
|--|--|--------|-----|
| | High | Medium | Low |
| Sensitive Uses: childcare centre, pre-school or primary school | A | B | C |
| Sensitive Uses: dwellings, residential buildings etc. | A | B | C |
| Other Uses: Open space, agriculture, retail or office, industry or warehouse | B | C | C |

⁷ *General Practice Note: Potentially contaminated land*, June 2005 (Victorian Government Department of Sustainability and Environment), pp2–3 – selected as appropriate to the circumstances of Casey C207.

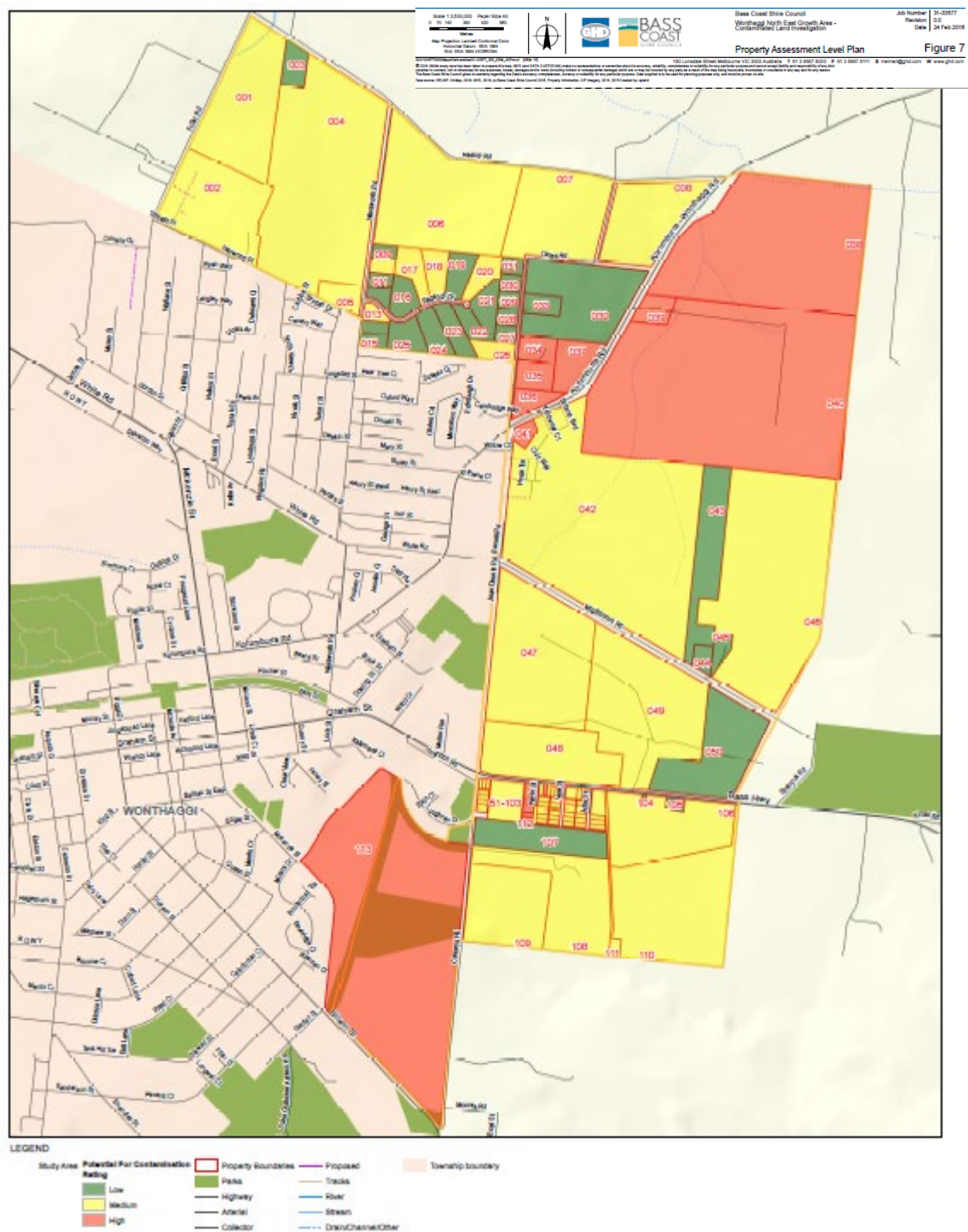
In the table above:

A = Require an environmental audit or apply the Environmental Audit Overlay.

