

[REDACTED]

**SUBMISSION TO DRAFT AMENDMENT C109moor**  
**Moorabool Planning Scheme — Merrimu Precinct**  
**Structure Plan**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 July 2026

**To: Merrimu** PSP Project Team — Victorian Planning Authority (VPA);  
Department of Transport and Planning (DTP); Moorabool Shire Council;  
The Hon. Sonya Kilkeny MP, Minister for Planning.

[REDACTED]

[REDACTED]

**By email:** [Merrimu@transport.vic.gov.au](mailto:Merrimu@transport.vic.gov.au); [info@moorabool.vic.gov.au](mailto:info@moorabool.vic.gov.au) —  
and by post to the addresses at the end of this submission.

**Re: Formal submission to draft Amendment C109moor to the**  
**Moorabool Planning Scheme (Merrimu Precinct Structure Plan) —**  
**request to accept a late submission — request to be heard by the**  
**Panel**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(together, 'the Land').

**Dear Sir or Madam, and to the Minister for Planning,**

## **A. Introduction and nature of this submission**

1. This submission is made under the Planning and Environment Act 1987 (Vic) ('the Act') in respect of draft Amendment C109moor to the Moorabool Planning Scheme, which seeks to implement the Merrimu Precinct Structure Plan ('the PSP'), the associated Development Contributions Plan and the accompanying Native Vegetation Precinct Plan. The amendment was placed on public exhibition from 6 March to 9 April 2026. This document, dated 2 July 2026, consolidates and replaces in form the Submitters' submission dated 1 July 2026 and its addenda; every ground, question and request in those documents is maintained and incorporated in this submission.

2. It is made jointly by the persons who hold the whole of the legal and beneficial interest in the Land:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] The Submitters request that this letter be accepted, recorded and fully considered as their formal submission for both properties; that it be accepted as a late submission for the reasons in Part D; and that they be heard, in their own right, by any panel or advisory committee appointed under Part 8 of the Act, consistent with sections 23(2) and 24.

3. Nothing in this submission waives any right; all rights are expressly reserved (Part K). The Submitters do not allege, at this stage, that any unlawful conduct has occurred. They seek reasons, disclosure of the evidence relied upon, and a fresh, fair, site-specific review of the Land before the amendment is finalised. While there is no general common law duty to give reasons (*Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656), reasons are appropriately provided in this context, and any panel will report its findings with reasons (section 25).

## **B. Summary of the case**

4. The exhibited draft allocates zero net developable area to the whole of a privately owned, commonly held landholding of approximately [REDACTED] designates effectively the entire balance 'Landscape Values'; and applies a proposed Public Acquisition Overlay (PAO7) [REDACTED] [REDACTED] all within a precinct whose stated purpose is to deliver in the order of 8,000 homes, 24,000 residents and 1,800 jobs.
- [REDACTED]
- [REDACTED]

5. The Submitters do not oppose the planning of Merrimu. Their case is that of a willing participant seeking a fair allocation: a reasonable net developable area consistent with comparable landholdings, with any genuinely verified landscape or environmental values protected by controls confined to the verified areas — or, if any part of the Land is in truth required for a public purpose, its formal reservation and acquisition with compensation in the ordinary way.

6. Three planning propositions lie at the heart of the case. First, on the exhibited mapping the 'Landscape Values' area appears to follow cadastral (title) boundaries rather than any physical feature on the ground, calling into question whether the designation rests on a site-based assessment at all. Secondly, comparable nearby land has, on the Submitters' present understanding, been allocated developable area while the Land has been allocated none, without any articulated planning basis for the difference. Thirdly, the exhibited outcome is internally inconsistent: [REDACTED] is found suitable and necessary for arterial road infrastructure serving the new community, and the Land was retained within the precinct when other land was excised for 'limited development potential' — yet the whole of the Land is treated as capable of supporting nothing.

7. One legal proposition follows. If the Land, or any part of it, is in substance required for a public landscape, open space, drainage or conservation purpose, the lawful and fair course is reservation under the Public Acquisition Overlay (Clause 45.01), carrying the compensation rights Parliament attached to reservation. Applying an uncompensated designation to achieve the same public benefit



[REDACTED]

engages sections 98(1A)–(1B) of the Act so as to extinguish any compensation pathway, and raises a serious question of purpose which the planning authority should answer. Because that architecture crystallises on approval of the amendment, this submission and any panel process are effectively the only window in which the choice of instrument can be tested.

## **C. The Land, its ownership and the exhibited treatment**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. It falls to be assessed both on the individual planning merits of each lot and as one substantial common landholding within the precinct.

9. As the Submitters understand the exhibited land budget, the proposed treatment is:

| Property   | Exhibited treatment under the draft PSP land budget                                                                                                                                                          |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [REDACTED] | Road widening approx. [REDACTED] subject to proposed Public Acquisition Overlay (PAO7) with Moorabool Shire Council as acquiring authority; 'Landscape Values' approx. [REDACTED] net developable area: nil. |
| [REDACTED] | 'Landscape Values' approx. [REDACTED] (the whole of the lot); net developable area: nil.                                                                                                                     |

10. The net effect is that the whole landholding is allocated no net developable area, while the ongoing rates, land tax, maintenance, risk and financial burden remain with the owners. Two further facts from the exhibition material are relied on below: the site location map accompanying the general notice identifies land 'previously included, now excised from the PSP due to limited development potential' (Annexure B, Exhibit B-2) — the Land was retained, not excised; and the property-specific PAO7 notice stated that it was 'for your information only and you do not have to act' (Annexure B, Exhibits B-3 and B-4).

## D. Request to accept a late submission

11. The exhibition period closed on 9 April 2026. The Submitters were not in a position to lodge during that period and request that this

[REDACTED]

submission be accepted late. Acceptance is supported by the following matters, individually and cumulatively.

