Planning and Environment Act 1987

Panel Report

Glenelg Planning Scheme Amendment C90
Portland Industrial Land Strategy Precincts 1, 3 and 4

18 April 2019
Planning and Environment Act 1987
Panel Report pursuant to section 25 of the Act
Glenelg Planning Scheme Amendment C90
Portland Industrial Land Strategy Precincts 1, 3 and 4
18 April 2019

Con Tsotsoros, Chair
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<tr>
<td>Council</td>
<td>Glenelg Shire Council</td>
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<tr>
<td>DPO</td>
<td>Development Plan Overlay</td>
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</tr>
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<td>ESO</td>
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</tr>
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<td>GRZ1</td>
<td>General Residential Zone Schedule 1</td>
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<td>IN2Z</td>
<td>Industrial 2 Zone</td>
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<td>Industrial Strategy or PILS</td>
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<td>Planning Scheme</td>
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Note: A number following a zone or overlay refers to a schedule number
Overview

Amendment summary

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<th>Glenelg Planning Scheme Amendment C90</th>
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<td>Portland Industrial Land Strategy Precincts 1, 3 and 4</td>
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<td>Proposes to implement recommendations in the Portland Industrial Land Strategy, 2016</td>
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<td>Glenelg Shire Council</td>
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<td>11 October 2018</td>
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<td>1 November to 3 December 2018</td>
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<td>Submissions</td>
<td>Submissions were received from:</td>
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<tr>
<td></td>
<td>1. Angela Ryks</td>
</tr>
<tr>
<td></td>
<td>2. Berry and Whyte Surveyors Pty Ltd</td>
</tr>
<tr>
<td></td>
<td>3. Paul Wright</td>
</tr>
<tr>
<td></td>
<td>4. Peter, Jodi, Jake and Brock Stevenson</td>
</tr>
<tr>
<td></td>
<td>5. C &amp; G Nominees Pty Ltd</td>
</tr>
<tr>
<td></td>
<td>6. Christine and Danielle Marley</td>
</tr>
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<td></td>
<td>7. Gordon Stokes</td>
</tr>
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</tr>
<tr>
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VICTORIA
State Government
Planning Panels Victoria
## Panel process

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###Appearances
- Glenelg Shire Council represented by Matt Beazley of Russell Kennedy Lawyers, who called expert evidence on planning from John Glossop of Glossop Town Planning
- Environment Protection Authority represented by Carolyn Francis, Regional Manager, South West Region
- CMG Nominees Pty Ltd represented by Daniel Pech of Myers Planning Group
- Peter, Jodi, Jake and Brock Stevenson represented by Jodi Stevenson

###Citation
Glenelg PSA C90 [2019] PPV

###Date of this Report
18 April 2019
Executive summary

Portland is a regional centre located in Victoria’s Great South Coast Region, approximately 360 kilometres to Melbourne’s central city and 104 kilometres to Warrnambool regional city. From 2011 to 2016, Portland’s population increased slowly to 9,712 people compared to Glenelg Shire which slightly decreased to 19,557 people.

Portland is connected to regional cities and centres, capital cities and international locations through a comprehensive road network, standard gauge rail, an airport and a 24-hour international port. The Port of Portland is a nationally significant asset which services regional products and has the potential to service new export markets.

Portland forms part of the Green Triangle Region – an economic area spanning across South Australia and Victoria.

Glenelg Planning Scheme Amendment C90 (the Amendment) seeks to implement recommendations for Precinct 1 (North Portland Industrial), Precinct 3 (Central Portland Employment) and Precinct 4 (Madeira-Packet Employment) identified in the Portland Industrial Land Strategy, 19 September 2016 (Industrial Strategy).

The Industrial Strategy has resulted from a collaborative five-year process between Glenelg Shire Council, the Victorian Government and many stakeholders. There is an evident strategic thread between the Strategy, existing State and regional planning policy, and specific local planning policy introduced in 2017 to implement its objectives, directions and recommendations. The Industrial Strategy is comprehensively informed through its background reports which assess economic, urban design, traffic, transport, market demand and needs.

The Amendment positively responds to Portland’s declining industry and recognises that it is likely to grow in the future. The proposed new land use framework will encourage investment and development in appropriate industrial locations. It will enable residential and mixed-use development on unrequired industrial land near the Portland town centre where investment is less likely due to issues such as the interface, and potential land use conflicts, with residential zoned land.

The Amendment was exhibited from 1 November to 3 December 2018 and Council received 10 submissions. Key issues raised in submissions included the appropriate zone for existing industrial land, the interface between sensitive and industrial land uses, potentially contaminated land, and the content of future development plans.

For the reasons set out in this report, the Panel finds that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded, strategically justified and should proceed subject to addressing the more specific issues raised in submissions.

North Portland – Precinct 1

Rezoning Lot 1 TP128066 at 89 Darts Road, Portland North, to Rural Conservation Zone Schedule 2 is justified and appropriate. The relatively small-scaled rezoning will not
negatively impact on the ability to develop Precinct 1 and achieve outcomes sought through the Industrial Strategy.

The exhibited requirement 10 in Development Plan Overlay Schedule 4 Clause 4.0 should provide more direction about managing the interface between industrial and sensitive uses.

The Panel commends Council for its positive and collaborative approach by inviting comment on the draft development plan. Council’s receptiveness to consider changing the Rural Conservation Zone Schedule 2 land description and its proactive consultation with the relevant catchment authority and State government department will positively inform future discussions with CMG Nominees and Mr Stokes through a separate process.

The Panel makes no formal recommendation because the draft development plans do not form part of the Amendment.

Central Portland Employment – Precinct 3

Rezoning land from Industrial 3 Zone to Mixed Use Zone Schedule 1 is justified and appropriate. Land bounded by Browning and Francis Streets and the railway corridor should remain in IN3Z because there is strategic support for light industry in this area and there is no strategic support to rezone the land for residential purposes.

The exhibited requirement 7 in Development Plan Overlay Schedule 7 Clause 4.0 should provide more direction about managing the interface between industrial and sensitive uses. The Schedule should not reference Clause 53.10 because it is already referenced in the industrial zones. The future approved development plan should not be required to maintain recommended default separation distances which can normally be varied.

The Environmental Audit Overlay should be applied to land identified in Figure 3 of this report (Figure 8.3 of the preliminary environmental report) with high potential for soil contamination, to meet Ministerial Direction 1 and align with Planning Practice Note 30. Applying the Environmental Audit Overlay to land identified with low or medium potential for soil contamination is inappropriate and will result in unjustified cost and delay.

Madeira-Packet Employment – Precinct 4

The exhibited requirement 6 in Development Plan Overlay Schedule 8 Clause 3.0 should provide more direction about managing the interface between industrial and sensitive uses.

Form and content of the Amendment

The exhibited decision guidelines should be drafted in policy neutral terms, as proposed by Mr Glossop at the Hearing.

Applying Development Plan Overlay Schedules 7, 8 and 9 to approximately 497.51 hectares of land in Precincts 1, 3 and 4 does not align with advice in Planning Practice Note 23 however, on balance, it can satisfactorily achieve the intended outcomes.

Council should review how Development Plan Overlay Schedule 7 is performing in Precinct 3, with regard to the evolving built form without notice and review rights, during its next Planning Scheme review.
Draft development plans

Before approving each development plan, Council should consider:

- how specified development contributions will be practically implemented because, unlike a development contributions plan, there is no mechanism to equalise or apportion contributions across all properties in the precinct
- how having no direction on individual property owner contributions will affect investment certainty and development feasibility
- whether specifying future land uses which are already directed by the Planning Scheme zone is appropriate.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Glenelg Planning Scheme Amendment C90 be adopted as exhibited subject to the following:

Portland North Industrial – Precinct 1

1. Amend Development Plan Overlay Schedule 9, as shown in Appendix B4, to:
   a) replace requirement 10 with: “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses including the Portland North Primary School”
   b) delete requirement 11.

Central Portland Employment – Precinct 3

2. Amend Mixed Use Zone Schedule 1, as shown in Appendix B1, to replace the decision guidelines with:
   - Whether the location of land uses, building design and interface treatment in the precinct minimises negative impacts on the amenity of nearby residents.
   - Whether the development located near the front of any site presents an attractive street frontage.
   - Whether the bulk and overall building height responds to adjacent sensitive land uses, where present. Large expanses of continuous wall visible to the street should have appropriate articulation, landscaping and other elements to provide relief and visual interest.
   - Whether the development improves the overall quality and management of stormwater and environmental values.
   - Whether the landscaping is of a high quality and cohesive treatment, particularly along key interfaces.

2. Amend Development Plan Overlay Schedule 7, as shown in Appendix B2, to replace requirement 7 in Clause 4.0 with “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses”.
3. Apply the Environmental Audit Overlay to land east of Hurd Street identified in Figure 3 of this report as having high potential for soil contamination, subject to any targeted further notice to affected property owners and tenants.

4. Remove the Environmental Audit Overlay from land which was not identified in Figure 3 of this report with high potential for soil contamination.

Madeira-Packet Employment – Precinct 3

5. Amend Development Plan Overlay Schedule 8, as shown in Appendix B3, to replace requirement 6 in Clause 3.0 with “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses”.
1 Introduction

1.1 The Amendment

(i) Description

The Amendment proposes to implement recommendations for the following three precincts identified in the Portland Industrial Land Strategy, 19 September 2016 (Industrial Strategy):

- North Portland Industrial – Precinct 1
- Central Portland Employment – Precinct 3

Specifically, the Amendment proposes the changes in Table 1 for each precinct.

Table 1: The Amendment proposal

<table>
<thead>
<tr>
<th>Precinct 1</th>
<th>Precinct 2</th>
<th>Precinct 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Zones</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Rezones the following from Industrial 2 Zone (IN2Z) to Industrial 3 Zone (IN3Z):</td>
<td>No zone change</td>
<td>- Introduces the Mixed Use Zone into the Glenelg Planning Scheme (Planning Scheme)</td>
</tr>
<tr>
<td></td>
<td>- land fronting the south side of Westlakes Road between the railway corridor and the Henty Highway</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- land surrounding the Portland North Primary School</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- part 89 Darts Road, Portland North (Lot 1 TP344672)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Rezones part of the Portland North Primary School site at 42 School Road, Portland North from IN2Z to Public Use Zone (PUZ2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Rezones Lot 1 TP128066 and part of Lot 2 LP212454 from IN2Z to Rural Conservation Zone Schedule 2 (RCZ2)</td>
<td></td>
</tr>
<tr>
<td><strong>Overlays</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Applies Development Plan Overlay Schedule 9 (DPO9) to the Precinct</td>
<td>- Deletes Design and Development Overlay Schedule 2</td>
<td>- Applies Development Plan Overlay Schedule 7 (DPO7) to part of the Precinct</td>
</tr>
<tr>
<td>- Applies Environmental Significance Overlay Schedule 2 (ESO2) to wetland areas in Precinct 1</td>
<td>- Applies Development Plan Overlay Schedule 8 (DPO8)</td>
<td>- Applies Environmental Audit Overlay to land proposed to be rezoned from IN3Z to residential zones which enable sensitive land uses (GRZ1 and MUZ1)</td>
</tr>
</tbody>
</table>
(ii) Subject area and context

Portland is a regional centre located in Victoria’s Great South Coast Region, approximately 360 kilometres from Melbourne’s central city and 104 kilometres to Warrnambool regional city. From 2011 to 2016, Portland’s population increased slowly from 9,601 to 9,712 people compared to Glenelg Shire which slightly decreased from 19,575 to 19,557.¹

Portland is connected to regional cities and centres, capital cities and international locations through a comprehensive road network, standard gauge rail, an airport and an international port which operates 24 hours each day. The Port of Portland is a nationally significant asset which services regional products including timber, livestock, grain and woodchips. It has the potential to expand and service new export markets.

