

# Minutes

Meeting of Council

Tuesday 16 April 2024

Surf Coast Shire Civic Office

Council Chambers

1 Merrijig Drive, Torquay, Victoria 3228

Commenced at 6:00 pm

**Council:**

Cr Liz Pattison (Mayor)

Cr Gary Allen

Cr Paul Barker

Cr Mike Bodsworth

Cr Kate Gazzard

Cr Rose Hodge OAM

Cr Adrian Schonfelder

Cr Libby Stapleton

Cr Heather Wellington

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# 1 Procedural Matters

## 1.1 Present

Cr Liz Pattison (Mayor)  
Cr Gary Allen  
Cr Paul Barker  
Cr Mike Bodsworth  
Cr Kate Gazzard  
Cr Rose Hodge OAM  
Cr Adrian Schonfelder  
Cr Libby Stapleton  
Cr Heather Wellington

Chief Executive Officer - Robyn Seymour  
General Manager Placemaking and Environment - Chris Pike  
General Manager Community Life - Damian Waight  
General Manager Strategy and Effectiveness - Gail Gatt  
Acting Executive Manager - Strategic Projects and Partnerships - Darryn Chiller  
Manager Integrity and Governance - Jake Brown  
Governance Officer - Jess Menzel

## 1.2 Opening

**Mayor Liz Pattison opened the meeting.**

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung People and the Gulidjan and Gadubanud Peoples of the Eastern Maar. The main Council offices in Torquay are on Wadawurrung Country. We wish to acknowledge the Traditional Owners of the lands on which each person is attending or viewing this meeting today, and pay respect to Elders past and present. Council also acknowledges other First Nations People that may be attending the meeting today.

## 1.3 Pledge

**Mayor Liz Pattison recited the pledge.**

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

## 1.4 Apologies

Nil.

## 1.5 Conflicts of Interest

Nil.

**Councillor Wellington joined the meeting via video-conference at 6:08pm.**

## 1.6 Public Question Time

### Question 1 - Karan Dawson - Torquay

My question relates to the proposed high density lifestyle village at Cypress Lane. Council should fully understand the findings from the Royal Commission into Aged Care and what the Federal Governments definition of aging in place really means? Ageing in place means that as people get older they can remain living in their own home rather than entering residential facilities. Ageing in place requires a degree of independent living ability for the older person (with both adequate levels of mental and physical ability), but gives them control over their living space and how they live, as well as ongoing connection to the community that they are used to. Connected to precious memories. Recent AHURI research reveals that between 78 and 81 per cent of older Australians aged over 55 (depending on age cohort) want to live in their own home as they age. An earlier Australia-wide survey of older Australians revealed a host of reasons why older Australians wanted to age in place including suitability of the dwelling, proximity to family and friends, shopping, transport and health services, and because of familiarity with the local community and neighbourhood. Please explain how an inappropriate high density development on Low density zoned land meets this need?

### Answer provided by General Manager Placemaking and Environment Chris Pike.

Thank you, Mayor and through you, thanks for the question, Karan. Something that might be helpful in response to your second question too, I think what's important to note tonight is that the decision being made by council doesn't reconsider its position on the use of the land from the 22 August, council meeting. But it is considering its position on the changes to the plans that have been put forward since that original decision and I think it is important for people to be aware that VCAT is meeting later this month to hear this matter and at this point will ultimately make that determination on the application. So, back to your question of ageing in place, so I guess the question of need was considered in the August council report that I just referenced and whilst ageing in place wasn't specifically referenced, that concept can be applied to this site.

Ageing in place, as I understand is defined by the Victorian Government, it's about staying independent in the familiar places where we live and the connections you outlined to local neighbourhoods and communities. And the State Government's Ageing Well action plan includes initiatives to support older Victorians, which includes appropriate housing in the right locations, at the right time. So, my consideration of your question would be that the retirement village does allow people to remain independent in housing that suits their needs of a stage in their life, and in addition retirement villages do add to the diversity of housing options and choice that's available to people locally.

**Question 2 - Karan Dawson - Torquay**

Has council made an effort to understand the last and most current census figures for Torquay and why this development is inappropriate for Torquay. All the retirement villages in the SC are in Torquay, and there is a younger demographic in Torquay. National data indicates that the average entry age to retirement villages is 75, and this will be the fifth retirement village for Torquay. This is not needed or supported by the data. Council must know the reasons for building this development in Cypress lane in a Low density zone is a furphy. The zoning was put in place for a reason, and this proposed high density lifestyle village doesn't pass the pub test?

**Answer provided by General Manager Placemaking and Environment Chris Pike.**

So, the assessment that was put forward to the Council in the council report on August 23, did consider the latest Census data, that would be 2021 data, with respect to the needs of the Torquay population as well as the market assessment submitted by the applicant. The requirement is it creates increased requirement for including the retirement villages and assessment of the low density zone was carried out in that report.

**Question 1 - Mark Mathews - Torquay**

The site on Cypress Lane for the proposed retirement village is within an LDRZ zone and is also designated "minimal change" with the Statement of Planning Policy for the DAL. The developer is proposing a development that is a massive seven times more dense than the smallest 2000sqm lot size normally allowed in LDRZ. The proposed retirement village at Cypress Lane is almost three times more dense than the Kithbrooke Park retirement village.

How can the Surf Coast Shire suggest that a residential density 700% higher than the normal LDRZ lot size can be supported and considered a "minimal change"?

**Answer provided by General Manager Placemaking and Environment Chris Pike.**

Thank you, through your Mayor and for the question, Mark. Apologies if there is a little bit of repetition from my previous response. I understand why you would ask the question. In very short terms, this isn't a matter that's being revisited, that particular point you raise. I do refer back to the assessment undertaken in the August report, that hasn't been revisited at this point. But, just to touch on the points made at that time, a range of matters were considered when assessing the impacts of density of development. That included the site coverage of buildings, comparisons with other retirement villages, in the same zone, and thousand the distinctive areas and landscapes policy envisages development should occur in minimal change areas. You might recall the assessment determined on balance the application was appropriate, having regard to these and other matters. So, really ultimately tonight's review of the amended plans will consider the difference in density compared to the original version rather than revisiting those original points.

**Question 1 - Ron Lowe - Torquay**

I see that council officers used housing affordability in their assessment of the amended plan for the proposed retirement village. My question is do they take into account people who buy in never own the land beneath their homes and pay a premium exit fee on sale of the property up to 30%. This would be a substantial sum of money if average price is one million plus dollars. How is this affordable if you decided that you're not happy living in this style of accommodation and want to move on. Or need to move to aged care. So please explain affordability of this proposal.

**Answer provided by General Manager Placemaking and Environment Chris Pike.**

Thanks for the question, through you, Mayor, Ron. Again, there will be a level of repetition here in that the questions of affordability were really something considered informing the Council decision made in August last year. Just for the sake of brevity, the rationale at that time was that the proposal was thought to contribute to the quantity and diversity of housing stock in Torquay. This improves housing choices for people in this area. It obviously has implications for nose who may choose to live in this particular development but also considers the fact that those people may vacate properties that they might be in now, making those available for others who may choose to move to the area. Thanks for your question, Ron.

**Procedural Motion**

**Moved Cr Hodge, Seconded Cr Schonfelder**

That item 2.2 be moved ahead of item 2.1 in the agenda.

CARRIED 9|0

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen	Nil	Nil
Cr Barker		
Cr Bodsworth		
Cr Gazzard		
Cr Hodge		
Cr Pattison		
Cr Stapleton		
Cr Schonfelder		
Cr Wellington		

## 2 Reports

### 2.2 VCAT Appeal - Planning Permit 21/0333 - Amended Plans Retirement Village - Cypress Lane, Torquay

<b>Council Plan</b>	<b>Theme Two - Healthy Connected Community</b> Strategy 3 Facilitate the provision of social infrastructure and open space to enable healthy lifestyles.
<b>Author's Title:</b>	Principal Statutory Planner
<b>General Manager:</b>	Chris Pike, General Manager Placemaking and Environment
<b>Division:</b>	Placemaking and Environment
<b>Department:</b>	Planning and Compliance
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>21 0333 - 5 Coombes Road TORQUAY - Council Meeting - Attachment 1 [2.2.1 - 12 pages]</li> <li>21 0333 - 5 Coombes Road TORQUAY - Council Meeting - Attachment 2 [2.2.2 - 19 pages]</li> <li>21 0333 - 5 Coombes Road TORQUAY - Council Meeting - Attachment 3 [2.2.3 - 9 pages]</li> </ol>

#### Purpose

- The purpose of this report is to determine a position on the amended plans for Planning Permit Application 21/0333 which Council determined to issue a Notice of Decision to Grant a Planning Permit and is now the subject of an appeal to the Victorian Civil and Administrative Tribunal (VCAT).

#### Summary

<b>DATE RECEIVED</b>	18 August 2021 (Amended 1 February 2023)
<b>PROPERTY NUMBER</b>	186333, 177356, 177357, 186960, 177358, 156630, 181445
<b>PROPERTY ADDRESS</b>	4, 10, 16, 22 and 24 Cypress Lane, Cypress Lane Road Reserve and 5 Coombes Road and part of 3A Blackwattle Mews Torquay
<b>APPLICANT</b>	Sincock Planning
<b>PROPOSAL</b>	Use and development of a retirement village, removal of native vegetation and removing a reservation from land under Section 24A of the Subdivisions Act
<b>ZONE</b>	Low Density Residential Zone
<b>OVERLAY/S</b>	Development Contribution Overlay – Schedule 2
<b>PERMIT TRIGGERS</b>	Clause 32.03-1 – Low Density Residential Zone Clause 52.02 – Easements, restrictions, and reserves Clause 52.17 – Native Vegetation
<b>RESTRICTIVE COVENANTS</b>	Nil
<b>CURRENT USE/ DEVELOPMENT</b>	16 Cypress Lane, Torquay is developed with a single dwelling and a shed is located on 10 Cypress Lane, Torquay. The remaining lots are vacant.

<b>CULTURAL HERITAGE MANAGEMENT PLAN</b>	Provided with the application
<b>OBJECTIONS</b>	111 objections 2 letters of support
<b>DECISION</b>	Notice of Decision to Grant a Planning Permit issued (previously)

### **Recommendation**

That Council, having received notice of an application to Amend Planning Application 21/0333 pursuant to VCAT Practice Note PNPE9:

1. Agrees to the amended plans being substituted for consideration at the VCAT hearing.
2. Supports the amended plans subject to the modified conditions in **Attachment 1**.

### **Council Resolution**

**Moved Cr Allen, Seconded Cr Bodsworth**

That Council, having received notice of an application to Amend Planning Application 21/0333 pursuant to VCAT Practice Note PNPE9:

1. Agrees to the amended plans being substituted for consideration at the VCAT hearing.
2. Supports the amended plans subject to the modified conditions in Attachment 1.

CARRIED 5|4

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen Cr Barker Cr Bodsworth Cr Pattison Cr Stapleton	Cr Gazzard Cr Hodge Cr Schonfelder Cr Wellington	Nil

### **Outcome**

2. If Council accepts this recommendation, Council will be able to participate in the hearing and present a position on the amended plans.

### **Key Considerations**

3. Council decided on 22 August 2023 to issue a Notice of Decision to Grant a Planning Permit for the use and development of the land for a retirement village, the removal of native vegetation and the removal of reserve status from land, subject to conditions.
4. An appeal was lodged to review Council's decision at the Victorian Civil and Administrative Tribunal (VCAT) by objectors to the permit application. A hearing is scheduled to start on 29 April 2024 for 5 days.



5. Council then decided not to approve the road discontinuance of Cypress Lane and the sale of part of Reserve 3 PS305011W, which the applicant relied on to facilitate part of the proposed development.
6. Amended plans have been circulated in accordance with the VCAT Practice Note PNPE9 which propose the retention of Cypress Lane and Reserve 3 as a public roadway and reserve respectively, and consequential changes to the layout of development.
7. Having received notice of the proposed amendments, and in preparation for the upcoming VCAT Hearing, Council must now determine whether it continues to support the proposal in its amended form or opposes the application in its amended form. This consideration is limited to an assessment of the proposed changes to the application and is not a reconsideration of Council's decision to grant the Notice of Decision on 22 August 2023.
8. It is recommended that Council supports the amended proposal for the reasons outlined in this report.
9. In reaching a recommendation, officers have considered the amended plans against the decision on the original plans and the relevant provisions of the Surf Coast Planning Scheme including the matters previously considered.

### **Background**

10. Council resolved to issue a Notice of Decision to Grant a Planning Permit for the use and development of a retirement village at 5 Coombes Road, Torquay (Cypress Lane) at the Meeting of 22 August 2023.
11. On 3 October 2023 Council resolved not to approve the sale of Cypress Lane and part of the Reserve No. 3.
12. An objector appeal, with nine joint applicants/objectors, was lodged at VCAT in September 2023.
13. A VCAT Compulsory Conference was held on 12 and 16 February 2024. Agreement between parties was not reached.
14. A VCAT hearing is scheduled for 29 and 30 April and 1, 2 and 3 May 2024.

## **Options**

**Alternative Option 1** – That Council does not support the amended proposal.

15. This option is not recommended by officers as the amendments have been assessed against the Surf Coast Planning Scheme and in accordance with the *Planning and Environment Act 1987* and, on balance, the proposal continues to satisfy all requirements and objectives of the Scheme.
16. If Council does not support the amended plans, and VCAT allows the amended plans to be considered at the upcoming hearing, Council's participation at the hearing be limited. Council will need to present its original position of supporting the proposal in accordance with the Notice of Decision to Grant a Planning Permit but would be unable to contribute to the discussion on the amended plans suitability, including recommending conditions.

**Alternative Option 2** – That Council supports an alternative proposal, via recommended conditions/changes to the plans.

17. This option is not recommended by officers as the amendments proposed have been assessed against the Surf Coast Planning Scheme and in accordance with the *Planning and Environment Act 1987* and in consultation with Council's internal referrals and appropriate conditions have been recommended.

## **Council Plan (including Health and Wellbeing Plan) Statement**

### **Theme Two - Healthy Connected Community**

Strategy 3 Facilitate the provision of social infrastructure and open space to enable healthy lifestyles.

18. The retirement village will contribute to housing diversity within the municipality and offer greater housing choice to residents, contributing to more affordable housing options.

### **Financial Considerations**

19. There are no financial considerations relating to this recommendation of the amended plans prior to the upcoming Victorian Civil and Administrative Tribunal (VCAT) hearing. The costs associated with the VCAT hearing will be managed within existing operational budgets.