[REDACTED]

[REDACTED] did not become registered proprietor until [REDACTED] [REDACTED] after the exhibition period had closed. [REDACTED] interest in the land, and the transaction by which the company acquired it, preceded that registration [state the contract date here and exhibit the contract particulars; if the contract predates 6 March 2026, say so expressly]. As the affected registered proprietor, the company had no practical opportunity to lodge a submission, adduce evidence or otherwise participate during exhibition. In any event, the amendment has not been adopted or approved; acceptance of this submission now prejudices no one and assists the process.

- 13. The content of the notices did not convey the material effect.** Two notices were received in respect of the [REDACTED] a general notice dated 6 March 2026, and a property-specific PAO7 notice. The general notice invited feedback on the draft PSP but did not identify the land budget outcome for the property. The PAO7 notice addressed the road-widening overlay only, expressly stated that it was 'for your information only and you do not have to act', and likewise did not disclose that the balance of the property would be allocated no net developable area — the single most material effect of the amendment on the owners. Section 19(1)(c) requires notice to owners and occupiers the planning authority believes may be materially affected; the adequacy of such notice falls to be assessed by its content as well as its existence. A notice apt to lull rather than alert does not discharge the purpose of the provision.
- [REDACTED]

Copies of both notices and the accompanying maps are at Annexure B.

**14. Procedural fairness.** Where a public authority invites participation in a process affecting private property interests, affected owners are entitled to a genuine opportunity to be heard before the outcome is finalised: *Kioa v West* (1985) 159 CLR 550; *Annetts v McCann* (1990) 170 CLR 596. The Department's own notice records that submissions received after 9 April 2026 'will be assessed to determine how they can be considered'. Procedural fairness supports acceptance and full consideration before any recommendation, panel process or final decision, consistent with sections 21 to 27 of the Act.

**15. Statutory consequences.** The Submitters ask whether any exemption from notice requirements under section 19 or section 20 of the Act was sought or relied upon. They further note, and expressly reserve, the remedy in section 39 of the Act available to a person substantially or materially affected by a failure of a planning authority to comply with the Act's procedural requirements, observing that such a reference in respect of an amendment must generally be made before approval. This is recorded not as a threat but for transparency: acceptance and referral of this submission would substantially address the concern. Upon acceptance, section 23(2) requires the planning authority either to change the amendment in the manner requested or to refer the submission to a panel; referral, and the hearing right in section 24, is accordingly a procedural entitlement.



16. Acceptance will not prejudice the orderly conduct of the amendment. It will assist the planning authority, the Minister and any panel by ensuring that the treatment of the Land is properly tested against the evidence and that the affected owners are heard.

## **E. Statutory, policy and administrative law framework**

17. The Submitters rely upon the following framework in support of the grounds and relief below:

- (a) the objectives of planning in Victoria in section 4 of the Act — including the fair, orderly, economic and sustainable use and development of land (section 4(1)(a)) and the balancing of the present and future interests of all Victorians — and the objectives of the planning framework in section 4(2), including the provision of fair procedures for those affected;
- (b) the duties of a planning authority under section 12, including to have regard to the Minister's directions (section 12(1A)), the Planning Policy Framework, the objectives of planning, and any significant environmental, social and economic effects of the amendment (section 12(2));
- (c) the amendment and submission scheme in sections 8A and 17 to 27: authorisation (section 8A); exhibition (section 17); notice (section 19), including the duty in section 19(1)(c) to notify owners and occupiers who may be materially affected, and the exemption powers in sections 19 and 20; submissions (section 21); the duty to consider all submissions (section 22); the

[REDACTED]

obligation, where a submission requests a change, either to change the amendment as requested or to refer the submission to a panel (section 23(2)); the panel's duty to consider submissions and to hear those who request it (section 24); the panel's report with reasons (section 25); and the duty to consider that report before adoption (section 27);

- (d) the strategic assessment obligations under Ministerial Direction 11 and Planning Practice Note 46, and the Ministerial Direction on the Form and Content of Planning Schemes (section 7(5)), which require the amendment and each control it applies to rest on a clear, evidence-based strategic justification — the Submitters ask the planning authority to identify each Ministerial Direction applied, including whether Ministerial Direction 12 (Urban Growth Areas) applies to Moorabool;
- (e) the Precinct Structure Planning Guidelines (2021) and the standard land budget methodology governing the preparation of a PSP, under which constrained land is ordinarily recorded transparently as encumbered by category rather than a whole lot being allocated zero;
- (f) the statutory source of power for each control applied to the Land, including section 6(2) of the Act, so that each control can be traced to its enabling provision;
- (g) the Public Acquisition Overlay (Clause 45.01 of the Victoria Planning Provisions) and the compensation framework in Part 5 of the Act — section 98 (compensation for financial loss where land is reserved for a public purpose), as qualified by sections

98(1A) and 98(1B) (inserted by the Planning and Environment Amendment Act 2021), which confine the right to cases where the provision expressly states as a purpose the reservation of land for a public purpose, as the Public Acquisition Overlay does; section 98AAA ('inner public purpose land'); section 106 (loss on sale); section 107 (removal or lapse of a reservation); and the Land Acquisition and Compensation Act 1986 (Vic) (applied by section 105) — the effect of which, illustrated by *Skerdero Pty Ltd v Cardinia SC* [2014] VCAT 1334, is that land may be effectively set aside for public purposes under a PSP while no compensation is payable unless an express reservation is applied;

- (h) the infrastructure funding machinery in Part 3B of the Act (sections 46I and following), under which the amendment's Development Contributions Plan is made, and the principle that precinct infrastructure and public-benefit land is funded by the precinct rather than by the sterilisation of particular owners;
- (i) the common law requirements of procedural fairness (*Kioa v West*; *Annetts v McCann*) and the requirement that submissions receive genuine, active and conscientious consideration (*Tickner v Chapman* (1995) 57 FCR 451; *Carrascalao v Minister for Immigration and Border Protection* (2017) 252 FCR 352);
- (j) the requirements that a discretionary decision take into account mandatory relevant considerations (*Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24) and not be legally unreasonable — that it be supported by an evident and

intelligible justification (Minister for Immigration and Citizenship v Li (2013) 249 CLR 332; Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223); the obligation, in an appropriate case, to make obvious and centrally relevant inquiries (Minister for Immigration and Citizenship v SZIAI (2009) 259 ALR 429; Prasad v Minister for Immigration and Ethnic Affairs (1985) 6 FCR 155); the requirement that findings of fact rest on probative material (Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321); and the prohibition on exercising a statutory power for an improper or collateral purpose (Municipal Council of Sydney v Campbell [1925] AC 338; Thompson v Council of the Municipality of Randwick (1950) 81 CLR 87);