Portland forms part of the Green Triangle Region – an economic area spanning across South Australia and Victoria.

The Amendment applies to land in the North Portland Industrial Precinct (Figure 1), Central Portland Employment Precinct (Figure 2) and Madeira-Packet Employment Precinct (Figure 4).

1.2 Background

The chronology of events in Table 2 includes those referred to in Council’s Part A submission.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January and May</td>
<td>Council facilitated two community workshops regarding the Industrial</td>
</tr>
<tr>
<td>February 2016</td>
<td>Strategy</td>
</tr>
<tr>
<td>23 August 2016</td>
<td>Council adopted the Industrial Strategy</td>
</tr>
<tr>
<td>30 November 2017</td>
<td>The Industrial Strategy was introduced into the Planning Scheme,</td>
</tr>
<tr>
<td></td>
<td>particularly through a new Clause 22.01 (Portland industrial area),</td>
</tr>
<tr>
<td></td>
<td>as part of a restructured Local Planning Policy Framework [Amendment C75]</td>
</tr>
<tr>
<td>August 2018</td>
<td>Victorian Planning Authority completed development plans for the North</td>
</tr>
<tr>
<td></td>
<td>Portland Industrial Precinct, Central Portland Employment Precinct and</td>
</tr>
<tr>
<td></td>
<td>Madeira-Packet Employment Precinct</td>
</tr>
<tr>
<td>September 2018</td>
<td>Council resolved to seek authorisation from the Minister for Planning to</td>
</tr>
<tr>
<td></td>
<td>prepare and exhibit the Amendment</td>
</tr>
</tbody>
</table>

1.3 The Panel’s approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- North Portland Industrial – Precinct 1
- Central Portland Employment – Precinct 3
- Madeira-Packet Employment – Precinct 4
- Form and content of the Amendment.

1.4 Limitations

The three draft development plans do not part of the Amendment and the Panel does not formally recommend changes to these documents.
2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

(i) Victorian planning objectives

Relevant State planning objectives set out in section 4 of the Planning and Environment Act 1987 (the Act) are:

1. The objectives of planning in Victoria are:
   
   (a) to provide for the fair, orderly, economic and sustainable use, and development of land

   …

   (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria

2. The objectives of the planning framework established by this Act are:

   …

   (d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land.

The Amendment will assist in implementing these objectives by:

- providing for the economic and sustainable use and development of land by rezoning an industrial precinct, identified as appropriate for rezoning to a residential use, so that residential development can be considered through a planning permit application (1(a))
- allowing a relatively small island industrial site surrounded by residential land to be rezoned to a residential zone (1(c))
- applying the Environmental Audit Overlay to industrial land proposed to be used for a sensitive land use (2(d)).

(ii) Planning policies

The following clauses in the Planning Policy Framework are relevant to the Amendment:

<table>
<thead>
<tr>
<th>Clause</th>
<th>Objective/strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STATE</strong></td>
<td><strong>Victoria (11.01)</strong></td>
</tr>
<tr>
<td><strong>11 Settlement</strong></td>
<td><strong>Settlement – Great South Coast (11.01R)</strong></td>
</tr>
<tr>
<td></td>
<td>To attract more people to the region.</td>
</tr>
<tr>
<td></td>
<td><strong>Managing growth (11.02)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Supply of urban land (11.02-15)</strong></td>
</tr>
<tr>
<td></td>
<td>To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses</td>
</tr>
<tr>
<td>Clause</td>
<td>Objective/strategy</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------</td>
</tr>
<tr>
<td><strong>STATE</strong></td>
<td></td>
</tr>
<tr>
<td>13 Environmental risks and amenity</td>
<td>Soil degradation (13.04) Contaminated and potentially contaminated land (13.04-1S) To ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely</td>
</tr>
<tr>
<td>14 Natural resource management</td>
<td>Water (14.02) Catchment planning and management (14.02-1S) To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment Water quality (14.02-2S) To protect water quality</td>
</tr>
<tr>
<td>16 Housing</td>
<td>Residential development (16.01) Location of residential development (16.01-2S) To locate new housing in designated locations that offer good access to jobs, services and transport</td>
</tr>
<tr>
<td>17 Economic development</td>
<td>Employment (17.01) Diversified economy (17.01-1S) To strengthen and diversify the economy Employment (17.03) Industrial land supply (17.03-1S) To ensure availability of land for industry</td>
</tr>
<tr>
<td>19 Infrastructure</td>
<td>Development infrastructure (19.03) Infrastructure design and provision (19.03-2S) To provide timely, efficient and cost-effective development infrastructure that meets the needs of the community</td>
</tr>
<tr>
<td><strong>LOCAL</strong></td>
<td></td>
</tr>
<tr>
<td>21 Municipal Strategic Statement</td>
<td>Introduction (21.01) Key issues and influences (21.01-2) Identifying and enhancing Portland’s industrial precincts and preparing Development Plans for three major precincts, including: • Precinct 1 – North Portland Industrial Precinct • Precinct 2 – Central Portland Employment Precinct • Precinct 3 – Madeira Packet Road Employment Precinct Objectives, strategies and implementation themes (21.02) Urban growth (21.02-6) Some of Portland’s past planning has prejudiced future residential and industrial development and investment with no clear direction being set for industrial and residential areas around Portland Strategies (21.02-8) Encourage population growth within and immediately around the existing towns</td>
</tr>
</tbody>
</table>
to:

- maximise existing infrastructure investment
- support infrastructure improvement

... to:
- increase job opportunities
- provide land to facilitate further industrial investment …

Ensure that a compatible relationship exists between industrial and sensitive land uses with due regard given to the recommended separation distances.

Ensure decisions to develop or rezone land within the urban areas are informed by the following items:

- the capacity of the site to accommodate long term urban growth requirements, in particular the need for housing, housing choice, employment opportunities and liveability
- the demonstrated need for additional industrial and residential land having regard to current zoning and land supply
- the compatibility of the proposed use with adjacent activities, notably non-residential uses such as industry and agriculture
- the efficient, economic and orderly provision of infrastructure
- the minimisation of the environmental and social consequences of urban sprawl

**Noise and air (21.02-47)**

The historical development of Portland has resulted in some industrial and residential areas being located adjacent to each other

**Strategies (21.02-49)**

Provide buffers between new and existing industrial uses and residential areas in the form of open space, roads, building envelope restrictions and substantially landscaped areas of private land to limit visual, dust and odour impacts

**Implementation (21.02-50)**

Rezoning land from the Industrial 2 Zone to the Industrial 3 Zone adjacent to the North Portland Primary School in Precinct 1

Rezone land abutting the south side of Westlakes Road, between the railway line and Henty Highway from the Industrial 2 Zone to the Industrial 3 Zone to provide a buffer between the Industrial 1 Zone and the Rural Conservation Zone in Precinct 1

Retain the Industrial 3 Zone between Edgar Street and Hislop Street, Portland as a transitional area between the Port Zone to the east and the residential area to the west in Precinct 4

**22 Local planning policies**

**Portland industrial area (22.01)**

**Implementation (22.01-7)**

The objectives and strategies for Portland’s industrial areas will be implemented through the planning scheme by:

**Application of zones**

- Applying the Industrial 1 Zone, Industrial 2 Zone and Industrial 3 Zone as appropriate.

**Application of overlays**

- Applying the Development Plan Overlay to Industrial Precincts 1, 3 and 4.
- Applying the Environmental Audit Overlay to areas to be rezedoned from
2.2 Other relevant planning strategies and policies

(i) Great South Coast Regional Growth Plan

The Great South Coast Regional Growth Plan is one of eight regional growth plans that provide broad direction for land-use and development across regional Victoria. The Plan designates Portland as one of the region’s three regional cities and includes specific future directions, land use policies, strategies and actions.

One future direction seeks to support “opportunities to diversify the economy, taking advantage of environmental, heritage and infrastructure assets, and increasing industrial land supply”. It notes the importance of aligning land use opportunities to existing infrastructure corridors and protect them from inappropriate development.

Relevant strategies are:

- Investigate former industrial land around Kennedy Street for future land use options
- Investigate the development of well-designed industrial estates near the Henty Highway and the Portland-Maroona railway and direct future heavy industrial uses to this precinct.

2.3 Planning scheme provisions

The Amendment proposes to rezone land from either the IN2Z or IN3Z to either IN3Z, PUZ, RCZ2, MUZ1 or GRZ1. It also proposes to apply the Environmental Audit Overlay, ESO and DPO.

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework. Selected zone and overlay purposes are shown in
Table 3.
Table 3: Zone and overlay purposes

<table>
<thead>
<tr>
<th>Zones</th>
<th>Industrial 2</th>
<th>Industrial 3</th>
<th>Mixed Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To provide for manufacturing industry, the storage and distribution of goods and associated facilities in a manner which does not affect the safety and amenity of local communities. To promote manufacturing industries and storage facilities that require a substantial threshold distance within the core of the zone. To keep the core of the zone free of uses which are suitable for location elsewhere so as to be available for manufacturing industries and storage facilities that require a substantial threshold distance as the need for these arises.</td>
<td>To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict. To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community. To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations. To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.</td>
<td>To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. To provide for housing at higher densities. To encourage development that responds to the existing or preferred neighbourhood character of the area. To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Overlays</th>
<th>Environmental Audit</th>
<th>Environmental Significance</th>
<th>Development Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.</td>
<td>To identify areas where the development of land may be affected by environmental constraints. To ensure that development is compatible with identified environmental values.</td>
<td>To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land. To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.</td>
</tr>
</tbody>
</table>

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46: Strategic Assessment Guidelines, August 2018 (PPN46). That discussion is not repeated here.
Other Ministerial Directions relevant to the Amendment are:

- Ministerial Direction 1 – Potentially Contaminated Land under section 12(2)(a) of the Act
- Ministerial Direction – The Form and Content of Planning Schemes under section 7(5) of the Act (Ministerial Direction 7(5)).

**Planning Practice Notes**

The following Planning Practice Notes are relevant to the Amendment:

- Planning Practice Note 23 (PPN23) – Applying the Incorporated Plan and Development Plan Overlays, November 2018
- Planning Practice Note 30 (PPN30) – Potentially Contaminated Land, June 2005.
3 Strategic justification

3.1 Portland Industrial Land Strategy

The Industrial Strategy seeks to provide direction for future growth and development in Portland’s industrial areas. It includes a framework plan, precinct master plans, urban design direction, urban design guidelines and an implementation plan with strategies and actions. It considers 10 industrial precincts and includes master plans for:

- North Portland Industrial Precinct (Precinct 1)
- Central Portland Employment Precinct (Precinct 3)
- Madeira-Packet Employment Precinct (Precinct 4).

