



**AGENDA APPENDIX**  
**Council Meeting**  
**Wednesday 24 July 2013**

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.4 - PLANNING SCHEME AMENDMENT C77 - EASTERN DISTRICT URBAN DESIGN FRAMEWORKS - FINAL CONSIDERATION**

Appendix 1 – Planning Panel Victoria report on C77



*Planning and Environment Act 1987*

## **Panel Report**

South Gippsland Planning Scheme  
Amendment C77

**13 June 2013**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 153 of the Act

Amendment C77 to the South Gippsland Planning Scheme

A handwritten signature in dark ink, appearing to read 'Trevor', with a long, sweeping horizontal flourish extending to the right.

Trevor McCullough, Chair



## Amendment Summary

<b>The Amendment</b>	South Gippsland C77
<b>Purpose of Amendment</b>	<p>The Amendment applies to land within and adjoining the towns of Port Franklin, Toora, Welshpool, and Port Welshpool and the rural localities of Mt Best, Agnes and Hedley.</p> <p>The Amendment proposes to implement the recommendations of the South Gippsland <i>Eastern District Urban Design Frameworks (January 2012)</i> by introducing Objectives, Strategies and Actions for Implementation plus four Town Framework Plans into the Municipal Strategic Statement.</p> <p>The Amendment also makes changes to the application of zones and overlays and the <i>Eastern District Urban Design Frameworks (January 2012)</i> is added as a Reference Document.</p>
<b>The Proponent</b>	South Gippsland Shire Council
<b>Planning Authority</b>	South Gippsland Shire Council
<b>Exhibition</b>	<p>30 August 2012 to 28 September 2012.</p> <p>In response to a late submission to the to the Panel notification process, further notification was given to affected parties in relation to the proposed addition of 25 Welshpool Road, Toora to the Rural Activity Zone. Submissions closed on 12 March 2013 and two further submissions were received.</p>

## Panel Process

<b>The Panel</b>	Trevor McCullough
<b>Panel hearings</b>	<p>Directions Hearing 31 January 2013 at Foster</p> <p>Hearing 14 May 2013 at Foster</p>
<b>Site inspections</b>	31 January and 14 May 2013
<b>Appearances</b>	<ul style="list-style-type: none"> <li>• Ms Fiona Mottram and Mr Craig Lyon for South Gippsland Shire Council, who called expert heritage evidence from Mr David Helms.</li> <li>• Mr Allen Van Kuyk</li> <li>• Ms Cheryl Glowrey</li> <li>• Mr Rhett McLennan for Prom Country Aged Care</li> <li>• Ms J Trehwella of Counsel, instructed by Mr Bill Kee and appearing for Mrs Ellen Gilford, Mr Charles Wilson and Ms Susan Gilford</li> </ul>
<b>Submissions</b>	20 submissions were received as listed in Appendix A
<b>Date of this report</b>	13 June 2013

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# 1 The Proposal

## 1.1 Background to the proposal

Between 2010 and 2012, South Gippsland Shire Council undertook a process of consultation and review culminating in the approval of the *Eastern District Urban Design Frameworks (January 2012)* (the Frameworks) by Council in February 2012. The Frameworks provide guidance for the future development of the towns of Port Franklin, Toora, Welshpool and Port Welshpool, and the rural localities of Mt Best, Agnes and Hedley.

The Amendment seeks to implement the recommendations of the Frameworks into the Municipal Strategic Statement (MSS), make changes to the application of zones in the towns as recommended in the Frameworks, and add the Frameworks as a Reference Document into the Planning Scheme.

Currently the MSS only refers to the towns and small settlements in general terms, with no specific development guidance provided.

The Amendment process is summarised in the Table on the previous page.

## 1.2 Issues dealt with in this Report

The main issues for the Council were:

- A desire to provide development guidance for these localities, otherwise lacking in the current MSS;
- Implement the recommended modifications to zones in order to correct anomalies and indicate the clear intent for development in the towns and settlements;
- Provide clear boundaries and improved development certainty for each of the towns and settlements;
- Implement urban design guidelines that reflect the aspirations of the local communities; and
- Provide a program of actions to achieve the desired urban design outcomes.