(k) the principle that a denial of procedural fairness or like error in a final decision is a jurisdictional error amenable to judicial review (Craig v South Australia (1995) 184 CLR 163; Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476; Re Refugee Review Tribunal; Ex parte Aala (2000) 204 CLR 82), that such error must be material to attract relief (Hossain v Minister for Immigration and Border Protection (2018) 264 CLR 123; MZAPC v Minister for Immigration and Border Protection (2021) 273 CLR 506), and that judicial review of a decision to adopt or approve an amendment lies in the Supreme Court of Victoria (Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic); Administrative Law Act 1978 (Vic));

(l) the Planning Policy Framework, including integrated decision-making in favour of net community benefit and sustainable

development (Clause 71.02-3), significant environments and landscapes (Clauses 12.05 and 12.05-2S), the supply of urban land (Clause 11.02-1S) and housing supply (Clause 16.01-1S); and

(m) the Charter of Human Rights and Responsibilities Act 2006 (Vic), under which the VPA, DTP and Council are public authorities (section 4) that must give proper consideration to relevant human rights (section 38; *Castles v Secretary to the Department of Justice* (2010) 28 VR 141; *Bare v IBAC* (2015) 48 VR 129), including the property right in section 20, equality in section 8, and the limitations test in section 7(2).

## **F. Grounds of submission**

Several grounds concern standards that would fall to be applied on any review of a final decision; they are raised now so the evidentiary record is complete and the matters are squarely before the planning authority, the Minister and any panel before the amendment is finalised.

### **F1 — The zero net developable area outcome lacks an evident and intelligible justification**

18. The draft land budget allocates zero net developable area to each lot across a combined [REDACTED] of retained precinct land. That is a severe and unusual outcome: under the PSP Guidelines methodology, even heavily constrained lots ordinarily retain some developable residue, with constrained land recorded transparently as encumbered by category. A conclusion that two entire lots can support no development whatsoever is a finding of fact that must

[REDACTED]

rest on probative material referable to each lot (Bond). An outcome of this severity lacking an evident and intelligible justification risks legal unreasonableness (Li). The Submitters do not understand why land within a precinct said to deliver in the order of 8,000 homes, 24,000 residents and 1,800 jobs has been assessed as having no development potential whatsoever, and they seek the material on which that conclusion rests.

## **F2 — The 'Landscape Values' mapping appears to follow title boundaries, not features**

19. On the mapping the Submitters have seen, the Landscape Values area on the Land aligns closely with cadastral boundaries rather than following a natural feature across adjoining land. Genuine landscape, landform, vegetation, biodiversity and visual values do not ordinarily stop at title lines. The apparent cadastral alignment is, on its face, an indication that the designation may not rest on a physical feature actually present on the Land, and that the mapping proceeded without regard to the actual characteristics of the Land — a mandatory relevant consideration (Peko-Wallsend). The Submitters seek the criteria, methodology, underlying studies, GIS data and any instructions given to the mapping author regarding property boundaries, and will adduce ground-truthed landscape and ecological evidence of the actual condition of the mapped area.

## **F3 — Strategic justification under Ministerial Direction 11 and Practice Note 46**

20. A control removing all identified net developable area from approximately [REDACTED] of privately owned land requires [REDACTED]



[REDACTED]

compelling, transparent and verifiable strategic evidence under Ministerial Direction 11 and Planning Practice Note 46, justified control by control under the Form and Content Direction. In the absence of such evidence the outcome risks appearing arbitrary, disproportionate and inconsistent with the strategic assessment requirements applying to every planning scheme amendment. The Submitters seek the strategic assessment and the identification of where, within it, the treatment of the Land is justified.

## **F4 — Inconsistent treatment of comparable land**

21. Comparable land must be treated consistently unless a rational, evidence-based planning distinction is articulated. On the Submitters' present understanding of the exhibited land budget, nearby lots with similar access, topography, vegetation and servicing characteristics have been allocated net developable area while the Land has been allocated none. The Submitters will place before any panel a comparison table drawn from the exhibited land budget. Unexplained differential treatment is contrary to the fair and orderly planning objective in section 4(1)(a) and evidences a decision lacking intelligible justification (Li) and a failure to consider relevant matters.

## **F5 — Internal inconsistency: the road finding and the retention of the Land**

22. Two features of the exhibited scheme cannot be reconciled with a zero allocation. First, approximately [REDACTED] is identified as suitable and necessary for arterial road infrastructure serving the

[REDACTED]

new urban area — infrastructure that presupposes urban development around it — with Moorabool Shire Council as acquiring authority; yet the balance of the very same lot is assessed as incapable of supporting any development. Secondly, the precinct process included a mechanism, in fact used, to excise land 'due to limited development potential'; the Land was retained within the precinct. If the Land truly had no development potential, it stands unexplained why it was not excised with the other land; if it has development potential, it stands unexplained why none is allocated. The two positions are difficult to reconcile and each calls for a reasoned answer.

