Planning and Environment Act 1987

Panel Report

Glenelg Planning Scheme Amendment C78

11 September 2015
Planning and Environment Act 1987
Panel Report pursuant to Section 25 of the Act
Glenelg Planning Scheme Amendment C78

11 September 2015

Michael Kirsch, Chair
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<th>Description</th>
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<tbody>
<tr>
<td>DELWP</td>
<td>Department of Environment, Land, Water and Planning</td>
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<tr>
<td>DTPLI</td>
<td>Department of Transport, Planning and Local Infrastructure (former)</td>
</tr>
<tr>
<td>ERZ</td>
<td>Environmental Rural Zone</td>
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<tr>
<td>ESO</td>
<td>Environmental Significance Overlay</td>
</tr>
<tr>
<td>FZ</td>
<td>Farming Zone</td>
</tr>
<tr>
<td>GSFP</td>
<td>Glenelg Strategic Futures Plan</td>
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<tr>
<td>GSLUS</td>
<td>Glenelg Strategic Land Use Study</td>
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<tr>
<td>GSSS</td>
<td>Glenelg Sustainable Settlement Strategy</td>
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<tr>
<td>HO</td>
<td>Heritage Overlay</td>
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<tr>
<td>IN2Z</td>
<td>Industrial 2 Zone</td>
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<tr>
<td>LDRZ</td>
<td>Low Density Residential Zone</td>
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<tr>
<td>LPPF</td>
<td>Local Planning Policy Framework</td>
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<tr>
<td>MSS</td>
<td>Municipal Strategic Statement</td>
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<tr>
<td>PCRZ</td>
<td>Public Conservation and Resource Zone</td>
</tr>
<tr>
<td>PPN37</td>
<td>Planning Practice Note 37, Rural Residential Development</td>
</tr>
<tr>
<td>PPN42</td>
<td>Planning Practice Note 42, Applying the Rural Zones</td>
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<tr>
<td>PPRZ</td>
<td>Public Park and Recreation Zone</td>
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<td>RCZ</td>
<td>Rural Conservation Zone</td>
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<tr>
<td>RCZ2</td>
<td>Rural Conservation Zone Schedule 2</td>
</tr>
<tr>
<td>RLZ</td>
<td>Rural Living Zone</td>
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<tr>
<td>RO</td>
<td>Restructure Overlay</td>
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<tr>
<td>SLO</td>
<td>Significant Landscape Overlay</td>
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<tr>
<td>SPPF</td>
<td>State Planning Policy Framework</td>
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<tr>
<td>TZ</td>
<td>Township Zone</td>
</tr>
<tr>
<td>VCS</td>
<td>Victorian Coastal Strategy</td>
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<tr>
<td>VPO</td>
<td>Vegetation Protection Overlay</td>
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<td>VPP</td>
<td>Victoria Planning Provisions</td>
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Executive Summary

Summary
Submissions on Amendment C78 raised a number of key ‘strategic’ issues in relation to the proposed application of the Rural Living Zone, including the potential loss of productive agricultural land, the possible oversupply of zoned land and the optimal minimum subdivision area. Other issues included the potential impacts on environment, landscape character and heritage values.

The Panel concludes that these ‘strategic’ issues warrant further analysis by Council and that the proposed Rural Living Zone rezonings in Portland West, Portland North, Bolwarra South and Bolwarra North should not proceed as part of Amendment C78.

The further analysis that needs to be undertaken includes:
• a more complete and contemporary assessment of the agricultural productivity of the areas proposed to be rezoned
• a more thorough assessment of supply and demand issues, based on more realistic development projections and a more appropriate planning horizon
• a more detailed analysis of the appropriate minimum subdivision area and whether different minima should apply to different areas.

The Panel encourages Council to use its current Rural Land Use Strategy project to address some of these issues and to inform the consideration of others. Having done that, Council will be better placed to address issues associated with the Shire’s fragmented rural areas. This process will also be assisted by Council’s Portland Industrial Land Strategy project which will inform the consideration of industrial interface issues.

In relation to Digby, the Panel supports Council’s intention to provide for rural residential development to support the viability of the town. However, the proposed rezoning should not proceed without a Restructure Overlay being applied and a restructure plan being developed. This cannot be done as part of Amendment C78 given that the Restructure Overlay was not included in the exhibited Amendment and a restructure plan has not been prepared. Potentially affected parties should have an opportunity for input into these proposals and they will need to be progressed through a future planning scheme amendment.

Following its consideration of submissions, Council resolved to abandon the proposed Industrial 2 Zone rezonings in Portland North and to refer the zoning of this area to the Portland Industrial Land Strategy project. The Panel supports Council’s position on this issue and has recommended that the proposed rezoning be removed from the Amendment.

Council also resolved to correct a Public Conservation and Resource Zone mapping anomaly in the Wattle Hill Creek area. The Panel also supports this element of the Amendment and the proposed correction.

For these reasons the Panel recommends that most of the Amendment be abandoned, except for the proposed application of the Public Conservation and Resource Zone and the Public Park and Recreation Zone.
Recommendation

Based on the reasons set out in this Report, the Panel recommends:

Glenelg Planning Scheme Amendment C78 should be adopted as exhibited subject to the following:

1. Remove the proposed rezonings to Rural Living Zone in Portland North, Portland West, Bolwarra South and Bolwarra North.
2. Remove the proposed rezoning to Rural Living Zone in Digby.
3. Remove the proposed rezoning to Industrial 2 Zone in Portland North.
4. Modify the boundary of the Public Conservation and Resource Zone associated with Wattle Hill Creek in accordance with Council’s response to the submission from Berry and Whyte Surveyors.
1 Introduction

1.1 The Amendment

The exhibited Amendment

Glenelg Planning Scheme Amendment C78 (the Amendment) was prepared by the Glenelg Shire Council as Planning Authority. As exhibited, the Amendment seeks to implement elements of the Glenelg Sustainable Settlement Strategy, June 2012 and proposes to:

- Rezone land from Rural Conservation 2 (RCZ2) and Farming Zone (FZ) to Rural Living Zone (RLZ) in order to reflect the existing use of this land located in Digby, Portland North and West, and Bolwarra North and South.
- Rezone land in public ownership from RCZ2 to either Public Park and Recreation Zone (PPRZ) or Public Conservation and Resource Zone (PCRZ) to reflect the ownership and future management of land.
- Rezone land from RCZ2 to Industrial 2 Zone (IN2Z) where it forms part of a lot already in IN2Z in Portland North.
- Amend the schedule to the RLZ to apply a minimum subdivision area of 2ha within the areas to be rezoned in Portland and Bolwarra and a 1ha minimum subdivision area in Digby.
- Amend the schedule to the RLZ to provide for a 20m building setback on RLZ land adjoining School Road (Portland North) and a 15m building setback on RLZ land in Digby.

Authorisation

The Amendment was authorised by the then Department of Planning and Community Development (DPCD) on 27 June 2013 (AO2507), subject to the following conditions:

*The Explanatory Report and accompanying information must address the requirements for ‘Documenting a proposal’ contained in the Planning Practice Note Rural Residential Development (revised May 2012).*

*The Explanatory Report and accompanying information must clearly demonstrate how the amendment addresses the need for buffers between residential and industrial uses and has considered the implication of all proposed rezoning on existing rural land uses.*

*That notice of the amendment be given in writing to the public land manager of any affected land and to Native Title Services Victoria.*

In response, Council prepared the Glenelg Land Use Study Addendum - Rural Living Areas, July 2013 that analysed rural living issues throughout the municipality, including the areas affected by Amendment C78.

Exhibition and submissions

The Amendment was placed on public exhibition between 16 August and 30 September 2013 and attracted 22 submissions (refer to Appendix A).
Council advised the Panel that the Minister has approved an extension of time for adopting the Amendment.

Additional investigations in support of the Rural Living Zone

Following the exhibition of the Amendment, the then Department of Transport, Planning and Local Infrastructure (DTPLI) raised issues with Council about the strategic merits of the proposed application of the RLZ and the need for further analysis of various issues.

This resulted in Council reviewing the Glenelg Land Use Study Addendum and releasing a revised version (Version 2) in March 2015. The revised Addendum was informed by an assessment of demand and supply issues in the Rural Residential Land Demand and Supply Assessment, February 2015.

Notably, these documents were prepared and released well after the Amendment had been prepared and exhibited.

Council’s proposed changes to the Amendment

Following its consideration of submissions and further investigations, Council resolved to modify the exhibited Amendment to:

- Abandon the exhibited IN2Z rezonings
- Correct an anomaly with the exhibited PCRZ and RLZ boundaries relating to Crown Allotment A Section 1 Parish of Portland
- Increase the proposed minimum subdivision area in the RLZ schedule from 1 and 2 ha to 4ha.

1.2 The Panel process

Panel Appointment

At its meeting of 28 April 2015, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 11 May 2015 and comprised Mr Michael Kirsch (Chair).

Directions Hearing

A Directions Hearing was held in relation to the Amendment on 4 June 2015 at the Council offices, Portland. Council advised the Panel of its proposed changes to the Amendment and discussed whether there should be some further notification of those changes. The Panel agreed with Council that there should be further notification and directed that Council notify various parties and invite written submissions on the changes.

This further notification attracted 5 additional submissions (refer to Appendix A).

Inspections

The Panel undertook unaccompanied inspections of the areas affected by the Amendment on the day of the Directions Hearing and on the day prior to the Panel Hearing.

Panel Hearing

The Panel Hearing was held on 22 July 2015 at the Council offices, Portland. Those in attendance at the Panel Hearing are listed in Table 1.
Table 1  Parties to the Panel Hearing

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented by</th>
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<tbody>
<tr>
<td>Glenelg Shire Council</td>
<td>Billy Greenham and Matt Berry (Council) who called town planning evidence from Mark Bartsch (Planning Australia Consultants)</td>
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<tr>
<td>Wannon Water</td>
<td>Peter Wilson</td>
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<tr>
<td>Berry and Whyte Surveyors</td>
<td>Bernie Wilder</td>
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<td>Gordon Stokes</td>
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<td>Lex Chalmers</td>
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<td>Paul Wizard</td>
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1.3  Issues dealt with in this report

The Panel considered all written submissions, as well as submissions and evidence presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it and from its inspections of specific sites and the general areas affected by the Amendment.

This report deals with the issues under the following headings:

- Planning Context
- Rural Living Zone – Strategic issues
- Rural Living Zone - Area and site specific issues
- Other issues.
2 Background

2.1 The exhibited Amendment

Council provided the following overview of the Amendment:

The Amendment seeks to implement recommendations of the GSSS relating to rural living areas and changes to the RCZ2 on the periphery of settlements in the shire by:

- Rezoning land in Digby, Portland North, Portland West and Bolwarra from RCZ2 and FZ to RLZ in order to reflect the existing use of this land; and
- Rezoning some public land in Bolwarra, Portland West and Portland North from RCZ2 to PPRZ and PCRZ; and
- Amending the schedule to the RLZ to provide a 20 metre setback for buildings on lots adjoining School Road.