The main issues for the submitters were:

- Objection to, and support for, heritage controls in Toora;
- Whether part of the land between 5479 and 5483 South Gippsland Highway, Agnes should be included in the proposed rezoning to Rural Living Zone(RLZ);
- Whether 25 Welshpool Road, Toora should be included in the Rural Activity Zone; and
- Other minor proposals to change the proposed zone boundaries.

The Panel notes that the vast majority of the proposed Amendment is not challenged, and a number of supporting submissions were received.

This Report deals with the issues under the following headings:

- Strategic Planning Context;
- Heritage Issues in Toora;
- Land between 5479 and 5483 South Gippsland Highway, Agnes; and
- Proposed zoning changes.

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## 2 Strategic Planning Context

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

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

### 2.1 Policy framework

#### (i) State Planning Policy Framework

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

Clause 11.02-1 Supply of urban land – The Amendment responds to this clause by providing clear directions on location where growth should occur, and what form development should take, in the towns and settlements that are the subject of the Amendment.

Clause 11.02-3 Structure Planning – The Amendment supports effective planning and management of land use and development by defining township boundaries and identifying urban design initiatives.

Clause 11.05-4 Regional planning strategies and principles – The Amendment enhances the identity and sustainability of the towns by more appropriately identifying land use and by adopting urban design actions into the planning scheme.

Clause 14.01 Agriculture – The Amendment places clear boundaries on township intrusion into farming land and rezones land to effectively provide buffers between urban and farming uses.

Clause 15.03- 1 Heritage conservation – The Amendment identifies the need for particular locations to be examined for possible future heritage controls.

Clause 16.02-1 Rural residential development – Consistent with this clause, the Amendment identifies some parcels of land on the edge of existing townships to be rezoned to the Low Density Residential Zone (LDRZ). Other, more isolated sites are identified as Rural Living Zone sites.

Clause 17.01 Commercial Development and Clause 17.02 Industry – The Amendment identifies land in townships to be consolidated for commercial and industrial activities.

#### (ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following sections of the MSS: Clause 21.04-1 - Environment and cultural heritage; Clause 21.04-2 - Economy; Clause 21.04-3 - Settlement; and Clause 21.04-15 - Transport and Infrastructure. Council submitted that the proposed Rural Activity Zone (RAZ) in Toora is consistent with local policy 22.10 - Rural Activity Zone Policy that requires *'that types of tourism activities to be promoted are to be primarily accommodation and low key activities in conjunction with agriculture'*.

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## 2.2 Planning scheme provisions

The following zone and overlay changes are proposed as part of the Amendment as presented by Council to the Panel Hearing. The Panel has annotated each item with commentary on the status of each proposed change. The proposed changes are also shown in the revised Zone and Overlay maps in Appendix B.

### (i) Port Franklin

Rezone small parts of land in residential lots in Tramway Street (18-20, 36-40 and 33-41 Tramway Street) from Farming Zone (FZ) to Township Zone (TZ) to correct zoning map anomalies that had resulted in small parts of existing titles being erroneously zoned FZ and consequently also dual zoned.

Delete Significant Landscape Overlay 3 (Corner Inlet Amphitheatre) (SLO3) for consistency with overlay application on urban-zoned land within the township boundary.

Rezone the Crown Land developed as Port Franklin Recreation Reserve (north-east corner of Tramway and Bowen Streets) from TZ to Public Park and Recreation Zone (PPRZ) to recognize the public land ownership by Department of Sustainability and Environment (DSE) and the public recreational use and development.

*There were no submissions opposing the amendments in Port Franklin.*

### (ii) Toora

Rezone both the 'Buckley Estate' (all Buckley Street lots plus 4860 South Gippsland Highway) and the lots fronting the north side of the South Gippsland Highway west of Downings Hill Road (4865-4905 South Gippsland Highway plus 9 Downings Hill Road) from FZ to Low Density Residential Zone (LDRZ). The reason for this amendment is to recognise existing circumstances of residential development on urban and low density urban lots with a level of services (reticulated water, road, electricity, telecommunications but no sewerage) and close proximity to town's services and facilities. *This was not opposed by any submitter and was not proposed to be changed post-exhibition.*