## **F6 — Private land bearing a public cost: reservation versus uncompensated designation**

23. If the Land is to be preserved for landscape, scenic, open space, conservation, drainage or other public-benefit purposes, the planning authority should state whether the land is to be reserved, acquired, transferred or otherwise funded — because the choice of instrument determines the owners' rights. Following the insertion of sections 98(1A) and 98(1B) by the Planning and Environment Amendment Act 2021, the right to compensation under section 98 arises only where the scheme provision expressly states as a purpose the reservation of land for a public purpose, as a Public Acquisition Overlay does. The position illustrated by *Skerdero Pty Ltd v Cardinia SC* [2014] VCAT 1334 — that land may be effectively set aside for public purposes under a PSP — combined with those amendments, means an express reservation is now effectively a precondition to compensation, and that once the amendment is

approved with an uncompensated designation, no compensation pathway ever arises for that land. It would be unfair for private owners to bear the full financial burden of land said to serve a public benefit while receiving no development opportunity and no compensation. If any part of the Land is genuinely required for a public purpose, it should be reserved and acquired with compensation under Clause 45.01, sections 98 and 106 of the Act and the Land Acquisition and Compensation Act 1986 (Vic). The Submitters also ask whether any part of the Land is treated as 'inner public purpose land' under section 98AAA, with the further consequence that Part 5 compensation would not apply, and how any public-benefit function of the Land is treated in the Development Contributions Plan and the Part 3B funding framework: precinct infrastructure and public-benefit land is funded by the precinct, not by the sterilisation of particular owners.

## **F7 — Native vegetation, the Native Vegetation Precinct Plan and environmental matters**

24. To the extent the treatment of the Land rests on native vegetation, biodiversity or habitat values, the extent of any such constraint on each lot should be established by site-specific, ground-truthed assessment — consistent with the Guidelines for the removal, destruction or lopping of native vegetation (2017) and the Native Vegetation Precinct Plan framework — and not applied to the whole of each lot by desktop or aerial mapping alone. Any restriction should be no broader than necessary to protect verified values and should reflect the avoid–minimise–offset approach. The Submitters seek the NVPP as it affects the Land, the native vegetation mapping,

and each ecological study relied upon, including any targeted surveys (for example, Golden Sun Moth and Striped Legless Lizard) and whether any listed species or habitat was recorded on either lot.

## **F8 — Proportionality and less restrictive alternatives**

25. Even where a planning authority pursues a legitimate public objective, restrictions imposed on private land should be proportionate to that objective; proportionality is an aspect of legal reasonableness (Li) and of the analysis under sections 7(2) and 20 of the Charter. Where less restrictive alternatives could protect genuine values while allowing reasonable net developable area, they must be assessed before a whole landholding is treated as non-developable. Available alternatives include: controls confined to independently verified value areas; development outside verified constraints with clustering, setbacks or building envelopes; a Significant Landscape Overlay or design and development control limited to verified areas; an agreement under section 173 of the Act; road realignment reducing the take; transfer or acquisition of genuinely public-benefit land; identification of the Land as a future investigation area; or amended land budget treatment. If no documented assessment of alternatives exists, that omission is itself a significant failure of the strategic assessment required by Ministerial Direction 11 and Practice Note 46.

## **F9 — Impact on the owners**

26. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. The exhibited outcome would [REDACTED] significantly restrict the use and value of the Land, [REDACTED] and extinguish any compensation pathway. The Submitters ask that these consequences — squarely 'significant social and economic effects' within section 12(2)(c) — be given genuine weight.

## **F10 — Procedural fairness, natural justice and reasons**

27. For the reasons in Part D, procedural fairness supports the acceptance and full consideration of this submission. The Submitters request not merely that it be received, but that it be given genuine, active and conscientious consideration before any recommendation or decision is made (*Tickner v Chapman*; *Carrascalao*). They request a written statement of reasons explaining the treatment of each property, the evidence relied upon, the alternatives considered, and the basis for concluding that zero net developable area is justified.

## **F11 — Charter and property-related considerations**

28. The Submitters request confirmation that the obligations under the Charter were considered in determining the treatment of the Land,  
[REDACTED]

including the property right in section 20 and the obligation of proper consideration in section 38 (Castles; Bare), and that the practical effect of the proposed controls on private property interests is demonstrably justified under section 7(2) as proportionate and the least restrictive means reasonably available. The point is put shortly; it reinforces the proportionality analysis in F8.

## **F12 — Evidentiary foundation and the duty to make obvious inquiries**

29. A conclusion that each lot has zero net developable area is a finding of fact that must rest on probative material referable to the Land itself (Bond). Where the determinative question — whether a genuine landscape or environmental feature is physically present on each lot — is readily capable of resolution by an obvious and inexpensive inquiry, such as a site inspection to ground-truth the mapping, a failure to make that inquiry before imposing so severe an outcome may itself be an error (SZIAI; Prasad). The apparent alignment of the mapped area with title boundaries sharpens the concern. The Submitters ask the planning authority to identify the probative material relied upon and whether any site inspection of the Land was undertaken before the conclusion was reached.

## **F13 — Improper or collateral purpose and the avoidance of compensation**

30. A statutory power must be exercised for the purpose for which it was conferred. A power exercised to achieve a collateral object — in particular, to secure for public use the benefit of private land while avoiding the statutory obligation to compensate that a reservation would attract — may be invalid: *Municipal Council of Sydney v Campbell* [1925] AC 338; *Thompson v Council of the Municipality of Randwick* (1950) 81 CLR 87. If the practical effect of applying an uncompensated 'Landscape Values' control, rather than a Public Acquisition Overlay, to land that in substance serves a public purpose is to obtain that benefit without paying compensation, a serious question of purpose arises. The Submitters do not, at this stage, allege that this has occurred. They ask the planning authority to explain the purpose for which the control was applied, why a reservation under Clause 45.01 was not used if the land is in substance required for a public purpose, and how the compensation consequences of that choice were weighed.

## **F14 — Integrated decision-making, net community benefit and the cumulative burden**

31. Clause 71.02-3 requires decision-makers to integrate relevant policies and balance conflicting objectives in favour of net community benefit and sustainable development. The cumulative practical effect of the exhibited controls on this [REDACTED] landholding is:



| Element of the exhibited outcome          | Effect on the landholding                                                                                               |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Road widening and PAO7                    | Approx. identified for compulsory acquisition for a public road serving the new urban area.                             |
| 'Landscape Values' designation            | Effectively the entire balance of both lots                                                                             |
| Net developable area                      | Nil across both lots.                                                                                                   |
| Compensation under the exhibited controls | Nil for the Landscape Values land, by operation of ss 98(1A)–(1B) of the Act, unless an express reservation is applied. |
| Ongoing burden                            | Rates, land tax, maintenance, weed, pest and fire management obligations remain with the owners indefinitely.           |
| Public benefit derived                    | Road, landscape and open-space amenity enjoyed by a planned community of approximately 24,000 residents.                |

32. The benefit of this outcome flows to the future community of some 24,000 residents; the whole of its cost is concentrated, uncompensated, on one family. A net community benefit analysis that transfers the entire cost of a public good to two private lots, while removing all development opportunity from them, has not balanced anything; it has allocated the burden to those least able to spread it. The Submitters ask how the treatment of the Land was reconciled with Clause 71.02-3.