B = Require a site assessment from a suitably qualified environmental professional if insufficient information is available to determine if an audit is appropriate. If advised that an audit is not required, default to C.

C = General duty under Section 12(2)(b) and Section 60(1)(a)(iii) of the Planning and Environment Act 1987.

The map below shows the risk rating for each property in the precinct as reported in the ESA – note the colour code is different from the table.



Re-ranking of some properties ranked *high* in the ESA by PIS (red on the above map)

GHD undertook a Preliminary Site Investigation (PSI) of properties ranked high risk in the ESA and re-ranked the properties as follows:

| Property (ESA no. / lot on plan) | ESA rank | PSI rank | Recommended (VPA/BCSC) * |
|---|----------|----------|--|
| 34 / Lot 1 on LP211687 | High | High | EAO |
| 35 / Lot 2 on LP211687 | High | High | EAO |
| 36 / Lot 1 on TP129892 (CA 34G) | High | Medium | PSI |
| 37 / Lot 1 on PS648351 | High | High | EAO |
| 38 / Lot 1 on LP74840 | High | Low | General duty – no provisions in amendment |
| 39 / Lot 1 on PS531086 | High | High | EAO |
| 41 / Lot 1 on TP379102 (Formerly Pt CA 34F) | High | High | No action – retain in PUZ1 for electricity substation |
| 40 / Lot 2 Plan PS531086 | High | Low | General duty – no provisions in amendment |
| 60-65 / Plan CP172891 and Lot 14 Plan LP11690 | High | High | PSI |
| 67 / Lot 26 LP11690 | High | High | EAO (access not available) |
| 113 / CA 1 Sec 75 Parish of Wonthaggi | High | High | No action – outside precinct with no rezoning proposed |

*See discussion below

While the VPA does not seek an exemption from Direction No. 1, the guidance on the Minister's discretion to exempt a planning authority from the requirements of the direction, are of use in considering the appropriate level of regulation having regard to conditions on the site:

"Such an exemption may be appropriate where:

- Potentially contaminated land is already used for a sensitive use, agriculture or open space.*
- Prior industry use of the land was benign and unlikely to result in any contamination.*
- If there is a regional strategy to manage contamination (for example former gold mining activities)."*

The practice note further advises:

"Where land has been identified as being potentially contaminated, an assessment of the level of contamination is necessary before a decision is made about the future use or development of that land. Councils should consider whether further information or advice from an expert should be sought to assist in determining what level of assessment is required. This enables planning decisions to be made with the knowledge of the condition of the site and the most satisfactory site management strategies."

Considering the above criteria, the amendment should require:

- a proportionately higher degree of further assessment on properties 37 and 39. These properties are all planned to facilitate residential development. The EAO is the response suggested by the Ministerial and departmental guidance. These properties are within the precinct, but already zoned RGZ1. It appears proper regard was not had for the ESA at the time of their rezoning – given the PSI retains a high risk rating on these properties and they have not yet been developed for urban sensitive uses it would be prudent to apply the EAO at this time.
- Properties 34, 35 and have had no industrial use. Potential contaminants relate to former farming equipment use and waste (34), a partially demolished building (35) and petrol seepage (36) amongst other minor farming related residues. The UGZ Schedule should require a PSI to accompany any permit application with a related enforcement requirement.
- The remaining medium risk properties north of Inverloch Road should also provide a PSI with their application for a sensitive use/development and be subject to enforcement provisions.
- Properties 60-65 are zoned IN1Z and not proposed for rezoning. The UGZ Schedule should require a PSI to accompany any permit application with a related enforcement requirement.

