



AGENDA APPENDIX
Council Meeting
Wednesday 17 December 2014

AGENDA ITEM FOR SEPARATE DISTRIBUTION TO COUNCILLORS AND EXECUTIVE LEADERSHIP TEAM DUE TO DOCUMENT SIZE.

THE ITEM IS ACCESSIBLE VIA THE COUNCIL WEBSITE OR BY CONTACTING COUNCIL ON 03 5662 9200.

E.5 PLANNING SCHEME AMENDMENT C96- REZONING 35-65 KORUMBURRA-WARRAGUL ROAD FROM FARMING ZONE TO GENERAL RESIDENTIAL ZONE

Appendix 1 – Amendment C96 Panel Report

Planning and Environment Act 1987

Panel Report

South Gippsland Planning Scheme
Amendment C96

21 October 2014



Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act
South Gippsland Planning Scheme Amendment C96

21 October 2014

A handwritten signature in blue ink, consisting of a stylized 'T' and 'M' followed by a long, sweeping horizontal line.

Trevor McCullough, Chair

Contents

	Page
Executive Summary	i
1 The Proposal	1
1.1 The subject site.....	1
1.2 The Amendment.....	1
1.3 Background to the proposal.....	2
1.4 Issues dealt with in this report.....	3
2 Strategic Planning Context.....	4
2.1 Policy framework.....	4
2.2 Planning scheme provisions	5
2.3 Land Supply and Demand.....	6
2.4 Ministerial Directions and Practice Notes.....	6
2.5 Strategic Assessment.....	7
3 Issues Raised by Ms and Mr Fowles	8
3.1 Traffic.....	8
3.2 Access, Parking and Drainage issues	9
3.3 Other amenity impacts.....	9
4 The Proposed Planning Controls	10
4.1 The Proposed Zone.....	10
4.2 Removal of the ESO5.....	10
4.3 The Proposed DPO Schedule 9	11
5 Two Zones Applying to One Lot.....	16

Appendix A Panel Preferred DPO Schedule 9

List of Figures

	Page
Figure 1 Aerial view of the subject site	1
Figure 2 Proposed rezoning and extent of DPO9.....	2
Figure 3 Proposed initial 2 lot subdivision	2
Figure 4 Draft subdivision plan tabled for information by the proponent.....	3
Figure 5 The subject site as shown in the Korumburra Structure Plan.....	5

Amendment Summary

The Amendment	South Gippsland Planning Scheme Amendment C96
Subject Site	35 and 65 Korumburra-Warragul Road, Korumburra
Purpose of Amendment	<p>Rezones land at 35 Korumburra-Warragul Road to General Residential Zone (GRZ).</p> <p>Rezones part of the Farming Zone (FZ) land at 65 Korumburra-Warragul Road to GRZ.</p> <p>Removes the Environmental Significance Overlay Schedule 5 (ESO5) from the areas to be rezoned GRZ.</p> <p>Introduces and applies the Development Plan Overlay Schedule 9 (DPO9) to the whole of the land that which is identified in the Korumburra Framework Plan as 'Urban Expansion Area'.</p>
The Proponent	Mr Brian and Mrs Christine O'Neill
Planning Authority	South Gippsland Shire Council
Authorisation	A02729 dated 7 February 2014
Exhibition	17 March 2014 to 17 April 2014

Panel Process

The Panel	Mr Trevor McCullough (replacing Ms Cathie McRobert)
Directions Hearing	18 August 2014 at Leongatha
Panel Hearing	25 September 2014 at Leongatha
Site Inspections	25 September 2014
Appearances	<p>South Gippsland Shire Council represented by Mr Nick Edwards</p> <p>The Proponent represented by Ms Teresa Bisucci of Best Hooper who called evidence from:</p> <ul style="list-style-type: none"> Mr Jason Sellars on Traffic; Mr John Glossop on Planning; Mr Nick Brisbane on Land Supply; and Mr Mat Brosnan on civil engineering <p>Ms Karen and Mr Tony Fowles</p>
Submissions	<p>MGH Planning on behalf of the O'Neill Family (Proponent)</p> <p>South Gippsland Water (no objection)</p> <p>Mr and Ms Fowles</p> <p>West Gippsland Catchment Management Authority</p> <p>EPA Victoria (no objection)</p> <p>Department of Environment and Primary Industries</p>
Date of this Report	21 October 2014

Executive Summary

(i) Summary

Amendment C96 to the South Gippsland Planning Scheme, as exhibited, proposed to rezone 35, and part of 65 Korumburra-Warragul Road from the Farming Zone (FZ) to the General Residential Zone (GRZ). Since the Amendment was exhibited, number 35 Korumburra-Warragul Road has been included in the GRZ as part of Amendment VC116.

The Amendment applies the GRZ to part of number 65 Korumburra-Warragul Road; removes the Environmental Significance Overlay (ESO5) from that portion of the land that is to be rezoned to GRZ; and applies a Development Plan Overlay (DPO9) to all of 35 Korumburra-Warragul Road and a large proportion (but not all) of 65 Korumburra-Warragul Road.

Six submissions were received in response to exhibition of the Amendment. Council was unable to resolve all submissions and subsequently requested the Minister for Planning appoint an independent panel to review submissions and provide recommendations.

Submitters raised a range of issues including:

- Amenity impacts of future residential development;
- Increased traffic from future residential development creating noise, safety and access problems; and
- Issues regarding the form and content of the proposed Development Plan Overlay Schedule.

The Panel has reviewed the submissions and material presented to it and has concluded that the Amendment should be supported, subject to reducing the area of application of the proposed DPO9 to only apply to the area to be zoned GRZ.