The exhibited version of Amendment C78 affected approximately 480 parcels:

- 390 parcels in the Portland region and 72 in Digby to be rezoned to RLZ, from either the FZ or RCZ2;
- 16 parcels to be rezoned to PPRZ or PCRZ to reflect public ownership; and
- 2 parcels to be partly rezoned to IN2Z;
- A correction rezoning in Portland North of parcels partially in RCZ2 to the IN2Z; and
- Amending the schedule to the RLZ to reduce the minimum subdivision area to 2ha within the areas to be rezoned to RLZ in Portland, and to 1ha in Digby.

Council described the key issues raised in submissions as:

- Rezoning to IN2Z; citing appearance, safety and emissions issues;
- Environmental impacts; citing Wattle Hill Creek - Fawthrop Lagoon catchment, biodiversity and impacts arising from subdivision size;
- Heritage impacts; citing two properties considered of heritage value and other areas comprising cultural heritage assets;
- Impact on agricultural business; citing loss of agricultural land, encroaching development on Treloar Rose Farm, and impacts arising from small subdivision size;
- Character; citing subdivision size leading to loss of rural character and creating traffic management issues;
- Policy; citing lack of justification and adverse economic impacts resulting from an oversupply of rural-residential land;
- Service provision; Availability of reticulated water and sewerage services providing chance for more intensive urban development in future; and
- Exclusion of land; two landowners requested their properties be included in Amendment C78.
2.2 Portland West

This area is proposed to be rezoned from RCZ2 and FZ to a combination of RLZ, PPRZ and PCRZ (refer to Figure 1).

It is located to the west of the existing Portland urban area and although it comprises a mixture of lot sizes, it has a general ‘rural residential’ character, with most lots containing a dwelling. However, there are some larger lots that are used for agricultural purposes.

The Wattle Hill Creek traverses this area and is zoned a mixture of PCRZ and PCRZ.

Figure 1 Portland West rezonings
2.3 Portland North

This area is proposed to be rezoned from RCZ2 to a combination of RLZ and PCRZ (refer to Figure 2).

It is located to the north of the existing Portland urban area and has a mixture of lot sizes, including smaller ‘rural residential’ sized lots ranging up to some large agricultural lots. Although most lots have a dwelling, many (including some relatively large lots) do not. Because of this variation the area does not have a consistent character.

The eastern boundary of this area abuts a large area zoned IN2Z. The Wattle Hill Creek also traverses this area.

Figure 2  Portland North rezonings
2.4 Bolwarra South

This area is proposed to be rezoned from RCZ2 to a combination of RLZ, IN2Z\(^1\), PCRZ and PPRZ (refer to Figure 3).

It is located to the north of the existing Portland urban area and is within a broader agricultural and timber planation area.

It has a mixture of lot sizes, including some smaller ‘rural residential’ sized lots ranging up to some comparatively larger rural lots. Although most lots have a dwelling, some of the larger lots do not. Some discrete areas have a clear rural residential character, but there is an overall prevailing rural character because of the larger lots and continuing agricultural/horticultural use.

Figure 3 Bolwarra (South) rezonings

\(^1\) Council has resolved to abandon the IN2Z rezoning.
2.5 Bolwarra North

This area is proposed to be rezoned from RCZ2 to RLZ (refer to Figure 4) and is adjacent to a wider area already zoned RLZ.

It includes an existing rural residential area on Levett's Road that has a distinct rural residential character because of the small lots and existing dwellings.

It also includes a larger area centred on Rivetts Road that has larger lots, a limited number of dwellings and continues to be used for agriculture and horticulture. This area has a strong rural character.

Figure 4 Bolwarra (North) rezonings
2.6 Digby

Digby is a small town with an estimated population in the range of 300 - 400 people and provides a limited range of services and facilities.

The area proposed to be rezoned from FZ to RLZ (refer to Figure 5) comprises approximately 35ha. Most lots range between 0.2 – 0.3ha, although there are some larger lots in the southern area.

Some dwellings and associated structures have been built in the area proposed to be rezoned and consequently it has a rural residential or rural town character, rather than a rural or agricultural character.

Figure 5   Digby rezonings
3 Planning Context

This section provides an overview of the policy context for the Amendment and highlights the relevant policy framework, zone controls and other relevant planning strategies that were raised in submissions and considered by the Panel.

3.1 Policy framework

(i) State Planning Policy Framework

The Panel has had regard to the following clauses in the State Planning Policy Framework (SPPF):

- Clause 11.02-1 (Supply of urban land), including the strategies:
  
  Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.

  Restrict low-density rural residential development that would compromise future development at higher densities.

- Clause 11.05-1 (Regional settlement networks) which includes the Great South Coast Regional Growth Plan 2014 as a Policy Guideline.

- Clause 11.05-3 (Rural productivity) which promotes agriculture and rural production.

- Clause 11.05-4 (Regional planning strategies and principles) which supports regional development.

- Clause 11.05-5 (Coastal settlement) which supports sustainable coastal development.

- Clause 11.09 (Great South Coast regional growth) which includes the strategies:

  Support rural residential development in locations that:
  - Consolidate this form of development to provide servicing efficiencies next to existing townships.
  - Are adjacent to towns with limited growth demand to sustain population levels and communities.
  - Avoid unmanageable exposure to natural hazards, especially bushfire, flood and coastal hazards.
  - Avoid impact on regional assets including highly productive land.
  - Are not strategically identified for standard density urban growth.

  Protect strategically important agricultural and primary production land across the region from encroachment from urban expansion, rural residential and other potentially incompatible uses.

  Protect significant landscapes and provide vegetation corridors between high value environmental assets.
Clause 12.01-1 (Protection of biodiversity) which seeks to protect and conserve biodiversity.

Clause 12.04-2 (Landscapes) which seeks to protect landscapes and significant open spaces.

Clause 13 (Environmental risks) including objectives and strategies relating to noise abatement, air quality, and bushfire planning.

Clause 14.01-1 (Protection of agricultural land) which seeks to protect productive farm land which is of strategic significance in the local or regional context.

Clause 15 (Built environment and heritage) including objectives and strategies relating to heritage, including aboriginal cultural heritage.

Clause 16.02-1 (Rural residential development) which provides guidance for identifying land suitable for rural living and rural residential development, and includes the strategies:

Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.

Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.

Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.

Ensure planning for rural living avoids or significantly reduces adverse economic, social and environmental impacts by:

- Maintaining the long-term sustainable use and management of existing natural resource attributes in activities including agricultural production, water, mineral and energy resources.
- Protecting existing landscape values and environmental qualities such as water quality, native vegetation, biodiversity and habitat.
- Minimising or avoiding property servicing costs carried by local and State governments.
- Discouraging development of isolated small lots in rural zones from use for rural living or other incompatible uses.
- Encouraging consolidation of existing isolated small lots in rural zones.
- Maintaining an adequate buffer distance between rural residential development and intensive animal husbandry.

Ensure land is not zoned for rural living or rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.

Ensure land is only zoned for rural living or rural residential development where it:

- Is located close to existing towns and urban centres, but not in areas that will be required for fully serviced urban development.
- Can be supplied with electricity and water and good quality road access.
• Clause 17.02-1 (Industrial land development) which seeks to ensure availability of land for industry and to provide appropriate buffers to sensitive uses.
• Clause 19.03-2 (Water supply, sewerage and drainage) that supports the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.

(ii) Local Planning Policy Framework

Municipal Strategic Statement

The Panel has had regard to the following key elements of the Municipal Strategic Statement (MSS).

• Clause 21.09 (Industry), including the strategy:
  
  To protect areas suitable for industries requiring extensive buffer distances from residential and sensitive uses.

• Clause 21.09 (Agriculture), including the strategy:
  
  To protect areas of high quality agricultural land from non-agricultural uses.

This clause also includes the implementation actions:

Applying the Farming Zone to areas of the Shire currently in agricultural production except for areas suitable for intensive agriculture which shall be included in a Rural Conservation Zone.

Applying a 40ha subdivision minimum in the Farming Zone except in areas of prime agricultural land around Portland within a Rural Conservation Zone where the subdivision minimum is 2 ha.

• Clause 21.09 (Urban development), including the strategy:
  
  To lessen development conflicts within agricultural areas.

• Clause 21.09 (Portland), including:
  
  There is a particular need around Portland to ensure that:
  – the provision of land for low density residential, rural residential and rural living development is not required for other residential or industrial purposes and is environmentally appropriate;
  – opportunities for resubdivision of existing rural residential areas are realised because many existing rural residential areas can be more efficiently developed and provided with better facilities and infrastructure;
  – land for residential, industrial and port related and transport needs to be identified and protected by appropriate zoning and policies.

This clause also includes the strategy:

To provide land for rural residential and low density residential development that is environmentally and ecologically sustainable.

It also includes the implementation actions:
Retaining existing industrial zonings and protecting these from intrusive uses.

Providing for the resubdivision of existing rural residential areas to facilitate better utilisation of infrastructure.

Local Planning Policies

The Panel has had regard to the following key elements of the Local Planning Policies (LPPs).

- Clause 22.01-1 (Urban growth and development), including the objective:
  
  To lessen conflict in agricultural areas between agriculture and non-agricultural land uses.

- Clause 22.01-3 (Portland), including the Portland Structure Plan Maps 1 and 2 (Refer to Figures 6 and 7).
  
  This clause focuses development into nominated growth corridors and includes:

  - prevent conflict between incompatible land uses;
  
  - ensure the development and investment in infrastructure is not prejudiced by inappropriate land uses;
  
  - investigate appropriateness of rezoning Rural Conservation 2 to Rural Living Zone and Farming Zone as identified on Portland Structure Plan.

Figure 6  Portland Structure Plan 1
Figure 7  Portland Structure Plan 2

- Clause 22.01-1 (Digby), including the objective:

  Provide greater diversity of allotment size and lifestyle residential use by investigating Rural Living Zone sites identified on the Digby Structure Plan;

Figure 8  Digby Structure Plan
• Clause 22.02-1 (Land management and protection), including the policy basis:

  Sound land use, land management and protection of the natural resource asset base are essential to ensure the continued economic performance of the primary industry sector.

• Clauses 22.02-3 (Fire Hazard) and 22.02-4 (Coastal areas).

• Clause 22.02-5 (High quality agricultural land) that applies to ‘high quality agricultural land within the Rural Conservation Zone to the north and north-west of Portland’. The clause notes that:

  The Shire has a number of areas of high quality agricultural land particularly north and west of Portland which have the opportunity to support highly productive agricultural and horticultural uses. Further work needs to be undertaken to identify all areas in the Shire.

  The Shire’s high quality agricultural areas are a limited resource and offer substantial economic and tourist development potential. Council wishes to discourage uses which are non-soil based (such as residential development) or uses which do not depend on the high quality of the soil for their success.

The clause includes the objectives:

  To recognise the finite nature of high quality agricultural land.

  To protect high quality agricultural land because of its productivity and ability to sustain a wide range of agricultural uses.

  To encourage specialist agriculture on high quality agricultural land.

  To prevent the unsustainable use of high quality agricultural land which results in the loss of the quantity or quality of the soil and limits the realisation of its full productive potential.

  To prevent the conversion of high quality agricultural land to non-soil based use and development.

• Clause 22.02-6 (Management of coastal landscapes) which implements the Coastal Spaces Landscape Assessment Study, 2006.