### **Community Engagement**

20. In accordance with the requirements of VCAT Practice Note PNPE9, the applicant has given notice of the proposed amendment to the application to all objectors and parties who originally received notice of the application.

21. Council's website was updated to ensure the amended application was accessible to the community, as well as providing the process for responding to the amended application to VCAT. All parties have been invited to attend the Special Council Meeting to consider the amended plans.

### **Strategic Risk**

#### **22. Failure to protect the value and character of our places**

Inherent Risk Rating - Serious, Residual Risk Rating - Medium

23. The application has been assessed against all relevant requirements of the Surf Coast Planning Scheme and on balance determined that the proposal provides an acceptable outcome with respect to the character of the area.

### **Risk Rating**

24. The risk rating is low and can be managed at the department level.

### **Risk Appetite**

25. We will manage and support population growth in the Municipality, but not at the expense of the most important elements of our environment or the unique heritage and character of the different areas of our Shire.

### **Sustainability Considerations**

26. The amended application has been assessed against the relevant provisions of the Surf Coast Shire Planning Scheme, which includes balancing development, social and environmental considerations.
27. Further the proposed development is centered on sustainable practices, including utilising recycled water, not using gas, incorporating Water Sensitive Urban Design principles, solar panels systems for each Independent Living Unit and proposing a star rating of 7 stars for each Independent Living Unit and 7.2 for the apartment buildings.

### **Conflict of Interest**

28. No officer declared a conflict of interest under the Local Government Act 2020 in the preparation of this report.

### **Confidentiality**

29. This report and attachments contain no confidential information under section 66(2) of the *Local Government Act 2020*.

**Transparency**

**Audit and Risk Committee involvement**

30. This is not in scope of the Audit and Risk Committee report.

**Councillor Briefings**

31. This item was discussed at the following Councillor briefings prior to being presented to Council for consideration. Councillor attendance at each briefing was as follows:

Councillor Briefing Date: 12 March 2024

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor Briefing Date: 9 April 2024

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>N</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor attendance at briefings is not a statutory requirement. Councillors are able to access and request information through a number of mechanisms to understand matters being presented at a Council Meeting.

## **Report**

### **Amended Proposal**

32. This report and the assessment are based on the amended plans submitted on 5 March 2024 as part of the VCAT proceedings underway. Refer to Attachment 2 for amended plans submitted.
33. The following describes the changes in the plans from the original approved plans (assessed on 22 August 2023):

#### Retirement village

- The use of the land for a retirement village remains unchanged from the original proposal.
- The amended plans provide for a total of 191 independent living units (a reduction of 5 independent living units) comprising: of 117 independent living units (104 single storey semi-detached and 13 double storey attached units) and three apartment buildings including 16 one-bedroom apartments and 58 two-bedroom apartments.
- The previous proposal included 196 independent living units comprising 120 detached single storey and three apartment buildings of 16 one-bedroom apartments and 60 two-bedroom apartments.

#### Cypress Lane / Reserve 3

- Approval is no longer sought for the removal of reservation from land under Section 24A of the *Subdivision Act 1988*.
- Retain public Reserve 3 on PS305011W and propose landscaping and construction of a public footpath within.
- Retain Cypress Lane and existing street trees and proposed landscaping (continuing street tree planting), construction of a public footpath and 25 car parking spaces and a bus parking bay within the road reservation.

#### Access and parking

- Re-align and redesign the internal road network and parking areas accessed from Cypress Lane from proposed new crossovers.
- 334 car parking spaces are to be provided across the site (21 less than originally proposed) with single-width garages provided for independent living units (some provide tandem parking). Within the basement of the club house apartment building 57 car parking spaces are to be provided (including 6 staff parking) and 36 basement level car parking spaces are provided to the Deep Creek apartment buildings.

- There are 43 visitor parking spaces across the site (increased from 38).

#### Club House / Apartment Building

- Reconfigured design and form of the Apartment Buildings into two separate buildings three and two storeys linked at ground level via a walkway – which would comprise independent living apartments, administration, basement car parking and storage, and communal facilities.
- The three storey building will have a maximum height of 11.6 metres (increased from 11m) above natural ground level.
- The setbacks from the western boundary (adjoining residential land) have been reduced with the two storey building setback 35.32 metres (previously 49.6 metres) and the three storey building setback 73 metres (previously 93 metres).

#### Deep Creek Apartments

- The two apartment buildings in the south-eastern corner interfacing Deep Creek have been reduced in height from three storeys to two storeys (excluding basement) and a maximum height of 7.39 metres.
- The setback of buildings from Deep Creek reserve has increased from 16.57 metres to 21.71 metres.

#### Landscaping and open space

- Retention of existing trees within existing road reserve of Cypress Lane and along the property boundaries.
- Open space around the site has been modified around the new layout of development.
- Relocate the proposed lawn bowls area to the southern side of the clubhouse.
- Reduce the outdoor pavilions from six to five and provide a garden equipment shed.
- Remove the proposed sliding gate entry to Coombes Road (to be retained as a public road).
- Increasing landscape setbacks abutting the Deep Creek Reserve, and deletion of the proposed tennis court in the south-western corner (consistent with the conditions of the previously approved Notice of Decision to Grant a Planning Permit).
- Remove the proposed drainage swales within the site, with drainage relying on underground infrastructure and existing infrastructure within Cypress Lane.

## Site context

### Subject Site and Locality

34. The site is on the southern side of Coombes Road, Torquay on the corner of the Surf Coast Highway. The site comprises an area of 5.44ha which has been subdivided into ten lots known as 5 Coombes Road, 4 Cypress Lane, 10 Cypress Lane, 16 Cypress Lane, 22 Cypress Lane and 24 Cypress Lane, Torquay 3A Blackwattle Mews and 22 Cypress Lane and 5 Coombes Road. The proposal no longer includes the Cypress Lane road reserve and part of Reserve No. 3.
35. The land slopes down from the western corner of 10 Cypress Lane, Torquay (north-western end) to the east to the Surf Coast Highway and south to Deep Creek, as seen in the image below. The land slopes steeply within the Deep Creek reserve.

### Image of the subject site and levels



Source: Exponare - 2022 Surf Coast Shire Aerial Photograph

36. The land is developed with a dwelling at No. 16 Cypress Lane and farm sheds at 10 Cypress Lane, with the remaining lots being vacant.
37. The site includes boundary plantings (windrows) to the entrance, along the northern section of Cypress Lane and along the western (side) boundary. The species are predominantly cypress, pine, and eucalyptus species. No. 16 Cypress Lane, Torquay, which includes the existing dwelling is densely vegetated with planted vegetation including a mixture of eucalypts and pine trees. The remainder of the site is predominantly pasture grasses, with the re-establishment of native grasses.

38. To the west of the site the land is zoned Low Density Residential Zone with lots generally between 4,000-5,400m<sup>2</sup>. Lots are generally developed with large dwellings, and associated outbuildings. Swimming pools are common within the area. The lots are generally moderately vegetated in semi-formal to formal garden settings, including a mixture of native and exotic vegetation.
39. The land on the southern side of Deep Creek, opposite the site, is zoned General Residential 1 Zone, with lots generally between 450 to 750m<sup>2</sup>. The lots are generally developed with detached dwellings, including a mixture of single and double storey developments. The lots are generally moderately vegetated with a mixture of formal and native gardens.
40. Abutting the site to the east is the Surf Coast Highway, which includes a densely vegetated reserve and footpath. The land to the eastern side of the Surf Coast Highway is zoned General Residential 1 Zone, with lots generally between 450 to 700m<sup>2</sup>. The lots are generally developed with detached dwellings, including a mixture of single and double storey developments. The lots are generally sparsely vegetated in formal garden settings.
41. The land on the northern side of Coombes Road opposite the site is a vacant parcel (3.19ha) of land zoned Low Density Residential Zone. A planning application has been submitted to subdivide this lot into 13 lots. To the west of this parcel is a relatively recent subdivision, with lots generally 0.2ha in size. Some lots have been developed with detached dwellings.
42. To the south of the subject site is the Deep Creek linear reserve. The banks of Deep Creek are densely vegetated with predominantly indigenous vegetation, including some large Eucalypts. Abutting the site there is a clear (grassed) area of between 7.0 to 15 metres wide. On the southern side of Deep Creek, there is a linear footpath running along the Deep Creek Reserve, accessible from the northern side via a pedestrian footbridge close to the Surf Coast Highway. This path also links to the footpath that runs parallel to the Surf Coast Highway.
43. The site is in close proximity (walking distance) to services and facilities, including bus services, supermarket, medical centre and recreational reserves.

#### Permit and Site History

44. On 22 August 2023, Council determined to issue a Notice of Decision to Grant a Planning Permit for the land described as Lots 36A, 36B, 37A, 38A, 39, 40A, 40B, 41A and 41B on PS305011W and commonly known as 4, 10, 16, 22 and 24 Cypress Lane, 5 Coombes Road, part of 3A Blackwattle Mews and Cypress Lane Road Reserve, Torquay, to allow the use and development of a retirement village, removal of native vegetation and removing a reservation from land under Section 24A of the *Subdivision Act 1988* in accordance with the plans received by the Responsible Authority 1 February 2023, subject to the conditions.



45. On 11 September 2023, a joint application for review of Council's decision under section 82 of the *Planning and Environment Act 1987* was lodged at the Victorian Civil and Administrative Tribunal (VCAT) by objectors to the permit application.
46. On 3 October 2023, Council determined not to approve the road discontinuance of Cypress Lane and the sale of part of Reserve 3 PS305011W, which were relied upon by the permit applicant to facilitate part of the proposed development within the planning permit application.
47. On 5 March 2024, in accordance with VCAT Practice Note PNPE9, the permit applicant has given notice of a proposed amendment to the application. The amendment seeks to remove development proposed within Cypress Lane and Reserve No. 3, retaining these as a public roadway and reserve, respectively. Consequential changes to plans are made as a result.
48. A compulsory conference was conducted at VCAT on 12 and 16 February 2024, however agreement was not reached between the parties. The matter will now be heard by VCAT at the hearing scheduled for 29 and 30 April and 1, 2 and 3 May 2024.

#### Registered Restrictions

49. Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land is not affected by registered restrictions.

#### **Application process**

50. VCAT Practice Note PNPE9 requires the applicant to notify the following people of the proposed amended plans:
  - Responsible Authority.
  - Referral Authorities.
  - All parties to the VCAT proceeding.
  - All people who filed a Statement of Grounds with VCAT but are not participating in the hearing.
  - All people who objected to the original permit application.
  - All people who were notified of the original permit application.

A copy of the amended plans was also published on Council's website.

51. Anyone wanting to make a submission may do so by lodging a Statement of Grounds directly to VCAT.
52. VCAT will be responsible for determining the application. At the hearing, VCAT will also determine whether it is appropriate to substitute the amended plans for consideration.

## Planning Context

53. The subject site is zoned Low Density Residential Zone (LDRZ) and is affected by the Development Contributions Plan Overlay – Schedule 2 (DCPO2).

### Zone

54. The purpose of the LDRZ, in addition to implementing the Municipal Planning Strategy and the Planning Policy Framework, is to:

*“Provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.”*

55. A permit is required under Clause 32.03-1 and 320.3-4 to use the land for a retirement village (accommodation) and construct buildings and carry out works for that use.

### Overlays

56. The subject land is affected by the Development Contributions Overlay, the purpose of which is to:

*“Identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.”*

57. Schedule 2 of the Development Contributions Plan Overlay applies which incorporates the Torquay-Jan Juc Development Contributions Plan and specifies financial contributions to be made to development and community infrastructure.

58. The original Notice of Decision to Grant a Planning Permit included a condition to give effect to the development contributions plan. The proposed amendment will alter the contribution amount payable but does not change the requirement to impose a contribution via a condition.

59. The development infrastructure levy goes towards road works, intersection upgrades, shared pathways, sporting infrastructure and open space improvements, whilst the community infrastructure levy contributes towards community buildings such as library services and kindergartens. Area 13 is earmarked to contribute towards roads projects including upgrading the entire width of Coombes Road to 7.0 metres, the Coombes Road and Messmate Road roundabout, upgrades to the Deep Creek linear reserve, Great Ocean Road bike path and future expansion of the library.

### Other Provisions

60. The following Particular Provisions are relevant to the consideration of this application:
- Clause 52.06 – Car parking
  - Clause 52.17 – Native vegetation

- Clause 52.29 – Land adjacent to the Principal Road Network
- Clause 53.18 – Stormwater management in urban development

61. The general provisions set out at Clause 65 decision guidelines which the responsible authority must consider, as appropriate:

- The matters set out in section 60 of the Act.
- Any significant effects on the environment, including the contamination of land, may have on the use or development.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the environment, human health, and amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted, or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
- The impact the use or development will have on the current and future development and operation of the transport system.