The Panel accepts Council's submission that potential future impacts of development can be appropriately managed through permit conditions.

The Panel notes that the Amendment will create two zones on a lot and has made a recommendation on how Council should resolve this.

(ii) Recommendations

- 1. The Panel recommends that Amendment C96 to the South Gippsland Planning Scheme be adopted as exhibited subject to the following changes:**
 - a) Reduce the area of application of the proposed DPO9 to apply only to 35 Korumburra-Warragul Road and that part of 65 Korumburra-Warragul Road proposed to be zoned GRZ.**
 - b) Amend the form and content of the proposed Development Plan Overlay Schedule 9 as shown in Appendix A of this report.**
- 2. The Panel recommends that, should Council adopt the Amendment, the proposed two lot subdivision application be approved prior to seeking the Minister's approval to the Amendment to ensure that all land within a lot is entirely within one zone.**

1 The Proposal

1.1 The subject site

The Amendment applies to land at numbers 35 (Lot 1, TP119384D) and 65 (Lot 3 PS439847Q) Korumburra-Warragul Road, on the north western edge of the town of Korumburra.



Figure 1 Aerial view of the subject site

1.2 The Amendment

The Amendment, as exhibited, proposed to rezone 35, and part of 65 Korumburra-Warragul Road from the Farming Zone (FZ) to the General Residential Zone (GRZ). Since the Amendment was exhibited, number 35 Korumburra-Warragul Road has been included in the GRZ as part of Amendment VC116, gazetted on 1 July 2014.

The Amendment applies the GRZ to part of number 65 Korumburra-Warragul Road as shown in Figure 2; removes the Environmental Significance Overlay (ESO5) from that portion of the land that is to be rezoned to GRZ; and applies a Development Plan Overlay (DPO9) to all of 35 Korumburra-Warragul Road and a large proportion (but not all) of 65 Korumburra-Warragul Road, as shown in Figure 2.

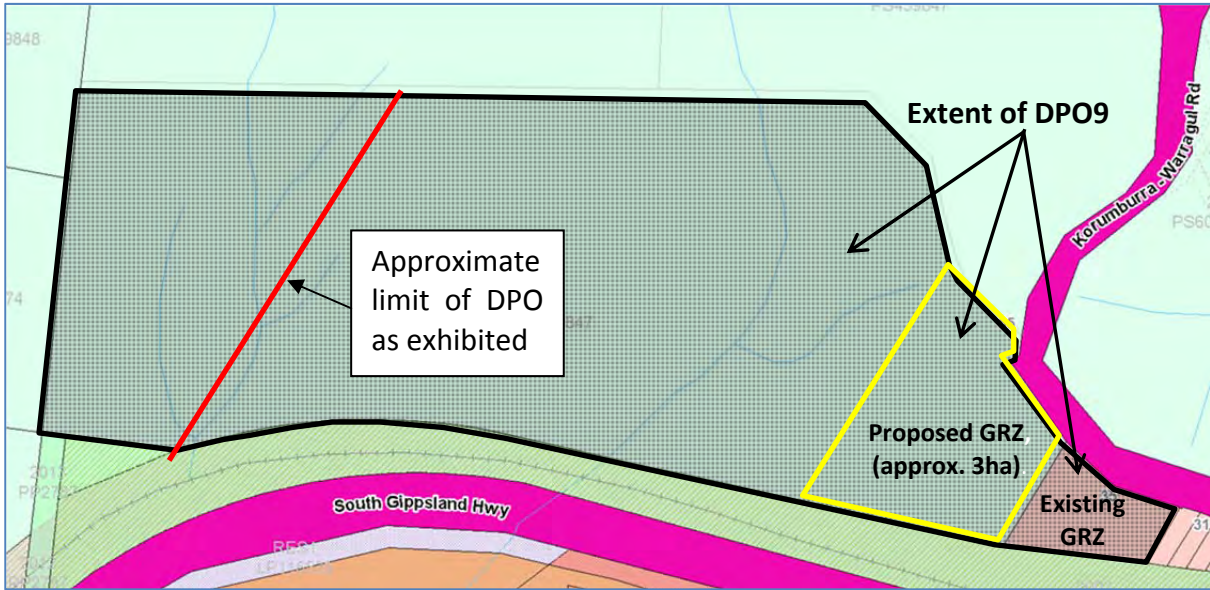


Figure 2 Proposed rezoning and extent of DPO9

1.3 Background to the proposal

The broader site (that corresponds approximately to the proposed DPO9 boundary) is identified in the Korumburra Structure Plan as an ‘Urban Expansion Area’.

An application has been lodged with Council for a Planning Permit to consolidate the land at 35 Korumburra-Warragul Road with part of the land at 65 Korumburra-Warragul Road and then subdivide the subject land to create two lots as shown in Figure 3.