Delete Environmental Significance Overlay 5 – Areas Susceptible to Erosion (ESO5) and Significant Landscaped Overlay 3 (SLO3) from the parts where it applies. (i.e. Buckley Estate land and proposed RAZ land.) The reasons for this include: the land is not steeply sloping; is moderately developed for urban residential purposes; and would not be developed at a scale with potential to cause soil erosion or detract from the landscape and for consistency with overlay application on urban-zoned land within the township boundary. *As a result of submissions, Council sought to retain the ESO5 and SLO3 on the proposed RAZ land, as reflected in the amended maps on Appendix B. This was not opposed by any submitters.*

Rezone 2 Creamery Valley Road, 9 Welshpool Road (Toora Tourist Park), and parts of 4975 South Gippsland Highway from FZ to Rural Activity Zone (RAZ) to support options for current and future tourism use and development in a rural, scenic setting in close proximity to the town services and facilities and with highway frontage. *As a result of submissions, Council sought to change the boundaries of the RAZ land as shown in the amended zoning maps in Appendix B. This was not opposed by any submitters, and action has been taken to align lot boundaries with the zone boundary. Refer section 5.2 of this report.*

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Rezone 25 Welshpool Road (Prom View Lodge aged care) from Public Use Zone 3 (Health and Community) (PUZ3) to RAZ to support opportunities for future tourism use and development of the site after the current use ceases in the near future. *This change was added following a late submission from Prom Country Aged Care and was opposed in two submissions. Refer section 5.3 of this report.*

Rezone Toora Hall at 23 Gray Street from TZ to Public Use Zone 7 (Other Public Use) (PUZ7) to recognize the established community use of the site and ownership by Toora Community Hall Committee of Management. *No submissions were received on this proposal. The Panel, however, has raised some issues regarding the appropriateness of the PUZ. Refer section 5.1 of this report.*

Rezone Toora Primary School sites at 5 Harriet Street (both sides of Gray Street) from TZ to Public Use Zone 2 (Education) (PUZ2) to recognize the land use and public ownership (Department of Education). *No submissions were received on this proposal.*

Rezone 4 Cunningham Street from TZ to Public Park and Recreation Zone (PPRZ) to recognize public recreation use and development (outdoor heated pool and tennis courts) and Council ownership. *No submissions were received on this proposal.*

Rezone Crown land on south side of Victoria Street (comprising rail trail, Sagasser Park, former railway easement parkland and Toora Bowls Club) from TZ to PPRZ to recognize public recreation use and development and public ownership (DSE). *Following submissions, Council sought to remove the property at 60 Victoria Street from the area to be rezoned as it is in private ownership. This is shown on the amended maps in Appendix B. See section 5.4 of this report.*

Rezone a small section of road reserve south of the railway easement from TZ to Industrial 1 Zone (IN1Z) to fix a mapping inconsistency. *This was queried in submissions but not altered. See section 5.4 of this report.*

Delete Environmental Significance Overlay 3 (Coastal Settlements) (ESO3) from IN1Z land south of Victoria Street (including land south of Beale Road) as application is 'blanket' style and site is not in a natural coastal environment or constrained by environmental factors. Site is variously developed for industrial use, recreational use and agriculture (grazing/pasture). The deletion is also consistent with overlay application on urban-zoned land within the township boundary. *No submissions were received on this proposal.*

### **(iii) Welshpool**

Rezone the land (lot 1 TP 223172) between Welshpool Primary School and the railway easement from FZ to PUZ2 to recognize the site's educational land use and the public ownership (Department of Education). Delete the SLO3 from the above site for consistency with land within the township boundary.

Rezone a narrow strip of land at 5970 South Gippsland Highway (Lot 1 TP 380602) on the primary school's east boundary from PUZ2 to FZ to fix a zoning map anomaly of land in private ownership. Apply SLO3 to the above land for consistency with the overlay's application to FZ land in this identified landscape.



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Rezone two small titles on south-east corner of South Gippsland Highway and Port Welshpool Road from TZ to PPRZ that comprise part of the park to recognize existing use and public ownership (Council).

Rezone land east of 55 Main Street to 6085 South Gippsland Highway inclusive from FZ to LDRZ (Where land at 6065 South Gippsland Highway is part of a large title used for agriculture rezone to a depth of approximately 56 metres in line with adjoining residential lots). Reasons being to recognise existing residential development, lot sizes and capability (2,000 and 4,000 sqm), proximity to town, and services (sealed road access, electricity, telecommunications, and reticulated water but outside sewer district). Delete SLO3 from above land for consistency with overlay application on urban-zoned land within the township boundary.