The Industrial Strategy is referenced in Clauses 21.02-46, 21.02-50, 21.02-86, 21.02-98, 21.02-117, 22.01-1 and 22.01-8 of the Planning Scheme.

The Industrial Strategy is supported by the following reports:

- Preliminary Planning and Environmental Analysis - Portland Industrial Areas, Parsons Brinckerhoff, May 2015 (preliminary environmental report)
- Economic Assessment, MacroPlan Dimasi, July 2015
- Urban Design Assessment, Urban Designs (Vic) and MacroPlan Dimasi, July 2015
- Traffic and Transport Assessment, Parsons Brinckerhoff, August 2015
- Needs, Demand and Gap Analysis, Parsons Brinckerhoff, October 2015

(i) Economic Assessment Report

The Economic Assessment Report found that in 2007, 619 hectares (44 per cent) of Glenelg Shire’s 1,392 hectares of total industrial zoned land was vacant. It also identified that Glenelg had the fifth largest stock of occupied industrial land in Victoria, of which a significant proportion is occupied by the Portland Aluminium Smelter and its buffers.

The Report states that constraints which limit industrial development include buffer requirements between sensitive land uses and industry, natural environment such as flooding and slope, infrastructure provision, location and property ownership.

(ii) Development plans

The Victorian Planning Authority prepared development plans in August 2018 to facilitate the redevelopment of Precincts 1, 3 and 4 of the Industrial Strategy. These plans are not proposed to be introduced into the Planning Scheme and do not form part of the Amendment.

3.2 Evidence and submissions

Council referred to the Amendment’s explanatory report which states that the Amendment is consistent with the Planning Policy Framework by:

- ensuring sufficient supply of residential and industrial land in appropriate locations (11.02-1, 16.01-2S, 17.01 and 17.03)
- applying planning provisions to protect significant wetlands (12.01-15 and 14.02-25)
implementing strategies which rationalise the amount of industrial land (22.01-5)
identifying appropriate road construction standards and routes for goods movement in the development plans, as recommended in Objective 5 (22.01-5)
applying the Development Plan Overlay to Precincts 1, 3 and 4 (22.01-7)
applying the Environmental Audit Overlay to industrial areas proposed to be rezoned to enable sensitive land uses (13.04-1S and 22.01-7).

The explanatory report states that the Amendment will result in a net community benefit and address environmental, social and economic effects by:

- introducing planning provisions for significant wetlands
- implementing development plans that will coordinate infrastructure and landscaping areas to improve visual quality
- rezoning land to improve and protect the amenity of sensitive land uses
- supporting the development of underused land by diversifying land use options in the Mixed Use Zone and by improving urban conditions
- providing certainty for future development through suitable buffers between industrial and sensitive land uses
- promoting the full uptake of land in the central employment precinct by consolidating industrial land
- rezoning areas consistent with the current use and development to support future development on adjacent land.

No submission considered that the Amendment's strategic justification was insufficient and should not progress.

Mr Glossop gave evidence that the Amendment broadly supports and implements relevant State, regional and local objectives in the Planning Policy Framework. He added that it seeks to advance actions in Clause 21.02-50 which implement noise and air pollution strategies and actions in Clause 22.01-7 which implement the Portland industrial area objectives and strategies.

Mr Glossop considered that Development Plan Overlay Schedules 7, 8 and 9 have been drafted to comply with Ministerial Direction 7(5).

### 3.3 Discussion and conclusions

The Industrial Strategy has resulted from a collaborative five-year process between Glenelg Shire Council, the Victorian Government including the Victorian Planning Authority, specialist consultants and many stakeholders.

The Panel considers that the Amendment has a solid strategic basis from the Industrial Strategy through to existing State, regional and local planning policy. This includes Clause 22.01 (Portland industrial area). The Industrial Strategy is comprehensively informed through its background reports which assess economic impacts, urban design, traffic, transport, market demand and needs. It accepts Mr Glossop’s evidence on the Amendment’s strategic justification.

The Amendment positively responds to Portland’s declining industrial business and employment while recognising that industry is likely to grow in the future. It does this by
establishing a new land use framework to encourage investment and development in appropriate industrial locations and rezoning unrequired industrial land in central Portland so that it can transform into a mixed-use area with residential opportunities.

The strategic path and specific actions introduced into the Planning Scheme through Amendment C75 inform the new land use framework. These include implementation actions in Clause 21.02 such as:

- Rezoning land from the Industrial 2 Zone to the Industrial 3 Zone adjacent to the North Portland Primary School in Precinct 1.
- Applying the Development Plan Overlay to industrial zoned land where there is a need to ensure that development occurs in an orderly manner with appropriate buffer areas and adequate services.

The Panel agrees with the explanatory report’s reasons why the Amendment will achieve net community benefit. The Amendment’s balanced approach to developing Glenelg’s economy while protecting the environment and achieving good amenity for residents, students and other members of the community will deliver net community benefit and sustainable development, as required by Clause 71.02-3.

For the reasons set out in the following chapters, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.
4 North Portland Industrial – Precinct 1

4.1 Background

(i) What the Amendment proposes for Precinct 1

The Amendment proposes to:

- rezone the following from IN2Z to IN3Z:
  - land fronting the south side of Westlakes Road between the railway corridor and the Henty Highway
  - land surrounding the Portland North Primary School
  - part 89 Darts Road, Portland North (Lot 1 TP344672)
- rezone part of the Portland North Primary School site at 42 School Road, Portland North from IN2Z to Public Use Zone (PUZ2)
- rezone Lot 1 TP128066 and part of Lot 2 LP212454 from IN2Z to RCZ2
- apply DPO9
- apply ESO2 to wetland areas.

These changes are outlined in Figure 1.

Figure 1  North Portland Employment – Precinct 1

(ii) Relevant policies

The following Clause 22.01 policy provisions are relevant to Precinct 1.
Portland industrial areas objectives and strategies (22.01-3)

Land use Objective 2

To protect the amenity of residential areas from the effects of industrial activity, while not impeding the productivity of industrial enterprises.

Precinct 1 – North Portland Industrial Precinct (22.01-4)

Vision

The North Portland Industrial precinct is to become a major industrial precinct that is to provide for large-scale industries on large allotments. It will encourage innovative and environmentally sustainable industries that have links to the regional economy and cater for industries that require buffer areas to minimise adverse amenity impacts. A development plan will be prepared based on the PILS framework plan that provides directions on preferred subdivision layout, lot sizes, street network, open space and integration with surrounding areas, including the need for buffers. The development plan will also ensure that the area will be well designed in relation to built form, landscaping and streetscape works. It will be well serviced with high quality roads, drainage and telecommunications infrastructure.

Objective 2

To effectively manage the interface between industrial and sensitive uses and surrounding rural zones.

4.2 Rural Conservation Zone

(i) The issue

89 Darts Road, Portland North, comprises Lot 1 TP128066 (east) and Lot 1 TP344672 (west). They are zoned IN2Z and abut other industrial land in the North Portland Industrial Precinct. Lot 2 LP212454 is a large parcel which abuts the eastern boundary of 89 Darts Road. The three parcels are zoned IN2Z, which prohibits accommodation other than a caretaker’s house. Lot 1 TP128066 (east) has an existing dwelling and is used for that purpose.

The Amendment proposes to rezone Lot 1 TP128066 (east) and a slither of Lot 2 LP212454 to RCZ2. It also proposes to rezone Lot 1 TP344672 to IN3Z. The issue is whether rezoning Lot 1 TP128066 (east) to RCZ2 is justified and appropriate.

(ii) Evidence and submissions

Council submitted that the property has a dwelling which is prohibited in the current zone – IN2Z. It added that the Amendment proposes to rezone 89 Darts Road to RCZ2 to address a land use anomaly. Council explained that the planning scheme amendment which introduced the new format Planning Scheme anomalously rezoned the land from a rural zone to IN2Z. Council presented historic planning scheme maps which confirmed this.

Berry & Whyte Surveyors Pty Ltd objected to part of 89 Darts Road being rezoned to RCZ2 because it would allow potentially conflicting uses which are currently prohibited. It referred to one of the purposes of the IN2Z:

To keep the core of the zone free of uses which are suitable for location elsewhere so as to be available for manufacturing industries and storage facilities that require a substantial threshold distance as the need for these arises.
Berry & Whyte Surveyors submitted the proposed rezoning to be a “significant backward step” in promoting a designated industrial precinct.

Mr Glossop responded that, while the Industrial Strategy does not specifically recommend rezoning the land, it generally seeks to “correct zone anomalies by adopting zones which reflect existing use and development patterns for land that is not used for industry”. He said rezoning 89 Darts Road to RCZ2 is consistent with this general principle. Mr Glossop could not find any environmental value to justify the zone, however, on balance he considered RCZ2 to be appropriate.

Mr Glossop questioned whether rezoning the abutting Lot 1 TP344672 to IN3Z would provide any meaningful amenity benefit to residents at 89 Darts Road. He acknowledged that industrial uses on surrounding IN2Z land need to be somewhat separated from 89 Darts Road.

(iii) Discussion

The Panel agrees with Council’s submission and accepts Mr Glossop’s evidence on this matter. Applying RCZ2 to Lot 1 TP128066 (east) and a slither of Lot 2 LP212454 would naturally extend the same zone on land abutting its eastern boundary. The Panel considers this to be good planning.

These parcels enjoy a large buffer to its south, formed by the wetlands, however, it is directly exposed to IN2Z to its west. While the RCZ2 does not offer the same amenity expected in urban residential zones, rezoning Lot 1 TP344672 to IN3Z would provide some separation from heavier industry with greater potential negative amenity impacts. Like Mr Glossop, the Panel questions the degree of benefit an approximately 28-metre separation would achieve and accepts that it would provide more benefit than not applying it at all.

The Panel considers that rezoning relatively small parcels of land to RCZ2 and IN3Z would not negatively impact on the ability for Precinct 1 to develop and achieve the intended outcomes in the Industrial Strategy.

(iv) Conclusion

The Panel concludes that rezoning Lot 1 TP128066 at 89 Darts Road, Portland North, to Rural Conservation Zone Schedule 2:

- is justified and appropriate
- would not negatively impact on the ability for Precinct 1 to develop.

4.3 Industrial and sensitive land use interface

(i) The issue

Exhibited DPO9 seeks, among other objectives, to effectively manage the interface between industrial and sensitive uses and surrounding rural zones. It also requires at Clause 4.0, a development plan to include:

- The amenity of surrounding residential properties.
• The impact of existing and future surrounding uses on the Portland North Primary School in relation to noise and air quality, as well as, pedestrians, cyclist, and motor vehicle access.

The issue is whether the DPO9 provisions appropriately respond to industrial and sensitive land use interfaces in the North Portland Precinct.