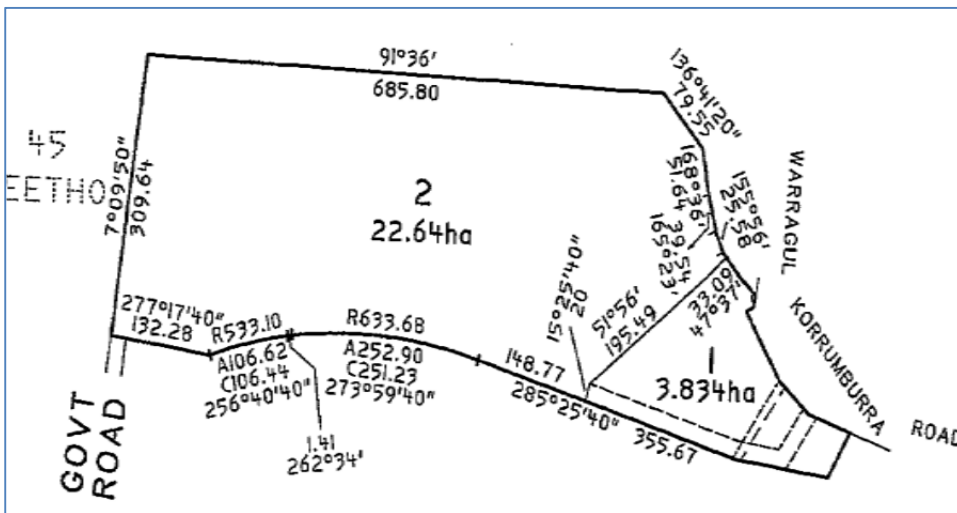


Figure 3 Proposed initial 2 lot subdivision

The Proponent has advised they intend to further subdivide the GRZ area to create a 28 to 30 lot residential subdivision. Although not part of this Amendment, a draft subdivision plan has been developed and was provided to the Panel for information as shown in Figure 4.

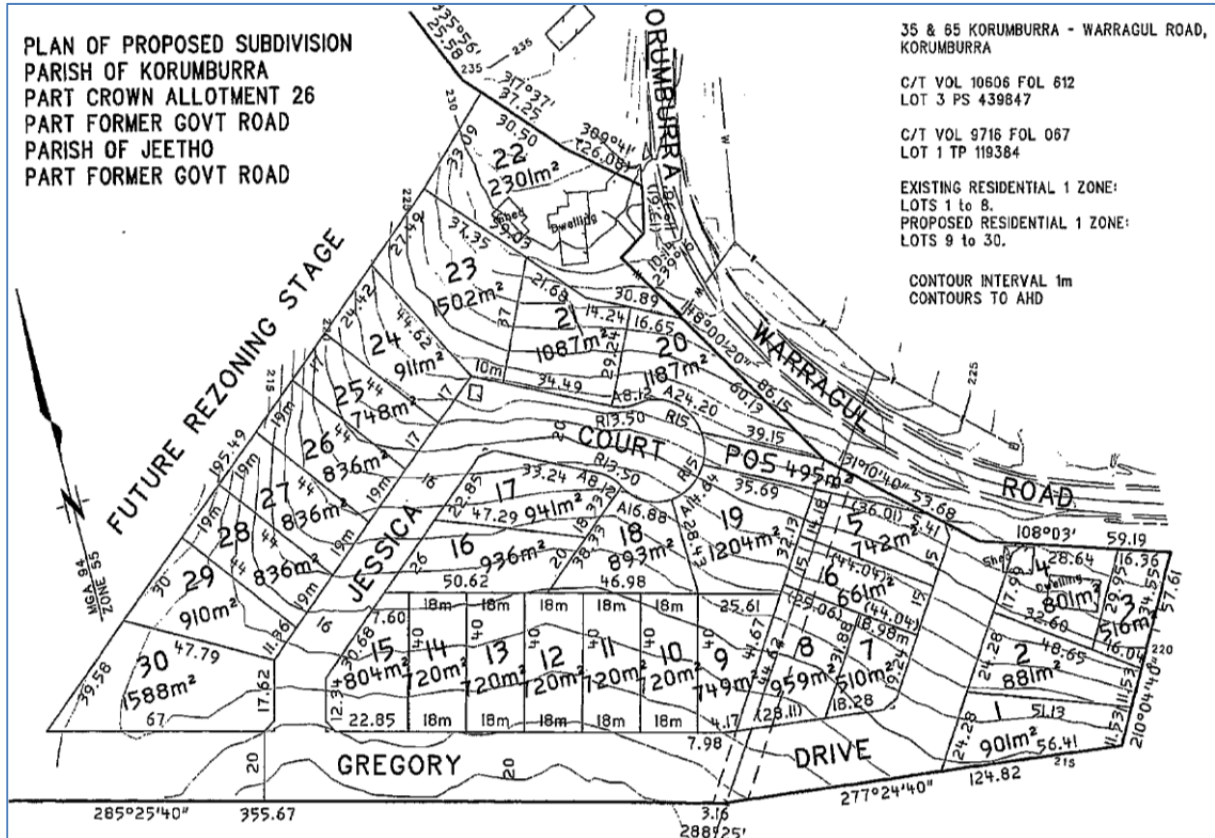


Figure 4 Draft subdivision plan tabled for information by the proponent

1.4 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from a site inspection.

Submissions were received from the proponent, four government agencies or service authorities, and one adjoining landowner.

Submitters raised a range of issues including:

- Amenity impacts of future residential development;
- Increased traffic from future residential development creating noise, safety and access problems; and
- Issues regarding the form and content of the proposed Development Plan Overlay Schedule.

The Panel has reviewed the issues under the following headings:

- Strategic Planning Context;
- Issues Raised by Mr and Mrs Fowles;
- The Proposed Planning Controls; and
- Two Zones Applying to One Lot.

2 Strategic Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the overall policy context of the Amendment and made a brief appraisal of the relevant controls and other relevant planning strategies.

2.1 Policy framework

2.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 11.02 Urban Growth: seeks to establish a suitable supply of land to accommodate growth over at least a 15 year period and provide clear direction on where this growth should occur. The Amendment will ensure a sufficient supply of land is available for residential development and provide competition within the marketplace.

Clause 14.02-1 Catchment planning and management seeks;

To assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

Clause 15 Built Environment and Heritage, (Clause 15.01-3 Neighbourhood and subdivision design) seeks;

To ensure the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods.

The strategies to achieve these outcomes are intended to be fulfilled by the DPO and future subdivision design will respond to specific neighbourhood requirements.