## **F15 — Urban land supply and housing policy**

33. Clauses 11.02-1S and 16.01-1S direct the maintenance of adequate supplies of urban land and housing. The precinct exists to deliver in the order of 8,000 homes. Sterilising [REDACTED] retained precinct land — land the State's own road planning treats as within the future urban fabric — without site-verified justification is inconsistent with the amendment's own strategic purpose and with State land supply and housing policy, and diminishes the precinct's contribution to those objectives for no demonstrated countervailing value.

### **G. Relief sought**

34. The Submitters respectfully request that the Victorian Planning Authority, the Department of Transport and Planning, Moorabool Shire Council and the Minister for Planning:

- (a) accept and record this letter as the Submitters' formal submission to Amendment C109moor for both properties, including as a late submission for the reasons in Part D (ss 21, 22);
- (b) provide a written statement of reasons explaining why each property has been allocated zero net developable area;
- (c) disclose the evidence relied upon, including the Landscape Values criteria, thresholds and mapping methodology, the GIS data, the Native Vegetation Precinct Plan and native vegetation mapping, and every ecological, arboricultural, visual, landscape, planning, drainage, traffic and engineering assessment, together with the strategic assessment under [REDACTED]

Ministerial Direction 11 and Practice Note 46 and the complete land budget for each property (Annexure A, Parts 1–4);

- (d) state the precise Victoria Planning Provisions clause under which the Landscape Values control is applied, the statutory source of power for each control (s 6(2)), and whether Moorabool Shire Council resolved to request the application of PAO7;
- (e) undertake a fresh, site-specific and evidence-based review of both properties before the amendment is finalised, including whether the Landscape Values designation should apply to the whole of each property or only to independently verified areas, and whether reasonable net developable area can be allocated while protecting genuine constraints;
- (f) identify any part of the Land required for a public purpose and, if any part is so required, reserve and acquire it with compensation under Clause 45.01, sections 98 and 106 of the Act and the Land Acquisition and Compensation Act 1986 (Vic), rather than sterilise it by an uncompensated designation;
- (g) explain the purpose for which the Landscape Values control was applied and, if the land is in substance required for a public purpose, why a reservation under Clause 45.01 was not applied (Campbell; Thompson v Randwick);
- (h) explain how the treatment of the Land was reconciled with Clause 71.02-3 and with Clauses 11.02-1S and 16.01-1S;
- (i) confirm the section 8A authorisation, whether notice was given under section 19(1)(c), and whether any exemption under section 19 or section 20 was sought or relied upon;

- [REDACTED]
- (j) confirm that, unless the amendment is changed in the manner requested, this submission will be referred to a panel under section 23(2), and that the Submitters will be heard in their own right under section 24 with leave to adduce expert town planning, valuation, landscape, ecological, arboricultural, traffic and engineering evidence;
  - (k) confirm whether the land budget and mapping may still be amended before finalisation, and identify the evidence that would assist reconsideration;
  - (l) confirm that proper consideration was given to the property right in section 20 of the Charter, consistent with section 38 and the limitations test in section 7(2);
  - (m) add [REDACTED] Submitters to all notification lists; arrange the meeting with DTP officers offered in the PAO7 notice and separate meetings with the VPA landowner liaison and Moorabool Shire Council;
  - (n) confirm that no final decision will be made in respect of the Land until this submission and the review requested have been genuinely considered;
  - (o) confirm that all documents concerning the treatment of the Land have been preserved and may be requested under the Freedom of Information Act 1982 (Vic), and nominate a single point of contact; and
  - (p) amend the draft PSP so that each property is afforded a reasonable net developable area consistent with comparable landholdings,

unless objective, site-specific and independently verified evidence demonstrates that no such area can be supported.

## **H. Findings and recommendations sought from any Panel**

35. Without limiting Part G, the Submitters respectfully ask any panel or advisory committee to find, on the evidence: (a) that the Landscape Values designation as applied to the Land is not supported by site-specific, ground-truthed evidence; (b) that the mapped boundary on the Land follows cadastral boundaries rather than physical features; (c) that the Land is physically capable of accommodating development while protecting any independently verified values; (d) that the treatment of the Land is inconsistent with comparable land without an articulated planning basis; (e) that allocating zero net developable area to approximately [REDACTED] of retained precinct land is inconsistent with the PSP's housing purpose and Clauses 11.02-1S and 16.01-1S; (f) that less restrictive alternatives were available and not assessed; and (g) that any part of the Land in substance required for a public purpose should be reserved under a Public Acquisition Overlay with the compensation rights attaching to reservation.

36. Consistent with those findings, the Submitters ask the panel to recommend under section 25 that, before adoption: the land budget, Framework Plan / Future Urban Structure and Landscape Values mapping be amended to include the Land in the developable area with a reasonable net developable area, any controls being

confined to independently verified values; alternatively, that finalisation of the treatment of the Land be deferred pending a site-based, independently reviewed assessment, or the Land be identified as a future investigation area; that a Public Acquisition Overlay be applied to any part genuinely required for a public purpose; and that the Landscape Values mapping affecting the Land be independently peer reviewed.