Properties remaining with a *high* ranking after ESA and PSI

Apply strategy 'A' from the practice note – *Require an environmental audit or apply the Environmental Audit Overlay*. EAO maps have been prepared for affected properties 37 and 39. An EAO map has been prepared for property 67 as no access was available during the PSI process to test whether it warranted a lower ranking.

Properties ranked *medium* in ESA and PSI

Apply strategy 'B' from the practice note - *Require a site assessment from a suitably qualified environmental professional if insufficient information is available to determine if an audit is appropriate. If advised that an audit is not required, default to C.*

The VPA has not been advised that an audit is not required. To implement this strategy the VPA proposes insertion of specific provisions in the UGZ, IPO and DPO schedules requiring an assessment and enforcement mechanism for relevant applications.

The UGZ schedule contains permit triggers and its schedule should require that a site assessment accompanies relevant applications under 'application requirements'. This should be complemented by a mechanism to enforce the completion of any site assessment recommendations i.e. remediation actions under 'Requirements and conditions for permits'.

The IPO and DPO contain no permit requirement and no related application requirement provisions. The IPO and DPO schedule should require assessment and remediation as above but under 'Requirement and conditions for permits'.

UGZ schedule application requirement

For an application to subdivide land or construct a building or carry out works for accommodation, a primary school or secondary school on [insert affected land addresses here] (including any parcel, lot or common property within the property or address) , an environmental site assessment, carried out by a suitably qualified environmental professional in accordance with National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) including:

- A detailed assessment of potential contaminants on the relevant land;
- Clear advice on whether the environmental condition of the land is suitable for the proposed use and
- whether an environmental audit of all, or part, of the land is recommended having regard to any practice note on Potentially Contaminated Land published by the Department;
- detailed assessment of surface and subsurface water conditions and geotechnical characteristics on the relevant land and the potential impacts on the proposed development including any measures required to mitigate the impacts of groundwater conditions and geology on the development and the impact of the development on surface and subsurface water; and
- Recommended remediation actions for any potentially contaminated land.

UGZ schedule requirement for permits

Any recommendation affecting the land in a preliminary site investigation for potential contamination accompanying an application must be carried out to the satisfaction of the responsible authority before the earlier of:

- the certification of a statement of compliance for the land under the *Subdivision Act 1988*; other than certification for a subdivision not requiring works,
- the commencement of the use,
- the issue of a building permit,

that allows use of the land for accommodation, a primary school or a secondary school.

Proposed IPO and DPO requirement for permits – medium risk properties

Before any of the following occur in relation to accommodation, a primary school or secondary school on [insert affected land addresses here] (including any parcel, lot or common property within the property or address):

- the Certification of a plan of subdivision under the *Subdivision Act 1988*, other than a certification for a subdivision not requiring works;
- the commencement of the use;
- the construction of a building or carrying out of works;

the following must be completed to the satisfaction of the responsible authority:

- the preparation of a Preliminary Site Assessment by a suitably qualified environmental professional in accordance with *National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013)* including:
 - A detailed assessment of potential contaminants on the relevant land;
 - Clear advice on whether the environmental condition of the land is suitable for the proposed use and
 - whether an environmental audit of all, or part, of the land is recommended having regard to any practice note on Potentially Contaminated Land published by the Department;
 - detailed assessment of surface and subsurface water conditions and geotechnical characteristics on the relevant land and the potential impacts on the proposed development including any measures required to mitigate the impacts of groundwater conditions and geology on the development and the impact of the development on surface and subsurface water; and
 - Recommended remediation actions for any potentially contaminated land; and
- the carrying out of any recommendation affecting the land in a Preliminary Site Investigation.

Properties ranked *low* in the ESA

Apply strategy 'C' from the practice note – *General duty under Section 12(2)(b) and Section 60(1)(a)(iii) of the Planning and Environment Act 1987*.