2.1.2 Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

Clause 21.05 -1 Growth of Towns, Strategy 1.2 : 'Support the development of vacant, serviced residential land, in accordance with the areas indicated on township framework and structure plans' which is in accordance with the Korumburra Framework Plan.

Clause 21.10-13 Rural residential development seeks to balance the need for urban development in the town and the protection of productive agriculture land.

A main intent of this clause is to balance the need for dwellings not reasonably connected to agricultural activities. In this case the use of the land, its size and proximity to the urban area suggests that agricultural production on this lot would contribute less to Korumburra as a whole than its development. Within the township boundaries, if Korumburra is to grow it is unavoidable that some agricultural land will be lost.

2.1.3 Other relevant policy

Korumburra Structure Plan

The Structure Plan was adopted by Council in November 2011 and gazetted as Planning Scheme Amendment C70 on 28 February, 2013.

A large proportion of the land at 65 Korumburra-Warragul Road was identified as suitable for urban expansion but the reason why the entire lot was not considered is due to topographical constraints as the steepness of the land increases towards the west.

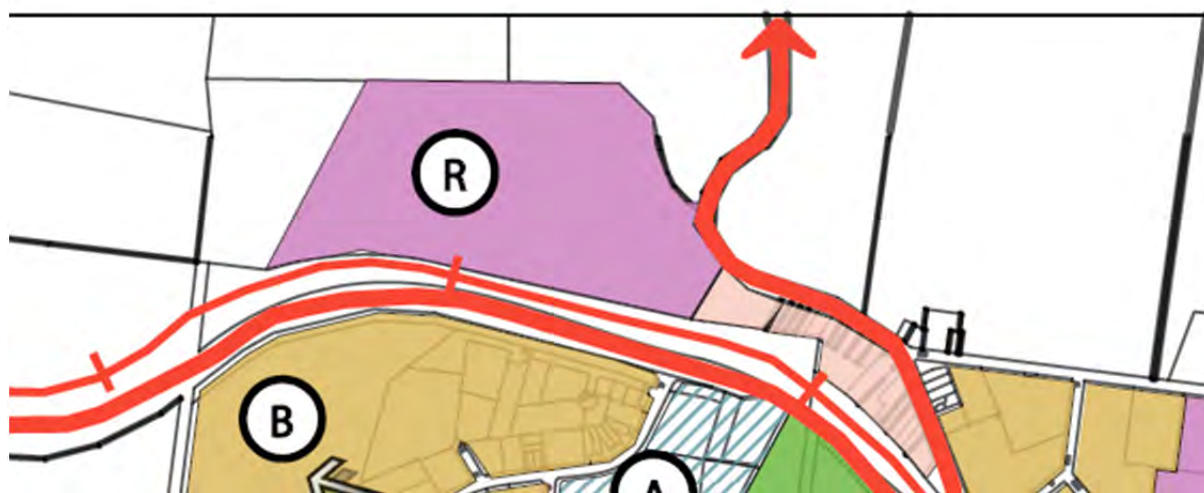


Figure 5 The subject site as shown in the Korumburra Structure Plan

The purple colour designates the land as 'Future Urban Residential' on Farming Zone adjoining the northwest boundary of the town. The letter "R" identifies land (p11) with a recommendation that the land should:

Rezone to facilitate future urban residential development when required, having close regard to issues of pedestrian connectivity to the existing Town Centre.

2.2 Planning scheme provisions

(i) Zones and Overlays

Council advised that land at 35 Korumburra-Warragul Road, Korumburra is GRZ1 and is not affected by any overlays. Schedule 1 to the GRZ requires no special provisions.

Land at 65 Korumburra-Warragul Road, Korumburra is FZ and is covered by the Environmental Significance Overlay:

- Schedule 2 (ESO2) - Water Catchments; and
- Schedule 5 (ESO5) - Areas Susceptible to Erosion

Land in this area of the FZ cannot be subdivided into lots smaller than 80 hectares and a permit is required to construct a dwelling on land less than 40 hectares. These provisions alone mean that for subdivision and development to occur on the property, a rezoning is required.

In relation to subdivision, Clause 35.07-3 Farming Zone, states as follows:

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 40 hectares.

A permit may be granted to create smaller lots if any of the following apply:

- *The subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision.*
- *The subdivision is the re-subdivision of existing lots and the number of lots is not increased.*
- *The subdivision is by a public authority or utility service provider to create a lot for a utility installation.*

2.3 Land Supply and Demand

The Proponent called expert evidence on land supply and demand from Mr Nick Brisbane of Essential Economics. Mr Brisbane carried out a review of previous residential land supply analyses and made his own enquiries to come up with a revised residential supply and demand assessment for Korumburra.

Mr Brisbane concluded as follows:

- Forecast demand for residential dwellings in Korumburra is 40-50 dwellings per annum over the next 15 years
- Korumburra has over 20 years supply of residentially zoned land
- Allowing for constraints and expected delays, Korumburra has approximately six to seven years supply of residential lots available for development in the short term
- The proposed rezoning would create approximately 30 new lots, or less than one year's supply
- The proposed rezoning will make a positive contribution to housing choice in Korumburra

The evidence provided by Mr Brisbane was not challenged, and Council accepted the advice. The Panel also accepts Mr Brisbane's evidence.

2.4 Ministerial Directions and Practice Notes

Council submitted that the Amendment is consistent with Ministerial Direction 11 – Strategic Assessment and the Ministerial Direction on the Form and Content of Planning Schemes. The Panel has no issue with compliance with these Directions.

The VPP Practice Notes *Applying the Incorporated Plan and Development Plan Overlays and Writing Schedules* are also relevant to the preparation of the DPO Schedule. Consistency of the proposed DPO9 with these Practice Notes is discussed in the next Chapter of this report.

