

ADDENDUM TO FORMAL SUBMISSION

Draft Merrimu Precinct Structure Plan : Planning Scheme Amendment C109moor

Submitted by	[REDACTED] [REDACTED] [REDACTED]
Entity	[REDACTED]
Property	[REDACTED]
Land area	[REDACTED] this addendum concerns approximately 40 acres of cleared, flat land within that holding
Relates to	Formal Submission on Amendment C109moor, lodged March 2026 via engage.vic.gov.au/Merrimu
Relief sought	Inclusion of [REDACTED] within the developable land framework of the Merrimu PSP, sufficient to yield approximately 300 residential lots
Key attachments	(1) Moorabool Planning Scheme Amendment C34, Panel Report, June 2008; (2) [REDACTED] letter to Moorabool Shire Council, 7 November 2012 (Notice re Zoning Anomaly for [REDACTED])
VPA contact	[REDACTED] [REDACTED] [REDACTED]

This addendum is made without prejudice to all existing and future legal rights of [REDACTED] and [REDACTED] set out in the original Formal Submission on Amendment C109moor.

1. Introduction and Purpose

These submissions are made by [REDACTED] as an addendum to its Formal Submission on Amendment C109moor, and are directed to the Victorian Planning Authority ("the Authority") and Moorabool Shire Council ("Council") in their respective capacities in relation to the finalisation of the Merrimu Precinct Structure Plan ("the PSP").

This addendum follows discussion with [REDACTED] at the Authority, who indicated that a supplementary submission addressing the development potential of [REDACTED] would assist the Authority in its consideration of [REDACTED] position.

For the reasons set out below, [REDACTED] submits that the Authority is now the only body with practical capacity to give effect to undertakings made to [REDACTED] by Council and, through the 2008 Amendment C34 Panel process, acknowledged at State level. Those undertakings cannot, as a matter of law, be given effect by directing developers to acquire native vegetation offset credits from a particular private landholder. The only available and lawful mechanism by which those undertakings can now be honoured is the inclusion of [REDACTED] within the developable land framework of the Merrimu PSP, in the manner set out in this addendum.

This addendum does not withdraw or narrow any part of the original Formal Submission and is to be read together with it.

2. Relief Sought

Thermo-Polis seeks a determination of the Authority, in finalising the Merrimu PSP, to designate sufficient developable land area within [REDACTED] to yield approximately 300 residential lots of varying sizes, together with corresponding and consequential provision for:

- road access and connection to the precinct movement network;
- inclusion within the Development Contributions Plan infrastructure charging and beneficiary area;
- servicing (water, sewerage and power) consistent with the standard applied to comparable land elsewhere in the precinct; and
- inclusion within an appropriate development staging tranche.

[REDACTED] does not seek to dictate the precise land use budget, zoning boundary, or configuration by which this outcome is achieved. [REDACTED] submits that these are properly matters for the Authority's planning and technical judgment, provided that the substantive outcome sought and provision for approximately 300 residential lots is delivered. Without limiting the generality of the foregoing, [REDACTED] position is that the flat, previously cleared northern portion of the property (in the order of 40 acres / 16.19 hectares) is the logical location for the developable component, with the balance of the land, including the areas of remnant vegetation nearer [REDACTED], retained and formally registered as a conservation and buffer area. [REDACTED] advances this as its preferred configuration, not as the limit of the relief sought.

3. Background

The relief sought in this addendum arises from a course of dealing between [REDACTED] Council and the State extending over some two decades, summarised below and set out more fully in the original Formal Submission.

3.1 The 2008 Amendment C34 Panel Report

[REDACTED] represented by [REDACTED] was a formal party to the Panel appointed under the Planning and Environment Act 1987 to consider Amendment C34 to the Moorabool Planning Scheme, which reported in June 2008.

The Panel recorded [REDACTED] submission as follows:

[REDACTED] which owns land in the [REDACTED] of the precinct, objected to: The existing PCRZ which has sterilised the land from any development opportunities without acquisition or compensation. The proposed Clause 21.03 Framework Plan which reinforces the constraint on the land."