• Clause 22.03-1 (Primary industries), including the objective:

  To ensure that changes to the use of land are not prejudicial to the continued production and operation of the agricultural, horticultural, timber, and fishing industries or to the productive capacity of the land.

• Clause 22.03-2 (Industrial development), including the objective:

  To ensure that industrial development does not prejudice the amenity of residential areas.
3.2 Planning scheme provisions

(i) Zones
The Amendment proposes to apply the Rural Living Zone (RLZ), which has the following purposes:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To provide for residential use in a rural environment.

To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.

To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The RLZ is proposed to be applied to areas currently zoned Rural Conservation Zone Schedule 2 (RCZ2) and Farming Zone (FZ).

The RCZ2 has a minimum subdivision area of 2ha and includes the ‘conservation values’:

To establish sustainable agricultural and horticultural uses based on the productive capabilities of the soil and to discourage the location of non soil-based activities which would result in the loss or under-use of agricultural land.

The purposes of the Farming Zone are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

To encourage the retention of employment and population to support rural communities.

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
3.3 Planning strategies

3.3.1 Glenelg Strategic Futures Plan, May 2009

The Glenelg Strategic Futures Plan (GSFP) brought together various strategic studies relating to infrastructure, flooding, industry and heritage. In relation to the Shire’s rural areas, the GSFP noted that the 2ha minimum subdivision area in the RCZ2 had become a de facto rural residential zone. It included a number of recommendations relating to the further analysis of various issues, including the appropriateness of the RCZ2 in some areas.

3.3.2 Glenelg Strategic Land Use Study (Volumes 1 and 2), August 2010

The Glenelg Strategic Land Use Study (GSLUS) includes analyses of various land use and zoning issues, including agriculture, rural living and the application of the RCZ and FZ.

In relation to the RCZ2, it proposed a number of options, including rezoning fragmented areas, changing the minimum subdivision size, using overlays to identify environmentally sensitive areas, identifying areas for intensive agriculture (separate to areas for intensive horticulture) and applying the RCZ2 to other areas.

3.3.3 Glenelg Sustainable Settlement Strategy, 2012

The Glenelg Sustainable Settlement Strategy (GSSS) built on the GSFP and GSLUS, and includes strategic directions for each of the Shire’s settlements, including rural hinterland areas.

It identified various ‘proposed rural living zone’ areas, including the general Portland West, Portland North, Bolwarra and Digby areas that are proposed to be rezoned RLZ in the Amendment.2

The GSSS was implemented by Amendment C73 that was approved in April 2014. That Amendment sought to identify areas for future rural living rezoning in accordance with the GSSS and was the subject of a Panel Hearing. That Panel considered submissions relating to the status of these rezoning references and commented that:

*The amendment includes numerous references to applying the Rural Living Zone, including the Portland 1, Portland 2, Heywood, Dartmoor, Nelson, Narrawong East, Digby and Merino Structure Plans. All of these references, with the exception of Portland 1 and 2 and Narrawong East, foreshadow investigations into the suitability of applying the Rural Living Zone. Portland 1 and 2 and Narrawong East identify areas that are simply designated ‘Proposed Rural Living Zone’. As discussed in the previous section, the Panel is concerned that designating these areas as ‘Proposed Rural Living Zone’ implies a level of strategic support that has not been demonstrated. As previously recommended, these designations should be modified to: ‘Rural Living Zone - Investigation Area’.*

*The Panel also notes that Clause 21.09 includes the following implementation action under the theme ‘Portland’:*

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2 The proposed ‘rural living zone areas’ in the GSSS are similar, but not identical to the areas proposed to be rezoned RLZ in Amendment C78.
These strategies will be implemented by:

- Rezoning fragmented rural land in the Rural Conservation Zone Schedule 2 (RCZ2) to the Rural Living Zone and converting remaining RCZ2 areas into the Farming Zone.

Again, this action is premature in light of the need to undertake further investigations and to provide adequate strategic justification in support of any future rezoning of these areas. For this reason, the reference should be removed from the amendment.

Changing the designation of these three rezoning proposals and removing the implementation action will clearly indicate that further analysis of the suitability of the Rural Living Zone is required, as is the case with the other Structure Plans that refer to the Rural Living Zone.

The Panel notes that the rezoning of these areas will need to be accompanied by detailed strategic analysis including the consideration of the relevant elements of the SPPF and the Practice Note: Rural Residential Development, 2012. This type of analysis was not presented to the Panel in respect of Amendment C73, but should accompany proposed Amendment C78 or other future amendments that seek to apply the Rural Living Zone. The Panel also assumes that the use of the Rural Living Zone in rural areas will be assessed as part of the Rural Zones Review project.

The C73 Panel recommended that the Amendment be modified to:

- Replace references to ‘Proposed’ zones in the legends of the relevant Structure Plan Maps in Clause 22.01 with ‘Investigation Area’.
- Remove the following implementation action from Clause 21.09:
  ‘Rezoning fragmented rural land in the Rural Conservation Zone Schedule 2 (RCZ2) to the Rural Living Zone and converting remaining RCZ2 areas into the Farming Zone’.

These recommendations were included in the approved Amendment.

### 3.3.4 Land Use Study Addendum – Rural Living Areas, July 2013

The Addendum provides further analysis of the proposed rural living zone areas identified in the GSSS, including those areas proposed to be rezoned in Amendment C78. As discussed in section 1 of this report, the Addendum was prepared following the request for authorisation to exhibit the Amendment and was exhibited with the Amendment. Following the exhibition of the Amendment, the then Department of Transport, Planning and Local Infrastructure (DTPLI) raised issues with Council about the strategic merits of the proposed application of the RLZ and the need for further analysis of various issues.

This resulted in Council reviewing the July 2013 Addendum and releasing a revised version (Version 2) in March 2015, well after the exhibition of the Amendment.
3.3.5 Rural Residential Land Demand and Supply Assessment – Glenelg, February 2015

Council commissioned the Rural Residential Land Demand and Supply Assessment as part of the review of the Addendum and in support of the Amendment.

The key findings of the Assessment included:

- 83 ‘rural residential’ lots were created across the municipality between 2006 and 2014 at an average rate of 10 lots per annum\(^3\). 40 lots were zoned RCZ2, 31 lots were zoned RLZ and 12 lots were zoned Low Density Residential Zone (LDRZ). These lots were concentrated in the Portland Region (75 lots).
- 68 ‘rural residential dwellings’ were constructed across the municipality between 2006 and 2014 at an average rate of 8.3 dwellings per annum. 29 dwellings were constructed on land zoned RCZ2, 27 on land zoned RLZ and 12 on land zoned LDRZ.
- The ‘most realistic’ demand scenarios include 10 lots per annum (scenario 3\(^4\)) and 13 lots per annum (scenario 1\(^5\)). Despite this, the Assessment applied a demand scenario of 20 lots per annum (scenario 4).
- Land currently zoned RLZ and LDRZ has the capacity to provide between 12 and 34 years supply\(^6\) depending on the minimum subdivision size that is applied.
- Land currently zoned RLZ and LDRZ together with the GSSS investigation areas has the capacity to provide between 17 and 44 years supply\(^7\) depending on the minimum subdivision size that is applied.

The Assessment does not discuss what an appropriate level of supply might be, but notes that there will be ‘ample rural residential land after the implementation of the GSSS’. It also notes that the forecast supply excludes the land zoned RCZ2 that is outside of the rural residential investigation areas.

Although Amendment C78 proposes to apply a minimum subdivision area of 2ha (1ha for Digby), the Assessment recommended that a 4ha minimum subdivision area be applied instead. This recommendation was based on market preference for lots in the 3 - 5ha range, its suitability for ‘coherent and sustained land management practices’, minimising infrastructure requirements and the provision of ‘buffer zones around conflicting uses’.

The Panel found that elements of the Assessment report were difficult to comprehend and that the rationale for various assumptions and findings were not always clear. The Hearing process would have been assisted if the report’s author had been available to discuss the report.

Issues associated with the supply and demand assessment are discussed in section 4.3 of this report.

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\(^3\) ‘Rural residential’ lots include those zoned RCZ2, RLZ and LDRZ.
\(^4\) Trend lot production remaining constant.
\(^5\) Victoria in Future 2012 and the historic/recent share of rural residential development at 14% of total residential construction activity.
\(^6\) The basis for this calculation is not clear and it is assumed that it relies on an annual demand of 20 lots.
\(^7\) The basis for this calculation is not clear and it is assumed that it relies on an annual demand of 20 lots.
3.3.6 Land Use Study Addendum – Rural Living Areas, Version 2 March 2015

The revised Addendum sought to address the issues raised by the then Department of Transport, Planning and Local Infrastructure following the exhibition of the Amendment. It relied on further analyses of various issues, including the Rural Residential Land Demand and Supply Assessment. In addition to the areas proposed to be rezoned RLZ in Amendment C78, it also addresses the other rural living investigation areas in the GSSS.

The revised Addendum highlighted that RCZ2 areas around Portland and Bolwarra have become defacto rural living areas and that FZ areas in Portland West have become highly fragmented. It concluded that this situation has compromised the agricultural productivity of these areas.

In relation to Amendment C78, the assessment recommended that the exhibited 2ha and 1ha minimum subdivision areas be increased to 4ha, consistent with the recommendation in the Rural Residential Land Demand and Supply Assessment.

3.3.7 Other strategies

Other strategies referred to in submissions and considered by the Panel include:
- Victorian Coastal Strategy, 2014
- Great South Coast Regional Growth Plan, 2014 (discussed earlier in relation to Clause 11.09 of the State Planning Policy Framework).

3.4 Planning Practice Notes

3.4.1 Planning Practice Note 37 Rural Residential Development, June 2015

Planning Practice Note 37 (PPN37) establishes that planning schemes should provide reasonable opportunities for rural residential development as part of providing for housing diversity and choice. It also notes that rural residential development ‘can have environmental, social and economic costs that are significantly higher than those of standard residential development’.

For these reasons, it identifies four strategic ‘considerations’:
- Strategy
- Housing need
- Location
- Subdivision and design.

Key elements of these considerations include:
- Whether the proposal is consistent with the overall strategic planning for the municipality.
- Determining how much rural residential development is required, including identifying housing needs over a 10 year period.
- Ensuring that rural residential development integrates with existing urban areas, protects natural resources (including productive agricultural land), protects environmental areas and biodiversity, protects landscape and heritage values, is provided with appropriate social and physical infrastructure, is compatible with existing and likely land uses, and is capable of being serviced.
PPN37 establishes that rural residential development is not appropriate (amongst other things) on productive agricultural land.

3.4.2 Planning Practice Note 42 Applying the Rural Zones, June 2015

Planning Practice Note 42 (PPN42) provides guidance about the use of the ‘rural’ zones, including the Rural Living Zone.

In relation to the Rural Living Zone, it includes:

This zone provides for residential use in a rural environment. It is designed to cater for lots in a rural setting that are large enough to accommodate a dwelling and a farming use. The farming use is likely to be carried on for reasons other than the need to provide a significant source of household income. In this zone:

- it is not essential that a dwelling be genuinely associated with a farming use of the land
- some farming may take place on the land, however this will not always be the case
- residents have a reasonable expectation that their amenity will be protected
- a wider range of tourism, commercial and retail uses may be considered in the zone.