Practice Note 78 – Applying the Residential Zones is also relevant to the proposed application of the GRZ.

2.5 Strategic Assessment

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

The Panel also concludes that the Amendment is strategically justified in terms of its consistency with the Korumburra Structure Plan and its contribution to residential land supply in Korumburra.

3 Issues Raised by Ms and Mr Fowles

3.1 Traffic

(i) Evidence and Submissions

Ms Fowles submitted that the traffic generated by the proposed development has been underestimated by Mr Sellars in his expert evidence, but even as estimated the projected traffic will create difficulties in accessing Korumburra-Warragul Road. Ms Fowles is concerned that the proposed intersection treatment may be unsafe, particularly with milk tankers and cattle trucks sweeping around the tight bend. She also raised concerns regarding poor visibility and increased noise from traffic.

In response, Ms Bisucci, on behalf of the Proponent, called evidence from Mr Sellars who provided estimates of traffic generated from both the currently proposed development and potential future development of the balance of the land (assuming Low Density Residential development). He concluded that the proposed development could generate up to 120 vehicle movements per hour in the peak, and that the proposed intersection treatment could easily expect to safely accommodate these projected traffic volumes.

Mr Sellars also concluded that the proposed intersection was, in a sense, overdesigned to cater for projected traffic volumes, but that the extended right and left turn lanes were justified to ensure safety for turning vehicles.

Council submitted that proposed DPO9 seeks to minimise access points to the main road. Council advised that VicRoads were sent drafts of the road layout in the pre-application phase and made suggestions to improve the design including a concrete splitter, but also commented that a full safety audit and detailed design assessment would need to be carried out prior to approval of any plans. Council added that *'any recommendation or condition made by VicRoads regarding the improvement of the design for nearby users must be taken up by Council prior to the approval of any planning permit and is subject to the provisions of Clause 56'*.

(ii) Discussion and Conclusion

The Panel accepts that the traffic projections prepared by Mr Sellars are appropriate and provided a reasonable estimate of the likely traffic that may be generated from future development. The volume of traffic generated by even the longer term development is not high and the Panel accepts the evidence of Mr Sellars that the proposed road network can easily accommodate the expected volumes.

The design of the intersection with Korumburra-Warragul Road is not strictly relevant to the current Amendment and is more a matter for a later approval process. Nevertheless, based on the preliminary design plans provided, the Panel is satisfied that a satisfactory layout can be achieved for the Korumburra-Warragul Road intersection and accepts VicRoads and Mr Sellars advice that this can be achieved in a safe manner.

3.2 Access, Parking and Drainage issues

(i) Submissions

Ms Fowles raised concerns that, with the proposed road widening in front of her property, the ability for her family to park cars on the road verge would be lost and that this would create a potential safety issue if required to reverse on to the road.

Ms Fowles is also concerned that drainage at the front of her property may be impacted by the intersection and road works.

(ii) Discussion and Conclusion

These are not directly matters for this Amendment process; however, the issues raised by Ms Fowles should be kept in mind in preparing the Development Plan and when the road and intersection design is being further developed. It may be possible to alter the design to preserve some of the road verge to allow safer manoeuvring of vehicles and potentially allow parking in front of the property.

The Panel is satisfied that the DPO Schedule that is part of this Amendment satisfactorily safeguards the impacts on neighbouring residents by requiring details of all infrastructure to be provided, including all road and drainage works. It is noted that the Development Plan and any subsequent planning permits are to be completed to Council's satisfaction. As part of discharging this duty, Council has a responsibility to ensure that all works are carried out in a proper manner that does not unreasonably adversely affect existing residents.

3.3 Other amenity impacts

(i) Submissions

Ms Fowles submitted that her family's quality of life may be affected by the close proximity of higher density development and the possible increased noise, overlooking and visual impact that may result.

Ms Bisucci submitted that decreased privacy would remain even if this Amendment was abandoned as the land neighbouring number 33 Korumburra-Warragul road is zoned appropriately for subdivision. She submitted that *'this being the case, and acknowledging that should the intended 30 lot subdivision proceed, this perception of loss of privacy could be exacerbated, design responses may mitigate some of these concerns such as screen planting or fence design, for example. While the proposal indicates that there could be 2 more dwellings neighbouring the current fence line, there are design responses that could be used to address these concerns.'*

(ii) Discussion and Conclusion

The Panel is satisfied that the requirements for the Development Plan contained in the DPO9, along with the normal planning permit application process, are designed to provide adequate protection of amenity of neighbouring residents.

4 The Proposed Planning Controls

4.1 The Proposed Zone

(i) Submissions

Both Council and the Proponent submitted that the GRZ is appropriate to apply to the site and that it will facilitate development in accordance with the Korumburra Structure Plan. The Proponent submitted that the application of the GRZ is appropriate in any analysis of the criteria set out in Practice Note 78 and that *'the GRZ strikes an appropriate balance between increasing housing opportunities which has regard to context, including any characteristics of the area.'*

(ii) Discussion and Conclusion

The application of the GRZ to the subject site is not challenged, and the Panel agrees that it is appropriate.

4.2 Removal of the ESO5

(i) Submissions

ESO5 (Areas Susceptible to Erosion) creates a permit trigger for some buildings and works with the following objectives:

- *To protect areas prone to erosion by minimising land disturbance and vegetation loss.*
- *To prevent increased surface runoff or concentration of surface water runoff leading to erosion or siltation of watercourses.*

It is proposed to remove the Overlay Schedule from the portion of the site to be rezoned to the GRZ, as more site specific controls will be applied through the proposed DPO Schedule.