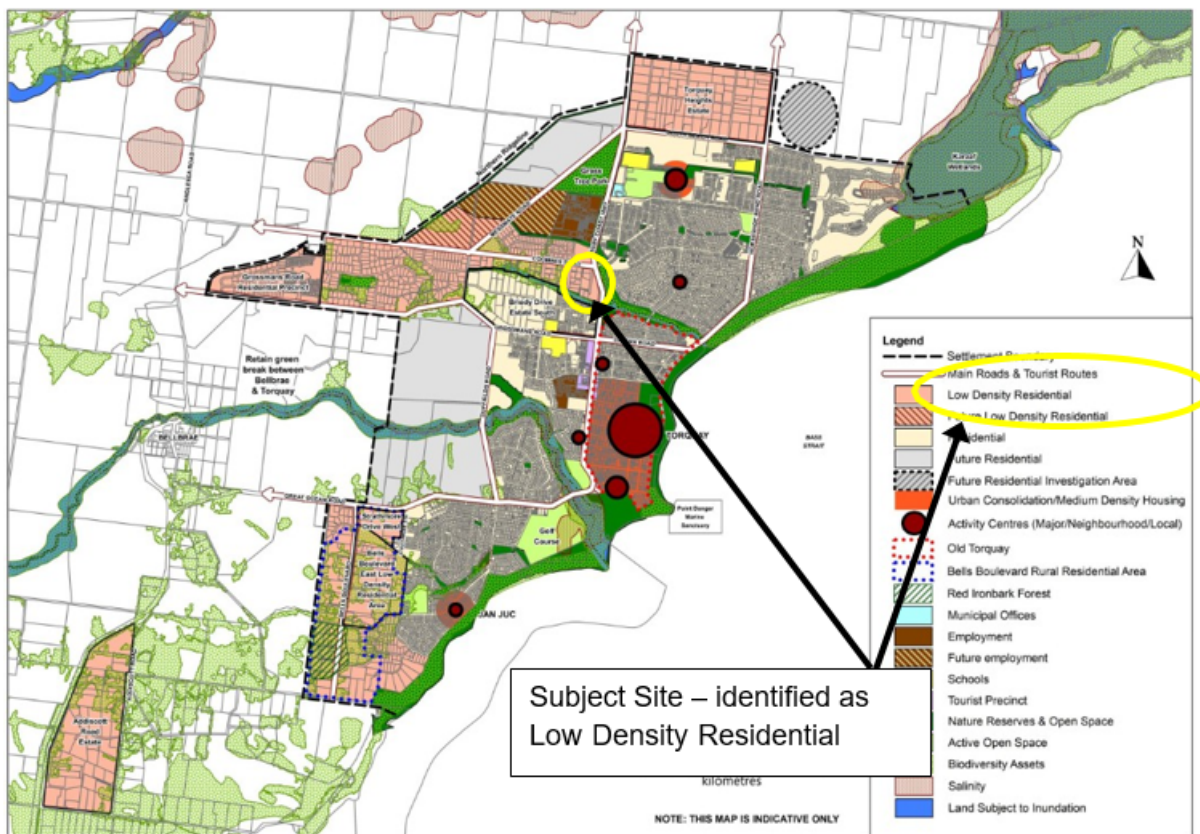
#### Municipal Planning Strategy and Planning Policy Framework

62. The following Planning Polices are considered relevant to this application:

- Clause 02.02 Vision
- Clause 02.03-1 Settlement
- Clause 02.03-6 Housing
- Clause 11.01-1L-02 Torquay Jan Juc
- Clause 11.03-5S Distinctive areas and landscapes
- Clause 12.01-1S Protection of biodiversity
- Clause 12.01-1L Protection of biodiversity in Surf Coast
- Clause 12.01-2S Native vegetation management
- Clause 12.03-1L River, corridors, waterways, lakes, and wetlands
- Clause 13.02-1S Bushfire planning
- Clause 13.02-1L Bushfire planning in Surf Coast
- Clause 15.01-1L-04 Streetscape and landscaping
- Clause 15.01-2S Building design

- Clause 15.01-4S Healthy neighbourhoods
- Clause 15.01-5S Neighbourhood character
- Clause 15.01-5L-02 Torquay-Jan Juc preferred neighbourhood character
- Clause 15.03-2S Aboriginal cultural heritage
- Clause 16.01-1S Housing supply
- Clause 16.01-1L-02 Torquay-Jan Juc housing growth
- Clause 16.01-2S Housing affordability
- Clause 16.01-5S Residential aged care facilities
- Clause 16.01-5L Residential aged care facilities in Surf Coast
- Clause 19.02-1S Health facilities

63. Clause 02.04-3 of the Municipal Planning Strategy sets out the strategic framework plans for the municipality. The site is identified in the Torquay-Jan Juc framework plan as Low Density Residential, reflecting the zone of the land (refer Figure below). The framework plan is read in conjunction with the strategic directions for settlement at Clause 02.03.



Source: Surf Coast Shire Planning Scheme

64. Clause 02.03-1 - Settlement

*Strong population growth in the Shire's coastal towns is expected to continue due to sustained interest in the region's natural environment. While there is pressure to expand some settlement boundaries into areas of high landscape significance, the landscape settings between settlements need to be retained.*

*Torquay-Jan Juc and Winchelsea are the only towns with capacity to accommodate substantial growth. Other towns are limited in opportunities to grow due to various physical, environmental or infrastructure constraints.*

***Torquay-Jan Juc is the gateway to Bells Beach and is the main urban growth centre of the Shire, with a population expecting to grow to 30,000 by the year 2040 (Surf Coast Shire, 2014) [emphasis added]. It is a popular destination for surfers, tourists, young families, and retirees and is becoming increasingly popular for permanent settlement by those valuing a coastal lifestyle. It is important that while Torquay continues to grow as a tourist destination, it also provides retail and entertainment services for the growing local and sub-regional population. The Spring Creek corridor west of Duffields Road is an area identified for long term urban growth.***

65. Clause 02.03-6 – Housing

***The Shire is faced with declining housing affordability and limited dwelling diversity, particularly on the coast where there is a lack of smaller dwellings near the town centres and commercial services, community facilities and designated tourist nodes [emphasis added].***

*However, any housing growth should not compromise neighbourhood character.*

*Torquay-Jan Juc, Winchelsea and Moriac contain opportunities for future rural residential development as identified on their respective framework plans in Clause 02.04.*

66. Clause 02.03-9 - Infrastructure

*Council seeks to:*

- *Facilitate improved access to aged care services and facilities.*

67. Clause 11.01-1L-02 - Torquay-Jan Juc

*Relevant strategies include:*

- *Maintain a clear rural-landscape separation between Torquay-Jan Juc and the Armstrong Creek southern growth corridor of Geelong.*
- *Preserve the clear delineation between the urban township and the rural landscape of the Thompson Creek valley, afforded by the northern ridgeline.*

68. Clause 11.03-5S - Distinctive area and landscapes

Relevant objective is:

- *To recognise the importance of distinctive areas and landscapes to the people of Victoria and protect and enhance the valued attributes of identified or declared distinctive areas and landscapes.*

Statement of Planning Policy - Surf Coast Distinctive Areas and Landscapes

The Surf Coast Distinctive Area and Landscape (DAL) was declared on 19 September 2019 under Section 46AO of the *Planning and Environment Act 1987*. A Surf Coast Statement of Planning Policy was approved by the Governor in Council in September 2022 and has come into effect.

*The Surf Coast Distinctive Area Landscape will protect the declared area's outstanding landscapes and coastal landforms, unique natural environment, rich Wadawurrung living cultural heritage and historic heritage, and important infrastructure and natural resources.*

The site is located within the protected settlement boundary of Torquay.

The Surf Coast Statement of Planning Policy for the DAL has nine policy domains, including Aboriginal cultural heritage – Wadawurrung Country; environment and biodiversity; landscape; environmental risk and resilience; water quality and security; historic heritage; tourism, agriculture, and natural resources; strategic infrastructure; and settlements.

Under settlement the role and function for Torquay-Jan Juc is:

*Torquay–Jan Juc is the largest settlement in the declared area, and it will continue to provide housing and employment opportunities to support local and regional communities and the visitor economy. Infill and greenfield growth will occur in designated future settlement areas and substantial change areas.*

Map 10 (Figure below) of the Statement of Planning Policy for the DAL shows the Torquay-Jan Juc protected settlement boundary. The subject site is within the minimal changes area, which is described as:

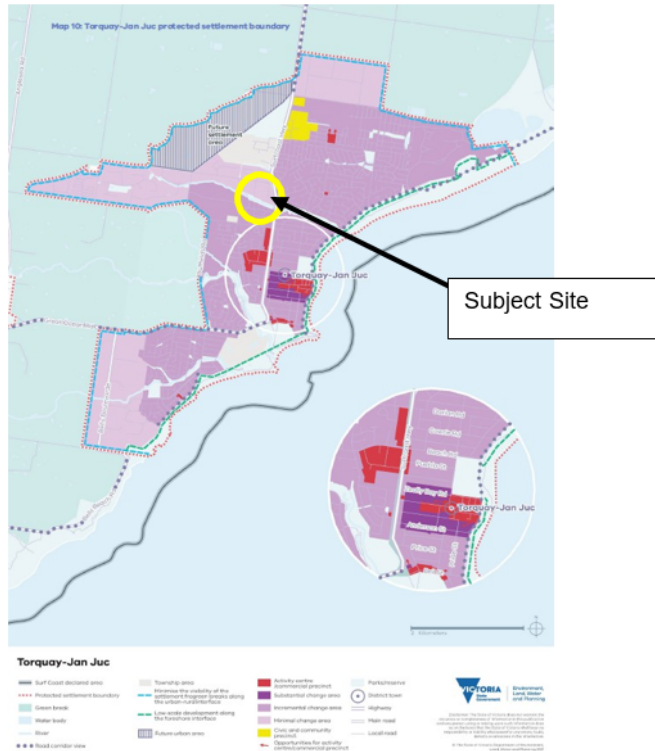
*Generally existing, low density residential areas located on the periphery of Torquay–Jan Juc. These areas will be retained, to provide a transition between the urban and rural landscapes.*

Development in minimal change areas is anticipated as being:

*Low-rise on larger lots, and it is designed to fit in with the existing coastal character of the area. It is set in well-landscaped gardens that meet bushfire risk requirements, and the surrounding vegetation is the dominant feature. Generous boundary setbacks help*

*minimise visual bulk, protect existing vegetation and allow space for additional landscaping including canopy trees. Materials and finishes reduce the visibility of development.*

Figure - Torquay-Jan Juc protected settlement boundary



Source: Surf Coast Statement of Planning Policy

69. Clause 12.01-1S - Protection of biodiversity

The objective is:

- *To protect and enhance Victoria's biodiversity.*

Relevant strategies include:

- *Use biodiversity information to identify important areas of biodiversity, including key habitat for rare or threatened species and communities, and strategically valuable biodiversity sites.*
- *Strategically plan for the protection and conservation of Victoria's important areas of biodiversity.*
- *Ensure that decision making takes into account the impacts of land use and development on Victoria's biodiversity, including consideration of:*
  - *Cumulative impacts.*
  - *Fragmentation of habitat.*
  - *The spread of pest plants, animals, and pathogens into natural ecosystems.*
  - *Avoid impacts of land use and development on important areas of biodiversity.*

70. Clause 12.01-1L - Protection of biodiversity in Surf Coast

Relevant strategies include:

- *Discourage extending settlements or intensifying development in locations containing significant biodiversity assets, unless these assets:*
  - *Will not be fragmented or compromised.*
  - *Will be incorporated into an open space network.*
  - *Protect the long-term health of vegetation especially in visually prominent areas.*
  - *Site and design development to minimise vegetation removal, particularly indigenous vegetation that adds to the landscape character.*
- *Encourage the planting of locally indigenous vegetation species to compensate for the removal of existing native vegetation.*
- *Encourage the removal of environmental weeds identified in the incorporated document Weeds of the Surf Coast Shire (Surf Coast Shire, 2013), aiming for their eventual eradication.*
- *Encourage retention of existing vegetation on private land, roadsides, and reserves.*
- *Protect the Bellarine Yellow Gum in Torquay-Jan Juc.*

71. Clause 12.01-2S Native vegetation management

The objective is:

- *To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.*

72. Clause 12.03-1S Water bodies and wetlands

The objective is:

- *To protect and enhance waterway systems including river and riparian corridors, waterways, lakes, wetlands, and billabongs.*

The relevant strategies are:

- *Protect the environmental, cultural, landscape values of all waterway systems as significant economic, environmental, and cultural assets.*
- *Conserve waterway systems and the landscapes and environmental values surrounding them by protecting ecological values, indigenous vegetation, terrestrial and aquatic habitats and encouraging biodiversity.*
- *Sensitively design and site development to maintain and enhance the waterway system and the surrounding landscape setting, environmental assets, and ecological and hydrological systems.*
- *Address the impacts of use and development on drought and flooding events at a catchment and site scale to protect the health and natural function of waterway systems and their surrounding landscape and environment.*
- *Protect geomorphology, bank stability and flood management capacity to strengthen the environmental value and health of waterway systems by:*
  - *Retaining, enhancing, and re-establishing indigenous riparian vegetation along waterway systems, ensuring it responds to the bushfire risk of a location.*



- *Enhancing and re-establishing both terrestrial and aquatic habitats and their linkages along and surrounding waterway systems.*
- *Limiting earthworks in proximity to waterway systems to minimise alterations to geomorphology, natural drainage, natural flows, and water quality.*
- *Facilitating the restoration of waterway systems through the removal of weeds, invasive species and pests.*
- *Enhance a sense of place and landscape identity by:*
  - *Conserving areas of identified Victorian Aboriginal cultural heritage significance relating to waterway systems.*
  - *Retaining and re-establishing vegetation, including grasslands and canopy trees, surrounding waterway systems to enhance and connect to the landscape setting, ensuring it responds to the bushfire risk of a location.*
  - *Protecting existing topographic features and maintaining a sense of naturalness through sensitive design and siting.*
- *Retain and enhance the recreation and amenity values along waterway systems by:*
  - *Planning for surrounding green spaces as recreation and tourism resources without adversely impacting environmental values and flood management capacity.*
  - *Protecting and enhancing parklands for their economic, social, and environmental values.*
  - *Protecting and enhancing public access to waterway systems and surrounding parklands.*
  - *Enhancing existing and providing new green links, pedestrian and cycle connections and open space.*
  - *Discouraging privatisation of spaces that interface with or provide access to waterway systems.*
  - *Avoiding overshadowing of waterway systems, their banks and adjacent public open space.*
  - *Promoting safety by maximising visibility and passive surveillance and providing good connections and access.*
- *Design and site development to maintain and enhance the natural environment of waterway systems by:*
  - *Minimising the visual intrusion of development on the natural landscape views from major roads, bridge crossings, public open space, recreation trails and within waterway systems themselves.*
  - *Ensuring development is visually subordinate to the local landscape setting, including through the use of vegetation to filter views of development.*
  - *Ensuring development adjacent to waterways adopts high quality materials and respectful design and siting.*
  - *Avoiding impeding the natural flow of waterways and future flood events.*
  - *Directing growth to established settlements where water and wastewater can be managed.*

73. Clause 12.03-1L - River corridors, waterways, lakes, and wetlands in Surf Coast

Relevant strategies include:

- *Retain and enhance vegetated riparian buffer zones along natural drainage and waterway corridors to slow the rate of run-off and prevent nutrients and sediments entering waterways, lakes, wetlands, and estuaries.*

74. Clause 13.02-1S - Bushfire planning

The objective is:

- *To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.*

Relevant strategies include:

- *Give priority to the protection of human life by:*
  - *Prioritising the protection of human life over all other policy considerations.*
  - *Directing population growth and development to low-risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.*
  - *Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.*

The following should be considered when assessing an application for accommodation (retirement village) in a bushfire prone designated area:

- *Consider the risk of bushfire to people, property, and community infrastructure.*
- *Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.*
- *Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.*

75. Clause 13.02-1L - Bushfire planning

Relevant strategies include:

- *Discourage landscaping in a connected, continuous form where:*
  - *Open space networks are linked to or are near a bushfire hazard.*
  - *It would link a high-risk bushfire prone area to an area of high activity.*
- *Minimise risk to life and property at locations where events are held and where large numbers of people congregate through fire protection, safety, and management measures.*
- *Avoid development intensification close to or abutting the Great Otway National Park and its interface with urban settlement.*
- *Site, design, and construct buildings to minimise the impact of bushfire mitigation measures on existing remnant vegetation.*

- *Manage the vegetation within the defensible space in a manner that respects the vegetated character of the location whilst meeting the minimum requirements for bushfire protection.*

76. Clause 15.01-1L-04 – Streetscapes and landscaping

The objective is:

- *To promote the development of coordinated and visually attractive streetscapes and landscapes in residential, commercial, and industrial areas.*

77. Clause 15.01-2S – Building design

The objective is:

- *To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.*

78. Clause 15.01-4S – Healthy neighbourhoods

The objective is:

- *To achieve neighbourhoods that foster healthy and active living and community wellbeing.*

79. Clause 15.01-5S – Neighbourhood character

The objective is:

- *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

Relevant strategies include:

- *Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.*
- *Ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.*
- *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:*
  - *Pattern of local urban structure and subdivision.*
  - *Underlying natural landscape character and significant vegetation.*
    - *Neighbourhood character values and built form that reflect community identity.*

80. Clause 15.01-5L-02 - Torquay-Jan Juc preferred neighbourhood character

This policy applies to an application to construct or extend one or more dwellings or subdivide land in a residential zone in Torquay and Jan Juc as shown on the Torquay- Jan Juc residential development framework plan to this clause.