## **I. Evidence the Submitters propose to call**

37. Subject to the panel's directions, the Submitters propose to rely on: (a) expert town planning evidence addressing strategic justification, the land budget, comparables, alternatives and a concept plan demonstrating development of the Land with any verified values protected; (b) expert landscape architecture and/or ecological evidence ground-truthing the mapped Landscape Values area against its actual condition, keyed to dated photographs and aerial imagery; (c) civil engineering evidence as to servicing feasibility, if servicing is put in issue; (d) traffic engineering evidence, if required, as to the necessity and extent of the PAO7 take; and (e) lay evidence of the Submitters as to the history, use and condition of the Land, with photographic and drone exhibits and a comparables table drawn from the exhibited land budget.

## **J. Attachments and request for a written response**

38. Annexure A contains the schedule of questions and evidence requests, each anchored where possible to its supporting provision or principle; the Submitters ask that each question be answered and

[REDACTED]

each document produced (or the basis for withholding stated) as part of the detailed written response requested. Annexure B contains the notices and Public Acquisition Overlay maps received from the Department (Exhibits B-1 to B-8), together with the further supporting documents listed at the end of this letter.

39. Given the seriousness of the proposed outcome — the removal of all identified net developable area from a combined landholding of approximately [REDACTED] representing [REDACTED] [REDACTED] — the Submitters ask that this matter be treated as a priority and that a detailed written response, including a statement of reasons, be provided before Amendment C109moor is finalised.

## **K. Reservation of rights**

40. Nothing in this submission is a waiver of any legal or equitable right or an acceptance of the validity or reasonableness of the proposed controls. The Submitters expressly reserve all rights, including under the Planning and Environment Act 1987 (Vic) (including sections 39, 98, 106 and 107), the Land Acquisition and Compensation Act 1986 (Vic), administrative law and procedural fairness, and the Charter; and the right to make further submissions, to adduce expert evidence, to be heard at any panel or advisory committee (section 24), to seek judicial review of any decision affected by material jurisdictional error in the Supreme Court of Victoria (Order 56; Administrative Law Act 1978 (Vic); Aala; Plaintiff S157/2002; Hossain; MZAPC), to seek declaratory or injunctive relief, to pursue any entitlement to compensation, and to pursue any other remedy available at law.

[REDACTED]

We thank you for your consideration and look forward to your response.

**Yours faithfully,**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Recipients

| Recipient                                                           | Contact details                                                                                                                                                                                                     |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Victorian Planning Authority /<br>DTP (Merrimu PSP Project<br>Team) | Email <a href="mailto:Merrimu@transport.vic.gov.au">Merrimu@transport.vic.gov.au</a> · Post:<br>Victorian Planning Authority, RE: Merrimu PSP,<br>GPO Box 2392, Melbourne VIC 3001 · Phone [REDACTED]<br>[REDACTED] |

[REDACTED]



|                                                    |                                                                                                                                                   |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Moorabool Shire Council                            | Email info@moorabool.vic.gov.au · Post: PO Box 18, Ballan VIC 3342 · Phone <span style="background-color: black; color: black;">[REDACTED]</span> |
| Minister for Planning — The Hon. Sonya Kilkenny MP | Parliamentary email<br>sonya.kilkenny@parliament.vic.gov.au (confirm current ministerial office details before sending)                           |
| Local State Member (optional copy)                 | Identify the Member for the Bacchus Marsh / Merrimu district via the Victorian Electoral Commission and copy for information.                     |

## Further supporting documents lodged with this submission

1. Annexure A — Schedule of questions and evidence requests (following pages).

2. Annexure B — Notices received in relation to Amendment

C109moor: the general VPA notice dated 6 March 2026 and the property-specific PAO7 notice from DTP (Mat Garner, Director New Communities), with the PAO explainer and Figures 1.1 to 1.3 (Exhibits B-1 to B-8, as previously lodged).

6. VicPlan Planning Property Reports for both properties.

- 
7. Photographs of vegetation, road access, driveways, boundaries and neighbouring land (dated site and drone photographs keyed to the exhibited mapping to follow).
  8. Any further correspondence received from the VPA, DTP or Moorabool Shire Council.

## **ANNEXURE A — Schedule of questions and evidence requests**

Amendment C109moor — Merrimu PSP .

This schedule consolidates, refines and supersedes in form the schedule previously lodged; every earlier request is maintained and incorporated. Each question is anchored, where possible, to the provision or principle that supports it. Where a question asks for a document, the Submitters ask that the document be provided or, if withheld, that the reason and the statutory basis for withholding be stated. The Submitters ask that each question be answered as part of the written response requested in the covering submission.

### **Part 1 — The land budget and net developable area**

- A1. Provide the completed land budget worksheet for each of prepared in accordance with the Precinct Structure Planning Guidelines (2021) land budget methodology, showing every input and deduction category (gross area, encumbered land, road, Landscape Values, open space, drainage, net developable area), and state whether the Landscape Values area was treated as encumbered land within gross developable area or excluded from gross developable area altogether. [PSP Guidelines; MD11; PPN46]
- A2. Identify every reason why each property has been assessed as having no net developable area, and the officer(s), consultant(s)

[REDACTED]

and document(s) responsible for that assessment. [ss 12(2), 22; PPN46]

A3. Confirm whether any part of either property was, at any stage of the PSP's preparation, assessed as developable and, if so, when and why that assessment changed, producing each iteration of the land budget for the Land. [PPN46 transparency]

A4. Explain how a net developable area of zero across a combined [REDACTED] of retained precinct land is consistent with the amendment's purpose of delivering in the order of 8,000 homes and 1,800 jobs, and with Clauses 11.02-1S and 16.01-1S of the Planning Policy Framework. [Cll 11.02-1S, 16.01-1S]

A5. State whether any development credit, transferable development right or other offsetting benefit was assumed or provided for the owners of the Land and, if not, why not. [Cl 71.02-3]

A6. Confirm whether the land budget for these properties can still be amended before the amendment is finalised, and identify the evidence that would most assist the planning authority to reconsider it. [ss 22, 23, 25]

A7. Identify what consequential changes elsewhere in the PSP, if any, would follow from reinstating a reasonable net developable area on the Land, and whether the precinct's housing and infrastructure outcomes would be materially affected.