The Proponent submitted that¹:

64. *The removal of ESO-5 should not be considered inconsistent with Clause 13 as:*

- *The overall schedule applies to a large area of land in the municipality and potentially requires some refinement;*
- *It remains on the remainder of the farming land where the land is steeper; and*
- *Will be dealt with through the DPO and through any Clause 56 analysis in any event.*

65. *The proposed DPO adequately provides controls for development on sloping land and consequently in our submission, ESO-5 is no longer necessary. This is evident in DPO-9 under the heading "Earthworks and Land Form".*

¹ Proponent Hearing submission

(ii) Discussion and Conclusion

The removal of the ESO5 from the portion of the site to be rezoned to GRZ was not challenged. The Panel notes that the ESO5 will continue to apply to the remainder of the site in the FZ. The Panel believes that, given the proposed controls set out in the DPO9, this is appropriate.

4.3 The Proposed DPO9

The primary mechanism for controlling future development on the subject site is the proposed Schedule 9 to the DPO. The proposed DPO9 was exhibited as part of the Amendment and the Proponent made submissions regarding the content. The content, drafting and extent of application of the DPO9 were discussed at some length at the Hearing and the Council and the Proponent were invited to provide their preferred version of the DPO9 to the Panel by 10 October 2014.

The following sections discuss the main issues in relation to the DPO9 and the Panel has included its preferred final form of the DPO9 as Appendix A to this report.

4.3.1 The Extent of the land to which DPO9 applies

(i) The Issue

The DPO9 is proposed to apply to all of 35 Korumburra-Warragul Road and a large proportion (but not all) of 65 Korumburra-Warragul Road, as shown in Figure 2. This would mean that the overlay would apply to both GRZ land and potential future LDRZ land. The issue is whether this is appropriate or whether the DPO9 should only apply to the proposed GRZ land.

(ii) Submissions

Council submitted that the overlay is intended to guide development of the entire lot should a full development scenario be proposed. Council submitted that the DPO9 had been proposed to apply to both the GRZ and LDRZ land to ensure that work required for the Development Plan could be co-ordinated over the entire site and the cross impacts on each site properly considered.

In his evidence, Mr Glossop supported the DPO over the entire site on the basis that the interface (between GRZ and LDRZ) can be considered and planned as a whole. Mr Glossop also gave evidence that coverage of the entire site by the DPO *'would send a signal that the land is earmarked for future development (which might be useful to abutting landowners) as well as ensuring that the conventional density residential is approved having regard to the future development of the balance of the land.'* He did, however, acknowledge that some qualification would be required in the DPO schedule to make clear that some requirements applied only to the LDRZ land, for example a wastewater management plan. He accepted that there were advantages and disadvantages of a broader DPO and acknowledged that the site *'could do without it'*.

In discussions at the Hearing, the Panel questioned the application of the DPO to the entire site on the basis that different development plan requirements would likely apply to the differently zoned parts of the land. After some discussion, it was generally agreed by Council

and the Proponent that, on balance, it may be better to restrict the current overlay to the GRZ land and apply a different DPO schedule to the LDRZ part of the land at the time of future rezoning.

(iii) Discussion

The Panel agrees that, on balance, it is better to apply the proposed DPO9 to just the GRZ land and consider a different overlay schedule if and when the remainder of number 65 Korumburra- Warragul Road is zoned LDRZ. In drawing this conclusion, the Panel notes that the requirements of the DPO schedule for the LDRZ land would likely need to include a land capability statement, particularly to assess the capability of the site to treat sewerage on site, and that this part of the site also includes a number of waterways that will require careful management. The GRZ part of the site, by contrast, will be connected to a reticulated sewer, is relatively flat and is only peripherally affected by one waterway. The requirements of development plans to apply to each portion of the site are therefore quite different, and it would be clumsy, and arguably unreasonable, to apply the same DPO requirements to both parts of the site.

The Panel notes Mr Glossop's evidence that applying the DPO to the whole site '*would send a signal that the land is earmarked for future development*' but believes that it is not appropriate to pre-empt such development in the absence of proper strategic consideration. That should be left to a future amendment.

(iv) Conclusion

The Panel concludes that the proposed DPO9 should be reduced to apply only to 35 Korumburra-Warragul Road and that part of 65 Korumburra-Warragul Road proposed to be zoned GRZ.

4.3.2 Content and Drafting of the DPO9

(i) The Issues

A number of issues were raised regarding the form and content of the DPO9 as discussed below.

(ii) Submissions, Evidence and Discussion

1.0 Requirement before a permit is granted

There was general agreement between Council and the Proponent that these requirements could be made more specific. The Panel has adopted the revised wording proposed by Council post-hearing.

2.0 Conditions and requirements for permits

The Panel raised some concerns that the items listed in the exhibition version of this clause were not of the nature of conditions and requirements for permits, but rather decision guidelines or development plan requirements.

Mr Glossop made similar comments in his expert evidence.

The final Council preferred post-hearing version of the DPO9 has substantially reduced the requirements in this clause and the Panel generally accepts the revised form as appropriate. The reference to building envelopes should, however, make reference to land abutting 33 Korumburra-Warragul Road; and the Panel believes that reference to a Section 173 (or similar) agreement should be retained.

3.0 Requirements for Development Plan

Staging

The final Council version of the DPO9 removes reference to a staged development plan. The Panel agrees on the basis that the DPO9 applies only to the GRZ land. While the development may still be staged, the overall development is relatively small and the development plan should not be staged.

Land use and subdivision

There was some discussion about the detail of this section, particularly in relation to surveillance and walking/cycling routes. The positions of the parties were not substantially different and the Panel believes the wording adopted by Council in its final version resolves any concerns.