Whilst this policy does not apply to the subject site, as the proposal is for a retirement village and not more than one dwelling, it provides context in respecting and contributing to the existing neighbourhood character.

The relevant objective is:

- *To ensure development achieves architectural and urban design outcomes consistent with the preferred character of the residential areas of Torquay-Jan Juc.*

Strategies relevant to all of Torquay-Jan Juc include:

- *Retain and enhance landscaping and trees as a major element in the appearance and character of Torquay-Jan Juc's residential environments.*
- *Provide contemporary coastal architecture with a lightweight appearance, visually interesting well-articulated facades, simple detailing and roof forms, and a variety of lightweight materials and natural colours.*
- *Provide visually recessive garages that are set back behind the building line or to the rear of dwellings so as not to dominate the streetscape or building façade.*
- *Retain the openness of front gardens to the street by avoiding the use of front fences or by providing low or open style front fences, except in the General residential (standard density) precinct where all front fencing should be avoided.*
- *Minimise adverse amenity impacts on adjoining properties by way of visual bulk.*
- *Provide a landscape treatment that enhances the overall appearance of the development and the streetscape, including by siting development to maintain the predominant pattern of front setbacks in the street to allow for space to retain or plant canopy trees and shrubs.*

Additionally, the following strategies and guidelines are relevant for the subject site, which is identified within the low-density residential precinct at Clause 02.04-3 (Torquay- Jan Juc framework plan), as detailed above:

Low density residential precinct strategy

- *Maintain the existing low density, single dwelling character.*

Low density residential precinct policy guideline

- *Consider as relevant:*
  - *A maximum development height of 2 storeys (7.5 metres).*

#### 81. Clause 16.01-1S – Housing supply

The objective is:

- *To facilitate well-located, integrated, and diverse housing that meets community needs.*

Relevant strategies include:

- *Ensure that an appropriate quantity, quality, and type of housing is provided, including aged care facilities and other housing suitable for older people, supported*

*accommodation for people with disability, rooming houses, student accommodation and social housing.*

- *Increase the proportion of housing in designated locations in established urban areas (including under-utilised urban land) and reduce the share of new dwellings in greenfield, fringe and dispersed development areas.*
- *Encourage higher density housing development on sites that are well located in relation to jobs, services, and public transport.*
- *Facilitate diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.*
- *Encourage the development of well-designed housing that:*
  - *Provides a high level of internal and external amenity.*
  - *Incorporates universal design and adaptable internal dwelling design.*
- *Support opportunities for a range of income groups to choose housing in well-serviced locations.*

#### 82. Clause 16.01-1L-02 Torquay-Jan Juc housing growth

This policy applies to an application to construct or extend one or more dwellings or subdivide land in a residential zone in Torquay and Jan Juc as shown on the Torquay- Jan Juc residential development framework plan in Clause 15.01-5L-02.

Whilst this policy does not apply to the subject site, as the proposal is for a retirement village and not more than one dwelling, it provides context in respecting and contributing to the existing neighbourhood character.

The relevant objective is:

- *To balance residential development with the capacity of the residential areas in Torquay-Jan Juc to accommodate housing growth and change.*

Low density residential precinct

The strategies are:

- *Maintain the low density residential areas on the urban fringe to provide a transition in density and built form to surrounding rural land.*
- *Limit residential development other than through subdivision of larger lots in accordance with minimum lot size provisions as specified by the Low Density Residential Zone and schedule to the zone.*

#### 83. Clause 16.01-2S - Housing affordability

The objective is:

- *To deliver more affordable housing closer to jobs, transport, and services.*

The relevant strategies are:

- *Ensuring land supply continues to be sufficient to meet demand.*

- *Increasing choice in housing type, tenure, and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.*
- *Promoting good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.*
- *Encouraging a significant proportion of new development to be affordable for households on very low to moderate incomes.*

84. Clause 16.01-5S – Residential aged care facilities

The relevant objective is:

- ***To facilitate the development of well-designed and appropriately located residential aged care facilities [emphasis added].***

The relevant strategies are:

- *Recognise that residential aged care facilities contribute to housing diversity and choice, and are an appropriate use in a residential area.*
- *Recognise that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale, and mass).*
- *Ensure local housing strategies, precinct structure plans and activity centre structure plans provide for residential aged care facilities.*
- *Ensure that residential aged care facilities are located in residential areas, activity centres and urban renewal precincts, close to services and public transport.*
- *Encourage planning for housing that:*
  - *Delivers an adequate supply of land or redevelopment opportunities for residential aged care facilities.*
  - *Enables older people to live in appropriate housing in their local community.*
- *Provide for a mix of housing for older people with appropriate access to care and support services.*
- *Ensure that proposals to establish residential aged care facilities early in the life of a growth area are in locations that will have early access to services and public transport.*
- *Ensure that residential aged care facilities are designed to respond to the site and its context.*
- *Promote a high standard of urban design and architecture in residential aged care facilities.*

85. Clause 16.01-5L - Residential aged care facilities in Surf Coast

The relevant strategy is:

- *Promote the development of retirement villages in Torquay-Jan Juc that integrate with the surrounding road and pathway network.*

The applicable policies require balancing considerations relating to the use of the land for a retirement village, the provision of a diversity in housing, the integration with neighbourhood character, well-designed built form, minimising the impacts on

amenity, appropriate bushfire impact consideration, stormwater management and considering impacts on the environment, including native vegetation.

Overall, the proposal including the amended plans are considered consistent with State and Local policy to facilitate well-designed and appropriately located housing that meets the needs of older people in an aging community, respecting the neighbourhood character of the area and without compromising on the environmental values of the land or the surrounds.

### **Assessment**

86. The following assessment is made having regard to the VCAT Practice Note PNPE9 amended plans. The matters which have not changed in relation to the proposal and formed part of Council's original assessment have not been restated, with the focus of the assessment being the key changes to the plans.

#### Use of the land

87. The proposed use of the land remains unchanged by the amended plans and there is no further assessment required on the use of the site as a retirement village from the previous assessment on 22 August 2023 and the subsequently issued Notice of Decision Grant a Planning Permit.

#### Density / Site Coverage

88. The plans approved by Council on 22 August 2023 proposed a site coverage of 38.5% (the overall site including the land for Cypress Lane and Reserve No. 3) and a density of one independent living unit per 331 square metres.

89. The assessment at the time determined the proposed site coverage / density as suitable having regard to:

- The relatively low overall site coverage when compared with a standard residential development within a General Residential Zone which allows site coverage up to 60% without approval.
- A lesser site coverage than similar developments in the Low Density Residential Zone (i.e. Kithbrook Retirement Village having a site coverage of 40.9% including the wetland area, and 57% excluding the wetland).
- That building coverage was lower, but the density (number of dwellings) was greater per square metre due to a more compact living in apartment buildings.
- The overall site coverage of a development provides valuable insight into site massing and how a development might sit and feel in the landscaping, as opposed to considering the overall dwelling yield.

90. The amended plans submitted for VCAT show a slight increase in site coverage by 6.5% to a total of 45% (excluding Cypress Lane and Reserve No. 3 land in the site area). If including Cypress Lane and Reserve No. 3, the site coverage is closer to 37%. The

dwelling density has increased to one independent living unit per 285 square metres owing to a greater offering of more compact units (such as double storey).

91. The zone controls set no parameters for considering what is an appropriate form/scale of density or site coverage for such a development. While the numeric assessment above is informative as to scale, whether the intensity of development is acceptable must be determined having regard to the impacts of the proposal against the objectives of the zone and planning policy.
92. In this regard, it is clear that:
- While the development is denser than the original proposal, the existing and proposed landscaping within Cypress Lane, Deep Creek Reserve, Surf Coast Highway, as well as landscaping along property boundaries, will screen/soften much of the development from all relevant vantage points.
  - Viewlines of the development to the north and east are extremely limited by virtue of roadside vegetation corridors on Coombes Road and Surf Coast Highway, where only glimpses of building will be visible. Without entering Cypress Lane and seeing the extent of development, residents/visitors viewing the site from these vantage points will have no conception of development scale and form and would not think the site is anything other than a low-density site.
  - Viewlines of the development to the west will be heavily screened by dense landscaping along the western boundary, which will form a visual screen to the site. Like the viewlines from the north and east, the interface to properties on Jetti Lane abutting the site will have fleeting views of the development on the site. Absent prior knowledge of what is developed on the subject site, properties on Jetti Lane (save for 7 and 9 Jetti Lane), will not see the development as being any denser than what would be expected on a site in the Low Density Residential Zone.
  - From 7-9 Jetti Lane, the dwellings on these properties are setback a minimum of 60 metres from the closest built form, which will have some landscape screening planted. The viewlines of these properties to the immediate east/south-east will be of a denser development than what is existing within the Low Density zoned land but will only be seen from these angles – views to the north-east are softened by screening planting and topography, and views to the south remain of the Deep Creek Reserve. Importantly, there are no decision guidelines in the zone relating to visual impacts of density, and there is no legal right to the preservation of a view of the existing hillside on the subject site. Given the setbacks of these dwellings, any disbenefits by way of increased density viewed from these dwellings, is offset by the net community benefit of the proposal as a whole.
  - Viewlines of the development to the south remain largely softened by topography of the area, which falls into the Deep Creek Reserve and rises on either side. The most prominent viewlines to the south are seen from Briody Drive, where the roadway is able to see above existing vegetation in the Deep Creek Reserve. However, the proposal provides for significant additional landscape screening, which will soften the density of the development from this view corridor, which will



ensure that any visual prominence from the development is within an acceptable range.

- There are no view sharing issues that arise from development scale on the site, noting that from private properties, there is no legal right to the retention of views of the site as an undeveloped hillscape.

#### Neighbourhood Character / Built Form, Height, and Setbacks

93. The original assessment considered matters relating to height, scale and built form of the retirement village and its impact on the low-density character of the area.
94. The objective of Clauses 15.01-5S, 15.01-5L-02 and 16.01-1L-02 and relevant strategies is to support development that respects existing or preferred character having regard to the urban structure and subdivision patterns, vegetation, and other values of the site. Specific to low density zoned areas are strategies which seek to provide guidance for the construction of single dwellings on lots (such as maximum dwelling heights of 7.5m (two storeys).
95. Whilst these policies do not provide specific guidance for a retirement village in a Low Density Residential Zone, it is useful for considering how the proposal responds to the preferred character of the area.
96. The retirement village is predominantly single storey built form with a mixture of two and three storey components. Higher built form of the apartments has been set back and located centrally to the site and/or interfaced closer to public land such as the Surf Coast Highway and Deep Creek Nature Reserve, further from the existing low density residential land. The location of these buildings and the landscape response around them will ensure that these structures are not visibly dominant or seen as discordant in the landscape.
97. The single storey independent living units abut the northern boundary (Coombes Road), eastern boundary (Surf Coast Highway) and western boundary (Jetti Lane properties). There are 117 single storey ILU's with the buildings providing a high level of articulation through stepping and varied roof forms.
98. The amended design has less bulk and massing and has been reduced from what was previously considered for the central Club House / Apartment Building and the Deep Creek Apartment Building.

#### *Club House / Apartment Building*

99. The Club House / Apartment Building, which provides a maximum of three storey built form (excluding basement) is located centrally within the site, with a minimum setback of 35.32 metres from the western (side) boundary adjoining the Jetti Lane properties.
100. The building is broken into two forms, one to the east and one to the west, which join via a single glazed hallway on the ground floor and an outdoor terrace walkway on the first

floor. The eastern portion of the building is three storeys in height, comprising club rooms and Independent Living Unit apartments. The western portion of the building is two storeys in height and primarily comprises Independent Living Unit apartments. Terrace courtyard areas straddle the space between the two building forms. Beneath, in the basement level, is proposed an underground car park, bicycle facilities, storage cages, gym, and sauna. The building is contemporary in design, incorporating articulation through the first-floor verandahs, stepping in at the third level and the mixture of materials and colours to provide visual interest and contrast.

101. The orientation of the three storey built form linearly north-to-south, with a length of approximately 57 metres and a width of approximately 25 metres. The siting, size and orientation of the structure minimises the extent of built form viewed beyond the subject land, particularly when viewed from the General Residential Zone land on the southern side of Deep Creek.
102. The apartment building proposes a maximum overall development height of approximately 11.6m above Natural Ground Level (NGL) (maximum 3-storey built form), which with its central location, provides generous setbacks, providing room for the retention and planting of vegetation; provides stepping up from single storey independent living units from the boundaries; is orientated to minimise the visibility of the three storey built form from beyond the site and provides a built form that in the context of the site will respect the neighbourhood character of the area.
103. A combination of the existing vegetation on the site together with the proposed landscaping response (discussed in further detail below) will assist with further softening the building when viewed from beyond the subject site and with providing natural screening. Refer to Figures 3-9 and 11-14 of Attachment 2.