(ii) Evidence and submissions

Environment Protection Authority (EPA) submitted that the second DPO9 objective could be strengthened by changing development plan requirements 10 and 11 and adding a new requirement so that separation distances are considered. It was concerned that potential odour, dust and noise from industry could negatively affect the health and amenity of sensitive uses. EPA explained that this would be consistent with the actions in the Industrial Strategy for Precincts 1, 3 and 4 to “protect amenity of sensitive uses outside the industrial zones through consideration of interface and buffer provisions”.

At the Hearing, Ms Francis of EPA proposed the following changes to relevant DPO9 development plan requirements.

Requirement 10:
Details of how the proposal responds to and protects the amenity of surrounding sensitive uses including consideration of potential offsite impacts such as odour, dust and noise.

Requirement 11:
Details of how the proposal responds to and seeks to avoid offsite impacts to existing and future surrounding sensitive land uses including the Portland North Primary School.

Ms Francis also proposed a new requirement to address impacts on pedestrians, cyclists and motor vehicle access because these are separate issues to industry encroachment on sensitive uses.

Council originally responded that the planning policy framework and Clause 53.10 adequately consider separation distances and EPA Publication 1518 (Recommended separation distances for industrial residual air emissions) provides further guidance. It added:

There may be value in adding known separation distances that are to be strictly maintained to a Development Plan. However, as Clause 53.10 is currently formulated it provides a requirement for referral of a land use application to the EPA where the threshold distance is not met. The EPA can consent to a variation of the threshold distance.

Council sought the Panel’s recommendation as to whether it is appropriate to reference Clause 53.10 in DPO9 or to require recommended separation distances to be maintained. Council accepted EPA’s proposed development plan requirements.

(iii) Discussion

The Panel agrees with the intent which EPA seeks for a development plan through DPO9. DPO9 operates with the parent Development Plan Overlay provisions which seek, among other purposes:
To implement the Municipal Planning Strategy and the Planning Policy Framework.

Planning policy in the Planning Scheme, with guidance from EPA Publication 1518, provide an appropriate framework for assessing relevant permit applications proposing industry near sensitive uses. Specifically, Clauses 17.03-2S (State) and 21.02-48 (Local) consider separation distances, buffers, air emissions and sensitive land uses. Although Clause 53.10 no longer aligns with the more progressed EPA Publication 1518, it still applies for permit applications proposing specified industrial uses in Precinct 1.

Accordingly, development plan requirements should introduce a local response, without repeating existing planning policies or provisions.

Clause 65.01 of the Planning Scheme requires that, before deciding on an application or approval of a plan, Council must consider the “effect on the amenity of the area”. The exhibited, and somewhat generic requirement 10 does not provide any further insight beyond this existing requirement. It does not inform what the development plan needs to provide about the “amenity of surrounding residential properties”. The Panel prefers EPA’s version of requirement 10, which provides more relevant detail and introduces a local response.

The Panel considers that requirement 11 is not needed. A school is a sensitive land use which is addressed through requirement 10.

If the Panel had supported requirement 11, it would have recommended more detail regarding how the development plan identifies any impact on the Portland North Primary School. The Panel would not have supported it extending to pedestrians, cyclists and motor vehicle access because it agrees with EPA that these are separate issues to industry encroachment on sensitive uses. The Panel has not included a separate new requirement because this matter should be explored further to better understand what EPA seeks to achieve.

The Panel agrees with the further detail sought by EPA, subject to:
- deleting the reference to ‘proposal’ because Clause 4.0 specifies requirements for a development plan
- drafting changes which improve the requirement’s operation.

**Maintaining recommended default separation distances**

The Panel considers that it is appropriate for a development plan to show how it maintains any identified and specified separation distance which is supported by a specific detailed assessment. However, it is not appropriate to require that recommended default separation distances be maintained because the ultimate specified distance may vary from the default, based on individual circumstances. Requiring industries with advanced measures such as indoor processing, acoustic treatment and odour filters to maintain the default Clause 53.10 threshold distances or recommended EPA separation distances would unnecessarily increase costs and reduce land efficiency.
Referencing Clause 53.10 in the Development Plan Overlay schedule

The Practitioners Guide advises to avoid cross references to other sections of the Planning Scheme. Industrial 1, 2 and 3 Zones reference Clause 53.10 therefore a reference to this clause in DPO7 is not needed or appropriate.

Council made similar submissions about recommended separation distances and Clause 53.10 for Precincts 3 and 4. The Panel does not repeat its discussion about these matters in this report.

(iv) Conclusions and recommendations

The Panel concludes:

- The exhibited requirement 10 in DPO9 Clause 4.0 should provide more direction about managing the interface between industrial and sensitive uses in a local context.
- A development plan should not be required to maintain recommended default separation distances which can normally be varied.
- DPO7 should not reference Clause 53.10 because it is already referenced in the industrial zones.

The Panel recommends:

Amend Development Plan Overlay Schedule 9, as shown in Appendix B4, to:

a) replace requirement 10 with: “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses including the Portland North Primary School”

b) delete requirement 11.

4.4 Draft North Portland Industrial Precinct Development Plan

(i) The issue

The draft North Portland Industrial Precinct Development Plan does not form part of the Amendment and has not been approved. Nevertheless, Council invited the Panel to recommend changes to the draft development plans which did not change their intent.

(ii) Evidence and submissions

At the Hearing, Mr Pech of Myers Planning Group represented CMG Nominees. He explained that 697 Henty Highway was approximately 58 hectares, comprising 38 hectares of IN2Z and 14 hectares of RCZ2.

CMG Nominees supported DPO9 but questioned the strategic alignment between the Industrial Strategy and draft North Portland Industrial Precinct Development Plan. It requested that Plan 3 (Future urban structure) be changed to not identify 697 Henty Highway as “conservation area (RCZ2)” because:

- it does represent full strategic alignment with objectives in the Industrial Strategy
- the subject land’s existing condition and zone implies that no change can be contemplated in the future.
CMG Nominees considered that the desired vision for RCZ2 is to:
- ensure development of this land does not compromise adjoining industrial land
- ensure that Portland’s northern gateway maintains a rural quality and character
- provide some separation between industrial and residential uses.

CMG Nominees explained that the Industrial Strategy did not explicitly identify the RCZ2 land as a buffer between industrial and residential uses. He added that the land could be more accurately described as “land zoned Rural Conservation Zone” because this would:

…assist any future review of the extent of land zoned Rural Conservation, and if appropriate, in identifying a more appropriate zone to better manage the landscape, built form and land use requirements within this ‘buffer’ area.

Council responded that the Industrial Strategy did not specifically recommend whether change could be contemplated on the subject land in the future. In its closing submission, Council said that it had no issue with describing the land by its zone. It noted that the development plans may be changed through a separate process before they are approved.

Mr Stokes commended Council for the Industrial Strategy’s extensive process, its professional conduct and strategic vision for Portland’s industrial areas. He generally supported the Amendment but sought more detailed requirements in the draft Precinct 1 development plan to:
- enhance the riparian area surrounding each water body
- improve water quality and biodiversity
- encourage greater diversity of bird life through revegetation
- restore and enhance the biodiversity of WI3 and WI4.

Council responded:

Consultation was undertaken with the Glenelg Hopkins Catchment Management Authority (GHCMA) and the Department of Environment, Land, Water and Planning (DELWP) in regard to requirements and guidelines to be included in the draft Development Plans. Following the most recent consultation specific requirements for the Walook Swamp (WI-02) were sought from DELWP for inclusion in the draft Development Plan. It was noted at that time that the requirements vary and there is value in allowing flexibility and discretion in response to individual planning permit applications.

(iii) Discussion and conclusion

The Panel commends Council for its positive and collaborative approach by inviting comment on the draft development plan. Council’s receptiveness to consider changing the RCZ2 land description and its proactive consultation with the relevant catchment management authority and State government department will positively inform future discussions with CMG Nominees and Mr Stokes through a separate process.

The Panel makes no formal recommendation because the draft development plans do not form part of the Amendment.
5 Central Portland Employment – Precinct 3

5.1 Background

(i) What the Amendment proposes for Precinct 3

The Amendment proposes to:

- introduce the Mixed Use Zone into the Planning Scheme
- rezone IN3Z and C2Z land east of the railway corridor (except for land proposed to be rezoned to GRZ1) to a new MUZ1
- rezone land south of Garden Street and to the east side of Osbourne Street from IN3Z to GRZ1
- apply DPO7 to part of the precinct
- apply the Environmental Audit Overlay to land proposed to be rezoned from IN3Z to residential zones which enable sensitive land uses (GRZ1 and MUZ1).

These changes are outlined in Figure 2.

![Central Portland Employment – Precinct 3](image)

(ii) Relevant policies, strategies and analysis

The following policies, strategies and analysis are relevant to Precinct 3.

Precinct 3 – Central Portland Employment Precinct (22.01-5)

Vision

The Central Portland Employment Precinct is to provide for light industries to the west of the railway spur and is to provide for a transition to a mix of commercial and residential to the east of the railway spur. A development plan will be prepared for both areas to the east and west of the railway spur. The development plan to the west of the railway spur will be based on the existing road network and identify the priorities for upgrading key access points, intersections and internal roads. The development
plan for the east will identify future opportunities for mixed use development and residential development on the basis of this area’s interface with existing commercial and residential areas.

Objective 2
To rationalise the amount of industrial land.

Strategy
- Provide for mixed use and residential development east of the railway spur by rezoning surplus industrial land.
- Apply the Environmental Audit Overlay to all land being rezoned from industrial.

Objective 5
To manage the interface between industrial and sensitive uses.

Clause 22.01-5 implements Precinct 3 objectives, strategies and actions in the Industrial Strategy and includes:

Industrial Strategy
Encourage consolidation and continuation of light industry west of the rail spur. Protect amenity of sensitive uses through interface and buffer considerations. Provide direction on appropriate uses within the precinct. Investigate potential of rezoning for a residential/mixed use redevelopment east of the railway spur whilst managing light industrial and rail spur interface. Investigate rezoning of eastern area to reflect existing residential and commercial character.

Needs Demand and Gaps Analysis
Generally this Precinct received a ‘moderate’ score for the suitability of light industry land use. Very few properties received a ‘strong’ score and this is solely due to the lower levels of potentially contaminated soils on these sites.

For these reasons, it is considered that some locations within Precinct 3 are somewhat suitable for light industry. However, considering that there is already a significant number of light industry activities in the western part of Precinct 3, west of the railway line, it is considered appropriate that some of this area be retained for industrial purposes.

5.2 Zoning east of the railway corridor

(i) The issue
The issue is whether rezoning land in Precinct 3 from IN3Z to Mixed Use Zone is justified and appropriate.