Waterways

The reference to waterways is not required if the DPO only applies to the GRZ land.

Earthworks and Land Form

It was agreed that the term 'steeply sloping' should be defined. It was agreed that this should read 'land with a slope of more than 10%'.

There was some discussion about the appropriate trigger for the requirements for a geotechnical report. Other DPOs in South Gippsland adopt 20% or 15% slopes. In its final preferred DPO9, Council proposed a trigger of 15% to be consistent with the recently adopted Jumbunna Road DPO schedule (DPO7).

Infrastructure Services

The need to include a land capability statement requirement was discussed in the Hearing. The Panel believes tht this would only be required in the LDRZ portion of the land and therefore can be left out.

Open Space

The Panel accepts Council's proposed simplification of this section.

Flora and Fauna

The Panel accepts the Council's simplification of this section on the basis that there is no native vegetation on the GRZ part of the land.

Land Contamination

Ms Bisucci submitted that the requirement for a land contamination assessment was unwarranted as the land had not been used for any purpose other than farming and there

was no reason to suspect any contamination. She proposed a limited desktop assessment be required.

Council have proposed modified wording which appears to address this issue.

Cultural Heritage

Council removed the requirement for a Cultural Heritage Assessment from the final version of the DPO9 on the basis that it is an overly onerous requirement and there are no known areas of cultural significance on the land.

Process and Outcomes

Ms Bisucci submitted that it is not common for DPO schedules to include a requirement for community consultation. Mr Glossop, in his evidence, submitted that any consultation can be undertaken informally and that the requirement in the DPO should be removed.

Council initially submitted that it preferred to retain a reference to community consultation but in the final Council preferred version this has been removed.

The Panel agrees that the formal requirement for community consultation should be removed. In drawing this conclusion the Panel is mindful that such clauses can sometimes be confusing and imply review and appeal rights that in practice do not exist.

Provision of Infrastructure and Cost Apportionment

Council removed the requirement for this section on the basis that a Section 173 agreement has already been signed addressing infrastructure requirements.

The Panel understands that the Section 173 agreement has already been signed, but prefers that the reference be retained in the DPO schedule to record the intention. The Panel agrees with the Proponent that this is best recorded as a permit requirement.

4.0 Decision Guidelines

In the final version of the DPO9, Council removed the Decision Guidelines on the basis that: *'we found that the reference documents that were previously quoted were either mentioned in the provisions of the Planning Scheme or were outdated. In the interests of brevity, Council officers considered that the decision guidelines in cl 56 provisions would address any of the concerns we might have for the schedule.'*

The Panel accepts Council's position.

(iii) Conclusions

The Panel concludes that the proposed DPO9 should take the form as shown in Appendix A. The preferred version is based on the final Council post-hearing version but makes further changes in response to the issues discussed above and assumes that the DPO9 will only apply to GRZ land.

4.3.3 Recommendation

- 1. The Panel recommends that Amendment C96 to the South Gippsland Planning Scheme be adopted as exhibited subject to the following changes:**

- a) **Reduce the area of application of the proposed DPO9 to apply only to 35 Korumburra-Warragul Road and that part of 65 Korumburra-Warragul Road proposed to be zoned GRZ.**
- b) **Amend the form and content of the proposed Development Plan Overlay Schedule 9 as shown in Appendix A of this report.**

5 Two Zones Applying to One Lot

(i) The Issue

If adopted as exhibited, the Amendment will have the impact of applying two zones to the one lot, at least for a period until a subsequent subdivision permit is approved. The Panel notes that this is not regarded as good planning practice and should be avoided.

The Department of Transport, Planning and Local Infrastructure expressed concern in the authorisation letter that the proposed Amendment would result in the land at 65 Korumburra-Warragul Road being in two zones:

I note that the proposed amendment will result in the land at 65 Korumburra-Warragul Road being in two zones. While I understand this is consequence of the incremental urban expansion at Korumburra, this outcome does not accord with established planning practice. Consequently, I expect that Council would provide evidence of the measures it has put in place to ensure that all land in any lot is entirely in one zone, when it submits the adopted amendment for approval....

(ii) Submissions

Council acknowledged this, although noted 'Creating more than one zone in a lot, although not best planning practice, is not specifically prohibited.'

Council added that:

In this instance, the applicant has lodged a subdivision application with Council (2014/57) that subdivides the land along the proposed rezoning boundaries in order to avoid having a lot with two zones. It is intended that this permit will be approved at the outcome of the amendment process. This is a procedural matter only as the lot will be subdivided again in line with the final lot design and statement of compliance.

The split zoning issue becomes less of a strategic consideration because the land being covered with DPO9 has also been identified for urban expansion in the Structure Plan. It remains that more than one zone over one lot is not good planning practice but given;

- •the topography of the lot,
- •the zone identified for the remainder of the lot (Low Density Residential Zone); and
- •the extensive technical reporting that would be required to progress that stage of development,

rezoning the 3ha land parcel would achieve preferable planning outcomes for the development of Korumburra in line with clause 11 Settlement of the SPPF.

(iii) Discussion and Conclusion

The Panel understands that Council has not approved the current (2 lot) subdivision application on the basis that the land is currently in the FZ (Schedule 1) and therefore cannot

be subdivided into lots less than 80ha. The Panel, however, notes that the FZ provisions also say:

A permit may be granted to create smaller lots if any of the following apply:

- *The subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision.*
- *The subdivision is the re-subdivision of existing lots and the number of lots is not increased.*
- *The subdivision is by a public authority or utility service provider to create a lot for a utility installation.*

It is understood that the proposed 2 lot subdivision proposes to create two lots comprising:

- 35 Korumburra-Warragul Road plus 3ha of 65 Korumburra-Warragul Road as one lot; and
- The balance of 65 Korumburra-Warragul Road (22.6ha) as the second lot.