Moorabool Planning Scheme Amendment C34, Panel Report, June 2008, Chapter 5.2 (Bences Road, Bacchus Marsh) Submissions

Council's response, as recorded by the Panel, was that "the Structure Plan for Bences Road will address these issues." That undertaking is now eighteen years old.

The Panel further found, independently of the parties' submissions, that the zoning applied to the land was legally erroneous:

"The Panel does not agree with the view in the Draft Structure Plan that 'It is also not uncommon for land not in public ownership to be within a PCRZ.' This zone is within the suite of public land zones (Clause 36) and the VPP Practice note 'Applying Public Land Zones' clearly states 'The public land zones can only be applied to public land.' ... It appears to this Panel that the application of the PCRZ to private land to the west of the Long Forest Nature Conservation Reserve was an error that was overlooked when the scheme was approved."

Moorabool Planning Scheme Amendment C34, Panel Report, June 2008, Chapter 5.2 - Privately Owned Public Conservation and Resource Zone (PCRZ) Land

The Panel recommended as follows:

“The PCRZ of private land on the [REDACTED] of the Bences Road area should be zoned RCZ as an interim measure until an appropriate planning framework is established through a separate Amendment to implement a Structure Plan for the area.”

Moorabool Planning Scheme Amendment C34, Panel Report, June 2008, Recommendation 16

“It is emphasised that before such an amendment is exhibited, it should be established whether there is government interest in acquiring land to extend the conservation reserve. If there is, a Public Acquisition Overlay should be considered when the structure plan amendment is prepared. As an interim measure only, the privately owned PCRZ land should be zoned RCZ.”

Moorabool Planning Scheme Amendment C34, Panel Report, June 2008, Chapter 5.2

3.2 The 2008–2012 Negotiations with Council

Following the Panel Report, [REDACTED] engaged with Council officers that included [REDACTED] and [REDACTED], with a view to resolving the anomaly. [REDACTED] letter to Council of 7 November 2012 records that Council conceded fault and disclosed that the same zoning error affected more than a dozen properties across the Shire. The letter confirms that [REDACTED] and [REDACTED] (then owned by [REDACTED] subsequently [REDACTED] l) and [REDACTED] were affected by the identical error, on the same terms, evidencing a systemic Council mapping error rather than a matter isolated to [REDACTED]

The 7 November 2012 letter records that Council agreed at least one of the following would occur:

- rezoning of the properties to RCZ within three months, as recommended by the Panel;
- application of a Public Acquisition Overlay, with an agreed “like for like” valuation methodology using neighbouring sub-0.75-hectare developable land as the yardstick;
- funding of the acquisition through a Developer's Contribution Scheme, with affected landowners reimbursed on a staged basis; or
- Federal or State Government sign-off on an acquisition overlay at an accepted value.

The negotiated position extended beyond the narrow PCRZ-affected strip. [REDACTED] letter records that the balance of the holding was contemplated as forming part of the wider precinct offset arrangement, on the basis that it was to function as the mechanism enabling higher-density development on adjoining land:

“The area in question would not only cover an offset portion already rezoned as PCRZ but include the remainder of our land. The reason being that the remainder of our land would have to be the larger blocks closer to the remnant forest that would then allow for the adjacent blocks to be developed as higher density ‘clusters’. These larger blocks were to further assist in the integration of the forest into the proposed development as part of the whole of precinct development plan. Therefore this sacrificed land would also be equitably considered in the benefit that it would offer to the adjacent developable properties.”

[REDACTED] letter to Moorabool Shire Council, 7 November 2012, “Consolidated Recommendations”

Only the rezoning limb of that arrangement was ultimately performed, and only after considerable delay. The offset-related commitments were not implemented. The 2012 letter records that, as at that date, neighbouring developers (identified in the letter as [REDACTED] and [REDACTED]) were preparing development applications on the basis that the [REDACTED] formed no part of their offset strategy.