#### *Deep Creek Apartments*

104. The Deep Creek Apartment Buildings comprise two 2-storey (excluding basement) apartment buildings, with a minimum setback of 6.95 metres to the eastern boundary interfacing with the Surf Coast Highway and approximately 16.63 metres from the southern boundary interfacing with Deep Creek. The buildings are setback a minimum of approximately 3.65 metres from one another and accessible to each other by an outdoor courtyard area. The buildings would have a maximum overall height of 7.54 metres.
105. The buildings comprise a mixture of one and two-bedroom Independent Living Unit apartments on the ground and first floors, accessible via lift and stairs. Beneath, in the basement level, is an underground car park, bicycle facilities and storage cages.
106. The separation of the building forms provides articulation and spacing, which provides visual interest and helps to soften the built form when viewed beyond the subject land.
107. The built form presents primarily as double storey however, owing to the fall of the land and the cut proposed to facilitate the design and construction of the apartment buildings, it does present a 2-3 storey stepped built form when viewed from the northern side of

the Deep Creek Linear Reserve and on the side elevations. The stepping of the form reduces visual bulk and massing. Furthermore, the existing vegetation within the Deep Creek corridor and the proposed landscaping response will limit the visibility of these buildings when viewed from the southern side of Deep Creek.

108. The impacts of the built form should be reduced by retaining the natural ground level of the lower level (where there are level(s) directly above) and cutting only for the building footprint and the access into the basement. Retaining the natural ground level would result in a two storey built form stepping up with the slope, which is not an uncommon built form approach on a sloping site. Refer to Figures 3-8, 10 and 15-17 of Attachment 2.

*Two Storey Independent Living Units – Deep Creek*

109. Thirteen Independent Living Units (ILU's) with two storey built form are proposed toward the south-western end of the site, proximate to the Deep Creek Linear Reserve. The ILU's are attached terrace style dwellings, which are cut into the slope to incorporate a semi-basement garage and laundry at the lower level. The buildings will have a maximum height approximately 7.0m above NGL and are considered site responsive, of a low scale and in keeping with the character objectives for the area.

*Setbacks*

110. The proposed development (as a whole) proposes generous boundary setbacks, with retained existing vegetation and the proposed landscaping response capitalizing on this. This will provide for a sense of space and softening of the development when viewed from outside the property, incorporating well into the existing character, as discussed in detail below.

111. The boundary setbacks are detailed below:

Boundary	Minimum Building Setbacks	Apartment Building Setbacks
Coombes Road frontage (northern boundary)	20.09m (minimum) to single storey built form	118.46m
Surf Coast Highway (eastern boundary)	2.00m (minimum) to single storey built form	6.95m (Lot D1) 71.84m (Lot A)
Southern boundary (abutting Deep Creek Reserve)	23.00m (minimum) to single storey built form	16.63m (Lot D2) 122.28m (Lot A)
Western boundary (abutting the Jetty Lane properties)	4.48m (minimum) to single storey built form 4.71m (minimum) to double storey built form	13.50m

It is noted that the setbacks are from the road reserve boundary (i.e. where the subject land's title boundary abuts the road reserve boundary) and not from the carriageway. Further setbacks along the road reserve boundary vary as built form is not proposed parallel to the title boundaries, but in an angled formation.

112. The proposal, which has generous setbacks, with predominately single storey built form and strategically placed two and three storey built form, will not be detrimental to the existing low-density character of the area and is comparable to the built form and density present within the nearby General Residential Zoned land (to the east and south). The retention of existing vegetation, where practical (discussed in detail below) and the planting of vegetation throughout the site, in particular the perimeter, will effectively soften and screen the built form when viewed from outside the site. Overall, it is considered that the minor changes to heights and setbacks are similar to the original proposal, and still align with the key matters considered when making the original assessment of the proposal.

#### Surf Coast Distinctive Area and Landscapes

113. Concerns have been raised that the proposal contravenes the Surf Coast Distinctive Area Landscape (SCDAL or commonly referred to as the DAL).

114. The objective of Clause 11.03-5S is to:

- *To recognise the importance of distinctive areas and landscapes to the people of Victoria and protect and enhance the valued attributes of identified or declared distinctive areas and landscapes.*

115. The subject site is identified as an area of minimal change, which is described as:

*Minimal change areas are generally existing, low density residential areas located on the periphery of Torquay–Jan Juc. These areas will be retained, to provide a transition between the urban and rural landscapes.*

116. Pursuant to Section 46AZ of the *Planning and Environment Act 1987*, the Surf Coast Statement of Planning Policy (SPP) forms part of the State Standard Provisions of the Scheme.

117. The DAL and SPP does not prohibit any Section 1 or 2 uses permitted in the Low Density Residential Zone but rather provides guidance on how development should be considered in the area:

- *Development in minimal change areas is low-rise on larger lots, and it is designed to fit in with the existing coastal character of the area. It is set in well-landscaped gardens that meet bushfire risk requirements, and the surrounding vegetation is the dominant feature. Generous boundary setbacks help minimise visual bulk, protect existing vegetation and allow space for additional landscaping including canopy trees. Materials and finishes reduce the visibility of development.*

118. The amended proposal has not substantially altered the overall scale and intensity of development to warrant significant reconsideration of the proposal under the DAL's requirements. Given the proposal is predominantly single storey with strategically sited two and three storey buildings, has generous boundary setbacks, which support the retention and replanting of canopy trees to provide a development in a well-landscaped treed setting it is still considered to be in keeping with the character envisaged by the DAL.

119. Importantly, the DAL/SPP sets no requirement as to what an acceptable density or scale is in these areas. This remains subject to detailed assessment against the Scheme, as has been undertaken here.

#### Native Vegetation and Environmental Impacts

120. The amended plans do not seek to remove any additional vegetation from the site than previously considered and approved. This included approval for the removal of 2.687 ha of native grasses and a scattered tree, which was also supported by the Department of Energy, Environment and Climate Act and Council's Environment Unit (ecologist).

121. There are also no changes to the Deep Creek environs, no works or vegetation removal occurring within the creek corridor and the development will rely on existing stormwater infrastructure. Conditions recommended for a Construction Environmental Management Plan are recommended to be retained.

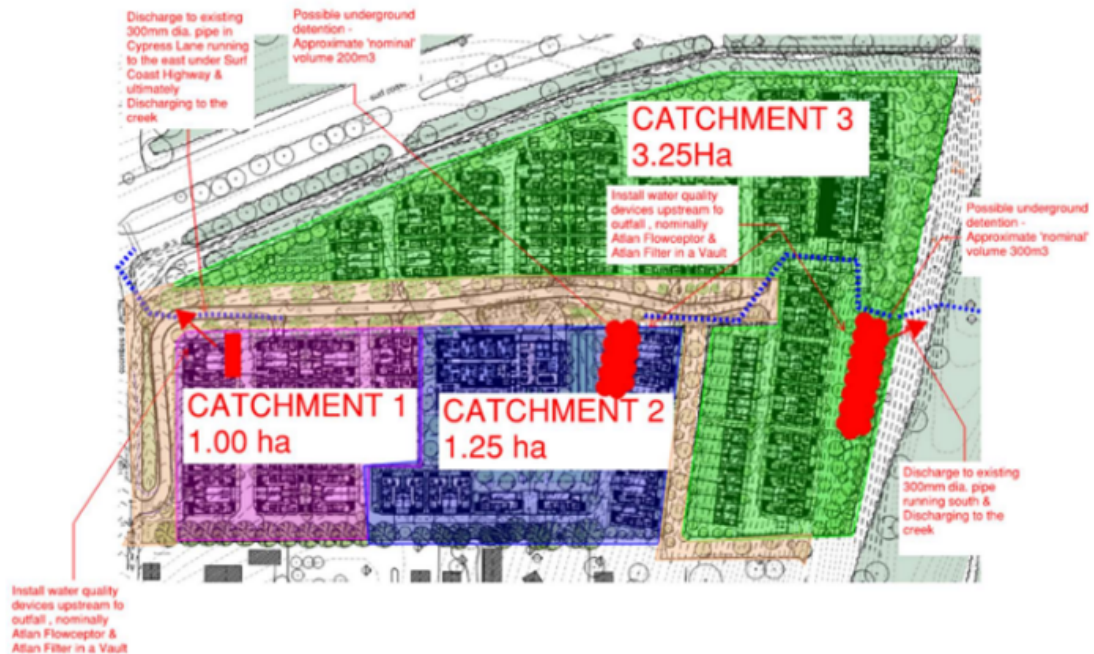
### Stormwater Management

122. The amended plans show changes to how stormwater is to be managed onsite as follows:
- The onsite swales and bioretention rain gardens originally proposed no longer form part of the proposal, which is in line with referral comments from Council's Infrastructure unit.
  - Given the retention of the existing road reserve (Cypress Lane) as a Council asset, the revised treatment drain would see the water collectively treated and, if necessary, detained before it enters Council owned assets in Cypress Lane, avoiding unnecessary jumps between Council-owned and privately-owned assets.
123. Concerns had been previously raised that stormwater runoff would impact on the environmental values of Deep Creek, including through the cumulative impacts of flooding and impacts on runoff into the ocean.
124. The application included a Cypress Lane Flood Impact Assessment prepared by Water Tech (2021), Addendum 2023 (attached) and a Stormwater Management Strategy prepared by Loetis, dated March 2024 (updated from Cardno Site Stormwater Management Plan June 2021). The applicant has confirmed that the Flood Impact Assessment took into consideration the current zoning and land uses for catchment external to the subject site (i.e. a cumulative assessment of the flood impact).
125. The site has been divided into three catchments, with two discharge points, one for the northern and one for the southern catchments. The catchment areas will be confirmed during the detailed design phase, as the northern catchment will need to be sized to maintain the predevelopment discharge rate of the northern point.
126. It is proposed that all stormwater be treated before entering Council stormwater network, to avoid unnecessary asset ownership changes in the network.
127. Realignment of the existing pipe network between Cypress Lane and the Deep Creek Reserve is required to facilitate the proposed development layout, these changes would need to be approved during the detailed design, noting that no changes to the existing outlet pipe to Deep Creek would be allowed, as disturbance to the embankment is not satisfactory.
128. The northern catchment (catchment 1) of the subject site (i.e., Coombes Road end) would be in the order of 1ha in size and proposes a discharge point into the existing assets, which ultimately drain to Deep Creek via existing outlet pipe(s).
129. The southern catchment (catchments 2 and 3) would be in the order of 1.25ha and 3.25 ha, respectively. The Stormwater Management Strategy considers that the size of the southern catchment would result in generated flows that are beyond the existing outlet pipe capacity. Detention storage is proposed/required to restrict the southern catchment flows to predevelopment levels and will be determined during the detailed design stage post-permit. The strategy considers that a staged approach to the delivery of this

infrastructure will allow initial stages discharging to the pipe to be delivered up to the pipe's capacity before the detention storage is required to be delivered. Flows within the creek are ephemeral in nature, passing through quickly following rain events. There are no natural storage areas, and the creek has a good positive grade to its outlet point at the foreshore. Flood modelling undertaken by WaterTech shows that the proposal does not increase overall peak flows within the creek for the 1% AEP.

130. Concern has been raised regarding the risk of increased erosion of the embankments. The WaterTech addendum responds to this, stating that given overall peak flows are reducing as part of the development, there is no credible risk of increased erosion of the creek. The Stormwater Management Strategy confirms this assertion, explaining that the proposed regime will reduce the currently occurring flow out of the existing eastern and southern catchments, resulting in a reduction to the currently occurring erosion at these locations. The extent of any effect on peak flows within the creek is also very localised. This is partially due to the site's proximity to the Surf Coast Highway embankment, which has a 1,200mm drainage culvert which is well below the capacity of the creek following a storm event. Land and properties downstream of the embankment therefore benefit in terms of flood protection in general from the flow attenuation provided by this limiting hydraulic structure. Of more relevance therefore to this application is what backwater effect might be credible. As discussed, it has been shown that the peak flows in this area just upstream of the embankment are actually reduced. The modelling shows that the site only affects about 140 metres of the creek during peak events, in a positive way by reduced overall peak flows.

Figure – Proposed catchments



Vegetation Retention / Removal and Landscaping

131. An updated Tree Health and Impact Assessment (arborist) report undertaken by Let's Talk About Trees, dated February 2024 has been submitted with the amended plans. The report has undertaken an assessment of the perimeter trees and broken them into separate plantations.

Figure – Plantation areas identified in the arborist report.





132. Except for the native vegetation proposed to be removed under Clause 52.17, a planning permit is not required for the removal of most of the vegetation on-site.
133. As a result of the amended application, fewer trees are proposed for removal:
- The 15 Cypress trees along Cypress Lane are to be retained (previously proposed for removal). The proposed vehicle crossovers present a 10% encroachment into the root structure which, given the nature of the works, is not considered to cause adverse impact on the health of the trees. Minor lopping works are necessary to allow access to crossovers given the amount of overgrowth on the trees. It is noted that these trees are planted and therefore exempt from the requirement to obtain a planning permit under Clause 52.17 of the Scheme.
  - Trees within Plantation 1 are to be retained in situ on both sides of the road reserve (previously proposed for removal). It is noted that these trees are planted and therefore exempt from the requirement to obtain a planning permit under Clause 52.17 of the Scheme.
  - Trees within Plantations 2 and 3 along the western boundary are to be retained (previously retained).
  - Along the western boundary to the south of the Tuart Gum is a plantation/windrow of Monterey Pine (Plantation 4). The arborist report has stated that whilst these trees were sound at inspection, past management techniques (pruning) of these trees has resulted in unbalanced form and structure, with unmanageable canopies and it is recommended that these trees be removed. Additionally, Monterey Pines are an exotic species, which are environmental weed species in the Surf Coast Shire. Given the proximity of the site to Deep Creek it is recommended that these trees be removed to improve the environmental values of the site and area (previously proposed to be removed). It is recommended that a condition of any approval requires that these trees be replaced with indigenous species that are predominantly Eucalyptus species to improve the environmental values of the site.
  - Trees within Plantations 5 and 6 (along the perimeter shared with Surf Coast Highway and Deep Creek Reserve), which include Cyprresses, Pines, and non-indigenous Eucalypts, are to be retained (previously proposed to be retained).
134. The arborist report recommends that the existing boundary fence be retained and become the tree protection zone for the trees within the road reserve. Given the setback of the vegetation to the site boundary it is considered that a new fence could also become the tree protection fencing to the vegetation within Deep Creek reserve.
135. The assessment finds that the retention of the majority of the vegetation along the boundaries is possible. The image below shows the proposed vegetation. The proposed vegetation to be retained on the site combined with proposed landscape planting will assist with softening the development when viewed from beyond the site and respect the landscape values of the surrounding area.
136. The arborist report includes a Tree Management Plan and tree protection measures. A condition of approval requires tree protection to be undertaken in accordance with the Tree Health and Assessment report and Tree Management Plan, dated February 2024.