(ii) Evidence and submissions
Council submitted that the Amendment proposes to rezone approximately 21.59 hectares of IN3Z and C2Z land to MUZ1 and GRZ1. It noted that about 12.28 hectares of the total land is substantially vacant, underused or derelict. Council considered MUZ1 to be suitable because:
- it reflects the existing mix of residential, commercial and light industrial uses
- the Mixed Use Zone seeks to increase density of development, consistent with the precinct’s central location.
Mr Glossop referred to the Industrial Strategy which states that it is appropriate to rezone land to MUZ1 because the surplus industrial land is an isolated precinct surrounded by residential land, at the fringe of industrial land use and near the Portland town centre. He considered the Mixed Use Zone to be appropriate because:

- activities on land in Precinct 3 already include mixed uses such as residential, retail premises, food and drink premises
- the Industrial Strategy does not identify the need to retain the land for future industrial purposes
- the zone provides an appropriate transition between the C2Z to the east and west to residential areas
- the zone does prohibit some existing non-residential uses which would happen if the zoning was changed to a General Residential Zone.

Submissions expressed different views about how land east of the railway corridor should be zoned, as summarised in Table 4.

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Zone east of the railway corridor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General Residential</td>
</tr>
<tr>
<td>Mr Wright</td>
<td>Support</td>
</tr>
<tr>
<td>Stevenson family</td>
<td>Support</td>
</tr>
<tr>
<td>Ms and Ms Marley</td>
<td>Support</td>
</tr>
<tr>
<td>Mr and Ms Greig</td>
<td>Support</td>
</tr>
</tbody>
</table>

Council did not support a residential-only zone because it would result in non-compliant industrial and commercial development which is not the desired outcome or vision in the Industrial Strategy.

(iii) Discussion

Precinct 3 east of the railway corridor, where the Amendment proposes to rezone land to MUZ1, can be generally described as predominantly vacant land west of Hurd Street and developed land with mixed industrial and residential uses east of Hurd Street.

The Panel notes that the existing industrial zoned land in Precinct 3 significantly separates Portland’s surrounding residential land. This has been further exacerbated by limited investment in this precinct, resulting in considerable vacant land on both sides of the railway corridor.

Precinct 3 has small clusters of dwellings throughout the precinct which abut industrial land. The IN3Z has existed since the Glenelg Planning Scheme was introduced in 1998, although information presented by Council at the Hearing indicates that a proportion of land in Precinct 3 was originally proposed for residential use. The Industrial Strategy identifies the land use conflicts between existing industrial land and surrounding residential areas.
The Amendment directly implements planning policy in Clause 22.01 of the Planning Scheme which itself implements Precinct 3 objectives, strategies and actions specified in the Industrial Strategy. Specifically, it seeks to rezone surplus industrial land by providing mixed use development east of the railway corridor to implement Objective 2 (To rationalise the extent of industrial land).

The Panel considers MUZ1 to be a transitional zone until land has been developed for mostly residential purposes. Council should monitor how the MUZ1 land, especially west of Hurd Street, evolves to see whether the General Residential Zone may be more suitable in the longer-term future.

(iv) Conclusions
The Panel concludes that rezoning land in Precinct 3 from IN3Z and C2Z to Mixed Use Zone is justified and appropriate.

5.3 Zoning west of the railway corridor

(i) The issue
The issue is whether land in Precinct 3 bounded by Browning and Francis Streets and the railway corridor should remain in IN3Z.

(ii) Evidence and submissions
Council referred to the Industrial Strategy which recommends that IN3Z be retained and it submitted that this zone is needed for existing industry. It explained that the Amendment did not propose to rezone land west of the railway corridor because there were individual dwellings next to existing industry. Council noted that no objecting submitter west of the railway corridor resided in Precinct 3.

Mr Glossop considered that the IN3Z land west of the railway corridor should be retained and is suitable for industrial activity because:
- it is currently zoned for industrial purposes
- the Industrial Strategy identifies the precinct as “most appropriate” to meet the short, medium and long term needs of light industry
- it is next to the railway line and port precinct
- there are opportunities for industry to complement adjacent C2Z and MUZ1 land.

Mr Glossop stated that the Industrial Strategy specifically identifies the IN3Z land to meet the light industrial demand in the short to long term, but it did not strategically justify it being rezoned. He acknowledged that Precinct 3 directly abuts residential land and that light industry can potentially affect the amenity of residential uses. He stated that IN3Z contemplates industry being near residential properties and referred to the Practitioners Guide which states:

Industrial 3 Zone – a buffer zone between Industrial 1 or 2 zones and residential areas. Can also be used in industrial areas where special consideration is required because of industrial traffic using residential roads, unusual noise or other emission impacts, or to avoid inter-industry conflict.
The Stevenson family, Mr and Ms Marley and Mr and Ms Grayson requested that IN3Z land west of the railway corridor be rezoned to either the General Residential Zone or Mixed Use Zone because the zones were consistent with surrounding dwellings. Mr and Ms Greig submitted that a residential-only precinct would benefit the broader community by improving the area’s appearance and providing additional Council revenue through rates. They noted that the area is less than 1.5 kilometres from Portland’s central activity centre.

At the Hearing, Ms Stevenson submitted that traffic, safety and noise issues were generated from December 2012 when Council allowed B-double trucks to access Kennedy Street through Garden and Browning Streets every hour of every day. Trucks cutting corners, jackknifing, blocking streets, and turning into wrong streets negatively impacted neighbouring residents. She added that noise from trucks changing gears and using exhaust brakes kept residents awake at night. Council reversed its decision seven months later.

Residents such as Mr Wright and the Stevenson family were concerned because the Industrial Strategy Precinct 3 master plan nominates a new road along the railway corridor and Garden Street (west of Browning Street) as a candidate route for B-double trucks and other heavy vehicles. Ms Stevenson submitted that heavy vehicle noise would be exacerbated in this area because the Precinct 3 land is formed like a natural velodrome. She considered that the proposed trees would not sufficiently reduce noise and noted that Browning Street residents can hear noise from the Port of Portland at night during its 24-hour operation.

Ms Stevenson said that allowing heavy vehicles in the area would create an issue with the following clauses in IN3Z:

**Use of land**

**Amenity of the neighbourhood**

A use must not adversely affect the amenity of the neighbourhood, including through the:

- Transport of materials, goods or commodities to or from the land.
- Appearance of any stored goods or materials.
- Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

A further concern was that the IN3Z land would be used as an intermodal terminal for containers. Ms Stevenson considered this area to be unsuitable for a terminal and suggested the new industrial development on Darts Road as a more suitable location. Mr Glossop responded that the Industrial Strategy Precinct 3 master plan contemplates intermodal freight terminals in Precinct 3. He said that this is not uncommon on industrial zoned land and would be subject to a planning permit to assess how compatible it is with adjoining residential uses.

**(iii) Discussion**

In line with the Industrial Strategy, the Amendment does not propose to rezone IN3Z land west of the railway corridor. The Industrial Strategy is founded on the Needs Demand and Gap Analysis which scores Precinct 3 as ‘moderate’ for light industry, noting that some locations are somewhat suitable for light industry. It concedes that the area west of the
railway corridor should remain IN3Z because there is already a significant number of light industry activities in that location. Mr Glossop’s comprehensive gallery of photographs\(^2\) show very few modern light industrial buildings and limited reinvestment of existing industry in Precinct 3 since the IN3Z was introduced in 1998.

On face value, it would appear more strategically justified to relocate 20.77 hectares of INZ3 land west of the railway line to land further away from the Portland town centre and with better highway access. The Needs Demand and Gap Analysis identified that 48.8 hectares (five parcels) in Precinct 1 (North Portland) received a strong score for light industry. The Analysis simply considered that these large parcels should be reserved for heavy industry.

Planning for new light industry west of the railway corridor and in existing circumstances may not appear ideal, however, there is considerable industry already located west of the railway corridor. Portland’s historic planning has resulted in residential development mixed in and around industrial areas. Rezoning the IN3Z land for residential purposes without the necessary strategic work may further exacerbate this issue.

The Industrial Strategy objectives, strategies and master plan and the Central Portland Employment Precinct Development Plan establish a strategic framework so that industry in Precinct 3 can co-exist as harmoniously as possible with surrounding residential areas. This includes requirements for landscaping and pedestrian and cyclist safety.

Plan 7 in the Development Plan identifies a new connector street which was identified in the master plan as a possible new truck route for B-doubles beside the railway corridor. This would redirect heavy vehicles from Browning Street and other local streets. The Panel does not have sufficient information to understand how the proposed heavy vehicle route may generate noise to surrounding residents. Council will need to understand this when the road is designed because noise can affect people’s health, especially if it disturbs their sleep. Any potential noise issues can be considered during the design stage when details are known. At this stage of the planning process, potential noise in itself is not sufficient reason to rezone IN3Z land.

The Panel accepts Mr Glossop’s evidence regarding the intermodal terminals noted in the Precinct 3 master plan.

The Panel cannot recommend that the Amendment rezone land west of the railway line because there is no strategic support for this change and it would transform the Amendment beyond its intent.

(iv) Conclusions

The Panel concludes that land in Precinct 3 bounded by Browning and Francis Streets and the railway corridor should remain in IN3Z because:

- there is strategic support for light industry in this area
- there is no strategic support to rezone the land for residential purposes.

\(^2\) Document 4
5.4 Potentially contaminated land

(i) Background

The preliminary environmental report assesses and classifies potential soil contamination into the three categories shown in Table 5.

Table 5 Preliminary environmental report contamination classifications

<table>
<thead>
<tr>
<th>Classification</th>
<th>Former/Current Land Use (included or was likely to include)</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Underground chemical/fuel storage tanks; Aboveground chemical/fuel storage tanks; Manufacturing (large/medium scale) likely to have used liquid chemicals/generated liquid/solid waste; Potential for waste disposal onsite</td>
</tr>
<tr>
<td>Medium</td>
<td>Small manufacturing with the potential for some chemical usage/waste disposal onsite; Commercial use with some potential for chemical usage/waste disposal onsite; Potential for imported fill to have been used onsite.</td>
</tr>
<tr>
<td>Low</td>
<td>Long-term commercial use with low potential for chemical usage/waste disposal onsite; Residential/farming use; General small sites with low potential for chemical usage/importation of fill.</td>
</tr>
</tbody>
</table>

Using this assessment framework, the report classified Precinct 3 land as shown in Figure 3.

Figure 3 Precinct 3 potential soil contamination assessment

Source: Preliminary Planning and Environmental Analysis - Portland Industrial Areas, Figure 8.3

The report states:

It is important to note that this assessment is only desktop and further in depth site inspections/testings would need to be undertaken to confirm the presence, or not, of contaminated soil.
The Industrial Strategy recommends that the Environmental Audit Overlay be applied to land identified in the Precinct 3 master plan to be rezoned to MUZ1 and GRZ1. It comments that areas east of Hurd Street had fewer, interspersed pockets of high potential for soil contamination.

(ii) The issue

The Amendment proposes to apply the Environmental Audit Overlay to part of the IN3Z and C2Z land east of the railway corridor proposed to be rezoned to GRZ1 and MUZ1. The issue is whether the Amendment appropriately responds to potential land contamination for land proposed to be rezoned for residential purposes.

(iii) Relevant Ministerial Direction, policies and Practice Note

Ministerial Direction 1 seeks to ensure:

... that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination.

The direction defines:

- potentially contaminated land as land used or known to have been used for industry; mining; or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land)
- sensitive use as a residential use, a child care centre, a pre-school centre or a primary school.