The 2012 letter further asserts, though without independent valuation evidence attached, that [REDACTED] sold neighbouring [REDACTED] at approximately 50% below market value as a consequence of the same zoning anomaly. [REDACTED] puts this on the record as a contemporaneous, named example of the value impact of the error, while acknowledging that a current independent valuation would be required before this figure could be relied upon in any contested hearing.

4. The Historical Undertaking Cannot Be Given Effect by Directing Developers, and Inclusion in the PSP is the Available Remedy

[REDACTED] wishes to correct, for the record, the basis on which its position is now advanced. It is understood that the Authority does not have power to direct or mandate a developer to acquire native vegetation offset credits from a particular private landholder. Offset credits within the Victorian native vegetation framework are sourced by permit applicants from a general market of registered and third-party offset providers, and the Authority's role in approving a permit application does not extend to nominating, still less compelling, the source of an applicant's offsets. Any provision in the PSP or Development Contributions Plan purporting to direct developers to a named private offset supplier would accordingly sit outside the Authority's proper function and would not, in [REDACTED] submission, be a mechanism the Authority could lawfully or practically adopt.

It follows that the undertakings recorded in the 2008 Panel Report and in the 2008–2012 negotiations with Council, which contemplated [REDACTED] land generating value as a nominated precinct offset site and cannot now be given effect in the manner originally contemplated. [REDACTED] accepts this. It does not follow, however, that those undertakings can simply lapse unremedied.

Two lawful mechanisms remain available to give effect to the substance of what was promised:

- acquisition of the land, or the affected portion of it, by a public authority pursuant to a Public Acquisition Overlay, as the 2008 Panel itself contemplated as an alternative to rezoning; or
- inclusion of the land within the developable land framework of the PSP, so that Thermo-Polis is able to realise the value of its land through development in the same manner as comparable landholdings elsewhere in the precinct.

No Public Acquisition Overlay has been applied to the [REDACTED] land at any point in the eighteen years since the Panel's Recommendation 16, notwithstanding that the Panel itself said this question should be resolved before any structure plan amendment was exhibited.

In the absence of any acquisition, and given that a direction to developers is not a course reasonably open to the Authority, [REDACTED] submits that inclusion of the land within the PSP's developable land framework is the only remaining mechanism by which the Authority can give practical effect to the undertakings summarised in Section 3 above. This is the basis upon which the relief in Section 2 is sought.

5. Consistency with the Merrimu Precinct Structure Plan

[REDACTED] submits that the relief sought is not a departure from the exhibited PSP, but is consistent with, and gives proper effect to, the PSP's own stated criteria for identifying developable land. The PSP constrains development on topographic and ecological grounds; neither constraint applies to the land the subject of this addendum:

- Requirements R54–R58 and Guidelines G51–G53 (Slope and Visual Impact) apply to land with slope greater than 10%, and to land west of the break-of-slope line shown on Plan 6 – Topography, requiring minimised cut and fill, larger lots, and limitation of visual impact. These requirements exist because that class of land is inherently difficult to develop. The flat, cleared portion of [REDACTED] the subject of this addendum does not fall within that class.
- Requirements R42 and R46, together with the Native Vegetation Precinct Plan referred to at Section 1.9 of the PSP, require a 50-metre conservation setback and the retention of native vegetation within conservation areas. As the land the subject of this addendum has already been cleared, it does not contain the vegetation values these provisions are directed at protecting. The corresponding formal registration of the balance of the property as a conservation area, proposed in Section 2 above, satisfies these requirements directly, and results in a larger, more clearly defined conservation holding on this parcel than presently exists.
- Requirement R17 already requires that the land connecting Flanagans Drive and the [REDACTED] be vested as a road reserve in perpetuity, expressly “to enable properties in this location to

connect in to the broader precinct.” The PSP has therefore already anticipated residential-grade access to the [REDACTED] frontage of [REDACTED].

Further, the Authority's own background material for the Merrimu PSP records that the question of the precinct's eastern boundary has previously been treated as provisional and open to correction on the basis of evidence.