Photos of the existing vegetation along the Surf Coast Highway Road Reserve



Photo of the existing vegetation within the Deep Creek Reserve



Figure - Perimeter vegetation retention and removal plan



### *Landscaping*

137. The application includes a concept landscape plan, prepared by Habitat Landscape and Environmental Design Consultants, dated February 2024. The landscape plan provides for the retention of some of the perimeter vegetation and the vegetation along Cypress Lane (as discussed above), and the planting of trees and shrubs throughout the site, including around the perimeter. A planting schedule has been provided which includes a mixture of indigenous, native, and exotic species.
138. It is recommended that a condition of any approval require that:
- All perimeter trees and vegetation within 50 metres of the southern boundary abutting the Deep Creek Reserve be indigenous species, with the perimeter trees being indigenous Eucalyptus species.
  - Trees must be offset a minimum of 3m from any fences to allow ongoing maintenance of plants and lawns.
  - At least 4m either side of any footpaths to remain unplanted to allow for maintenance vehicle access (trees should be offset from footpaths at least 2m).
139. The proposal will retain some tall tree canopy around the perimeter of the site and provide for replanting of indigenous canopy trees to provide a development that sits within a treed canopy setting, which will respect the landscape character of the area and enhance the environmental values of the land. Refer to Figure 34 (Landscape Concept Plan) of Attachment 2.

### *Fencing*

140. The amended application proposes the boundary fencing largely comprising of 1.7-2.0m high metal pickets with maximum 25% transparency finished in Colorbond Monument, face brick columns and gates for vehicle and pedestrian access.
141. A condition of approval requires a detailed fencing plan that demonstrates that the fencing does not impact on the vegetation to be retained on the site and within the adjoining reserves. A new fence may not be permitted to be constructed on the boundary or an arborist report may be required to demonstrate that there will be no impact on vegetation to be retained.
142. The proposed style of boundary fencing is not considered to be wholly in keeping with the low-density character of the area as there is little visual permeability associated with the fencing (i.e. the proposed 25% transparency), however it is typical for this type of use and development and necessary for privacy and security reasons.
143. It is considered that a metal picket fence, which is 75% permeable will provide security and visual permeability (see image below). Additionally, any fencing should not contribute to the fire risk of the site, as detailed further below, under bushfire.
144. A condition of approval requires the fencing to be metal picket style fencing, or similar, which will provide for visual permeability, whilst still providing the security of high

fencing. The proposed brick (or similar) piers to the gate entrance on Coombes Road are considered acceptable.

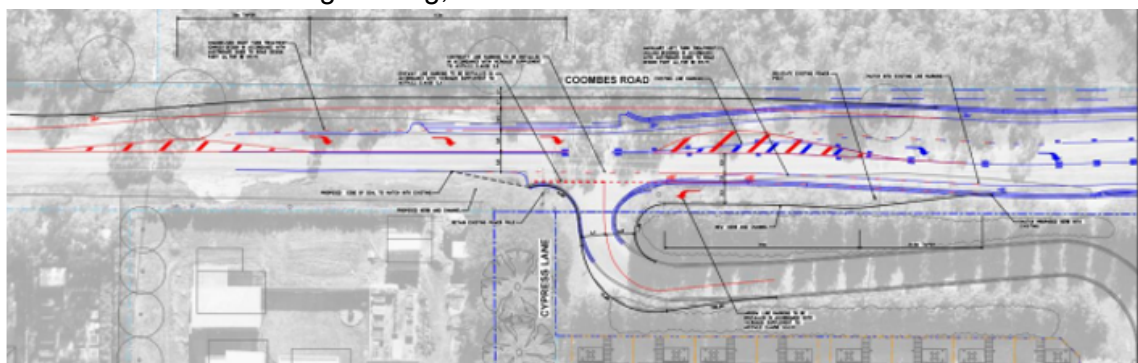
### Tennis Court

145. As a consequence of the amendment, the proposed tennis court in the south-western corner of the site, abutting the Deep Creek linear reserve, is no longer proposed. This aligns with Council's previous recommendation to remove/relocate due to impacts on the interface with the reserve.

### Traffic

146. The application included a Traffic Impact Assessment, prepared by One Mile Grid Traffic Engineering, dated 5 March 2024 (updated). The traffic assessment looks at vehicular access to the site, onsite car parking and traffic volumes along Coombes Road.
147. In assessing traffic generated the traffic report anticipates that the proposal of 191 independent living units, adopting rates generated by an existing retirement village in 40 Watt Street, Lara, will generate 56 morning peak movements and 53 afternoon peak movements (equivalent to approximately one vehicle trip per minute) – which represents only a nominal decrease in traffic movements than the original proposal considered by Council at the 22 August 2023 Council Meeting. Furthermore, of these movements the report finds that approximately 90% of anticipated inbound and outbound movements to/from the site would be in the direction Coombes Road east / Surf Coast Highway (i.e. left in / right out). The report recommends that as part of the Stage 2 works, a short channelised right turn treatment and an auxiliary left turn treatment on Coombes Road would be required to facilitate access to the site, as per the Figure below.

Figure – Proposed turn treatments. Source: Traffic Impact Assessment, prepared by One Mile Grid Traffic Engineering, dated 5 March 2024



148. The projected traffic generation for the proposed use and development remains very low as per the original application and expected to be easily absorbed by the surrounding road network.
149. The application was referred externally to the Department of Transport and Planning (DTP, also known as VicRoads) during the original application process, who had no objection to the proposal and highlighted no significant concerns with such. Council's

Traffic and Design Unit were also referred the application during the original application process and determined that the projected traffic volume(s) were within the carrying capacity of existing road infrastructure, having particular regard to the Surf Coast Highway / Coombes Road carriageways and signalised intersection, subject to conditions. DTP and the Infrastructure Unit were given notice of the amended application by the Permit Applicant / Respondent. An updated response from the Infrastructure Unit is provided at Attachment 3.

Car parking and Bicycle Spaces

- 150. Clause 52.06 – car parking states that before a new use commences the number of car parking spaces required under Clause 52.06-5 or in a schedule to the Parking Overlay must be provided to the satisfaction of the Responsible Authority.
- 151. Using the car parking table at Clause 52.06-5, the car parking rate for a retirement village (as proposed by the PNPE9 amendment) would generate a requirement of 229 car parking spaces.

Table – Clause 52.06 Car Parking Requirements

Use	Number of ILU's	Rate	Requirement
Retirement Village	191	1 per every 1 or 2 bedroom ILU	191
Visitor parking	-	1 per every 5 ILUs for developments of 5 or more ILUs	38
<b>Total Required</b>			<b>229</b>

- 152. The development will provide a total of 334 spaces across the site, which is 105 spaces more than the statutory requirement at Clause 52.06. It is considered that the proposal will provide adequate parking for the retirement village.
- 153. It is noted that the provisions at Clause 52.06-5 set out a minimum benchmark for proposals to meet. The amount of onsite car parking is in accordance with the planning scheme and, therefore, this aspect of the proposal does not require permission. That is, there is no ambit for discretion to require a proposal to provide more or less car parking where it meets or exceeds the statutory requirement.
- 154. Whilst no bicycle spaces are required under Clause 52.34, the application proposes 55 bicycle spaces for the apartment buildings, including 35 spaces within the basement car park of the Lot A (central) apartment building and 10 spaces in each of the apartment buildings located in the south-east corner of the site.

155. The application was referred internally to the Traffic and Design Unit for consideration of the proposed parking and bicycle spaces and no concerns were raised regarding the provision of car parking. It is noted that parking bays at the end of the cul-de-sacs is not practical as it would restrict the movement of the MRV. Additionally, further detail is required regarding the design of access and car parking along Cypress Lane, as per the requirements of Clause 52.06-9 of the Scheme.

#### Waste management

156. An updated Waste Management Plan (WMP) prepared by One Mile Grid, dated 5 March 2024 identifies that it is proposed to utilise the Shire's municipal waste collection services to manage the collection and disposal of all waste streams associated with the independent living units, while it is proposed to engage a Private Contractor to manage the collection and disposal of all waste associated with the apartments and ancillary uses. Residents of the units would be provided with dual waste bins (recycling and general waste) and the waste would be collected curbside (adjacent to unit).
157. The application was referred internally to Council's Infrastructure Unit for consideration of the amended WMP. In their response, the Infrastructure Unit advised that:
- The swept paths supplied are insufficient for Council's waste collection vehicles;
  - The use of hammerhead turning areas in cul-de-sacs is not supported for safety reasons. Waste vehicles must be able to turn in a single forward motion; and
  - The provision of only recycled and general waste bins is not consistent with current best practice, which requires separate bins for glass and food recovery.
158. Accordingly, either the plans must be amended in light of the above, or the permit applicant/ respondent should elect in the WMP to engage a private contractor for all waste collection services on the subject land, and not Council-managed waste collection service.
159. Given the extent of redesign required to satisfy a Council managed waste collection service conditions of any approval will require an amended WMP be submitted for approval prior to the commencement of the development, including the requirement for a four-waste stream. This can be readily addressed by conditions of this nature.

#### Cypress Lane and Part Reserve 3 / Open Space / Sale of Public Land

160. The application originally sought to remove the reserves in accordance with Section 24A of the *Subdivision Act 1988*, however the amended application removes this part of the application.
161. Vehicle crossovers, designed and constructed to meet Council requirements, would need to be constructed from Cypress Lane to service the proposed internal roads. No buildings would be constructed within the road reserve and the existing layout of the road, save for any widening or car parking works required as a condition of permit, is proposed.

162. The land forming Reserve No. 3 would be maintained in its current state with no buildings or works proposed. Landscaping in this reserve is proposed, which is supported by Council's Open Space team, subject to final determination of planting density and species type.

### Bushfire

163. The site is identified as in an area that is bushfire prone. In accordance with Clause 13.02 – Bushfire, the applicant submitted a Bushfire Risk Assessment, prepared by South Coast Bushfire Consultants, dated March 2024 (updated). The report assesses the nearby vegetation type as woodland/low woodland along the Deep Creek linear reserve, grassland to the north and low threat in the surrounding residential area.
164. In considering Clause 13.02-1S (bushfire planning), which has a strategy for the protection of human life the bushfire risk assessment states that the site is considered to be at a low risk from bushfire as it is located centrally within the Torquay township and is surrounded by existing development to all aspects.
165. The report recommends the following measures to mitigate the surrounding bushfire hazards:
- *Construct a non-combustible fence along the eastern interface of the site to provide shielding from the vegetation along the eastern boundary.*
  - *All development along the eastern interface of the site be constructed to a Bushfire Attack Level (BAL) rating of 29.*
  - *All development at the southern interface should be constructed to a BAL rating of 19.*
  - *All other development within the site should be constructed to a BAL of 12.5.*
166. The application was referred to the CFA as part of the original planning application process, who provided conditional consent to the application. The CFA was given notice of the amended application by the Permit Applicant / Respondent. The CFA also stated in their original response that if fencing is required along the eastern interface of the development that they support the recommendation in the Bushfire Risk Assessment that it should be of non-combustible material.
167. Concerns were raised that any replanting on the site would be restricted due to the bushfire risk. Whilst the site is in an area that is bushfire prone it is not covered by a Bushfire Management Overlay, where defendable space requirements are required as conditions of planning approval. Neither the bushfire consultant nor the CFA have recommended the management of vegetation as a condition of any approval. Nevertheless, an amended landscaping plan condition will require that any proposed planting within the Cypress Lane road reserve and Reserve No. 3 on the title must have regard for the density of planting and species selection in considering bushfire risk.

### Cultural Heritage

168. Under Part 2 of the Aboriginal Heritage Regulations 2018 a cultural heritage management plan is required for an activity if:
- *all or part of the activity area for the activity is an area of cultural heritage sensitivity; and*
  - *all or part of the activity is a high impact activity.*
169. A cultural heritage management plan is required for the proposed use and development of the land for a retirement village as the southern portion of the site is identified as an area of cultural heritage sensitivity and under Division 5 (high impact activities) a retirement village is a high impact activity.
170. A cultural heritage management plan has been prepared in accordance with Part 4 of the *Victorian Aboriginal Heritage Act 2006*, by Alpha archaeology, dated 16 December 2020 (No. 17297). The assessment included a desktop, standard and complex assessment, where no Aboriginal cultural material was found during the subsurface testing. The plan has been approved by the Wadawurrung Traditional Owners Corporation on 16 December 2020. The proposed amendments are consistent with the approved plan.

### Summary Recommendation

171. It is recommended that Council as the Responsible Authority resolves to support the amended proposal at the upcoming VCAT Hearing, subject to amended draft conditions provided in Attachment 1.



## 2.1 Application for Approval of an Amended Development Plan for the Briody Estate West, Torquay (PG20/0013)

### Council Plan

#### Author's Title:

#### General Manager:

#### Division:

#### Department:

#### Attachments:

### Theme Four - Sustainable Growth

Strategy 11 - Protect heritage and township character.

Principal Strategic Planner

Chris Pike, General Manager Placemaking and Environment.

Placemaking and Environment

Integrated Planning

1. Schedule 10 to Clause 43.04 Development Plan Overlay [2.1.1 - 5 pages]
2. Approved Development Plan Development [2.1.2 - 1 page]
3. Amended Development Plan ( Spiire) [2.1.3 - 1 page]
4. Amended Staging Plan [2.1.4 - 1 page]
5. Amended Landscape Masterplan Report ( Tract) [2.1.5 - 5 pages]
6. Eastern Drainage Basin Landscape Master Plan ( Site Image) [2.1.6 - 4 pages]
7. Interim Road Network Plan ( Spiire) [2.1.7 - 1 page]
8. Ultimate Road Network Plan ( Spiire) [2.1.8 - 1 page]
9. Updated Assessment against requirements of DP O 10 [2.1.9 - 11 pages]
10. Town Planning Report with Clause 56 Assessment [2.1.10 - 51 pages]
11. Assessment of Proposed Changes Against Relevant Planning Policy and Issues Raised in Submissions [2.1.11 - 13 pages]
12. Updated Briody Drive West Shared Infrastructure Funding Plan - December 2023 [2.1.12 - 51 pages]

### Purpose

1. To seek Council's approval of an amended development plan for the Briody Estate West pursuant to Schedule 10 of the Development Plan Overlay (DPO10).