The direction requires a planning authority, when preparing an amendment which would enable a sensitive land use on potentially contaminated land, to satisfy itself that the environmental conditions of that land are, or will, be suitable for that use.

Planning Practice Note 30 (Potentially contaminated land) states:

The Explanatory Statement to Direction No. 1 suggests that it may only be appropriate to defer the audit requirement if testing of the land before a notice of amendment is given is difficult or inappropriate. An example might be where the rezoning relates to a large strategic exercise or involves multiple sites in separate ownership.

Planning authorities should be careful in applying the Overlay. All buildings and works associated with a sensitive use (irrespective of how minor) will trigger the need to undertake an environmental audit.

Where sensitive uses already exist on a site the planning authority, before applying an EAO, should satisfy itself that these sites are potentially contaminated (through site history records). If there is no evidence of potentially contaminated land it may not be appropriate to apply the EAO to these sites.

(iv) Evidence

Mr Glossop was not satisfied that Council’s approach for applying the Environmental Audit Overlay predominantly to vacant land met Ministerial Direction 1 or the Industrial Strategy. He noted that the Amendment proposes to apply the Environmental Audit Overlay to only part of the land proposed to be rezoned to GRZ1 and MUZ1 and:

Notably, the amendment does not propose to apply the EAO to land that fronts Wade Street, some lots on Garden Street and to the part of the precinct generally bounded
by Hurd Street (to the west), New Street (to the east), Station Place (to the south) and residential properties to the north.

Mr Glossop considered it more appropriate to apply the overlay to all land proposed to be rezoned GRZ1 and MUZ1 in the absence of contradictory conclusive evidence. He explained that this approach aligned with the Industrial Strategy Precinct 3 master plan.

(v) Submissions

In its Part A Submission, Council stated that the Environmental Audit Overlay was not proposed on land with an existing sensitive land use or developed land east of Hurd Street. It explained that applying the overlay to:

- all IN3Z land proposed to be rezoned would mitigate the risk but would also unnecessarily burden existing sensitive land uses
- land with existing uses which have a known contamination risk is an alternative approach.

At the Hearing, Council maintained that it is appropriate to limit the Environmental Audit Overlay to land which is substantially vacant land or known to have been used for industry which may have led to soil or ground water contamination. It explained that its approach was based on the extent of existing sensitive land uses which existed before the industrial zones were applied. Council added that the Industrial Strategy’s approach does not recognise existing use rights for sensitive land uses.

Council submitted that the preliminary environmental report identified ‘potential’ soil contamination based on the known existing use or historic land use. It added:

In the area proposed to be rezoned out of an industrial zone by the Amendment most of the existing land uses, such as service industry, can be considered in a commercial zone where sensitive land uses can also be considered without the need for an environmental audit. In these cases reliance on a soil test is often the only consideration of this issue.

It should also be noted that some of this land is in the existing C2Z (refer to Attachment 4 - Developed commercial and residential uses area (C2Z) fronting onto Hurd Street (Coral)), not an industrial zone, proposed to change to the MUZ1. A select number of sensitive uses, including Education centre, Caretaker’s house, Motel and Residential hotel, can be considered in the C2Z in addition to industry without adverse amenity potential.

Council considered it inappropriate to apply the Environmental Audit Overlay to land developed with a dwelling and other structures, primarily because the audit requirement on established uses and existing sensitive uses would be excessive. It provided supporting information with individual site assessment details, including the preliminary environmental report’s original classification and Council’s reclassification based on the assessment criteria in the report\(^3\). Council reclassified land on or east of Hurd Street from ‘high potential’ to ‘medium’ or ‘low’ and generally included the following comment:

\(^3\) Document 10
Yes, however considering the known site history it is considered to be more suitable for medium classification. Recommend that the EAO not be applied

Council acknowledged that the service station and motor repairs at 145 Percy Street has a high potential for contamination because of its underground and above ground fuel storage and potential for onsite spill. It noted that the Environmental Audit Overlay is not proposed to be applied to this site, although it is proposed to be rezoned to MUZ1.

In its original submission, EPA advised that the Environmental Audit Overlay should be applied consistently with Planning Practice Note 30. It recommended that Council ensure that all land affected by the Amendment is suitable for the intended use and that the appropriate assessment level is undertaken in accordance with the practice note. At the Hearing, Council responded:

It is unclear which option is recommended by the EPA and which specific sites they recommend the EAO be applied to that are not captured by the current proposed extent of the EAO.

At the Hearing, Ms Francis of EPA submitted that Council’s approach appears to overlook contamination risk on sites currently developed for a commercial purpose but may be redeveloped for a sensitive use in the future. Regarding Mr Glossop’s recommendation to apply the Environmental Audit Overlay to a broader area, she explained that the need for an audit should consider the risk profile of the affected land and likely proposed uses. Ms Francis said that Planning Practice Note 30 “states that it is not appropriate to apply the EAO to sites identified as having a low or medium potential for contamination”. She added that it is appropriate to apply the overlay to any site with high potential for soil contamination.

Ms Francis submitted that, in line with Planning Practice Note 30:

… the EAO should be applied to all sites to be rezoned to a more sensitive use that have been identified as having a high potential for contamination as identified in the PPEA⁴.

Sites identified as having a medium and low potential for contamination may be able to be managed at the statutory planning stage.

(vi) Discussion

Existing advice and direction

EPA’s submission at the Hearing was more detailed and insightful than its original submission. Council and Mr Glossop would have benefitted from this information at an earlier stage.

Planning Practice Note 30 advises that the overlay should:

• be a statutory mechanism to defer an environmental audit until the site is ready to be developed for a sensitive use
• not simply be used to identify land that is or might be contaminated
• not be justified based on previous zoning alone.

⁴ Preliminary environmental report
The Panel could not find advice in Planning Practice Note 30 which specifically states that the Environmental Audit Overlay should not be applied to land with low or medium potential for contamination. The practice note’s assessment matrix advises on the appropriate assessment for low, medium and high potential land. The matrix states that Ministerial Direction 1 requires an environmental audit only for land identified with a high potential for contamination proposed to be used for a sensitive land use such as schools, dwellings and residential buildings. At the planning scheme amendment stage, an environmental audit would not be required for land with low or medium potential.

Planning Practice Note 30 advises to be careful when applying the overlay because all buildings and works associated with a sensitive use would need an environmental audit. Applying the Environmental Audit Overlay to low or medium potential land would unnecessarily introduce an environmental audit for all buildings and works permit applications, resulting in unjustified cost and delay.

The preferred approach

The Panel has considered existing advice and direction when reviewing approaches proposed by Council, Mr Glossop and EPA.

For the purposes of Ministerial Direction 1, the Panel considers that rezoning all IN3Z land east of the railway corridor to a residential zone to be a “large strategic exercise”. The Panel commends Council for engaging Parsons Brinckerhoff to prepare the preliminary environmental report. The potentially contaminated land assessment methodology aligns with the assessment matrix in Planning Practice Note 30.

The Panel agrees with EPA that the Environmental Audit Overlay should be on land identified with a high potential for contamination in the preliminary environmental report. The relevant contaminated land requirements of the Environment Protection Act 1970 would apply irrespective of whether or not the Environmental Audit Overlay is on land in Precinct 3. Further in-depth individual site testing will confirm whether contaminated soil exists, and where identified, how the site should be cleaned.

The Panel agrees with Mr Glossop that Council’s approach to applying the Environmental Audit Overlay to predominantly vacant land does not address the recommendation of the Industrial Strategy or the requirements of Ministerial Direction 1. However, the Industrial Strategy’s recommendation to apply the overlay to all land proposed to be rezoned also does not align with advice in Planning Practice Note 30 and inappropriately exceeds the requirements of Ministerial Direction 1.

Applying the Environmental Audit Overlay to all C2Z and IN3Z land proposed to be rezoned would simply identify land that is or might be contaminated based on previous zoning alone. This approach contradicts advice in Planning Practice Note 30. Applying the overlay on land with a ‘low’ and ‘medium’ potential for contamination would introduce an unnecessary and onerous statutory process because:

- land with a ‘low’ potential proposed for any use and land with ‘medium’ potential for non-sensitive uses can be managed through sections 12(2)(b) and 60(1)(e) of the Planning and Environment Act 1987 without the need for the overlay.
• land with a ‘medium’ potential proposed for sensitive uses would require a site assessment from a suitably qualified professional (in specified circumstances) without the need for the overlay.

Land east of Hurd Street

The Panel agrees with EPA that the Environmental Audit Overlay should be applied to land on and east of Hurd Street identified in the preliminary environmental report with high potential for contamination. In line with Ministerial Direction 1, land east of Hurd Street should not be rezoned MUZ1 until the overlay has been applied appropriately.

Council did not propose to apply the Environmental Audit Overlay to sites on or east of Hurd Street because its own assessment reclassified them to low or medium potential for contamination. The preliminary environmental report classified each site based on its land use history. Council reclassified each site, again based on their history.

Council’s site reclassification does not appear to align with advice in Planning Practice Note 30. For example, the Environmental Audit Overlay should be applied to the service station at 145 Percy Street because it is a site:
• with high potential for contamination
• proposed to be rezoned MUZ1 which enables sensitive uses.

Council does not recommend the overlay for other sites with current or former motor repairs, panel beaters, glass and aluminium production and other industry. Table 1 in Planning Practice Note 30 identifies automotive repair, glass manufacturing, metal finishing and treatments, spray painting, and steel works, as land uses with high potential for contamination. These land uses are likely to have stored and used dry and liquid chemicals, chemical gases, solvents, oils and related fluids. Metal production uses chemicals for its finishing process at high temperatures. The Environmental Audit Overlay should be applied to land used for any of these uses.

Further notice

Council should inform itself whether further targeted notice is needed to owners and tenants on land where the Environmental Audit Overlay should be applied but was not proposed by the exhibited Amendment.

(vii) Conclusions and recommendations

The Panel concludes:
• Applying the Environmental Audit Overlay to land identified in Figure 3 of this report (Figure 8.3 of the preliminary environmental report) with high potential for soil contamination meets Ministerial Direction 1 and aligns with Planning Practice Note 30.
• Applying the Environmental Audit Overlay to land identified in the preliminary environmental report with low or medium potential for soil contamination is inappropriate and will result in unjustified cost and delay.
The Panel recommends:

**Apply the Environmental Audit Overlay to land east of Hurd Street identified in Figure 3 of this report as having high potential for soil contamination subject to any targeted further notice to affected property owners and tenants.**

**Remove the Environmental Audit Overlay from land which was not identified in Figure 3 of this report with high potential for soil contamination.**

### 5.5 Industrial and sensitive land use interface

#### (i) The issue

Exhibited DPO7 requires at Clause 4.0, a development plan to include “the amenity of surrounding residential properties”. The issue is whether the DPO7 provisions appropriately respond to industrial and sensitive land use interfaces in the Central Portland Employment Precinct.