No provisions are required in the planning scheme amendment to implement this strategy.

5.4 Environmental management

5.4.1 Native vegetation

Nature Advisory documented all native vegetation in the precinct.⁸ Ample areas of *swamp scrub* (EVC 53) were recorded along roadsides throughout the precinct, alongside small isolated patches of *damp sands herb-rich woodland* including some large trees (EVC 3) south of Inverloch Road. Most had condition scores in the mid-20's out of 100.

Small stands of trees were recorded south of Inverloch, on Fuller Road and along a fence line in the northeastern-most property in the precinct. Most trees in the precinct are *swamp paperbark* or *coast manna-gum*.

To put the information collected to best use, a native vegetation precinct plan (NVPP) is proposed. The information on native vegetation has been incorporated into planning for the precinct. The NVPP has enabled significant stands of vegetation to be incorporated into future public open space along McGibbonys Road and south of Inverloch Road (see over and Future Urban Structure at Section 3 above).

This planning for native vegetation management at the precinct scale has enabled its integration with the future development scenario and the pre-setting of offset requirements where vegetation cannot be retained. The NVPP will act as a kind of precinct level permit to remove the native vegetation identified for removal in the NVPP with conditions around offsets and protection of retained native vegetation (see plans overleaf).

5.4.2 Water quality in creeks and rivers

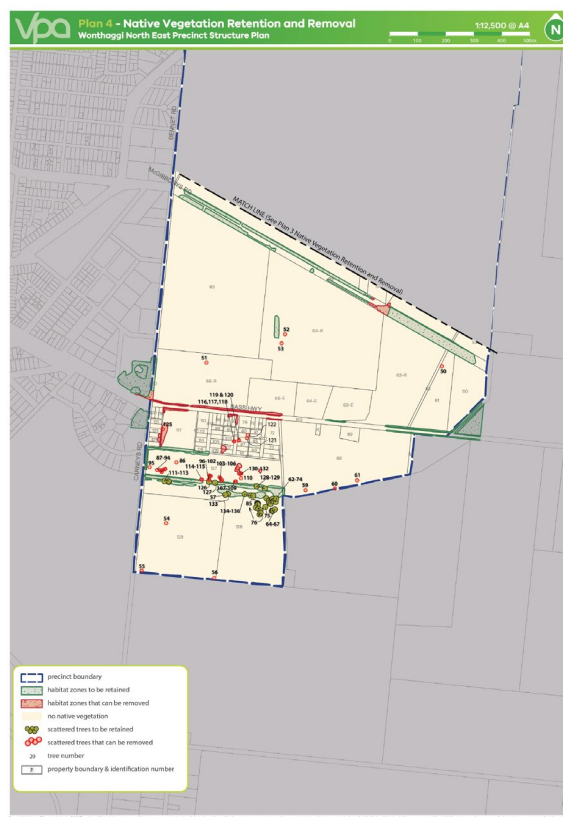
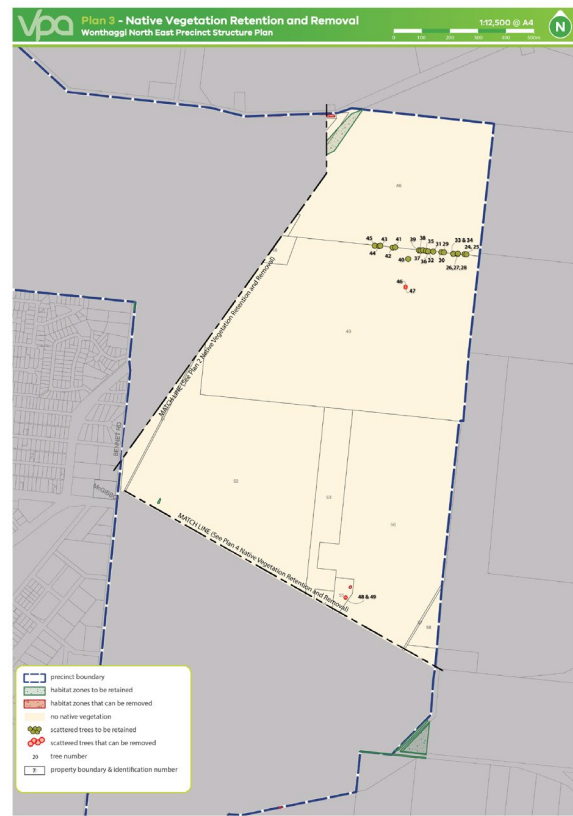
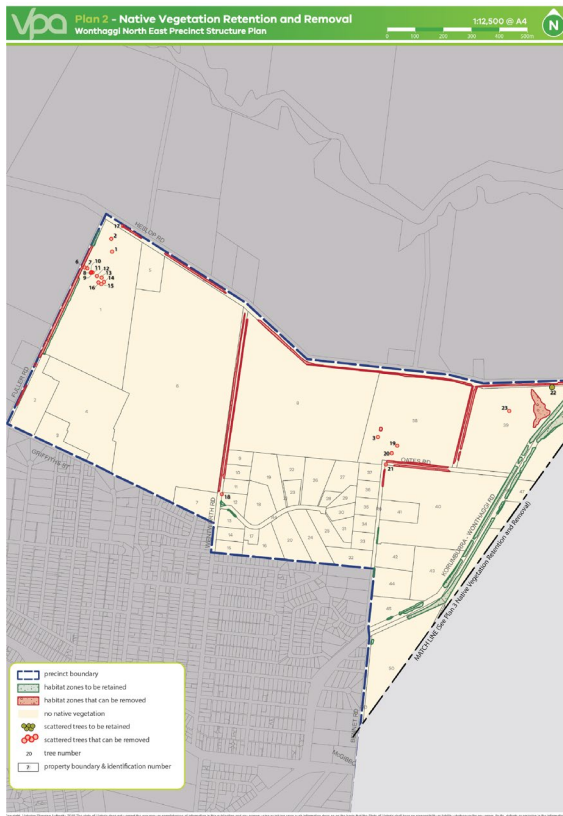
The amount of surface-water runoff will increase as additional built-up areas are constructed around Wonthaggi. The PSP and the DCP detail requirements and guidance for laying out and constructing new drainage and waterway assets to cope with these increased flows. The aim is to avoid disruptive changes to the Powlett River's flows and adequately remove urban pollutants from the water before it reaches the river.