### Recommendation

That Council:

1. Receives and notes the submissions received following exhibition of the initial and the revised amended Briody Estate West Development Plan.
2. Approves the Amended Briody Estate West Development Plan (**Attachments 3-8**) pursuant to schedule 10 of Clauses 43.04 of the Surf Coast Planning Scheme.

## **Council Resolution**

### **Moved Cr Hodge, Seconded Cr Barker**

That Council:

1. Receives and notes the submissions received following exhibition of the initial and the revised amended Briody Estate West Development Plan.
2. Approves the Amended Briody Estate West Development Plan (**Attachments 3-8**) pursuant to schedule 10 of Clauses 43.04 of the Surf Coast Planning Scheme.

CARRIED 8|1

<b>For</b>	<b>Against</b>	<b>Abstained</b>
Cr Allen Cr Barker Cr Bodsworth Cr Gazzard Cr Hodge Cr Pattison Cr Stapleton Cr Wellington	Cr Schonfelder	Nil

### **Outcome**

2. If Council accepts this recommendation, the amended development plan will supersede the current approved development plan. Any subsequent permits must be generally in accordance with the new approved development plan.

### **Key Considerations**

3. An application has been received for approval of an amended development plan pursuant to DPO10 for land within the Briody Estate West, Torquay.
4. DPO10 (**Attachment 1**) seeks to achieve a comprehensively planned residential subdivision in an area with multiple land ownership and land titles.
5. Once approved, a development plan does not have an expiry date and remains extant. An amended plan would supersede the previous approved plan.
6. The current application has been made on behalf of Summerset Villages (Number 2) Pty Ltd, an experienced retirement village operator that has acquired a significant proportion of the land in the development plan area since the previous plan was approved.
7. The application seeks to incorporate a retirement village on 8.51 hectares of land in the centre of the site to replace some of the residential subdivision previously approved in 2017. The retirement village will consist of approximately 231 individual residential units, a residential aged care facility (80 beds) and independent & assisted living apartments (60 units). The remainder of land in the development plan will continue to provide for conventional residential subdivision with approximately 313 lots in standard density areas (ranging from 350-900 square metres), approximately 17 lots in higher density areas fronting Deep Creek (250-325 square metres) and a multi-unit site comprising 11 lots. These are indicative numbers only.

8. If the development plan is approved, a planning permit will be required for use of the land for a retirement village and the buildings and works associated with it. A permit is also required for buildings and works associated with an aged care facility.
9. The initial amended development plan, and associated plans and documents were publicly exhibited in November 2022. Since then, revisions have been made to the plan and these are outlined in more detail below. **Attachments 3-8** provide the revised amended plans.
10. A peer review of the Stormwater Management Strategy submitted with the initial amended development plan was commissioned by Council and has been undertaken since the plan was publicly exhibited. An updated Stormwater Strategy has since been received and additional information has been submitted by the applicant including a Geomorphic Assessment of Deep Creek and a Vegetation Assessment of the Deep Creek Riparian Corridor. These documents have been provided to the CCMA for consideration and comment. An Economic and Social Needs and Benefits Assessment has also been submitted. The additional information has assisted in reaching a recommendation on the application.
11. The revised plans and additional information has been provided to all landowners within the development plan area and all previous submitters for comment. All issues raised in the submissions in response to both rounds of public exhibition have been taken into consideration in assessment of the application and reaching a recommendation.
12. The proposed changes to the development plan have been assessed against the relevant planning policies and the submissions. An assessment is provided in **Attachment 11**. It is considered that the proposed changes accord with all relevant provisions in the Surf Coast Planning Scheme including State and Local policies in the Planning Policy Framework, the General Residential Zone, Particular Provisions and the Overlays, as well as all relevant strategies in the Distinctive Areas and Landscape Statement of Planning Policy (DALSP). Specifically, the amended development plan adequately achieves the objectives of DPO10 (**Attachment 9** provides an assessment). A Clause 56 assessment is also attached (**Attachment 10**).

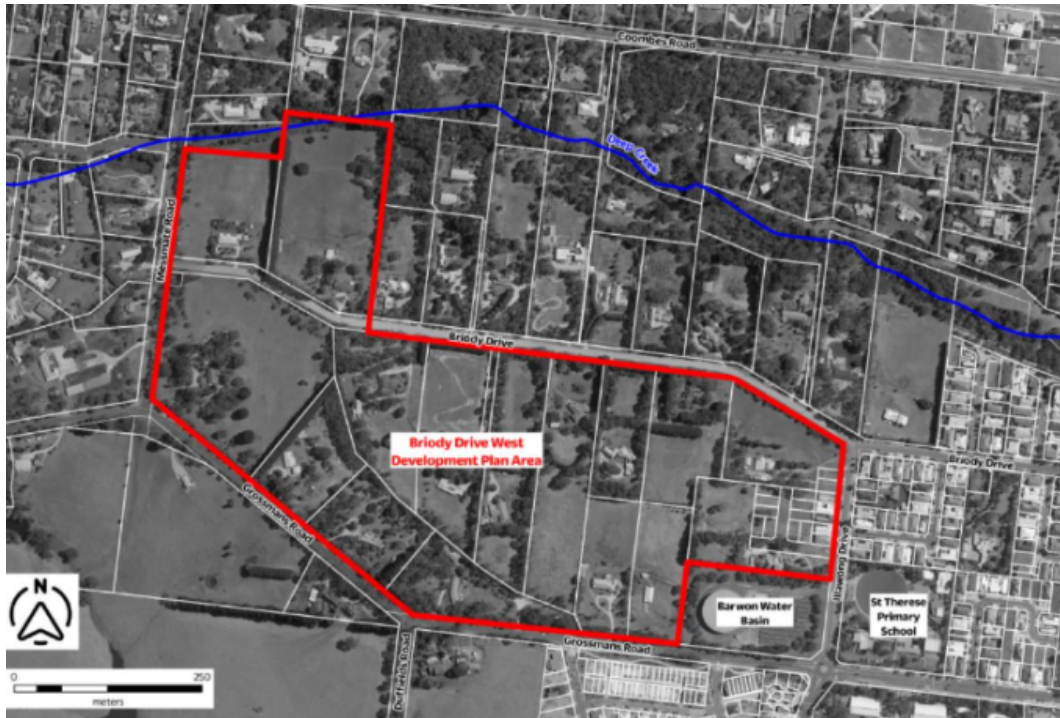
### **Background**

13. DPO 10 was applied to the land as part of the Planning Scheme Amendment to rezone the land from Low Density Residential Zone to Residential 1 Zone (now the General Residential Zone) in 2012 to facilitate higher density residential development consistent with the strategic directions at the time.
14. The Development Plan Overlay requires a development plan to be prepared to the satisfaction of the responsible authority before a permit may be granted to use, develop or subdivide the land. Any subsequent permits must be generally in accordance with the approved development plan. The schedule to the Development Plan Overlay must specify any requirements for the plan.
15. A development plan for the site was previously approved under DPO10 in 2017 for residential subdivision to include a mix of general and higher density areas (**Attachment 2**). The development of the land within the development plan area has already commenced adjacent to Illawong Drive in accordance with the previously approved development plan.

16. The initial amended development plan, and associated plans and documents were publicly exhibited in November 2022. It also included the following changes:
  - 16.1. Replacement of the 8,847 square metre stormwater treatment basin in the eastern catchment with a linear strip reserve and an underground water treatment device.
  - 16.2. Removal of the detention function of the drainage basin in the western catchment to provide a wetland and sediment pond (water quality treatment system only) adjacent to Deep Creek.
  - 16.3. Re-location of the local park from the centre of the site to be adjacent to Briody Drive (measuring 0.87 hectares).
  - 16.4. Provision of lot size ranges within the general residential areas.
  - 16.5. Incorporation of a future roundabout at the junction of Briody Drive and Messmate Road at Council's request to address safety issues (to be provided by Council at a time in the future when traffic volumes necessitate).
  - 16.6. Upgrading of Briody Drive to a Connector Level 1 Road (rather than Access Level 2 standard), including bike lanes in both directions (to be completed in two stages with indented parking on the south side to be provided in the second stage when traffic volumes necessitate).
17. Since the exhibition of the initial amended plan the following revisions have been made:
  - 17.1. Replacement of the proposed underground proprietary units in the eastern catchment with a 2,000 square metre reserve incorporating a raingarden/bio-retention basin and sediment forebays. Underground proprietary units will be used to service the retirement village only and will be maintained by the retirement operator.
  - 17.2. The incorporation of a perimeter road along the eastern boundary of 150 Briody Drive to meet the requirements of the CFA, and a note on the plan relating to defendable space requirements.
  - 17.3. Provision of a notation indicating traffic management measures on Briody Drive and the internal road parallel to Briody Drive. A further notation will address the need to consider 'Safe traffic and speed controls' at the junction with the retirement entrance.
  - 17.4. Provision of a notation indicating a 'junction improvement treatment' at the intersection of Briody Drive and Illawong Drive that will be undertaken by Council.
  - 17.5. A note requiring all Cultural Heritage Management related conditions in the approved Cultural Heritage Management Plan be adhered to (as required by the Wadawurrung Traditional Owners Aboriginal Corporation).
  - 17.6. A note on the staging plan requiring that any future permit for the first stage of development in each catchment is subject to a condition requiring

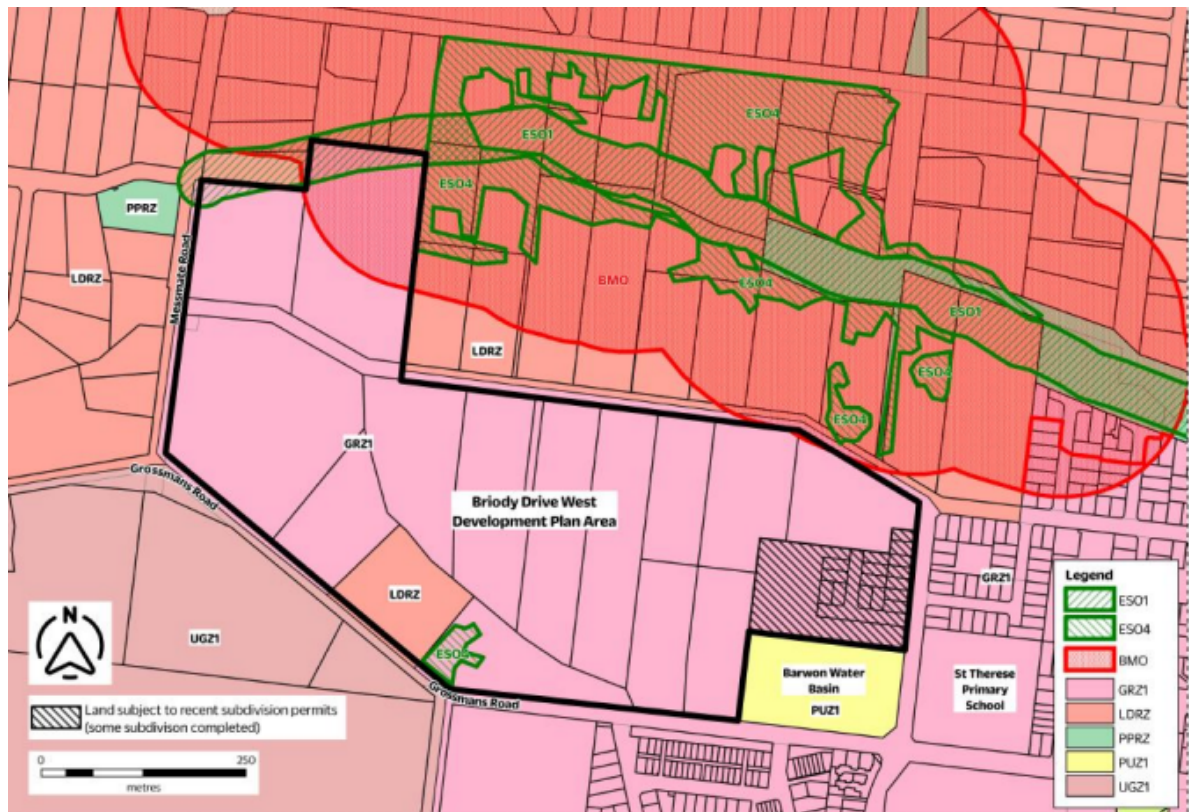
a Waterway Management Plan for Deep Creek (adjacent to the discharge points only).

18. DPO10 pertains to the land outlined in the map below.



Zoning and Overlays

19. The map below shows the current Zoning and Overlays that apply to the development plan area and surrounding land.



20. Development Contributions Plan Overlay 1 (DCPO1) applies to the properties in the development plan area abutting Briody Drive (and to land on the northern side of Briody Drive) to facilitate upgrade of the road and to apportion the cost of works.
21. Development Contributions Plan Overlay (DCPO2) applies and gives effect to the Torquay/Jan Juc Development Contributions Plan which collects contributions for development and community infrastructure being delivered by that plan outside the DPO area.
22. A Shared Infrastructure Funding Plan (SIFP) also applies to apportion the cost of public open space and drainage infrastructure within the DPO area. This has been updated to correctly reflect the changes in the number of land parcels (to include the additional lots from recent subdivision) and the changes to infrastructure items and their costs. The SIFP has undergone a detailed review by an external consultant with expertise in this field and is considered satisfactory. This will be implemented through a Section 173 Agreement at the planning permit stage.
23. Therefore, contributions for infrastructure will be collected from each landowner within the precinct via multiple mechanisms at subdivision/development stage.
24. A Bushfire Management Overlay (BMO) applies to part of 150 and 170 Briody Drive and the remainder of the development plan area is in a Bushfire Prone Area.
25. Design and Development Overlay – Schedule 1 (DDO1) affects the land to protect and enhance the low-rise coastal character of Torquay-Jan Juc. DDO1 provides a planning permit trigger for the construction of buildings with a height of more than 7.5 metres above natural ground level.