It notes that:

The existing size or pattern of lots in area should not be the sole basis for deciding to apply a particular zone. For example, it is not appropriate to decide that the Rural Living Zone should be applied to an area simply because it comprises small lots.

However, it also notes that:

Possible Rural Living Zone areas include:

- rural areas that have been substantially subdivided and developed for dwellings in proximity to an urban area or township with a range of urban services and infrastructure.

3.5 Other Council projects

3.5.1 Glenelg Rural Land Use Strategy project

Council has commissioned the preparation of a Rural Land Use Strategy. The project is underway and a Technical Assessment Report (May 2015) has been completed. This will be followed by a Strategic Issues and Options Paper, a Strategy Implementation Report and Planning Scheme Amendment Documentation.

The project brief provided by Council outlines various tasks, including analyses of rural housing and agricultural productivity issues, together with the performance of the Glenelg Planning Scheme.

The Technical Assessment report noted that ‘dwelling development on small rural lots has the potential to:'
• Compromise the implementation of the Shire’s settlement strategy, particularly the release and development of Rural Living and Low Density Residential Zoned land.
• Introduce inefficiencies in the delivery of rural infrastructure and services.
• Introduce conflict between agricultural activities and non-farming neighbours.
• Place upward pressure on agricultural land process.
• Reinforce expectation of future development and subdivision opportunities.

3.5.2 Portland Industrial Land Strategy

Council has commissioned a ‘Portland Industrial Land Strategy’ that will consider, amongst other things, the suitability of existing industrial zonings and various ‘interface’ issues, including the Industrial 2 Zone area in Portland North, adjacent to an area proposed to be zoned RLZ in the Amendment.

Council advised that a draft Strategy is to be prepared by February 2016 and the final Strategy by June 2016.
4 Rural Living Zone – Strategic issues

Submissions raised a number of issues in relation to the proposed application of the Rural Living Zone (RLZ). Some submitters supported this element of the Amendment, with some also raising issues about the minimum subdivision area. Other submitters opposed the introduction of the RLZ, preferring the retention of the existing Rural Conservation Zone Schedule 2 (RCZ2) and the Farming Zone (FZ).

This section of the report discusses the broad strategic issues raised in these submissions, while section 5 discusses the ‘area and site specific’ issues, including Digby.

4.1 Introduction

4.1.1 Background to the Rural Living rezonings

Council provided the following explanation of why it proposed to apply the RLZ:

A key purpose of the Amendment is to rectify the zoning of land which has become de facto rural residential/living development. Both the RCZ2 and FZ have in some areas been fragmented and developed with housing, reflecting a rural living rather than agricultural land use.

Given the intended purposes of the FZ and RCZ2 to encourage agriculture and environmental protection and the high levels of rural residential development, these intentions have not been achieved in the Amendment areas. Recent development in these areas has resulted in an undesirable outcome for both zones, causing significant issues of policy, fairness, and rational planning. Historical subdivision and development of dwellings in these areas results in confusion amongst landowners and potential applicants. Council subsequently deals with numerous applications for dwellings and subdivision in these areas. This imposes significant resource costs upon Council, as well as frustration for potential applicants and landowners.

The Rural Conservation Zone in particular has faced development pressure on the fringe of Portland. Significant numbers of dwelling development have historically been approved in these areas.

Council contrasted the characteristics of the RCZ2 area proposed to be rezoned with the remnant RCZ2 areas in the following table:

<table>
<thead>
<tr>
<th></th>
<th>Number of lots</th>
<th>Vacant lots</th>
<th>Minimum (ha)</th>
<th>Maximum (ha)</th>
<th>Median (ha)</th>
<th>Mean (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C78 Rezoning Areas</td>
<td>324</td>
<td>83 (25%)</td>
<td>0.14</td>
<td>31.44</td>
<td>3.80</td>
<td>3.02</td>
</tr>
<tr>
<td>(RCZ2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance of RCZ2 land</td>
<td>447</td>
<td>224 (50%)</td>
<td>0.14</td>
<td>155.40</td>
<td>13.16</td>
<td>11.57</td>
</tr>
</tbody>
</table>

Table 2 Comparison of RCZ2 lots
(Source: Council submission)
Council also provided an assessment of lot size and development ratios:

<table>
<thead>
<tr>
<th>Investigation Area</th>
<th>Number of lots</th>
<th>Vacant lots</th>
<th>Minimum (ha)</th>
<th>Maximum (ha)</th>
<th>Median (ha)</th>
<th>Mean (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland (RCZ2) North</td>
<td>130</td>
<td>31 (24%)</td>
<td>0.65</td>
<td>31.44</td>
<td>4.26</td>
<td>5.52</td>
</tr>
<tr>
<td>Portland (RCZ2) West</td>
<td>91</td>
<td>24 (26%)</td>
<td>0.14</td>
<td>11.10</td>
<td>2.37</td>
<td>3.24</td>
</tr>
<tr>
<td>Portland West (FZ)</td>
<td>52</td>
<td>9 (17%)</td>
<td>0.77</td>
<td>13.85</td>
<td>3.92</td>
<td>3.44</td>
</tr>
<tr>
<td>Bolwarra (RCZ2) (North)</td>
<td>14</td>
<td>3 (21%)</td>
<td>1.27</td>
<td>20.49</td>
<td>4.00</td>
<td>8.38</td>
</tr>
<tr>
<td>Bolwarra (RCZ2) (South)</td>
<td>89</td>
<td>25 (28%)</td>
<td>0.18</td>
<td>21.61</td>
<td>2.92</td>
<td>4.71</td>
</tr>
<tr>
<td>Digby (FZ)</td>
<td>87</td>
<td>72 (82%)</td>
<td>0.02</td>
<td>1.86</td>
<td>0.20</td>
<td>0.32</td>
</tr>
</tbody>
</table>

Table 3  Lot size and development ratio  
(Source: Council submission)

In summary, Council submitted that the Amendment seeks to balance a number of potentially competing objectives in the Glenelg Planning Scheme, including the protection of agricultural land and the provision of housing diversity and choice. Although Council accepted that there were issues with the proposed RLZ rezonings, it argued that the existing RCZ2 (as it applies to fragmented areas) does not provide a workable mechanism to manage those areas and to resolve what it sees as an inherent conflict between the purposes of the zone and the existing subdivision and development within those areas.

4.1.2 Background to the Rural Conservation Zone Schedule 2

Following the Directions Hearing, the Panel directed that Council’s submission provide the ‘background to and the rational for the existing application of the Rural Conservation Zone Schedule 2 within those areas proposed to be rezoned Rural Living Zone’.

Council’s submission at the Hearing traced the RCZ2 back to its predecessor Environmental Rural Zone (ERZ) that was included in the new format planning scheme approved in 1998. Council had initially proposed that ‘high quality agricultural land’ be subject to an Environmental Significance Overlay (ESO), however, the Panel and Advisory Committee that considered the new format planning scheme recommended that the ERZ be used instead. Council advised that the intended purpose of applying the ESO was to protect the land for agriculture and to discourage housing and timber production.

The Panel assumes the ‘high quality agricultural land’ designation was derived from the pre Victoria Planning Provision (VPP) planning scheme/s that applied to the area, possibly from the earlier Shire of Heywood Planning Scheme. Mr Wilde suggested that this was the case and that it referred to ‘red soil’ areas. Having read the Panel and Advisory Committee report, it is evident that the 2ha minimum subdivision area was intended to encourage small lot horticulture and agriculture, while discouraging dwellings and timber production.
However, Council submitted that there have been few new horticultural enterprises established in those areas since the introduction of the RCZ2 and the earlier ERZ.

4.2 Protecting productive agricultural land

4.2.1 The issue

The issue is whether applying the Rural Living Zone adequately protects productive agricultural land.

The protection of productive agricultural land is a recurring theme in the Glenelg Planning Scheme, Planning Practice Note 37 – Rural Residential Development (PPN37) and Planning Practice Note 42 - Applying the Rural Zones, June 2015 (PPN42).

4.2.2 Evidence and submissions

Mr Treloar (Treloar Roses and Midway Roses) opposed higher density residential development on ‘very good natural productive soil types’. His comments in relation to his business are discussed in section 6.3 of this report.

Mr G Stokes submitted that the Bolwarra area contains some of the ‘highest quality soils in the district’ and that the RCZ2 should be retained. He submitted that applying the RLZ will increase land values, making it difficult to purchase or lease land for farming.

Ms Chalmers opposed the application of the RLZ, submitting that it would not protect ‘high quality agricultural land’ and would be inconsistent with various State and local planning policies. In particular, she submitted that the areas proposed to be rezoned meet most of the characteristics of ‘productive agricultural land’ described in PPN37 and that the RLZ should only replace the RCZ2 in areas that are already developed (housing clusters), such as the area along Levetts Road in Bolwarra North. Other areas of RCZ2 ‘including many large lots’ should be retained to enable agricultural use.

Ms Chalmers also submitted that Council has relied on the ‘fragmentation’ argument in support of the applying RLZ without having assessed the agricultural productivity of these areas or the impacts of existing subdivision and dwelling patterns. She also noted that the need to protect the better quality agricultural land in Glenelg would become increasingly important in light of climate change.

Mr Wizard submitted that the ‘red soil’ areas should be protected and that there was scope for more horticulture in the Portland area.

Mr Wilson noted that the Bolwarra area has large lots and extensive agricultural use.

Council submitted that the ‘agricultural capability’ of the areas proposed to be rezoned ‘has been prejudiced by dwelling development’ and ‘fragmentation’. Council added that the Amendment would protect against the ‘seepage’ of additional rural residential subdivision and development into the remaining areas of RCZ2 and FZ and that the High Quality Agricultural Land Policy (Clause 22.02-5) would assist in protecting these areas.

Council advised that the Land Use Study Addendum assessed the agricultural capability of the Investigation Areas, based on the Land Resource Assessment Study of the Glenelg Hopkins Region, 2001. The Addendum found that none of the areas (except for Digby) were
classified as having ‘high agricultural capability’, although there are extensive areas of ‘medium’ capability for various agricultural activities.

Council also discussed the Rural Land Use Strategy project that is currently underway. The Technical Assessment Report completed in May 2015 includes an overview assessment of agricultural land capability, although the areas proposed to be rezoned in the Amendment were not included in that assessment. The project relies on the earlier 2001 capability mapping, but introduces other factors such as lot sizes and water availability. The project will also take into account a range of contemporary issues.

4.2.3 Discussion

Council repeatedly characterised the proposed RLZ areas as having a de facto rural residential character and a dwelling density that significantly constrained agricultural productivity. The Panel agrees that while some areas can be characterised this way, there are other areas that have relatively larger lots, limited housing, continuing agricultural/horticultural use and a prevailing rural character. The Panel was not convinced that the agricultural productivity of some of these areas has been compromised to the extent that automatically justifies the RLZ being applied.

The variations in land uses and lot sizes were highlighted by Ms Chalmers in relation to the Bolwarra North area. This area includes rural residential housing on Levett's Road while, in contrast, the area to the north and south of Rivetts Road includes large agricultural lots and dispersed housing. Similar situations can also be found in various other areas included in the Amendment.