The concept drainage and waterway designs are shown in the DCP which also requires developers to collectively fund those construction of those works. The DCP makes Council responsible for constructing the works. The council has the option of allowing a developer to construct the works on its behalf.

⁸ Wonthaggi North East Precinct Structure Plan: flora and fauna assessment (Nature Advisory, May 2020).

Draft native vegetation precinct plan maps, March 2020

Bass Coast Shire Council



6 INFRASTRUCTURE, PUBLIC LAND AND STAGING

6.1 Public land requirements – summary

Proposed public facilities in the PSP requiring land include:

- A sports reserve – purchased through DCP funds, land set aside through subdivision.
- Community centres – purchased through DCP funds, land set aside through subdivision.
- Local parks – purchased and set aside through subdivision in accordance Clause 53.01.
- Drainage lines and water treatment areas - purchased through DCP funds, land set aside through subdivision.
- Roads and intersections – roads and intersections to be vested in authority at subdivision with some collectively funded as shown in DCP. Public Acquisition Overlays are applied to selected intersections where there is a risk that only part of the intersection land will be available through subdivision when the intersection is needed.

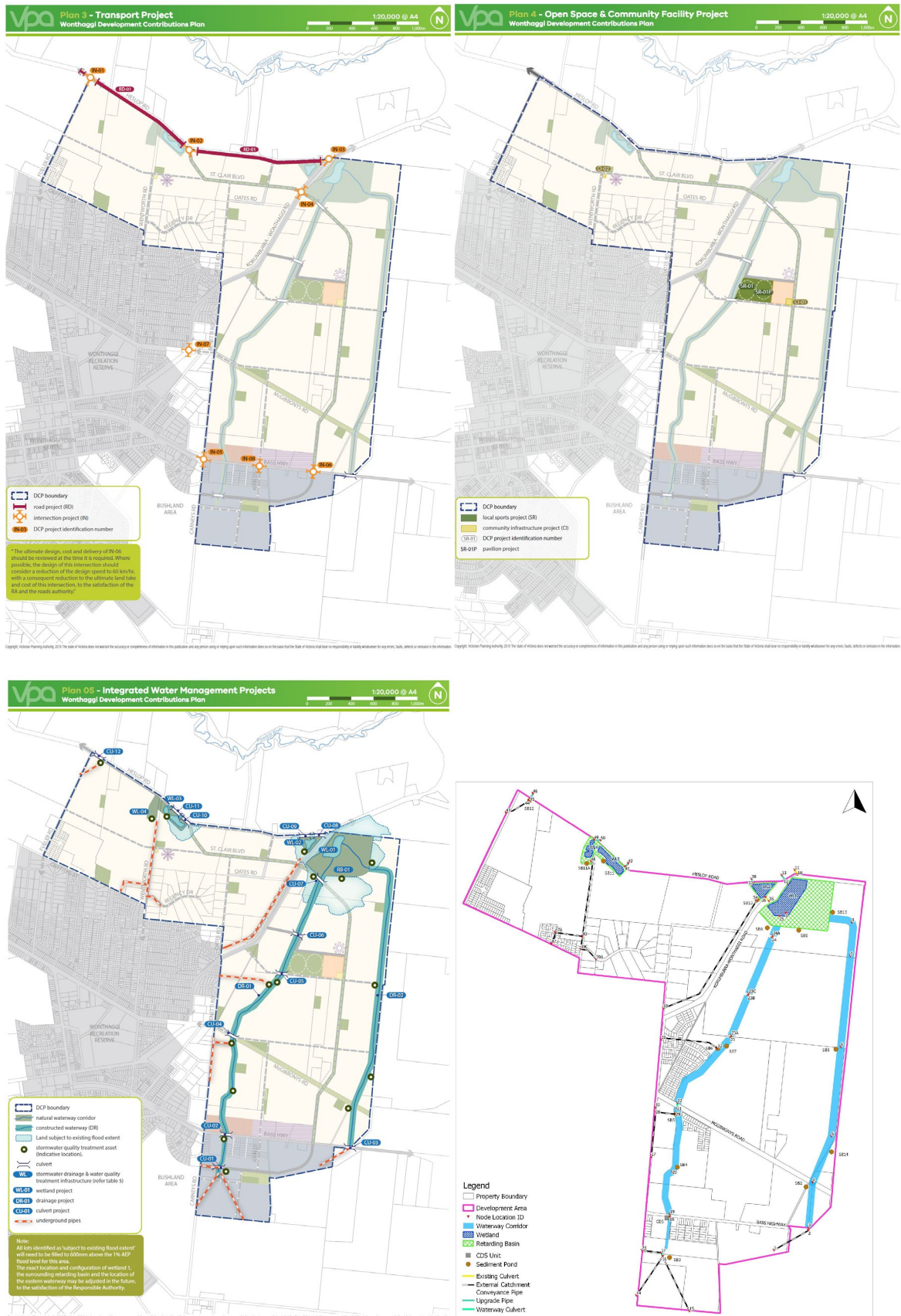
Delivery methods for main intersection land