Council's 2021 Bushfire Assessment and Development Report for the Merrimu PSP records the following Panel finding on that question:

“If evidence can be provided in the future that demonstrates the land within the [Bushfire Management Overlay] (or some significant portion of it) can be developed, then a modification to the eastern boundary of the precinct could be considered at that time.”

Merrimu PSP – Bushfire Assessment and Development Report (BPAD), April 2021, recording the Panel's findings on the eastern precinct boundary

[REDACTED] submits that the present, cleared and surveyable condition of the relevant portion of [REDACTED] constitutes precisely the class of evidence this passage contemplates and is consistent with the correction to the eastern boundary anticipated by the 2008 Amendment C34 Panel referred to in Section 3.1 above.

6. Confirmation of Developable Extent

The 2007 Bences Road Area Local Structure Plan Final Report (Ratio Consultants) records, in relation to its own indicative development and no-development boundaries, that:

“The final boundaries of development and no development areas will be determined in the detailed development plan for the precinct. The feature and level survey and the findings of the vegetation survey will firmly establish the boundaries of each area... the figures outlining the future development and no development areas are preliminary boundaries that are indicative only.”

Bences Road Area Local Structure Plan Final Report, Ratio Consultants, November 2007, Section 8.2.9

[REDACTED] submits that the Merrimu PSP process is the “detailed development plan for the precinct” this passage anticipated, and that a current feature, level and vegetation survey of [REDACTED], which [REDACTED] is prepared to commission, is the appropriate mechanism by which the Authority may confirm the precise developable extent required to give effect to the relief sought. [REDACTED] requests that the Authority confirm it will accept and have regard to such a survey, prepared to the satisfaction of the responsible authority, in finalising the property-specific land use budget for this parcel.

On the extent of “no development area” historically applied to the land, [REDACTED] notes for completeness that its own contemporaneous correspondence records this figure inconsistently: a letter of 4 November 2005 states “more than 60 percent”, while a letter of 30 March 2007 states “more than 85 percent”. [REDACTED] position is that the constraint increased over that period as successive buffer and structure plan iterations were applied. Both figures are put on the record for completeness; neither is determinative of the present relief sought, which rests on the current, surveyed condition of the land.

7. Indicative Yield

The following table sets out indicative yield scenarios in support of the relief sought, using the density benchmarks already adopted in the exhibited PSP (Table 3 – Housing Density and Diversity and Table 4 – Dwelling Yields), at a range of Net Developable Area (NDA) assumptions based on an indicative 40-acre developable extent.

As set out in Section 6 above, the precise developable area remains subject to confirmation by survey; the figures below are accordingly indicative only and would be finalised through a Functional Layout Plan at the subdivision permit stage, in the same manner as for any other parcel in the precinct.

Assumption (indicative only)	PSP Density Reference	Indicative Yield
70% NDA ratio (11.33 ha) at Standard Density	Table 3/4 – Balance, 15 dwellings/NDHa	~170 lots
70% NDA ratio (11.33 ha) at Amenity Density	Table 3/4 – Amenity, 25 dwellings/NDHa	~283 lots
75% NDA ratio (12.14 ha) at Amenity Density	Table 3/4 – Amenity, 25 dwellings/NDHa	~300 lots (requested)
80% NDA ratio (12.95 ha) at Amenity Density	Table 3/4 – Amenity, 25 dwellings/NDHa	~324 lots

[REDACTED] relief is sought by reference to the yield outcome of approximately 300 lots, rather than by reference to any particular NDA assumption or zoning configuration, for the reasons given in Section 2 above.

8. Consequences of Non-Resolution

[REDACTED] respectfully submits that resolution of this matter within the current PSP process, rather than by way of subsequent review, appeal or litigation, is in the interests of the Authority, Council and the orderly implementation of the Merrimu PSP as a whole, for the following reasons.