## **Part 2 — The 'Landscape Values' designation: instrument, criteria, methodology and data**

- A8. State the precise instrument by which 'Landscape Values' is applied to the Land — an Urban Growth Zone schedule category, a Significant Landscape Overlay (Clause 42.03), an Environmental Significance Overlay (Clause 42.01), a zone provision, or a notation within the incorporated PSP — and provide the enabling clause and schedule and the statutory source of power for each control applied to the Land. [s 6(2); Form and Content Direction, s 7(5)]
- A9. Provide the criteria, thresholds and methodology used to identify land as having 'Landscape Values' within the precinct. [PPN46; Cl 12.05-2S]
- A10. Provide every underlying study relied upon — landscape, visual, biodiversity, ecological or otherwise — with the dates, authors and terms of reference of each. [MD11; PPN46]
- A11. Provide the GIS data, layers and mapping (in an accessible format) showing the Landscape Values area on and around the Land.
- A12. Identify who determined the extent of the Landscape Values area on each property, on what date, and on what evidence; and identify the landscape or environmental feature said to be physically present on the Land, with its location. [ABT v Bond — probative material]

## **Part 3 — Alignment of the mapped area with cadastral boundaries**

- A13. Explain why the Landscape Values area on the Land appears to terminate at the Submitters' title boundaries rather than following any natural or physical feature across adjoining land.
- A14. If the designation is based on a genuine landscape, vegetation or environmental feature, explain why the mapped boundary does not continue across neighbouring properties where the same feature would be expected to exist.
- A15. Confirm whether cadastral (title) boundaries were used as an input to, or a constraint upon, the mapping of Landscape Values and, if so, on what basis; and provide any internal guidance or instruction given to the mapping author regarding the treatment of property boundaries. [Peko-Wallsend]
- A16. Confirm whether any independent peer review of the Landscape Values mapping was undertaken; if so, provide it; if not, explain why none was considered necessary.

## **Part 4 — Site verification, native vegetation and ecology**

- A17. Identify whether any site inspection of the Land was carried out before the zero net developable area conclusion was reached — by whom and on what date — and provide all field notes, photographs and records of any such inspection, or confirm that none occurred. [SZIAI; Prasad]

- A18. Explain how the extent of any environmental or landscape constraint on the Land was verified on the ground, as distinct from being inferred from desktop or aerial sources, and confirm whether the whole of each property, or only identified parts, contains the values said to justify the designation.
- A19. Provide the Native Vegetation Precinct Plan as it treats each property, identify the native vegetation (if any) actually mapped on each lot, and provide any native vegetation assessment, tree survey, arboricultural report or habitat assessment relied upon for the Land. [Guidelines for the removal, destruction or lopping of native vegetation (2017)]
- A20. Provide each ecological, flora and fauna study relied upon for the precinct as it bears on the Land — including any targeted surveys (for example, Golden Sun Moth and Striped Legless Lizard) — and identify whether any listed species or habitat was recorded on either property.

## **Part 5 — Consistency with neighbouring and comparable land**

- A21. Provide a comparison of the land budget allocations (gross area, encumbrances and net developable area) for the Land and for each adjoining and nearby lot within the precinct. [s 4(1)(a) — fair and orderly planning]
- A22. Identify each nearby property that has been allocated net developable area, and the physical or planning characteristics said to distinguish it from the Land.

[REDACTED]

A23. Explain how the differing treatment of the Land and comparable land is consistent with the orderly and fair planning of the precinct and the equal application of the land budget methodology. [Li — intelligible justification]

A24. Provide the assessment that informed the excision of other land from the precinct 'due to limited development potential' (as shown on the exhibited site location map), and explain the basis on which the Land was retained within the precinct notwithstanding an allocation of zero net developable area.

## **Part 6 — Road widening, PAO7 and acquisition**

A25. Provide the engineering and traffic justification for the road widening affecting approximately [REDACTED] of the [REDACTED] [REDACTED] including the road cross-section, alignment and functional layout plan, and any assessment of an alternative alignment that would reduce the take.

A26. Explain how the conclusion that part of [REDACTED] is suitable and necessary for a public road serving the new urban area is reconciled with the conclusion that the balance of the same property is unsuitable for any net developable area.

A27. Confirm the identity of the acquiring authority for PAO7, the public purpose for which the land is to be acquired, the anticipated timing of acquisition, and the acquisition and compensation pathway that will apply, including under the Land Acquisition and Compensation Act 1986 (Vic); and confirm whether Moorabool Shire Council resolved to request



[REDACTED]

the application of PAO7, providing the date and terms of any resolution and the supporting officer report. [Cl 45.01; Part 5 of the Act; LACA 1986]

A28. Confirm whether the PAO proposal was assessed together with, or separately from, the land budget and Landscape Values treatment of the balance of [REDACTED] providing any integrated assessment; and confirm whether any other part of the Land [REDACTED] is intended to be reserved or acquired for any public purpose.

## **Part 7 — Public purpose, funding, reservation and compensation**

A29. State whether any part of the Land is, in substance, intended to function as public open space, landscape buffer, drainage, waterway, retarding basin or conservation land serving the precinct; if so, identify the area, the mechanism proposed, and whether that land is to be reserved, acquired or transferred, and on what terms.

A30. Explain how the public benefit derived from any such function of the Land is to be funded — through the Development Contributions Plan and the infrastructure funding machinery in Part 3B of the Act (sections 46I and following), by public acquisition, by credit or by transfer — or whether the cost is intended to be borne by the owners through the sterilisation of the Land. [Part 3B; Cl 71.02-3]

A31. State whether any part of the Land is treated as 'inner public purpose land' within the meaning of section 98AAA of the Act, and the consequences for compensation. [s 98AAA]

A32. Identify every compensation entitlement the planning authority considers arises, or would arise, in respect of the Land, including under sections 98, 106 and 107 of the Act; and state whether the planning authority considered that applying an uncompensated control, rather than a Public Acquisition Overlay, to land in substance required for a public purpose engages sections 98(1A) and 98(1B) (inserted by the Planning and Environment Amendment Act 2021) with the effect that no compensation is payable, and how that consequence was weighed in fairness to the owners. [ss 98, 98(1A)–(1B), 106, 107; Skerdero]