#### (ii) Evidence and submissions

EPA submitted that DPO7 Clause 4.0 requirement seven should be revised to consider the likely impact of industry, with potential for offsite impacts, on the amenity of sensitive uses. It sought to require that separation distances and interface land uses be considered so that health and amenity of residents in surrounding areas are not adversely impacted by air emissions such as odour, dust and noise. At the Hearing, Ms Francis of EPA proposed the following:

- Details of how the proposal responds to and protects the amenity of surrounding sensitive uses including consideration of potential offsite impacts such as odour, dust and noise.

Council originally responded that the Planning Policy Framework and Clause 53.10 adequately consider separation distances and EPA Publication 1518 (Recommended separation distances for industrial residual air emissions) provides further guidance. It sought the Panel’s recommendation as to whether it is appropriate to reference Clause 53.10 in DPO7 or require recommended separation distances to be maintained.

Council accepted EPA’s proposed development plan requirement.

#### (iii) Discussion

The industrial and sensitive land use interface in Precinct 3 is different to that of Precinct 1, based on existing zoning and subdivision patterns, land form, and industry type enabled by the respective industrial zone. The same planning policies and provisions apply in both circumstances.

Chapter 4.3 provides a more comprehensive response to industrial and sensitive land use interface issues. In line with that chapter, the Panel considers that planning policy in the Planning Scheme, with guidance from EPA Publication 1518, provide an appropriate framework for assessing relevant permit applications proposing industry near sensitive uses.
The exhibited DPO7 development plan requirement 7 is generic and does not provide a local response to what is expected in the development plan regarding the “amenity of surrounding residential properties”. EPA’s suggested requirements explain what is sought in the development plan regarding amenity and air emissions. The development plan should be required to show how it manages, rather than “responds to and protects”, the amenity of surrounding sensitive uses.

The Panel’s response to Council’s submission about recommended separation distances and Clause 53.10 is in Chapter 4.3.

(iv) Conclusions and recommendations

The Panel concludes that the exhibited requirement 7 in DPO7 Clause 4.0 should provide more direction about managing the interface between industrial and sensitive uses.

The Panel recommends:

Amend Development Plan Overlay Schedule 7, as shown in Appendix B2, to replace requirement 7 in Clause 4.0 with “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses”.


6 Madeira-Packet Employment – Precinct 4

6.1 Background

(i) What the Amendment proposes for Precinct 4

The Amendment proposes to delete Design and Development Overlay Schedule 2 from the Madeira Packet Road Industrial Area and apply DPO8. These changes are outlined in Figure 4.

(ii) Relevant policies

The following Clause 22.01 policy provisions are relevant to Precinct 4.

Precinct 4 – Madeira Packet Road Employment Precinct (22.01-6)

Vision

The Madeira Packet Road Employment Precinct is to provide for light industries and lower-scale commercial uses. The northern area of the precinct is in close proximity to the Port of Portland and provides an opportunity for existing port-related industries to be retained and future industries to develop. The southern area of the precinct has a number of service industries and lower-scale commercial uses that should be encouraged to remain. A development plan will be prepared that protects the main industrial areas and provides buffer treatments to the residential interfaces to the north and west. The development plan will show the extension of the existing service road from Victoria Road to George Street to reduce the number of crossovers to Madeira Packet Road.

Objective 5

To manage the interface between industrial and sensitive uses.
6.2 Industrial and sensitive land use interface

(i) The issue
Exhibited DPO8 seeks to “manage the interface between industrial and sensitive uses”. It also requires at Clause 3.0, a development plan to include “the amenity of surrounding residential properties”. The issue is whether the DPO8 provisions appropriately respond to industrial and sensitive land use interfaces in the Madeira-Packet Employment Precinct.

(ii) Evidence and submissions
EPA submissions for DPO8 requirements which manage interface issues in Precinct 4 were similar to its submissions for Precincts 1 and 3. It submitted that requirement 6 in DPO8 Clause 3.0 should be revised as follows:

Details of how the proposal responds to and protects the amenity of surrounding sensitive uses including consideration of potential offsite impacts such as odour, dust and noise.

Council accepted EPA’s proposed development plan requirement.

(iii) Discussion
The industrial and sensitive land use interface in Precinct 4 is different to that of Precincts 1 and 3, based on existing zoning and subdivision patterns, land form, and industry type enabled by the respective industrial zone. However, the same planning policies and provisions apply, and the Panel considers that requirement 6 in Clause 3.0 of the DPO8 should be worded in the same way as requirement 7 in DPO7 (for Precinct 3).

(iv) Conclusion and recommendations
The Panel concludes that the exhibited requirement 6 in DPO8 Clause 3.0 should provide more direction about managing the interface between industrial and sensitive uses.

The Panel recommends:

Amend Development Plan Overlay Schedule 8, as shown in Appendix B3, to replace requirement 6 in Clause 3.0 with “Details of how potential offsite impacts including odour, dust and noise will be minimised on the amenity of surrounding sensitive uses”.

7 Form and content of the Amendment

Mr Glossop gave evidence about the drafting of Mixed Use Zone Schedule 1 and the suitability of the Development Plan Overlay in the three industrial precincts.

7.1 Mixed Use Zone Schedule 1

(i) The issue
The issue relates to how the MUZ1 decision guidelines are drafted.

(ii) Evidence and submissions
Mr Glossop referred to the exhibited MUZ1 decision guidelines:

The following decision guidelines ... must be considered, as appropriate, by the responsible authority:

- The location of land uses, building design, interface treatment within the precinct must minimise negative impacts on the amenity of nearby residents.
- The development be located near the front of any site to present an attractive street frontage.
- That the bulk and overall building height be sympathetic to adjacent sensitive land uses. Large expanses of continuous wall visible to the street should have appropriate articulation, landscaping and other elements to provide relief and visual interest.
- That development improve the overall quality and management of stormwater and environmental values.
- The landscaping be of a high quality and cohesive treatment, particularly along key interfaces.

At the Hearing, Mr Glossop stated that the MUZ1 decision guidelines were drafted more like policy outcomes. He considered that they should be redrafted to read like decision guidelines. Mr Glossop presented a redrafted version which began each guideline with ‘whether’.

(iii) Discussion
The Panel agrees with Mr Glossop. The Practitioner’s Guide states that a decision guideline:

Sets out, in policy neutral terms, matters that, if relevant, should be considered by the decision maker when exercising a discretion.  

...  

They should not be framed in terms that direct the decision-maker in to consider a matter in a particular way.

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5 Practitioner’s Guide, p13
6 Practitioner’s Guide, p43
The exhibited decision guidelines are not drafted in policy neutral terms. Like Council, the Panel accepts Mr Glossop’s redrafted decision guidelines because they align with current practice advice.

(iv) Conclusion and recommendation

The Panel concludes that the MUZ1 decision guidelines, as redrafted by Mr Glossop, will achieve the objectives for the Central Portland Employment Precinct set out in the MUZ1, and are more closely aligned with good drafting practice as outlined in the Practitioners Guide.

The Panel recommends:

Amend Mixed Use Zone Schedule 1, as shown in Appendix B1, to replace the decision guidelines with:

- Whether the location of land uses, building design and interface treatment within the precinct minimises negative impacts on the amenity of nearby residents.
- Whether the development located near the front of any site presents an attractive street frontage.
- Whether the bulk and overall building height responds to adjacent sensitive land uses, where present. Large expanses of continuous wall visible to the street should have appropriate articulation, landscaping and other elements to provide relief and visual interest.
- Whether the development improves the overall quality and management of stormwater and environmental values.
- Whether the landscaping is of a high quality and cohesive treatment, particularly along key interfaces.

7.2 Development Plan Overlay

(i) Background

Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays) advises on circumstances when the Development Plan Overlay should be applied.

The Development Plan Overlay has always specified “a planning permit must be generally in accordance with the development plan”. Its notice and review exemption provisions have changed since Amendment VC148 was introduced.

Before Amendment VC148:

An application under any provision of this scheme which is generally in accordance with the development plan is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

7 planning.vic.gov.au planning scheme histories at 9 January 1997
After Amendment VC148:

If a development plan has been prepared to the satisfaction of the responsible authority, an application under any provision of this planning scheme is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.

(ii) The issues

The Amendment proposes to apply DPO7, DPO8 and DPO9 to approximately 497.51 hectares of land\(^8\) in Precincts 1, 3 and 4 respectively. The issues are whether it is appropriate and strategically justified to apply the Development Plan Overlay:

- to larger-scaled precincts with fragmented land ownership
- considering that it will remove notice and review of permit applications which are generally in accordance with the development plan.

(iii) Evidence and submissions

In his statement, Mr Glossop assessed whether applying the Development Plan Overlay to the three industrial precincts was appropriate. To assist, he referred to the Industrial Strategy and Clause 22.01 and stated that it appeared to him that implementing the development plans seeks to:

- Provide directions on matters including preferred subdivision layout, lot sizes, street network, upgrading of key access points, intersections and internal roads, open space and integration with surrounding areas (for Precincts 1 and 3).
- Provide for buffer areas between industrial land uses and sensitive uses.
- Achieve good design in built form, landscaping and streetscape works.
- Facilitate public realm works and improvements, including the provision of high quality roads, drainage and telecommunications infrastructure.

Having regard to these matters, Mr Glossop considered that there is need for a control which enables a master planned outcome. He stated that the Comprehensive Development Zone, Activity Centre Zone, Design and Development Overlay and Development Plan Overlay in the Victoria Planning Provisions were examples of controls which could enable a master planned outcome. He found the Comprehensive Development Zone, Activity Centre Zone or Design and Development Overlay to be inappropriate or less suitable than the Development Plan Overlay for varying reasons.

Mr Glossop found the Development Plan Overlay to be generally appropriate “to ensure that the development parameters of strategic sites and strategic precincts are clearly defined and set out in a development plan”.

He referred to Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays) which provides guidance on appropriate circumstances for applying the overlay. The practice note states that the overlay should be applied where land ownership is limited to one or two parties. Mr Glossop considered that applying the overlay to precincts

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\(^8\) section 1.2, draft development plans, Victorian Planning Authority, August 2018
with heavily fragmented land ownership would make it difficult for plan making and achieving the vision of each plan.

In response to questions from the Panel, Mr Glossop stated that while it is preferable to have more consolidated land ownership in an area to which the Development Plan Overlay is applied, the draft development plans have been prepared and their contents are known. He added that DPO7, DPO8 and DPO9 enable a permit to be granted before the development plan has been prepared so they would not delay land development.

Mr Glossop noted that the Development Plan Overlay would exempt notice and review for third parties for permits which are generally in accordance with the development plan. He added:

I note that the development plans generally set relatively high standards for design, landscaping and subdivision layout outcomes. In this regard, I consider that the development plans and the application of the DPO could potentially facilitate an improved outcome for the orderly planning of the area and provide better buffer protection. I also acknowledge that the draft development plans have been subject to public consultation and submissions have been received.