*There were no submissions opposing the amendments in Welshpool.*

#### **(iv) Port Welshpool**

Rezone the precinct on the north-east corner of Port Welshpool Road and Lewis Street from IN1Z to TZ with the intention of encouraging a comprehensive, tourism-related development close to Long Jetty, for improved amenity with adjoining developed TZ land and in recognition the long term lack of demand for industrial use. (Council notes there is extensive vacant IN1Z within 2km on Port Welshpool Road and at nearby Barry Beach.) The rezoning is linked to the proposed new Clause 21.04-14 Strategy *“Encourage medium-scale tourism, compatible with any environmental constraints, in the precinct in the Township Zone in the vicinity of Long Jetty at Port Welshpool”* and Action for implementation *“Develop and implement a Design and Development Overlay or similar control for the precinct on the north-east corner of Port Welshpool Road and Lewis Street (1-9 Lewis Street) Port Welshpool.”* *No submissions were received on this proposal.*

Rezone the Crown land at 2 and 6 Port Welshpool Road (north-west corner of Port Welshpool Road and Bowling Club Road) from TZ to PPRZ to recognise the public land ownership (DSE), the use and development of part of the site for Long Jetty Caravan Park and Corner Inlet Yacht Club, and the future land use change of the area currently occupied by Gippsland Ports. *Council received an opposing submission in relation to this proposal but no change is proposed. Refer section 5.5 of this report.*

#### **(v) Mt Best**

Rezone 5 Mt Best – Tin Mine Road from FZ to PUZ7 to recognize the site’s development with Mt Best Hall and tennis courts, and its ownership by Mt Best Community Hall Inc. *No submissions were received on this proposal. The Panel, however, has raised some issues regarding the appropriateness of the PUZ. Refer section 5.1 of this report.*

#### **(vi) Agnes**

Rezone the subdivision from 5465 to 5495 South Gippsland Highway (east of Agnes River Road) from FZ to Rural Living Zone (RLZ) to recognize existing rural living development located on the highway at Agnes. The lots are a low residential density size, flat, have reticulated water, sealed road frontage, electricity and telecommunication services but are outside of a sewer district and isolated from existing town services and facilities. The settlement’s Highway frontage, surrounding agricultural district and proximity to an

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entry/exit point of the Great Southern Rail Trail when it has been extended makes it conditionally suitable for the limited range of Section 1 and 2 retail and other land uses. *The application of the RLZ to the land between 5479 and 5483 South Gippsland Highway has been challenged by two submitters. As a result Council sought to exclude this land from the rezoning and leave it as FZ. This in turn has been challenged by other submitters. Refer to Chapter 4 of this report.*

**(vii) Hedley**

Rezone private land used for agriculture on the north side of the South Gippsland Highway east of Hodgsons Road (located both north and south of the former railway station) from PUZ 7 to FZ to correct a mapping anomaly.

Rezone six lots on the south side of the South Gippsland Highway east of Todds Road from PUZ 7 to Public Conservation and Resource Zone (PCRZ) to reflect mapping anomaly and the existing circumstances of public ownership (DSE) and established native vegetation.

Apply SLO3 to the above rezoned sites for consistency with surrounding land.

*No submissions were received in relation to the amendments in Hedley.*

## **2.3 Other planning strategies**

The South Gippsland Rural Land Use Strategy sought to protect agricultural land from ad-hoc encroachment by non-agricultural activities. Amendment C77 also seeks to identify land where the Rural Activity Zone (RAZ) may be appropriate where rural based commercial and/or tourism activities would be appropriate.

Council is currently developing a Housing and Settlement Strategy. Council advised that the Strategy will not revisit the urban design frameworks for the towns and settlements that are the subject of this Amendment, but the Strategy will address the old crown subdivisions in Port Franklin and Hedley. This will address some of the recommended actions in the Frameworks report.

## **2.4 Ministerial Directions and Practice Notes**

The Amendment is consistent with DPCD *Practice Note 37 – Rural Residential Development* in the application of LDRZ and RLZ to appropriate locations.

## **2.5 Strategic Assessment**

The Panel notes that no submitters have challenged the strategic application of the Amendment, nor the proposal to include the Frameworks as a Reference Document in the Planning Scheme.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework and that the proposed changes to the application of zones are consistent with policy and strategy.