A33. Explain the purpose for which the Landscape Values control was applied to the Land; confirm that it was not applied for the purpose, or with the intended effect, of securing public-benefit land while avoiding compensation; and explain why a reservation under Clause 45.01 was not applied if the land is in substance required for a public purpose. [Municipal Council of Sydney v Campbell; Thompson v Randwick]

A34. Explain how the imposition of ongoing rates, land tax and maintenance obligations on land allocated no developable area is said to be consistent with the fair, orderly, economic and sustainable use and development of land. [s 4(1)(a)]

## **Part 8 — Strategic justification, Ministerial Directions and Practice Notes**

A35. Provide the strategic assessment of the amendment prepared under Ministerial Direction 11 and Planning Practice Note 46, and identify where in that assessment the treatment of the Land is justified. [MD11; PPN46]

A36. Identify each Ministerial Direction applied in the preparation of the amendment, including whether Ministerial Direction 12 (Urban Growth Areas) applies to Moorabool, and confirm compliance with the Ministerial Direction on the Form and Content of Planning Schemes in respect of each control applied to the Land. [ss 7(5), 12(1A)]

A37. Identify the objectives of planning in Victoria (section 4 of the Act) said to be served by allocating no net developable area to the Land, and how the present and future interests of the owners were weighed in that assessment. [s 4; s 12(2)(c)]

A38. Identify the strategic basis for the treatment of the Land in the Bacchus Marsh Urban Growth Framework (or any successor framework) and explain how allocating zero net developable area is consistent with it and with the Municipal Planning Strategy's growth directions for Merrimu. [Cl 02]

## **Part 9 — Alternatives and proportionality**

A39. Identify every less restrictive planning alternative considered for the Land — including a Significant Landscape Overlay or design

[REDACTED]

control confined to independently verified areas, development outside verified constraints with clustering, setbacks or building envelopes, an agreement under section 173 of the Act, road realignment, transfer or acquisition of public-benefit land, identification of the Land as a future investigation area, or amended land budget treatment — and provide the assessment by which each was rejected in favour of a zero allocation.

[PPN46; Li]

A40. Explain the precise planning objective served by allocating zero net developable area to the Land, and why a lesser restriction cannot achieve the same objective.

A41. State whether the effective sterilisation of privately owned land through the proposed controls was identified and considered as a consequence of the amendment, and how that consequence was weighed against the public benefit sought. [s 12(2)(c); Cl 71.02-3]

A42. Explain how the removal of all net developable area from approximately [REDACTED] of privately owned land is proportionate to the public benefit sought to be achieved. [s 7(2) Charter; Li]

## **Part 10 — Process, notice and procedural fairness**

A43. Confirm whether the amendment was authorised by the Minister under section 8A of the Act, and provide the authorisation and any conditions relevant to notice or process. [s 8A]

[REDACTED]

A44. Confirm whether notice of the amendment was given to the owners of each property under section 19(1)(c) of the Act, identify each notice relied upon, and state whether any exemption from notice requirements under section 19 or section 20 of the Act was sought or relied upon (providing any such exemption and its terms). [ss 19(1)(c), 20]

A45. Confirm whether the planning authority specifically considered its procedural fairness obligations to the owner of [REDACTED] [REDACTED] which became registered proprietor after the exhibition period had closed. [Kioa v West; Annetts v McCann]

A46. Confirm that this submission has been accepted and recorded as a formal submission to Amendment C109moor for both properties, including as a late submission for the reasons given, consistent with the Department's own statement that late submissions will be assessed to determine how they can be considered. [ss 21, 22]

A47. Confirm that, unless the amendment is changed in the manner requested, this submission will be referred to a panel in accordance with section 23(2) of the Act, and that the Submitters will be afforded the opportunity to be heard in their own right, with leave to adduce expert town planning, landscape, ecological, valuation, traffic and engineering evidence. [ss 23(2), 24]

A48. Confirm that all three Submitters have been added to every notification list for the amendment and for these properties, that no final decision will be made in respect of the Land until

[REDACTED]

[REDACTED]

this submission and the review requested have been genuinely considered, and nominate a single point of contact for this matter. [s 22; Tickner v Chapman]

A49. Confirm the arrangements for the meeting with DTP officers offered in the PAO7 notice, and for a separate meeting with the VPA landowner liaison and with Moorabool Shire Council, to discuss the impact on the Land and possible alternative outcomes.

## **Part 11 — Documents, reasons, preservation and disclosure**

A50. Provide copies of all reports, memoranda, consultant advice, modelling and correspondence that informed the treatment of the Land in the draft PSP and land budget, and identify each meeting, workshop or decision at which the treatment of the Land was settled, with dates and participants. [s 22; PPN46]

A51. Provide a written statement of reasons explaining the treatment of each property — the evidence relied upon, the alternatives considered, and the basis for concluding that zero net developable area is justified — before Amendment C109moor is finalised. [s 25 (panel reasons); procedural fairness]

A52. Confirm that all documents concerning the treatment of the Land have been preserved and retained, confirm whether the documents requested will be provided voluntarily and, if any is withheld, state the reason and statutory basis; and identify the

relevant contact for any request under the Freedom of Information Act 1982 (Vic). [FOI Act 1982]

## **Part 12 — Charter of Human Rights and the review pathway**

A53. Confirm whether proper consideration was given to the right in section 20 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) — that a person not be deprived of property other than in accordance with law — consistent with the obligation in section 38, and provide the record of that consideration and any human rights or property rights assessment undertaken in respect of the Land. [Charter ss 20, 38; Castles; Bare]

A54. Explain how any limitation of that right is demonstrably justified under section 7(2) of the Charter as proportionate and the least restrictive means reasonably available. [Charter s 7(2)]

A55. Confirm the review pathway the planning authority considers applies to the adoption and approval of the amendment, and the point at which any decision affecting the Land becomes final. [ss 27–39]

*End of Annexure A. This schedule forms part of the submission to Amendment C109moor and is to be read together with the covering letter and Annexure B.*