Mr Glossop stated that while he was concerned that exempting notice and review rights may have unintended consequences, he considered it appropriate to apply the Development Plan Overlay to the precincts because:

- they are identified as strategic development precincts
- Precincts 1, 4 and the industrial part of Precinct 3 are largely self-contained, with limited direct abutments
- the Industrial Strategy identifies the need for improved urban design and infrastructure outcomes
- Clauses 21.02 and 22.01 identify a specific need to prepare development plans for each precinct
- it can provide a high degree of certainty for using and developing the land
- public consultation formed part of the Amendment process, therefore exempting third party notice and review may be appropriate
- it would facilitate land being redeveloped in a coordinated manner.

On balance, Mr Glossop found DPO7, DPO8 and DPO9 to be strategically justified.

(iv) Discussion

Exempting notice and review rights from permit applications proposing to develop approximately 497.51 hectares of land may have unintended consequences. The Panel accepts Mr Glossop’s evidence on this matter and shares his concern. Planning Practice Note 23 advises that, because the Development Plan Overlay has no public approval process for the plan, it should be applied to development proposals which achieve all of the following:

- not likely to significantly affect third-party interests
- self-contained sites where ownership is limited to one or two parties
- sites that contain no existing residential population and do not adjoin established residential areas.
The Panel questions whether a development proposal would meet the criteria in all three precincts. Development proposals may significantly affect the interest of residents within a precinct, ownership is across many properties, several sites contain an existing residential population and sites adjoin established residential areas.

However, when compared to other available planning zones and overlays, on balance, the Development Plan Overlay is satisfactory to achieve the intended outcomes. Exempting notice and review for permits on about 497.51 hectares of land will increase the importance of accurate, practical and statutorily implementable development plans.

Council should monitor how DPO7 is performing during its next Planning Scheme review. This is because the MUZ1 in Precinct 3 will enable multi-storey development with no specified maximum building height next to existing residential areas and among existing industrial uses.

(v) Conclusions

The Panel concludes:

- Applying Development Plan Overlay Schedules 7, 8 and 9 to approximately 497.51 hectares of land in Precincts 1, 3 and 4 does not align with planning practice note advice however, on balance, is satisfactory to achieve the intended outcomes.
- Council should review how Development Plan Overlay Schedule 7 is performing in Precinct 3, with regard to the evolving built form without notice and review rights, during its next Planning Scheme review.

7.3 Draft development plans

The Panel has reached the conclusions in this report based on the draft development plans not being part of the Amendment. It was nevertheless useful to refer to content which Council may consider approving after the Amendment is introduced into the Planning Scheme.

Mr Glossop referred to the draft development plans in his evidence and in response to questions from the Panel. He stated that it was unclear how much each permit application would have to contribute towards specified infrastructure items. Council should consider how each development plan will operate before approving them.

It is not clear how specified development contributions in the draft development plans will be practically implemented because, unlike a development contributions plan, there is no mechanism to equalise or apportion contributions across properties in the precinct. For example, Council should understand how one or more property owners will contribute towards infrastructure items such as item R30 in the Precinct 1 draft development plan which requires property owners to upgrade all local roads.

Clarity and direction are needed to support future investment certainty, development feasibility and to avoid delays resulting from potential disputes.

Council should also review item R24 in the Precinct 1 draft development plan, which requires certain future land uses when the school ceases to operate. Item R24 may be restricting the
land uses enabled through the school’s existing Public Use Zone. The Panel queries whether this is statutorily appropriate.

(i) Findings
The Panel finds that, before approving each development plan, Council should consider:

- how specified development contributions will be practically implemented because, unlike a development contributions plan, there is no mechanism to equalise or apportion contributions across all properties in the precinct
- how having no direction on individual property owner contributions will affect investment certainty and development feasibility
- whether restricting future land uses which are enabled by the Planning Scheme zone is appropriate.
# Appendix A  Document list

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Provided by</th>
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<tbody>
<tr>
<td></td>
<td><strong>27 February 2019</strong></td>
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<tr>
<td>1</td>
<td>Photos – Site inspection on 24 February 2019</td>
<td>The Panel</td>
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<tr>
<td>2</td>
<td><strong>18 March 2019</strong></td>
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<td>3</td>
<td>Expert witness statement – John Glossop</td>
<td>Council</td>
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<td>4</td>
<td><strong>25 March 2019</strong></td>
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<td>5</td>
<td>Photos – Portland industrial precincts</td>
<td>Mr Glossop</td>
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<td>6</td>
<td>Submission – Environment Protection Authority</td>
<td>Ms Francis</td>
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<td>7</td>
<td>Submission – CMG Nominees Pty Ltd</td>
<td>Mr Pech</td>
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<td>8</td>
<td>Submission – Peter, Jodi, Jake and Brock Stevenson</td>
<td>Ms Stevenson</td>
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<td>9</td>
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<td>10</td>
<td>Email – Further information and proposed MUZ1 wording</td>
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<td>11</td>
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<td>Tracked changes of relevant planning scheme provisions showing changes accepted by Council at the Hearing</td>
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Appendix B  Panel preferred version of the planning provisions

Tracked Added
Tracked Deleted
Appendix B1  Mixed Use Zone Schedule 1

SCHEDULE 1 TO CLAUSE 32.04 MIXED USE ZONE

Shown on the planning scheme map as MUZ1.

CENTRAL PORTLAND EMPLOYMENT PRECINCT

1.0 Objectives

- To encourage well-designed mixed use development incorporating uses such as general commercial, storage, limited low-impact industry and residential uses in the MUZ1.
- To promote low-impact employment opportunities in the MUZ1.
- To improve the visual amenity of the area.
- To provide residential infrastructure including constructed access, open space and utilities through staged development.

2.0 Clause 54 and Clause 55 requirements

<table>
<thead>
<tr>
<th>Standard</th>
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<tr>
<td>Minimum street setback</td>
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<td>Site coverage</td>
<td>A5 and B8</td>
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<td>Permeability</td>
<td>A6 and B9</td>
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<tr>
<td>Landscaping</td>
<td>B13</td>
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<td>Side and rear setbacks</td>
<td>A10 and B17</td>
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<td></td>
<td>B28</td>
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<tr>
<td>Front fence height</td>
<td>A20 and B32</td>
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</table>

3.0 Maximum building height requirement

None specified.

4.0 Exemption from notice and review

None specified.

5.0 Application requirements

None specified.
6.0 Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 32.04, in addition to those specified in Clause 32.04 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

▪ **Whether** the location of land uses, building design and interface treatment within the precinct **must minimise** negative impacts on the amenity of nearby residents.

▪ **Whether** the development **be** located near the front of any site **to** presents an attractive street frontage.

▪ **Whether** that the bulk and overall building height **be sympathetic responds** to adjacent sensitive land uses. Large expanses of continuous wall visible to the street should have appropriate articulation, landscaping and other elements to provide relief and visual interest.

▪ **Whether** that the development **improve** the overall quality and management of stormwater and environmental values.

▪ **Whether** the landscaping **be** of a high quality and cohesive treatment, particularly along key interfaces.

7.0 Signs

None specified.
Appendix B2 Development Plan Overlay Schedule 7

SCHEDULE 7 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO7.

CENTRAL PORTLAND EMPLOYMENT PRECINCT

1.0 Objectives

To achieve full utilisation of preferred industrial land.
To rationalise the extent of industrial land.
To improve the efficiency of use of industrial allotments.
To create an identifiable attractive character for the industrial precinct.
To improve the visual quality of the precinct

2.0 Requirement before a permit is granted

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority.

3.0 Conditions and requirements for permits

None specified.

4.0 Requirements for development plan

A development plan must include the following requirements:
- Details of the staging of the development.
- Where relevant appropriate arrangements for the provision and funding of infrastructure.
- The drainage of the land.
- Site topography having specific regard to future built form.
- The future road network, having specific regard for both vehicle and pedestrian access through and around the site.
- Overall landscaping for the precinct.
- Details of how potential offsite impacts such as odour, dust and noise will be minimised on the amenity of surrounding residential properties sensitive uses.
- Urban design features of the overall precinct, specifically streetscape character, place making and identity, and built form character.
- Subdivision design for the industrial park area of the precinct as bounded by Browning Street to the west, Kennedy Street to the south, Garden Street to the north, and the existing railway line to the east. This is to include a variety of appropriate lot sizes based on anticipated industrial uses.
- Industrial allotment design including, but not limited to, sustainable building design, landscape frontage, site setbacks, and open space interface.
Appendix B3  Development Plan Overlay Schedule 8

SCHEDULE 8 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO8.

MADEIRA-PACKET EMPLOYMENT PRECINCT

1.0 Objectives

To maintain and strengthen the economic role of the industrial development sector within Portland as key port related and regionally significant focus for industrial activity.

To achieve full utilisation of industrial land.

To improve the efficiency of use of industrial allotments.

To manage the interface between industrial and sensitive uses.

To create an identifiable attractive character for the industrial precinct.

2.0 Requirement before a permit is granted

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority.

3.0 Conditions and requirements for permits

None specified.

4.0 Requirements for development plan

A development plan must include the following requirements:

- Details of the staging of the development.
- Where relevant appropriate arrangements for the provision and funding of infrastructure.
- The drainage of the land.
- The future road network, having specific regard for both vehicle and pedestrian access through and around the site.
- Overall landscaping for the precinct.
- Details of how potential offsite impacts such as odour, dust and noise will be minimised on the amenity of surrounding residential properties and sensitive uses.
- Urban design features specifically streetscape character, place making and identity, and built form character.
- Industrial allotment design including, but not limited to, sustainable building design, landscape frontage, site setbacks, and open space interface.
Appendix B4 Development Plan Overlay Schedule 9

SCHEDULE 9 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO9.

NORTH PORTLAND INDUSTRIAL PRECINCT

1.0 Objectives

To develop the precinct with a focus on the delivery of innovative and environmentally sustainable industries that achieve best practice and have strong regional economic links.

To effectively manage the interface between industrial and sensitive uses and surrounding rural zones.

To create an identifiable and attractive character for the industrial precinct.

To improve the visual quality of the precinct that complements the business activities and adds to the value of these enterprises.

To maximise the available access to existing major transport infrastructure of road, rail and port facilities.

2.0 Requirement before a permit is granted

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority.

3.0 Conditions and requirements for permits

None specified.

4.0 Requirements for development plan

A development plan must include the following requirements:

- Details of the staging of the development.
- Where relevant appropriate arrangements for the provision and funding of infrastructure.
- The drainage of the land.
- Site topography having specific regard to future built form.
- Design, size, and location of all retarding basins to accord with current best practice.
- Hydrologic analysis of impacts on the existing biodiversity values found in relation to the existing wetland areas.
- The future road network, having specific regard for both vehicle and pedestrian access through and around the site.
- Traffic management controls (e.g. roundabouts) for the internal road network particularly at connections with the Henty Highway.
- Overall landscaping for the precinct.
- Details of how potential offsite impacts such as odour, dust and noise will be minimised on the amenity of surrounding residential properties, sensitive uses including the Portland North Primary School.
- The impact of existing and future surrounding uses on the Portland North Primary School in relation to noise and air quality, as well as, pedestrians, cyclist, and motor vehicle access.
- Urban design features of the overall precinct, specifically streetscape character, place making and identity, and built form character.
▪ Industrial allotment design including, but not limited to, sustainable building design, landscape frontage, site setbacks, and open space interface.