| Description | In precinct | Land required | DCP funded | Recommended method* | PS Map |
|---|-------------|--------------------|------------|--|--------|
| Heslop Road / Bass Hwy (far west of town) | No | Yes | No | PAO (Roads Corp) – but not part of this amendment | -- |
| Graham/McKenzie Sts | No | Yes | No | PAO (Roads Corp) – but not part of this amendment | -- |
| IN-01: Heslop / Fuller Rds | Yes | No | -- | -- | -- |
| IN-02: Heslop / St Clair Bvd | Yes | Yes | No | Subdivision | -- |
| IN-03: Heslop / Korumburra Rds | Yes | No | -- | -- | -- |
| IN-04: St Clair Bvd / Korumburra Rd | Yes | Yes | Yes | Subdivision + PAO (council) to enable both sides if needed at first subdivision | 57PAO |
| IN-05: Carneys Rd / Jean Dennis Road / Bass Hwy | Yes | Yes | Yes | Subdivision + PAO (council) on SE + NE cnr to enable both sides if needed at first subdivision | 63PAO |
| IN-06: St Clair Bvd / Bass Hwy | Yes | Yes | Yes | Subdivision + PAO (council) to enable both sides if needed at first subdivision | 64PAO |
| IN-07: MCGibbons Rd / Korumburra Rd | No | No already deliver | -- No | No – already delivered | -- |
| IN-08: John St / Bass Hwy | Yes | Yes | Yes | Subdivision + PAO (council) to enable both sides if needed at first subdivision | 64PAO |

*new PAO5 maps and schedule entry required for council roads.

Draft development contribution plan extracts, November 2020

Bass Coast Shire Council



6.2 Where private should be acquired for a public purpose

The proposed development contributions plan (DCP) funds land acquisitions through collecting levies from precinct developers proportionate to the amount of development they produce. The DCP appoints Council as the collector of the levies. The levies are to be put towards acquisition of land for planned sports reserves, drainage facilities, community facilities and major roadworks required to services the new development which would be unfair to impose on one landowner or inefficient to develop in a piece-meal way.

Local parks will be funded through a separate levy to be paid to Council on behalf of the community as authorised under the *Subdivision Act 1988* (See proposed Clause 53.01). Where a landowner provides a PSP identified park on their land, they will be paid for that land whether outright or in the form of a credit against their overall levy obligation. Payments and credits will be funded through the pooled levy collection from the precinct.

6.3 Where the developer is required to provide services to the site

Developers will be required to provide road, drainage, power and telecommunications services to their development as required under the relevant service provision legislation. These works, land and easements will ordinarily vest with the relevant asset manager upon completion. These requirements an ordinary incident of subdivision with the council and referral authorities having powers to require works and associated land through the *Subdivision Act 1988*. Works and land described in the PSP and DCP will need to be consistent with those documents subject to any reasonable variation by the authority receiving the asset.

6.3.1 Infrastructure: Staging and Sequencing

There is a need to consider a staging strategy given the long rollout time of the growth area. This will assist in ensuring that infrastructure can be funded without unreasonable pressure on council and asset manager resources while providing new households with access to local services and facilities at the earliest reasonable time.

For instance, the north-western part of the precinct is currently remote from services and retailing. The Korumburra Road also represents a significant barrier to movement in the absence of connector street and intersection development. It will likely be some time before there is enough population in the precinct to warrant creation of the ovals, school and community centre envisaged in the eastern part of the precinct.

Whereas, land adjacent the existing residential-zoned eastern development front can provide good access to the existing facilities in the centre of town.

For the most part, there are no areas so far from existing facilities to warrant substantially delaying development if the developer is willing to fund sufficient infrastructure to connect resident to facilities

and services. The need for orderly and efficient development and infrastructure delivery will need to be balanced with the availability of lots in the precinct.

The responsible authority will need to consider the relevant decision guidelines at Clause 65 of the VPP⁹ for subdivision more remote from the growth front; as well as having regard to policy addressing service provision to newly developing neighbourhoods. Some basic requirements for subdivision beyond the existing urban edge is provided at 3.7.1 of the PSP.

Subdivision application for more remote land may be refused of or conditions managing the staged development of some neighbourhoods or subdivisions, depending on the context at the time of the application.

END

⁹ For example:

- *The orderly planning of the area.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The staging of the subdivision.*
- *The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.*