The Panel agrees with Ms Chalmers that the Amendment would have benefitted from a more contemporary assessment of the agricultural capability, potential use and value of these areas. This would have better informed decisions about the appropriate zone/s and the minimum subdivision size/s in these areas.

This type of assessment would have clear synergies with the current Rural Land Use Strategy project. In fact, the Panel for Amendment C73 assumed that the use of the RLZ in the Shire’s rural areas would be assessed as part of this work.

The Panel believes that decisions about replacing the RCZ2 and FZ with the RLZ should be made with the benefit of the analyses and findings that will be provided through the Rural Land Use Strategy project. To proceed with the Amendment while this important and relevant project is underway would be a lost opportunity.

Council submitted that:

The desired outcome is to create a clear definition between rural residential land and remaining RCZ and FZ land intended for agricultural, horticultural or environmental protection purposes. Much of the pressure in these zones for dwelling development is in unsuitable locations and against the provisions of those zones.

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While the Panel accepts that this is Council’s rationale for the Amendment, it is not clear how or why the remaining areas will be treated differently to the ‘fragmented’ RCZ2 (and FZ) areas subject to the Amendment. The Amendment does not introduce any new strategies or policies that strengthen the protection of these areas for agriculture, it does it propose to address (increase) the minimum subdivision area in the remnant RCZ2 areas and it does not propose to rezone the remnant RCZ2 areas to FZ as foreshadowed in the exhibited Amendment C73. Because of this, there is no obvious basis on which to assume that the support for rural residential subdivision and housing under the RCZ2 that has occurred in the past will not occur in the future.

A more ‘complete’ amendment might have included the rezoning of the remnant RCZ2 areas to the FZ, or an increased subdivision minimum under the RCZ and/or more explicit strategies about how Council will manage these areas. Hopefully these issues will be considered as part of the Rural Land Use Strategy project.

4.2.4 Findings

The Panel finds that further analysis of the agricultural productivity of the proposed RLZ areas should be undertaken as part of a broader review of the appropriate zone/s and minimum subdivision area/s. This analysis would have synergies with Council’s current Rural Land Use Strategy project which will provide a more complete and contemporary basis on which to review those issues.

4.3 Supply and demand for rural residential lots

4.3.1 The issue

The issue is whether the Amendment is underpinned by a sound analysis of rural residential land supply and demand issues. In particular, whether the Amendment might result in an ‘oversupply’ of vacant land zoned for rural residential purposes.

At the Directions Hearing, the Panel foreshadowed that this was a key issue and subsequently directed that Council’s submission address:

_The extent and implications of the anticipated ‘oversupply’ of rural residential lots discussed in the report Rural Residential Land Demand and Assessment, February 2015._

4.3.2 Evidence and submissions

Ms Chalmers opposed the Amendment on the basis that there were extensive areas already zoned RLZ.

Mr Wilson (on behalf of Wannon Water) submitted that there was adequate vacant ‘rural residential’ land within existing zoned areas and that there was no need for additional land to be rezoned at this time. He also submitted that the demand projection of 20 lots per annum was too high.

Mr Wizard submitted that economic development and growth prospects in the Portland area were limited and that there was no need to create new rural residential lots.
Mr Wilder (on behalf of Berry and Whyte Surveyors) supported the Amendment, and submitted that there ‘are small number of 2 ha - 4 ha lots on the market at present’. He also submitted that the anticipated lot yield from the areas to be rezoned was overstated given various ‘production costs’ including those associated with native vegetation offsets and cultural heritage assessments.

Council submitted that the ‘primary intent of the Amendment is not to increase the supply of RLZ, but to provide a zoning relevant to the existing rural residential land use and character within these areas’.

Council relied on the findings of the Rural Residential Land Demand and Supply Assessment, submitting that:

*The rezoning of land currently zoned RCZ2 or FZ increases the years of supply, but dependent upon the scenario used the effect is negligible at the current proposal (20 years becomes 26 years), through to higher impact when modelled on a 2 hectare minimum subdivision area (34 years becomes 44 years).*

Council also relied on the evidence of Mr Bartsch who referred to the findings of the Rural Residential Land Demand and Supply Assessment. In response to questions from the Panel about what would constitute an appropriate level of supply, Mr Bartsch submitted that a 10 - 15 year supply would be the minimum, noting that some of the land supply would be taken up during the time it takes for the Amendment to be approved. He also submitted that a 20 – 25 year supply could be appropriate if an ‘optimistic’ development scenario was adopted.

Council submitted that adopting a 10 year supply limit would only be a ‘guide’ and that a higher supply scenario would provide greater flexibility. Council also submitted that it adopted a 20 year planning horizon, consistent with the Glenelg Sustainable Settlement Strategy planning horizon of 2036.

**4.3.3 Discussion**

(i) **Calculating supply and demand**

The calculation of potential lot supply is influenced by a number of factors, but particularly the anticipated development rate and the minimum subdivision size.

The land supply ‘adequacy’ analysis in the Rural Residential Land Demand and Supply Assessment considered a number of scenarios, concluding that there is 28 years potential supply within the existing land zoned RLZ and LDRZ in the Portland Region (scenario 2\(^9\)). Including the ‘investigation areas’ and a 2 ha minimum (scenario 3\(^10\)) increases this supply to 44 years.

Notably, this assessment relies on a projected demand of 20 lots per annum (scenario 4\(^11\)), even though ‘rural living’ dwelling construction and lot creation over the past 8 years have averaged 8.3 and 10 per annum respectively. It is not clear why such an inflated figure was adopted for these calculations given that the report concluded that scenario 1 (13 lots per

\(^9\) Table 36, Rural Residential Land Supply and Assessment – Glenelg, February 2015.
\(^10\) Table 37, Ibid.
\(^11\) Page 49, Ibid.
annum\textsuperscript{12}) and scenario 3 (10 lots per annum\textsuperscript{13}) are the ‘most realistic’ scenarios. The report simply notes that ‘it is assumed that demand is accelerated’.

The assessment also relies on an assumption that lots with dwellings will not be further subdivided, regardless of the size of the lot. The rational for this assumption is not clear, but adopting it will clearly result in an understated level of supply.

In light of past rural living development rates and the discussion in the Rural Residential Land Demand and Supply Assessment, the Panel believes that it would be appropriate to assume a base development or demand rate of 10 lots per annum, perhaps up to 12 lots per annum if a high growth scenario is adopted. Importantly, the Panel was not presented with any evidence or material to justify a higher level of demand - certainly not in the order of 20 lots per annum.

Adopting a development rate in the 10 – 12 lots per annum range, instead of 20 lots per annum, would significantly increase the potential supply, effectively doubling the capacity calculated in the Rural Residential Land Demand and Supply Assessment. This would be further increased if an allowance was made for the further subdivision of larger lots that have existing dwellings. Although the Panel has not calculated the possible level of supply under these more realistic scenarios, it is clear that the supply would be significantly higher than assumed in the Rural Residential Land Demand and Supply Assessment and relied upon by Council.

In response to the ‘oversupply’ issue, the Rural Residential Land Demand and Supply Assessment also recommended that a minimum subdivision area of 4ha be adopted rather than the exhibited 2ha minimum. This also has significant implications for calculating potential lot supply, reducing the projected level of supply from 44 to 26 years. Issues associated with the minimum subdivision area are discussed in section 4.4 of this report.

\textbf{(ii) Determining an appropriate level of supply}

There is limited direct guidance in the Glenelg Planning Scheme or PPN37 about what constitutes an appropriate level of rural living land supply. The SPPF requires that planning ‘accommodate projected population growth over at least a 15 year period’, although there are no specific references to rural living land supply.

PPN37 establishes that the provision of rural living land should be consistent with a ‘local housing analysis’ that accommodates housing needs over a 10 year period.

The 1997 iteration of Ministerial Direction No 6\textsuperscript{14} (Rural Residential Development) required that:

\begin{quote}
An amendment must not provide for rural residential use or development of land which would increase the supply of rural residential land to more than that required to meet a 10 year demand for rural residential lots (including vacant lots
\end{quote}

\textsuperscript{12} Page 29, Ibid.
\textsuperscript{13} Page 29, Ibid.
\textsuperscript{14} Minister’s Direction No 6 was revoked in May 2012.
in the existing supply), based on annual building approvals over at least the past five years or other suitable basis.\textsuperscript{15}

Having reviewed this material, the Panel believes that a 10 - 15 year supply of zoned land would typically be appropriate, subject to meeting all of the other relevant planning scheme requirements, including PPN37. This is broadly consistent with Mr Bartsch’s evidence, although he believed that a 20 - 25 year supply might be appropriate in an ‘optimistic’ scenario. It is not clear when such a scenario might be applied and the Panel was not provided with any material or evidence to support such a high level of supply in Glenelg.

The Rural Residential Land Demand and Supply Assessment found that there is a 28 year supply within existing RLZ and LDRZ areas in the Portland Region, based on the subdivision minima in the existing zone schedules. It also found that even assuming no further subdivision, the existing vacant lots could provide 12 years supply\textsuperscript{16}. As discussed earlier, these assessments rely on a development rate of 20 dwellings per annum, which is significantly above what the Panel believes is a justifiable projection. Applying a 10 – 12 lot per annum demand scenario would increase this ‘minimum’ level of current supply, calling into question whether any additional RLZ or LDRZ rezonings are needed in the short term.

(iii) Rezoning ‘de facto’ rural residential areas

Council in large part relied on the premise that the RCZ2 (and FZ areas) being rezoned are defacto rural living areas and should be zoned accordingly. On that basis, it argued that the Amendment will not create any new rural living opportunities. It also argued that rezoning these areas will reduce the ‘rural living’ subdivision and development pressure on the remaining RCZ2 areas.

The Panel agrees that it can be appropriate to apply the RLZ to de facto rural residential areas and notes that PPN42 identifies this as a possible use of the RLZ. However, it also notes that the existence of small lots is not by itself a reason for applying the RLZ.

Based on its review of the background material and its inspections of various areas, the Panel accepts that some of the RCZ2 and FZ areas in the Amendment have become de facto rural residential areas and might be legitimate candidates for the RLZ. However, this is not true of all of the areas proposed to be rezoned, particularly where larger lots have been retained and there is continuing agricultural use.

For this reason, the Panel does not agree with Council’s overall characterisation of these areas and believes that some areas (notably parts of Bolwarra North and South) have a strong agricultural character. Consequently, the Panel does not support the general proposition that the RLZ simply reflects an existing character and is justified on that basis.

In any event, it is not the perceived ‘character’ of these areas that should determine the appropriate zoning - zoning decisions in these areas need to primarily be based on an assessment of agricultural productivity.

\textsuperscript{15} Guidelines for Rural Residential Development, October 1997.

\textsuperscript{16} Table 36, Rural Residential Land Supply and Assessment – Glenelg, February 2015.
4.3.4 Findings

The Panel finds that the Amendment will result in a significant supply of rural residential lots, beyond the levels anticipated in the Glenelg Planning Scheme and PPN37. The Panel believes that providing a potential 10 - 15 year supply of vacant zoned land would be a reasonable approach, but that providing zoned land for 20 or more years supply would be excessive, particularly in the absence of explicit strategic justification.