26. Environmental Significance Overlay - Schedule 1 (ESO1) was applied to land adjacent to Deep Creek in 2018 (and includes a portion of land in 150 and 170 Briody Drive). This seeks to maintain the physical and biological integrity and functioning of aquatic systems and to enhance river health and biodiversity.
27. ESO 4 applies to a small area of land on 120 Grossman's Road, adjacent to the road reserve, and the Council owned reserve between 80 and 90 Briody Drive (where the proposed outfall pipe to Deep Creek will be located). It seeks to protect and enhance all biodiversity assets.

### **Options**

**Alternative Option 1** – That Council refuses the amended development plan.

28. This option is not recommended as the amended development plan has been thoroughly assessed and satisfies the requirements of DPO10 and other relevant planning policies. The plan will facilitate a residential subdivision and well-integrated retirement village in the General Residential Zone, in Torquay Jan-Juc where such facilities are supported.

### **Council Plan (including Health and Wellbeing Plan) Statement**

#### **Theme Four - Sustainable Growth**

Strategy 11 - Protect heritage and township character.

29. The proposal is considered to be consistent with relevant Council Plan objectives. The proposal will facilitate the provision of open space and active transport links to enable healthy lifestyles and will provide residential accommodation for the aged population enabling social connections and ageing in place.
30. The proposal will enable growth whilst protecting significant biodiversity assets and the character of the area.

### **Financial Considerations**

31. The developer will undertake the interim upgrade of Briody Drive which will be secured through a Works In Kind agreement. Council is required to reimburse the developer for the overprovision of the developer contribution required by the Briody Drive Upgrade DCP.
32. Council will also fund and provide the second stage of the upgrade of Briody Drive which incorporates a series of indented parking bays. These works will need to be provided for at a date in the future when traffic volumes necessitate.
33. Council will also fund the provision of a roundabout at the junction of Messmate Road and Briody Drive at a time in the future when traffic volumes necessitate. The detailed design for the roundabout works (as well as required land acquisition) have not yet been determined.
34. The junction improvement treatment at the intersection of Briody Drive and Illawong Drive will also be provided and funded by Council.
35. The above works are all above the provisions of the approved development plan. Indicative costs (2023 prices) and timing of delivery are provided below:

Intersection treatment at Briody Drive / Illawong Drive	\$100,000	– 2025/26 (following Briody Drive upgrade).
Design/construction of parking bays along Briody Drive	\$250,000	2028/29
Land purchase for roundabout	\$150,000	As per roundabout.
Design/Construction of roundabout at Briody Drive and Messmate Road Intersection	\$700,000	2029/30 (will be depend on rate of development).

### **Community Engagement**

36. The initial amended development plan was advertised and placed on public exhibition from 28 October 2022 until 25 November 2022. Notices were sent to all owners/occupiers within the development plan area and immediately surrounding the site, and a notice was published in the Surf Coast Times. A Special Council Meeting to hear the submissions was held on 7 March 2023.
37. All of the amended development plan documents were made available for viewing on Council’s website, which included an overview of the changes proposed to the development plan. A Council Officer was available to meet residents who requested an in person meeting to discuss the application, or to discuss the application on the phone.
38. The proponent also undertook a live webinar for local residents with a question and answer session.

### **Submissions to initial amended development plan**

39. The submissions are a key consideration in reaching a recommendation and have been considered in detail in assessing the application. Specifically the comments received relating to stormwater management resulted in additional information being sought regarding this issue and ultimately changes being made to the stormwater infrastructure in the eastern catchment. A junction improvement treatment at the junction of Briody Drive and Illawong Drive is also a key outcome.
40. A total number of 25 submissions from 27 submitters were received to the initial amended development plan. This number includes two from landowners within the development plan area, an Owners Corporation, and submissions from two community organisations: the Greater Torquay Alliance (representative of 10 community groups) and Torquay Coast Action. The following key issues were raised.

<b>Theme</b>	<b>Key Concerns Raised</b>
Provision of Retirement	<ul style="list-style-type: none"> <li>• Objection to provision of another retirement village/aged care facility in Torquay where there is no demand.</li> </ul>



<p>Village/Aged Care Facility</p>	<ul style="list-style-type: none"> <li>• Lack of detail relating to retirement village, including additional recreation facilities and open space.</li> <li>• Increased density due to retirement village (and no off-set through increased open space).</li> <li>• Queries regarding setbacks.</li> <li>• Support for the retirement village, although based on various conditions including that the development should be of high architectural quality, be well managed and well maintained, as well as providing additional public open space.</li> </ul>
<p>General Residential Subdivision Areas</p>	<ul style="list-style-type: none"> <li>• Concern regarding high densities, small lot sizes and narrow roads (as in recent, nearby subdivisions and inner-city developments).</li> <li>• Lack of detail on multi-unit site.</li> </ul>
<p>Stormwater Management Issues, Flooding and Impact on Deep Creek</p>	<ul style="list-style-type: none"> <li>• Objections to lack of detention of stormwater on site and removal of eastern drainage basin (and proposed outfall to Deep Creek) which will result in higher increased water flows and velocities into Deep Creek.</li> <li>• Concern regarding impacts on Deep Creek and properties abutting Deep Creek, including impacts on bank stability and creek bed erosion, as well as land erosion surrounding the creek and at the mouth of creek/beach/dunes.</li> <li>• Concern regarding potential impacts on ecology, fauna, flora, biodiversity and landscape in Deep Creek including rare and threatened species and no studies have been undertaken.</li> <li>• Impact on creek will be compounded by increased high density development from the retirement village and reduced permeable areas.</li> <li>• Concerns regarding flooding and Outdated Flood Impact Assessment.</li> <li>• Inadequate water quality treatment (due to use of underground treatment facility) which will not adequately protect the water quality in Deep Creek.</li> <li>• New Regulatory &amp; Guiding Documents have not been considered (Marine and Coastal Policy 2020, Distinctive Areas and Landscape Statement of Planning Policy and the EPA document Urban Stormwater Management Guidance -June 2021).</li> <li>• Erosion at mouth of creek and dunes where it runs onto Fisherman’s beach could be exacerbated.</li> <li>• Increased fresh water flow will likely increase pollutants in the sea water negatively impacting recreational activities.</li> <li>• Past inadequacy of storm water infrastructure design and maintenance should be considered (Karaaf Wetlands and Frog Hollow Estate).</li> <li>• Flooding and drainage failures in the area may not be alleviated</li> </ul>
<p>Traffic/Highway Issues</p>	<ul style="list-style-type: none"> <li>• Inaccurate traffic estimates and outdated modelling.</li> <li>• Concerns regarding impact of increased traffic from proposed development and capacity of the existing road network (Briody Drive, Illawong Drive, Grossmans Road) and intersections to accommodate it.</li> <li>• Concerns surrounding active transport options (particularly safe bicycle routes) and lack of public transport.</li> <li>• Concerns regarding increased truck traffic/servicing vehicles.</li> <li>• Concerns regarding safety of Briody Drive/Illawong Drive Intersection and Briody Drive Upgrade.</li> <li>• Concerns regarding school precinct congestion, parking and safe crossings.</li> </ul>

	<ul style="list-style-type: none"> <li>• Parking issues.</li> <li>• Impact of future rezoning of the northern side of Briody Drive to GRZ should be considered.</li> </ul>
Open Space Issues	<ul style="list-style-type: none"> <li>• Lack of open space/parkland, particularly due to loss of eastern drainage reserve (loss of amenity and reduction of flora/fauna in the area and no ability to plant trees or increase biodiversity).</li> </ul>
Impacts on vegetation	<ul style="list-style-type: none"> <li>• Concerns regarding loss of significant number of trees.</li> <li>• Established non indigenous planted windbreaks should be retained.</li> <li>• Concern regarding loss of areas of Grassy Woodland and Heathy Woodland.</li> <li>• Retirement village increases demand to remove vegetation.</li> </ul>
Other Issues	<ul style="list-style-type: none"> <li>• Lack of consultation and community engagement.</li> <li>• Impact on coastal township from excessive and inappropriate development.</li> <li>• Queries regarding potential access to future development on adjacent land to east.</li> <li>• Impact on adjoining land to north at 247 Messmate Road (containing Deep Creek corridor) in respect of overlooking and noise.</li> <li>• Impact on climate change.</li> <li>• Obstruction of views and other amenity concerns.</li> </ul>

Submissions to revised amended plan

41. The revised plans and documents were provided to previous submitters and landowners in the development plan area for further comments. Letters were sent to each person and the plans and documents were provided on Council’s website.
42. The issues raised in the submissions have been considered as part of the assessment of the application (**Attachment 11**).
43. 20 submissions from 19 submitters have been received in relation to the revised amended plan. This includes one letter from an Owners Corporation and one from the Greater Torquay Alliance. This includes two submissions from landowners within the development plan area supporting the proposal as an opportunity to provide a variety of much needed accommodation (including for ageing population) where stock is limited and delivery of infrastructure upgrades in the precinct.
44. The following issues were raised:

Theme	Key concerns Raised
Stormwater Management Issues, Flooding and Impact on Deep Creek	<ul style="list-style-type: none"> <li>• Stormwater and drainage issues not adequately assessed; revisions to plan exacerbate concerns.</li> <li>• Potential detrimental impacts (including sedimentation and erosion) on significant environment and ecosystem of Deep Creek (areas affected by ESO1 and ESO4) and beach due to lack of, and inappropriate stormwater detention infrastructure, lack of permeable surfaces from high density, poor water quality and pollution, inefficiency of underground units and cumulative impacts of stormwater runoff from development near Deep Creek (which must be considered).</li> <li>• Concerns regarding Deep Creek during construction.</li> <li>• Lack of maintenance of stormwater infrastructure.</li> </ul>
Density, character and lot sizes	<ul style="list-style-type: none"> <li>• Concerns regarding overdevelopment, high density of development (lots under 350 square metres inappropriate) and potential height of</li> </ul>

	buildings; out of character with surrounding LDRZ/semi-rural areas and failure to comply with current controls including DALSP.
Open Space Issues	<ul style="list-style-type: none"> <li>• Lack of parks and open space.</li> </ul>
Impacts on Flora and Fauna	<ul style="list-style-type: none"> <li>• Lack of comprehensive flora and fauna assessment (only small area of Deep Creek assessed).</li> <li>• Loss of habitats and potential impacts on native wildlife in the area including vulnerable and endangered species.</li> <li>• Loss of trees, and vegetation including Grassy Woodland (an endangered EVC).</li> </ul>
Transport & Traffic	<ul style="list-style-type: none"> <li>• Increased traffic volumes (including service vehicles for retirement village), congestion, impact on intersections, parking issues, safety, noise and pollution.</li> <li>• Underestimation of traffic and population.</li> <li>• Lack of clarity surrounding proposed junction improvements.</li> <li>• Concerns regarding safety at corner of Briody Drive/Illawong Drive due to provision of residential lots proposed where eastern drainage reserve is located.</li> <li>• Lack of traffic surveys</li> <li>• Inaccurate bicycle routes; hypothetical modelling of public transport.</li> </ul>
Other Issues	<ul style="list-style-type: none"> <li>• Development fails to align with the Council’s Climate Emergency Declaration.</li> <li>• Concerns regarding location of high-density areas in northern DP area, northern interface setbacks and fencing, and northern drainage interface with LDRZ.</li> <li>• Concerns relating to ‘future linear open space corridor’ and ‘potential access to future development’ shown on plan and impact on land immediately east of DP area on northern side of Briody Drive.</li> </ul>

**Statutory / Legal / Policy Considerations**

- 45. The amended development plan is consistent with the relevant provisions in the Surf Coast Planning Scheme, specifically DPO10, as well as the DALSP.
- 46. The amended development plan complies with the relevant requirements of the *Planning and Environment Act 1987*.

**Strategic Risk**

Failure to protect the values and character of our places.

Inherent Risk Rating - *Serious*, Residual Risk Rating – *Medium*

- 47. Approving the amended development plan is not considered to result in any additional impact on the character of the area than from the current approved plan.

**Risk Rating**

- 48. Risk rating is low and can be managed at department level.

**Risk Appetite**

49. This is within Council's Risk appetite - We will manage and support population growth in the Municipality, but not at the expense of the most important elements of our environment or the unique heritage and character of the different areas of our Shire.

**Sustainability Considerations**

50. The amended development plan would result in a sustainable outcome, providing housing for an identified need whilst protecting the environmental values and assets in the area.

**Conflict of Interest**

51. No officer declared a conflict of interest under the *Local Government Act 2020* in the preparation of this report.

**Confidentiality**

52. This report and attachments contain no confidential information under section 66(2) of the *Local Government Act 2020*.

**Transparency**

**Audit and Risk Committee involvement**

53. The assessment of the Amended Development Plan is not within the scope of the Audit and Risk Committee.

**Councillor Briefings**

54. This item was discussed at the following Councillor briefings prior to being presented to Council for consideration. Councillor attendance at each briefing was as follows:

Councillor Briefing Date: 7 March 2023

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>N</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor Briefing Date: 5 March 2024

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>Y</i>	<i>Cr Liz Pattison</i>	<i>N</i>
<i>Cr Paul Barker</i>	<i>N</i>	<i>Cr Adrian Schonfelder</i>	<i>Y</i>
<i>Cr Mike Bodsworth</i>	<i>Y</i>	<i>Cr Libby Stapleton</i>	<i>Y</i>
<i>Cr Kate Gazzard</i>	<i>N</i>	<i>Cr Heather Wellington</i>	<i>N</i>
<i>Cr Rose Hodge</i>	<i>Y</i>		

Councillor Briefing Date: 19 March 2024

<i>Councillor name</i>	<i>In attendance (Y/N)</i>	<i>Councillor name</i>	<i>In attendance (Y/N)</i>
<i>Cr Gary Allen</i>	<i>N</i>	<i>Cr Liz Pattison</i>	<i>Y</i>
<i>Cr Paul Barker</i>	<i>Y</i>	<i>Cr Adrian Schonfelder</i>	<i>N</i>
<i>Cr Mike Bodsworth</i>	<i>N</i>	<i>Cr Libby Stapleton</i>	<i>N</i>
<i>Cr Kate Gazzard</i>	<i>Y</i>	<i>Cr Heather Wellington</i>	<i>Y</i>
<i>Cr Rose Hodge</i>	<i>N</i>		

Councillor attendance at briefings is not a statutory requirement. Councillors are able to access and request information through a number of mechanisms to understand matters being presented at a Council Meeting.

### **3 Close of Meeting**

The Special Council Meeting - 16 April 2024 closed at 7:02pm.