- The underlying zoning error has now been the subject of an independent Panel finding (2008), a Council admission of fault affecting more than a dozen properties Shire-wide (2012), and correspondence extending over some two decades without final resolution. A structure plan that proceeds to adoption without addressing a documented and admitted error affecting multiple landholdings within its own boundary is, in [REDACTED] submission, exposed to a materially greater risk of formal review than one which resolves it.
- Because the underlying error is common to at least four landholdings [REDACTED], an unresolved outcome for [REDACTED] leaves open the possibility of parallel or sequential claims by other affected landowners, with attendant cost and delay to the Authority and Council in addressing each separately rather than resolving the common issue once, in this process.
- Provisions of Part 5 of the Planning and Environment Act 1987 concerning planning compensation, including compensation for financial loss arising from planning blight, remain available in principle to affected landowners in appropriate circumstances. [REDACTED] does not, in this addendum, make a concluded claim under Part 5, but notes that the continued absence of a Public Acquisition Overlay, combined with the Authority's inability to direct offset arrangements as addressed in Section 4 above, narrows the range of mechanisms by which the historical undertakings can be resolved other than through inclusion in the PSP.
- Delay in resolving [REDACTED] position increases the likelihood that this matter proceeds to a Planning Panel or Standing Advisory Committee hearing on Amendment C109moor, with resulting delay to the finalisation of the PSP for all stakeholders in the precinct, including those landowners and developers whose interests depend on timely adoption.

For these reasons, [REDACTED] submits that resolution of the relief sought in Section 2 above, within the current process, is the outcome most likely to deliver a timely and durable Merrimu PSP for all parties.

9. Formal Requests

#	Formal Request
1	Formally acknowledge in the PSP Background Report the June 2008 Amendment C34 Panel's finding that the PCRZ zoning applied to the [REDACTED] was an error, its Recommendation 16 that the land be rezoned RCZ as an interim measure, and the negotiated undertakings recorded in [REDACTED] letter to Council of 7 November 2012.
2	Confirm that the Authority will accept a current feature, level and vegetation survey of [REDACTED] commissioned by [REDACTED] as the basis for finalising the developable extent within the property-specific land use budget, consistent with the survey-based confirmation process contemplated in Section 8.2.9 of the 2007 Bences Road Area Local Structure Plan Final Report.
3	Amend Plan 2 – Place-Based Plan and Plan 3 – Housing to designate sufficient developable land area within Crown Lot 15 to yield approximately 300 residential lots, with the precise configuration to be determined by the Authority having regard to the survey referred to above.
4	Amend Appendix 2 – Property-Specific Land Use Budget to reflect the resulting Net Developable Area and dwelling yield, consistent with Table 4 – Dwelling Yields.
5	Formally register the balance of [REDACTED] not required to meet the developable extent as a Conservation Area under the Merrimu Native Vegetation Precinct Plan (NVPP), satisfying the requirements of R32 and R46 and the 50-metre conservation setback required by R42.
6	Confirm that the road connection required by R17 ([REDACTED]) will provide direct frontage access to the proposed residential area, and include any further internal connector requirement in Plan 4 – Movement Network.
7	Include the developable portion of [REDACTED] within the Development Contributions Plan infrastructure charging and beneficiary area, on the same basis as other residential land in the precinct.
8	Include the site within an early development staging tranche in Plan 13 – Infrastructure and Development Staging, having regard to the existing 22kV overhead supply along Bences Road identified in the Creo High-Level Utility Servicing and Infrastructure Assessment (January 2023) and the interim servicing capacity identified from the Dodemaide Circuit water tank.

10. Reservation of Rights and Next Steps

[REDACTED] requests that the Authority confirm in writing whether this addendum will be determined as part of the current review of submissions on Amendment C109moor, or referred to a Planning Panel or Standing Advisory Committee together with the original Formal Submission. [REDACTED] reiterates its request for a direct meeting with Authority and Council planning officers to discuss this addendum prior to the PSP being finalised.

This addendum, and the relief sought in it, is made without prejudice to and without waiver of any of [REDACTED] existing or future legal rights, including in relation to the matters addressed in Sections 3, 4 and 8 above, all of which are expressly reserved.

Submitted by:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Date: 14 July 2026

Lodged via: engage.vic.gov.au/Merrimu

Also emailed to: [REDACTED]

Also emailed to: Moorabool Shire Council planning@moorabool.vic.gov.au