The proposed 2 lot subdivision could therefore be interpreted as a re-subdivision with no increase in the number of lots. If that is the case, the Panel sees no impediment to the subdivision proceeding ahead of the adoption of the rezoning. In making this comment, the Panel believes that the remaining portion of the land at 65 Korumburra-Warragul Road, at 22.6ha, remains as a substantial FZ lot and would not be compromised as a farming lot in the intervening period prior to possible future rezoning to Low Density Residential Zone.

The Panel understands Council's dilemma in not wanting to proceed with subdivision if the rezoning was ultimately not supported, however, in this case the consequences of the rezoning not being approved are not high as the remnant 'house lot' would still exist as it does now.

The Panel believes that, in hindsight, it may have been better to exhibit a Section 96A subdivision application in conjunction with this Amendment in order to resolve the issue.

(iv) Recommendation

- 2. The Panel recommends that, should Council adopt the Amendment, the proposed two lot subdivision application be approved prior to seeking the Minister's approval to the Amendment to ensure that all land within a lot is entirely within one zone.**

Appendix A Panel Preferred DPO Schedule 9

Changes from Council final post-hearing version shown in red

SOUTH GIPPSLAND PLANNING SCHEME

SCHEDULE 9 TO THE DEVELOPMENT PLAN OVERLAYDD/MM/YYYY
Proposed C96

Shown on the planning scheme map as DPO9

RESIDENTIAL GROWTH AREA (NORTH WEST KORUMBURRA)**1.0 Requirement before a permit is granted**DD/MM/YYYY
Proposed C96

A permit may be granted before a Development Plan has been prepared to the satisfaction of the Responsible Authority for a minor extension, minor addition or minor modification to an existing development, boundary realignment, agricultural activity, vegetation removal or any other use that does not affect the future orderly development of the area affected by the Development Plan Overlay.

2.0 Conditions and requirements for permitsDD/MM/YYYY
Proposed C96

Before deciding on an application to subdivide land, construct buildings, or carry out works, the Responsible Authority must consider, as appropriate:

- The requirement for building envelopes ~~or agreements to be registered on newly created titles on any plan of subdivision for lots that abut 33 Korumburra-Warragul Road.~~
- An appropriate mechanism to identify and apportion costs of land and services as development occurs, by way of Section 173 Agreement or alternative means.

3.0 Requirements for Development PlanDD/MM/YYYY
Proposed C96

The Development Plan must show / provide:

General Requirements

- How the development of the land occurs in an orderly manner having regard to essential services, open space and roads.
- The timing and staging of the subdivision of the land.
- The potential for further subdivision of individual lots to negatively impact neighbourhood character
- The interface between proposed and existing nearby developments.

Land use and subdivision

- Details of the interfaces with neighbouring uses of land
- Any noise mitigation requirements associated with proximity to the South Gippsland Highway and Korumburra - Warragul Road.
- The overall subdivision of the area, including where possible, the proposed size and density of allotments which provide opportunities for a diverse range of housing types.
- Street network that:
 - Limit the creation of new road access points onto Korumburra - Warragul Road
 - Support building frontages which promotes passive surveillance of the street network.
- A staging plan that demonstrates an efficient and orderly provision of infrastructure and services.

Earthworks and Land Form

- Where land with a slope of more than 10% exists on the site, the Development Plan shall detail how the proposed design responds to the topography and contours of the land and whether significant earthworks are likely to be required for subdivisions to ensure good development design outcomes are achieved.
- Where land exceeds a slope of 15% a geotechnical report must be prepared by an

SOUTH GIPPSLAND PLANNING SCHEME

appropriately qualified person demonstrating the suitability of the land for development. The report must provide sufficient detail to ensure environmental, access and amenity issues are appropriately addressed. The report should determine whether building envelopes or other controls are likely to be required at the subdivision stage.

Infrastructure Services

- An integrated Stormwater Management Plan that incorporates water sensitive urban design techniques and provides for the protection of natural systems, integration of stormwater treatment into the landscape, improved water quality, reduction/mitigation of run-off and peak flows including consideration of downstream impacts and how they may be affected by roadworks to neighbouring properties.

A comprehensive Traffic Impact Assessment that identifies:

- The pattern and location of the major arterial road network of the area including existing roads and the location and details of any required:
 - road widening
 - intersections
 - access points
 - pedestrian crossings or safe refuges
 - cycle lanes
- The pattern and location of any internal road system based on a safe and practical hierarchy that accounts for pedestrian and bicycle connections and crossing points.
- Identification of costs for infrastructure provision both onsite and offsite.

Open Space

- The location of any open space reserves and details of the provisions of building / works / equipment within the open space. Open space should be located on a flatter area of land and capable of easy drainage

Flora and Fauna

- In consultation with the Department of Environment and Primary Industries, a Flora and Fauna Assessment, prepared by a suitably qualified expert(s), which includes but is not limited to species surveys for Gippsland Giant Earthworm and measures required to protect the identified species.

Land Contamination

- An investigation by an appropriately qualified person is required, which considers the potential location and forms of land contamination resulting from previous land uses, as well as measures to address contamination in areas where sensitive land uses are proposed. The investigation must consider but not be limited to, agricultural chemical use, informal land dumping, industrial & mining activities.
- This can initially take the form of a limited desktop study but further detailed investigation may be required should there be sufficient concern of a risk to sensitive uses of the land, as determined by the Responsible Authority.

Process and Outcomes

An Implementation Plan must be submitted as part of the development plan, indicating the proposed staging of the development and timing of infrastructure provision.