4.4 The minimum subdivision area

4.4.1 The issue

The issue is what minimum subdivision area should be applied within the RLZ.

The exhibited Amendment proposed a 1ha minimum subdivision area in Digby and a 2ha minimum in Portland North, Portland West, Bolwarra South and Bolwarra North.

Following its consideration of submissions and the recommendations of the Rural Residential Land Demand and Supply Assessment, Council resolved to increase the proposed minimum subdivision area from 1ha and 2ha to 4ha.

4.4.2 Evidence and submissions

Mr Wilder (on behalf of Berry and Whyte Surveyors) supported the Amendment but queried Council’s proposal to increase the minimum lot size to 4ha. He submitted that 2ha lots were more appropriate because smaller lots were easier to manage and discouraged the keeping of farm animals. He suggested that some of the RLZ areas should have a 2ha minimum subdivision area while others should have a 4ha minimum.

Ms Chalmers noted Council’s proposal to increase the minimum lot size to 4ha, commenting that ‘This appears specious in the context of valuable agricultural land for the sake of ‘lifestyle’ and diversity of housing stock’ purposes’. She preferred the exhibited 2ha minimum subdivision area, rather than Council’s proposed 4ha minimum.

Mr G Stokes preferred a 4ha minimum subdivision area on the basis that it would provide better environmental protection.

Council advised that the exhibited 2ha minimum subdivision area was carried over from the 2ha minimum in the RCZ2. Council also advised that the subsequent decision to apply a 4ha minimum subdivision area was primarily in response to the Rural Residential Land Demand and Supply Assessment recommendation and the potential ‘oversupply’ of lots under the exhibited 2ha scenario. However, Council also submitted that it was partly in response to submissions relating to environmental and agricultural issues.

Council’s submission concluded that a 4ha minimum subdivision area was more appropriate because:

- The Spatial Economics report demonstrates that a 2 hectare minimum creates almost double the supply, which would represent a significant oversupply. The 4 hectare minimum will mean that in the Portland Region

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17 Issues associated with Digby are discussed in section 5.1 of this report.
RLZ and LDRZ adequacy (after rezoning) will equate to an appropriate 26 years supply; and

- Greater flexibility in siting and less intensive development can avoid impacts and provide greater setback distances. This will aid protection of environment, biodiversity, character and amenity. It will also enhance mitigation of bushfire risk and land use conflict (agricultural and industrial).

The Rural Residential Land Demand and Supply Assessment identified a number of factors in support of a 4ha minimum subdivision area, concluding that it would:

- reduce the projected level of supply
- be consistent with the recent subdivision activity that has created lots between 3 and 5ha
- provide for the easier implementation of land management practices
- reduce infrastructure requirements
- facilitate ‘buffer zones’ around conflicting uses.

The report does not include any detailed discussion of those factors, other than in relation to the impact on potential lot supply.

Mr Bartsch also relied on the Rural Residential Land Demand and Supply Assessment and supported a 4ha minimum subdivision area. He submitted that 4ha lots are more flexible for agriculture than 2ha lots.

4.4.3 Discussion

The analysis of this issue in the background reports, submissions and evidence is relatively brief, perhaps reflecting that the exhibited minimum subdivision area was simply carried over from the existing RCZ2, while Council’s subsequent support for a 4ha minimum was largely driven by concerns about an ‘oversupply’ of lots. In any event, the Panel is not satisfied that this issue has been adequately investigated or that there is clear support for universally applying a 2ha or 4ha minimum.

A number of factors are relevant to determining a preferred minimum subdivision area and it is highly likely that different minima might be suitable for different areas. This is particularly so because of the diversity of existing lot sizes, the different land uses and character within various areas, the extent of agriculture in various areas and the variations in environmental constraints and proximity to urban services. It is also possible that some areas, particularly those closer to Portland that have access to infrastructure and urban services, might be suitable for smaller lots, perhaps under the Low Density Residential Zone (LDRZ).\(^{18}\)

A potential benefit of applying a smaller minimum subdivision area is that it can reduce the amount of agricultural land that is lost to production. It can also enable development to be focussed in smaller areas, reducing the interface with agricultural land. Smaller lots are also typically easier to manage, potentially resulting in better environmental outcomes.

\(^{18}\) The Panel has not formed any conclusions about the use of the LDRZ and only raises it as an option that Council might consider.
Alternatively, larger lots might be better suited for productive agriculture use and, if appropriately managed, can also provide positive environmental, landscape and character outcomes.

4.4.4 Findings

The Panel finds that the proposed use of the 2ha minimum subdivision area (to carry over the RCZ2 minimum) or the 4ha minimum subdivision area (to limit the anticipated oversupply of land) have not been adequately considered or justified. This element of the amendment needs further assessment, including whether different subdivision minima might be suitable for different areas and whether some areas might be suitable for the LDRZ rather than the RLZ.

4.5 Conclusions and recommendation

Submissions raised a number of issues, principally related to the protection of productive agricultural land, that the Panel believes require further investigation before any of the proposed RLZ rezonings should proceed.

These issues are important because the Glenelg Planning Scheme includes numerous strategies and policies intended to protect productive agricultural land. Although Council has undertaken a significant amount of work in support of the Amendment, the Panel is not satisfied that issues such as the quantum of the areas to be rezoned, the appropriate minimum subdivision area or the agricultural productivity of these areas have been adequately addressed.

Council acknowledged that there were issues with the Amendment but submitted that it was an appropriate mechanism to address the ‘legacy’ issues arising from the inadequacies of the RCZ2 and the past administration of that zone and the FZ. While the Panel understands this argument, it considers that the Amendment is too blunt an instrument and lacks the necessary rigour to adequately address those issues. The Panel is concerned that the rezonings will potentially alienate further agricultural land and that the blanket adoption of a 2ha or 4ha minimum subdivision area is too simplistic a response to the varying characteristics of the areas proposed to be rezoned. In the absence of these matters having been more thoroughly explored, it is difficult to support a zoning regime that is likely to create a significant oversupply of land zoned for rural residential development.

For these reasons, the Panel recommends that the proposed RLZ rezonings be removed from the Amendment and that Council further investigate the issues raised in this report before considering whether to prepare a new amendment.

These investigations should include:

- A more complete and contemporary assessment of the agricultural productivity of the areas proposed to be rezoned.
- A more thorough analysis of supply and demand issues, based on more realistic development projections and a more appropriate planning horizon.
- Further consideration of the appropriate minimum subdivision area and whether different minima should apply to different areas (including consideration of whether there is scope to apply the LDRZ in some areas).
• whether additional changes should be made to the Glenelg Planning Scheme to further protect productive agricultural land, particularly remnant areas zoned RCZ2.

Council’s current Rural Land Use Strategy project provides an opportune time and process to address some of these issues, and to inform the consideration of other issues.

Finally, the Panel considered whether some elements of the proposed RLZ rezonings might be able to proceed, but it was not possible to determine what land might be rezoned and what subdivision minimum might be applied. This conclusion reflects that there needs to be further analysis of these issues before any additional land should be zoned RLZ.

**Recommendation**

The Panel recommends:

1. **Remove the proposed rezonings to Rural Living Zone in Portland North, Portland West, Bolwarra South and Bolwarra North.**
5 Rural Living Zone - area and site specific issues

This section discusses ‘area’ and ‘site specific’ issues raised in submissions and should be read in conjunction with section 4 of this report. Because of its recommendation that the Rural Living Zone not be applied as part of the Amendment, the Panel has not responded to every detailed issue raised in submissions. Instead, it has focussed on key issues that will be relevant to the additional investigations that the Panel believes are necessary in support of any future proposals to apply the Rural Living Zone.

5.1 Digby

5.1.1 The issue

The issues are whether the RLZ should be introduced at Digby and, if so:

- What is the appropriate minimum subdivision area?
- Should the Restructure Overlay be applied in conjunction with the RLZ?

The exhibited Amendment proposed to zone land around the Digby town centre from FZ to RLZ and to apply a 1ha minimum subdivision area in the zone schedule. The area proposed to be rezoned is approximately 35ha and consists of scattered housing within a small lot, old Crown subdivision.

Following its consideration of submissions and the recommendations of the Rural Residential Land Demand and Supply Assessment, Council resolved to increase the proposed minimum subdivision area from 1ha to 4ha.

5.1.2 Evidence and submissions

Council submitted that the proposed rezoning was consistent with Clause 22.01-3 (Growth Corridors and Structure Plans), including the Digby Structure Plan (Figure 8) and the strategy:

*Provide greater diversity of allotment size and lifestyle residential use by investigating Rural Living Zone sites identified on the Digby Structure Plan.*

Council noted that although Digby has areas of high agricultural capability for dairying, the areas proposed to be rezoned are highly fragmented (effectively part of the ‘town’) and not suitable for dairying. It submitted that allowing limited rural residential development would help support existing community infrastructure and the viability of the town. Council also noted that the town was unsewered and had effluent disposal issues.

Mr Bartsch’s evidence report supported the RLZ rezoning and the application of a 4ha minimum subdivision area, but recommended that the rezoning be accompanied by a Restructure Overlay ‘to require that a minimum allotment size of 4.0 hectares be achieved before new development is permitted on these allotments.’ During the Hearing, Mr Bartsch indicated that a preferred minimum subdivision area might be between 2 – 4ha.

Council advised that it supports ‘in principle’ the application of a Restructure Overlay in conjunction with the RLZ (as recommended by Mr Bartsch), but believes that a consolidation target of 4ha is impractical. This is because the majority of lots are in the 0.2 – 0.3ha range, requiring up to 20 lots to be consolidated to achieve a 4ha lot. Council submitted that its
assessments of lot sizes and ownership suggests that most areas of contiguous parcels are approximately 2ha.

Council concluded that further analysis of land tenure would be required before an appropriate consolidation target could be determined.

5.1.3 Discussion and findings

The Panel supports Council’s intention to provide limited rural residential development opportunities in support of Digby and to facilitate the consolidation of small lots. This would be a sensible outcome and would help reinforce the viability of the town.

In reaching this view, the Panel believes that the Digby rezoning is different to the proposed Bolwarra and Portland rezonings and does not raise the same ‘strategic’ issues discussed in section 4 of this report. Firstly, there are no significant supply/demand issues given that the rezoning applies to a small discrete area surrounding the town that includes an old Crown subdivision consisting of many small lots, some of which are already developed. Secondly, there are no issues associated with the loss of agricultural land or an area of the Farming Zone given that it is not used for agriculture, is highly fragmented and has no obvious productive agricultural use.

The Panel also supports the Mr Bartsch’s recommendation that a Restructure Overlay should be applied if the land is to be rezoned. To apply the RLZ without a Restructure Overlay (and a restructure plan) would create an expectation that dwelling applications will be approved on the basis of the zoning. The current FZ provides some protection against this and should be retained until the Restructure Overlay and a restructure plan are implemented. This cannot be done as part of Amendment C78 given that a restructure plan has not been prepared and potentially affected parties have not had the opportunity for input.

The Panel also believes that Council needs to undertake further analysis of the preferred minimum subdivision area and whether the LDRZ might be an alternative to the RLZ.

In light of these issues, the proposed rezoning of this area should not proceed as part of Amendment C78. The rezoning and application of the Restructure Overlay will need to be progressed through a future planning scheme amendment following further analysis of the relevant issues by Council.

5.1.4 Recommendation

The Panel recommends:

2. Remove the proposed rezoning to Rural Living Zone in Digby.
5.2 Environmental values

5.2.1 The issues

The issues are whether the RLZ should replace the RCZ2 and the FZ in the absence of additional ‘environmental’ overlays.

5.2.2 Evidence and submissions

Ms Chalmers submitted that the RLZ provided less environmental protection than the RCZ2 and for this reason the RCZ2 should not be replaced without appropriate ‘environmental’ overlays and protection being in place. She highlighted the Wattle Hill Creek system and Fawthorp Lagoon as areas that should be protected before being rezoned.

Ms Chalmers also highlighted and referred to various reports in support of her contention that Council had failed to adequately address environmental issues in the Glenelg Planning Scheme, particularly the lack of ‘environmental’ overlays.

Mr G Stokes submitted that the RLZ provided less protection of environmental values than the RCZ2, noting that the RCZ ‘purposes’ have a stronger focus on protecting environmental values than the RLZ. Mr Stokes submitted that the Glenelg Planning Scheme was deficient in protecting various environmentally significant areas, particularly the Wattle Hill Creek and Fawthorp Lagoon (the Creek flows through the Portland West and North rezoning areas).

Council provided an assessment of identified biodiversity areas in relation to the areas proposed to be rezoned and noted that only two biodiversity sites overlap with the proposed RLZ. These are the ‘Bolwarra Remnants’ and the ‘Walook Swamp and Darts Road Swamp’. Council’s mapping indicates that the overlap areas are relatively confined and that there is limited subdivision and development potential within these areas, particularly if a 4ha minimum subdivision area is applied.

Council also submitted that the proposed RLZ and the existing planning scheme provisions, such as Clause 52.17 (Native vegetation) provide adequate protection for environmental assets. For example, the Rural Living Zone requires a planning permit for a building within 100 metres of a waterway, wetlands or designated flood plain, and includes various ‘environmental’ decision guidelines.

Specifically in relation to the Wattle Hill Creek and Fawthorp Lagoon catchment, Council submitted that the Amendment will not have a negative impact because of the ‘low ability for further development’ and the limited subdivision potential in the area, particularly under a 4ha minimum subdivision area. Council also noted that other provisions that apply in these areas such as the PCRZ, PPRZ and Clause 52.17 (Native vegetation) provide a further level of protection.

5.2.3 Discussion and findings

The Panel acknowledges the submissions relating to the lack of ‘environmental’ overlays, particularly in the Wattle Hill Creek and Fawthorp Lagoon catchment. The revised Land Use Study Addendum explains that biodiversity mapping was completed in 2001 and although Environmental Significance Overlay (ESO) and Vegetation Protection Overlay (VPO) mapping and schedules were prepared, they were not implemented. The Panel also notes that the
Glenelg Environment Strategy 2010–2020 includes recommendations relating to updating and introducing environmental provisions in the Glenelg Planning Scheme, although it is not clear whether Council has undertaken or plans to undertake any additional work around these issues.

In any event, the issue for the Panel is whether the RLZ should be applied in the absence of ‘environmental’ overlays such as the ESO and VPO. Given its recommendation that the RLZ rezonings not proceed as part of Amendment C78, the Panel has not examined this issue in detail and has not formed a view about whether or where such overlays should apply. However, the Panel notes that the RLZ, in contrast to the RCZ, provides for the use and development of a dwelling without a planning permit. Other elements of the two zones, such as the decision guidelines are relatively similar.

In assessing whether there is likely to be any substantive difference in the environmental outcomes under the two zones, the Panel has relied on Council’s detailed assessment of future subdivision and development potential associated with identified biodiversity areas and within the Wattle Hill Creek and Fawthrop Lagoon catchment. Council concluded that these areas are substantially developed and have limited potential for further subdivision and development, particularly under a 4ha minimum subdivision area.

The Panel finds that the absence of environmental overlays is not a reason to abandon the RLZ, however it is a factor in refining where the RLZ might be applied and what minimum subdivision area might be appropriate.

5.3 Industrial interfaces

5.3.1 The issue

The issue is whether land should be rezoned RLZ in proximity to land zoned Industrial 2 Zone (IN2Z).

The exhibited Amendment proposes to rezone land to RLZ in four areas that have interfaces with an area zoned IN2Z. These interface areas are:

- Westlakes Road (Henty Highway to Railway line, Portland North)
- School Road (between Westlakes Road and Portland-Nelson Road, Portland North)
- Lightbodys Road (between Portland-Nelson Road and Wilsons Road, Portland North)
- Darts Road (off Henty Highway, Bolwarra South).

The IN2Z area and the interface areas are shown on Figure 9.

The exhibited Amendment also includes a 20m ‘minimum setback from a road’ along the Schools Road interface. This setback is intended to protect the gas pipeline along Schools Road and to provide a buffer between future rural residential development and the IN2Z.

During the authorisation process, the then Department of Transport, Planning and Local Infrastructure queried whether the potential impacts of applying the RLZ adjacent to land zoned IN2Z had been adequately investigated.

Council provided further analysis of this issue in the revised Land Use Study Addendum and its submission at the Hearing. Mr Bartsch also addressed the issue in his evidence report.
5.3.2 Evidence and submissions

Council provided an overview of the four interface areas, including the number of lots and dwellings, together with an assessment of potential subdivision and dwelling opportunities.

Council also advised that it is preparing a ‘Portland Industrial Land Strategy’ that will consider, amongst other things, the suitability of existing industrial zonings and various ‘interface’ issues, including the Industrial 2 area adjacent to the proposed RLZ.
Council concluded:

*The four IN2Z interface areas have adjacent existing rural residential development. The land use interface remains controlled during any planning permit application for development. Future industrial development will need to incorporate appropriate buffers (under EPA guidelines) to these existing sensitive uses. Given the high percentage of dwelling development in these areas, rezoning of this land will not have a large intensification impact or increase of land use conflict. The recently commenced Portland Industrial Land Strategy will more definitively address these sensitive interfaces and may lead to rezoning of industrial land.*

Mr Bartsch noted that the revised Land Use Study Addendum ‘provides a basic level of information’ on this issue and that the Portland Industrial Land Strategy project will address ‘sensitive interfaces and provide recommendations for their future treatment’.

**5.3.3 Discussion and conclusions**

The need to protect industrial land is a recurring theme in the Glenelg Planning Scheme, including the need to provide adequate buffers between industrial activity and sensitive uses, such as dwellings. This is particularly so in relation to the IN2Z which is typically used for ‘heavy’ industry that can have significant amenity impacts.

The need to protect industrial activity is reinforced in PPN37 which includes:

*Rural residential development should not be provided on land that is:*

- within the separation requirements of an amenity reducing land use as described in the Environment Protection Authority’s Recommended Separation Distances for Industrial Residual Air Emissions, and is a ‘sensitive’ land use in applying the EPA guidelines.

The Glenelg Industrial Land Use Plan, 2007 includes the following commentary on the Industrial 2 area:

*The industrial area provides one of the key locations for industries requiring buffers, particularly for industries with emissions such as noise, or odour. However, within Precinct NP1(c) a major constraint on the future development of a significant part of the site is the presence of the North Portland Primary School located on School Road with Industrial 2 zoned land on three sides. This is a critical constraint to the future development of this major industrial area.*

*The options available are to relocate the school or back zone the industrial area to a rural zone. It is considered that this industrial area is critical to the long term future economic well being of Portland, with exceptional infrastructure assets for an industrial area. The preferred outcome is the relocation of the school to a site which will not suffer the adverse effects of proximity to a major industrial site. Consideration should also be given to the creation of a suitable buffer zone for the areas adjacent to other Industrial 2 Zone to the west and the east.*

Although this Plan will be revised and updated by the current industrial strategy project, this extract highlights the importance of this IN2Z area and the constraints associated with sensitive uses.
As a matter of general principle, the Panel has concerns about applying a zone (including the RLZ) adjacent to an IN2Z area that creates an expectation that applications for further subdivision and additional dwellings will be approved. The existing RCZ2 is still a ‘rural’ zone that provides some protection against these expectations by limiting further subdivision and new dwellings unless associated with ‘sustainable agricultural and horticultural uses’. In contrast, the RLZ creates expectations that residential development is automatically appropriate and that residential amenity will be protected.

The Panel believes that it would be premature to apply the RLZ in the interface areas in light of the impending Rural Land Use Strategy and the Portland Industrial Land Strategy. The Rural Land Use Strategy provides an opportunity to assess the agricultural values of the RCZ2 interface areas and to consider whether they should be rezoned or have a different minimum subdivision area. The Portland Industrial Land Strategy provides an opportunity to reassess the IN2Z area and, if the zone is to be retained, consider how to address interface issues.

5.4 Portland West infrastructure provision

5.4.1 The issue

The issue is whether the proposed RLZ rezoning in Portland West will compromise efficient infrastructure development associated with the longer term residential expansion of Portland.

The Portland West rezoning area is between the existing Portland urban area (to the east) and an area identified for longer term residential growth (to the south-west). These areas are shown on Portland Structure Plans 1 and 2 included in Clause 22.01-3 (refer to Figures 6 and 7 in this report).

5.4.2 Evidence and submissions

Wannon Water (represented by Mr Wilson) raised concerns about the proposed RLZ rezoning in Portland West, including the potential for further rural residential subdivision and development in this area. Mr Wilson submitted that increasing fragmentation had limited the scope for sequential urban residential growth to the south-west of this area as foreshadowed in the Portland Structure Plans. He submitted that this ‘leap frogging’ was a poor planning outcome, particularly in terms of infrastructure provision. In support of this, Mr Wilson explained the costs that would be incurred by extending services to this long term growth area through the proposed RLZ area.

The Panel sought Mr Wilson’s views on whether Council’s proposed RLZ (and its 4ha minimum subdivision area) would do more to limit further fragmentation than the current RCZ2 (and its 2ha minimum subdivision area). He agreed that the increase in the minimum lot size would assist, but believed that the purposes of the RCZ2 provided greater protection against further fragmentation. On this basis, Wannon Water supported the retention of the existing RCZ2 and suggested that a 40ha minimum subdivision area be applied.

Council submitted that this area has a rural residential character given the extent of small lots and the number of existing dwellings. On this basis, Council submitted that the proposed rezoning of this area will have little, if any, impact on its development potential;
particularly if a 4ha minimum subdivision area is applied. Council also submitted that applying a 40ha minimum subdivision area would not reverse the current situation. Council concluded that the rezoning of this area would not impact on or exacerbate the infrastructure issues raised by Mr Wilson.

5.4.3 Discussion and findings

The Panel has recommended that the rezoning of this area not proceed, although it acknowledges that a change in zoning might be warranted after further analysis of the issues raised in this report. This analysis should include a further assessment of the matters raised by Wannon Water and what zone and/or subdivision minimum might be applied to support effective infrastructure provision to the long term residential growth area to the south-west.

The Panel was not presented with enough information to adopt a position on these matters, but there are a number of possible approaches, including:

- Promoting more intensive serviced development, perhaps under the Low Density Residential Zone, that might contribute to sequential infrastructure development.
- Seeking to limit future subdivision and development under the current zone (or the RLZ, as proposed by Council).
- Applying a larger minimum subdivision area (as proposed by Mr Wilson) to limit any further subdivision in the area.

The issues raised by Mr Wilson might also warrant reconsidering whether the long term residential growth area to the south-west remains a sensible planning option.

These matters need to be considered within the context of the broader strategic issues discussed in section 4 of this report.

5.5 Heritage

5.5.1 The issue

The issue is whether the Amendment should apply a Heritage Overlay to protect various sites.

5.5.2 Evidence and submissions

Mr G Stokes expressed concern that the application of the RLZ would threaten the retention of heritage places that are not subject to the Heritage Overlay (HO). He noted that a broader range of uses were permitted and permissible under the RLZ than the RCZ2. He proposed that the Amendment include the application of the HO to various properties.

Council provided advice on the heritage status of various places raised in this submission, noting that some of the sites fall outside the area affected by the Amendment, while others are already subject to the Heritage Overlay. Council advised that it is about to commission a ‘heritage gap study’ that will consider the inclusion of new sites in the Heritage Overlay. Council also noted that the RCZ and RLZ both contain ‘decision guidelines’ relating to minimising impacts on features of ‘historic’ significance.
5.5.3 Discussion and findings

It is not possible to apply the HO as part of Amendment C78, given that it was not included in the exhibited Amendment. Applying the HO would require more explicit justification and the notification of potentially affected parties through the planning scheme amendment process.

The Panel notes Council’s advice regarding the forthcoming ‘heritage gap study’ and encourages it to review the relevant sites raised by Mr Stokes as part of that project.

5.6 Proximity to urban development

5.6.1 The issue

The issue is whether the areas proposed to be zoned RLZ are too distant from existing urban areas.

PPN37 includes:

Rural residential development must be planned to show how it relates to, or is supported by, existing urban development.

5.6.2 Evidence and submissions

Ms Chalmers submitted that not all of the proposed RLZ rezonings were close to Portland or existing services, noting that some dwellings would be over 6km from the centre of Portland. She submitted that this would increase car dependency and trips.

Council submitted that all of the areas adjoin an area (or areas) zoned for urban, low density residential or rural residential.

Mr Bartsch noted that the ‘proximity’ argument was not as strong for the Bolwarra area as for Portland North and West.

5.6.3 Discussion and findings

The Panel is satisfied that the areas proposed to be rezoned are in reasonable proximity to urban and other services associated with those centres (particularly Portland), although the number and range of services obviously varies from area to area. The Panel does not believe that a lack of ‘proximity’ is a reason for the Amendment to not proceed.
6 Other issues

6.1 Industrial 2 Zone

6.1.1 The issue

The issue is whether the exhibited Industrial 2 Zone rezonings should proceed (refer to Figure 3 in this report).

The exhibited Amendment proposed to rezone part of two lots on the Henty Highway Portland North from Rural Conservation Zone Schedule 2 (RCZ2) to Industrial 2 Zone (IN2Z). The rezoning was intended to correct a split zoning over the lots.

6.1.2 Submissions

Submissions from Mr G Stokes, Ms Alford, Ms Wigley, Mr Webb, Ms Webb, Ms Heathcote and Mr Mailing opposed the extension of the IN2Z citing a number of amenity and other impacts. Some sought the extension of the RLZ over the existing IN2Z to the west.

Council submitted that rezoning the land to RLZ would be inappropriate because it would expand the rural residential interface with the broader area of land zoned IN2Z to the west.

Council also advised that the zoning of this area would be referred to the Portland Industrial Land Strategy process which will investigate the issues raised in submissions. On this basis, Council resolved to abandon this part of the Amendment.

6.1.3 Discussion and findings

The Panel supports Council’s position on this issue and agrees that the zoning and interface issues affecting this area should be reviewed as part of the Portland Industrial Land Strategy process. This will provide a more considered basis on which to address the zoning anomaly in this area and the future of the IN2Z in this area.

6.1.4 Recommendation

The Panel recommends:

3. Remove the proposed rezoning to Industrial 2 Zone in Portland North.

6.2 Public Conservation and Resource Zone

6.2.1 The issue

The issue is whether the extent of the exhibited Public Conservation and Resource Zone (PCRZ) should be changed.

The exhibited Amendment proposed to rezone land associated with Wattle Hill Creek in Portland West from RCZ2 to Public Conservation and Resource Zone (PCRZ) to correct a zoning anomaly.
6.2.2 Submissions

The submission from Berry and Whyte Surveyors sought a modification to the exhibited boundary of the PCRZ to reflect land ownership in the area. The submission included supporting material from the Office of the Surveyor General.

Council resolved to modify the PCRZ boundary to accommodate the submission.

6.2.3 Discussion and findings

The Panel supports Council’s position on this issue and agrees that the PCRZ boundary should be changed to reflect the public land boundary.

6.2.4 Recommendation

The Panel recommends:

4. Modify the boundary of the Public Conservation and Resource Zone associated with Wattle Hill Creek in accordance with Council’s response to the submission from Berry and Whyte Surveyors.

6.3 Treloar Rose Farm

6.3.1 The issue

The issue is whether the Treloar Rose Farm site should be protected by a buffer zone. Similar issues were discussed at the Hearing in relation to the Portland Strawberry Farm site.

The Treloar Roses Farm is currently zoned a mixture of RCZ2 and RLZ and is not directly affected by the Amendment, except for a small area in the southern area of the property which seems to be within the proposed RLZ area (Bolwarra South).

The Portland Strawberry Farm site is also zoned RCZ2 and is proposed to be zoned RLZ.

6.3.2 Evidence and submissions

Mr Treloar (Treloar Roses Farm) raised concerns about potential complaints from residential neighbours relating to noise, spraying and other issues, and suggested that a ‘buffer’ or ‘exclusion’ zone be provided around the property. He advised that the rose growing business employs 30 permanent employees, increasing to around 55 employees in the peak season.

Council provided an analysis of existing lots and dwellings in the immediate area and concluded that there was limited scope for further subdivision and additional dwellings, particularly if the 4ha minimum subdivision area was applied. On that basis, Council submitted that there was no need to formalise a ‘buffer’ area.

Council also advised that the zoning of the Treloar Rose Farm will be considered as part of the Glenelg Rural Land Use Strategy project.

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19 As indicated on a plan provided by Council following the Hearing.
6.3.3 Discussion and conclusions

In light of its recommendation that the RLZ rezonings not proceed, the Panel has not formed a view about whether a formal ‘buffer’ around the Treloar Roses Farm is warranted. However, this matter should be considered as part of the Glenelg Rural Land Use Strategy project, together with the zoning of that area.

6.4 89 Dart Road, Portland North

6.4.1 The issue

The issue is what zone should be applied to this property.

This property is zoned Industrial 2 Zone (IN2Z) and is to the west of an area currently zoned Rural Conservation Zone Schedule 2 and proposed to be zoned Rural Living Zone.

6.4.2 Submissions

The submissions from Mr G Stokes and Mr J Stokes queried the zoning of this property, submitting that it should be zoned RCZ2 or RLZ. Mr G Stokes provided some background to the zoning and ownership of the property and submitted that there had been an error in the past application of the ‘industrial’ zone (currently the IN2Z).

Council submitted that as the land is outside the area covered by the Amendment, it cannot be rezoned as part of this process. The issue will be referred to the Portland Industrial Land Strategy project.

6.4.3 Discussion and findings

The issues raised in these submissions will require further analysis and cannot be addressed as part of Amendment C78. For this reason, the Panel supports Council’s position and agrees that these submissions and the zoning of this property should be considered as part of the Portland Industrial Land Strategy projects. Council should also review the submission from Mr G Stokes to determine whether there has been an ‘administrative’ error in the application of the IN2Z in this area.

6.5 Dartmoor

6.5.1 The issue

The issue is whether land in Dartmoor should be rezoned Rural Living Zone as part of Amendment C78.

The Dartmoor area is not included in the Amendment.

6.5.2 Submissions

The submission from Mr and Mrs Dyson sought the rezoning of their land in Dartmoor to Rural Living Zone. They submitted that this would be consistent with the Glenelg Sustainable Settlement Strategy.

Council submitted that the land is outside the area affected by Amendment C78 and would need to be the subject of a separate amendment.
6.5.3 Discussion and findings

The Panel agrees with Council that rezonings in Dartmoor are beyond the scope of Amendment C78.

6.6 Notification and communication

6.6.1 The issue

The issue is whether Council adequately communicated and expressed the content and implications of the Amendment.

6.6.2 Submissions

The submission from Mr Farnsworth noted that Council provided comprehensive information about the Amendment in its correspondence and on its website, but that it did not provide any information on how the Amendment would affect individuals.

Council advised the Panel that the submitter declined the offer of a meeting to discuss the Amendment.

6.6.3 Discussion and findings

On the information provided to it, the Panel is satisfied that Council met the notification requirements of the Planning and Environment Act 1987 when it exhibited the Amendment. The Panel also notes that Council has taken a proactive approach in communicating with stakeholders, highlighted by Council providing updates on the Amendment’s progress and its willingness to advise people of its proposed changes to the Amendment.

While the Panel accepts that the potential impacts of Amendments are not always clear, potential submitters have a responsibility to inform themselves of those impacts.
## Appendix A  List of Submitters

<table>
<thead>
<tr>
<th>No.</th>
<th>Submitter</th>
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<tbody>
<tr>
<td>1</td>
<td>Roger Whyte (Berry and Whyte Surveyors)</td>
</tr>
<tr>
<td>2</td>
<td>Frank Farnsworth</td>
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<tr>
<td>3</td>
<td>Maree Alford</td>
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<td>4</td>
<td>Lorraine Wigley</td>
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<td>David Webb</td>
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<td>6</td>
<td>Denise Webb</td>
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<td>7</td>
<td>Helen Heathcote and Tim Mailing</td>
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<td>8</td>
<td>Krysalis and Paul Wizard</td>
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<td>Gordon Stokes</td>
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<td>Gary Treloar</td>
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<td>AL Chalmers</td>
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<td>12</td>
<td>Justin Stokes</td>
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<td>13</td>
<td>Stacy and Gavin Dyson</td>
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<td>Lindsay Dart</td>
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<td>15</td>
<td>Ken and Jenny Dart</td>
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<td>16</td>
<td>Lynn Logan</td>
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<td>Graeme and Bernadette Hann</td>
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<td>21</td>
<td>Bob Barry (Country Fire Authority)</td>
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<td>Maria Lovison (Native Title Services Victoria)</td>
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<td>23</td>
<td>Ian Marshall and Marilyn van Wegen*</td>
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<td>24</td>
<td>Peter Wilson (Wannon Water)*</td>
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<td>26</td>
<td>John Legg*</td>
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<td>27</td>
<td>Geoff Brooks (Department of Environment, Land, Water and Planning)*</td>
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*Submission in response to further notification in June 2015*
## Appendix B  Document List

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<td>Council</td>
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<tr>
<td>2</td>
<td>22/7/2015</td>
<td>Attachments including background reports</td>
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<td>7</td>
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