The Panel concludes that the form of the Amendment is appropriate subject to the further discussion of the issues contained in the following Chapters.

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## **2.6 Recommendation**

**The Panel recommends that Amendment C77 to the South Gippsland Planning Scheme be approved including the post-exhibition changes proposed by Council as shown in Appendix B, subject to the further recommendations in Chapters 3, 4 and 5 of this report.**

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## 3 Heritage Issues in Toora

### 3.1 The Issue

The Amendment introduces a new clause 21.04-4 into the MSS that has strategies and actions for implementation that refer to the heritage character of Toora. Some submitters have objected to this reference.

### 3.2 Evidence and Submissions

Ms Irene Spooner (Submission 13) objected to a Heritage Overlay in Toora, arguing that decisions about buildings should be made by the owners and not taken away as would be the case if an overlay was implemented.

Council submitted that Mrs Spooner may have misunderstood the Amendment. Council submitted that the Amendment does not introduce an overlay, but rather simply identifies the strategic intent to retain the existing character of historic buildings, in particular along Stanley Street, Toora, and investigate the application of a Heritage Overlay to relevant properties.

Council pointed out that any such further work would require consultation with owners, exhibition of any proposed overlay and that the process would provide ample opportunity for public input.

Council called expert evidence from Mr David Helms on why Toora, and Stanley Street in particular, had been specifically identified in the proposed new clause. Mr Helms gave evidence that Toora has a greater concentration of heritage properties in one place and justified the investigation of appropriate controls. In evidence, Mr Helms proposed a number of minor changes to the wording of the proposed clause 21.04-4 aimed at improving the clarity of the work to be done.

In response to these suggestions, Council submitted the following revised wording relating to heritage in clause 21.04-4:

*9<sup>th</sup> dot point under Strategies*

- ~~Retain the existing heritage character, design and built form of historic buildings~~ Conserve and enhance heritage places, in particular along Stanley Street Toora, in recognition of their contribution to the overall image of the Eastern District towns and localities.

*4<sup>th</sup> dot point under Actions for implementation*

- *Undertake a review and implement the recommendations of the South Gippsland Heritage Study (2004) for the Eastern District towns and localities. As part of the Heritage Review, investigate application of a ~~precinct based~~ Heritage Overlay to Stanley Street properties ~~(from the Gray Street intersection to the Victoria Street intersection)~~ to protect and enhance the heritage character of Toora's Town Centre.*

Ms Cheryl Glowrey, in her presentation to the Panel, and in her written submission (No. 17), submitted that she supports the inclusion of the reference to action on heritage in Toora.

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She submitted that the town had a rich history in the dairy industry and that a Heritage Overlay should be pursued in order to prevent buildings being destroyed. She submitted that the heritage buildings, properly restored, would provide a tourism attraction for the town.

### 3.3 Discussion and conclusions

The Panel notes that the proposed wording in the MSS merely proposes '*investigate application of a Heritage Overlay*' and therefore does not commit to any controls being imposed without proper consultation and a future amendment process.

The Panel accepts the evidence of Mr Helms that the nature of the buildings in Toora warrants specific reference in the MSS and concludes that the clause is appropriate. The Panel accepts that the changes proposed by Council are more reflective of the general nature of the intent to investigate heritage controls. The Panel also notes that the inclusion of these words in the MSS do not guarantee that a future process will implement a Heritage Overlay, and any future controls should follow a proper consultation and submission process.

### 3.4 Recommendations

The Panel recommends:

**Adopt the proposed new clause 21.04-4 in the South Gippsland Planning Scheme subject to the following changes:**

**9<sup>th</sup> dot point under 'Strategies'**

- ~~Retain the existing heritage character, design and built form of historic buildings~~ **Conserve and enhance heritage places**, in particular along Stanley Street Toora, in recognition of their contribution to the overall image of the Eastern District towns and localities.

**4<sup>th</sup> dot point under 'Actions for implementation'**

- Undertake a review and implement the recommendations of the South Gippsland Heritage Study (2004) for the Eastern District towns and localities. As part of the Heritage Review, investigate application of a ~~precinct-based~~ **Heritage Overlay to Stanley Street properties (from the Gray Street intersection to the Victoria Street intersection)** to protect and enhance the heritage character of Toora's Town Centre.

## 4 Land between 5479 and 5483 South Gippsland Highway, Agnes

### 4.1 The Issue

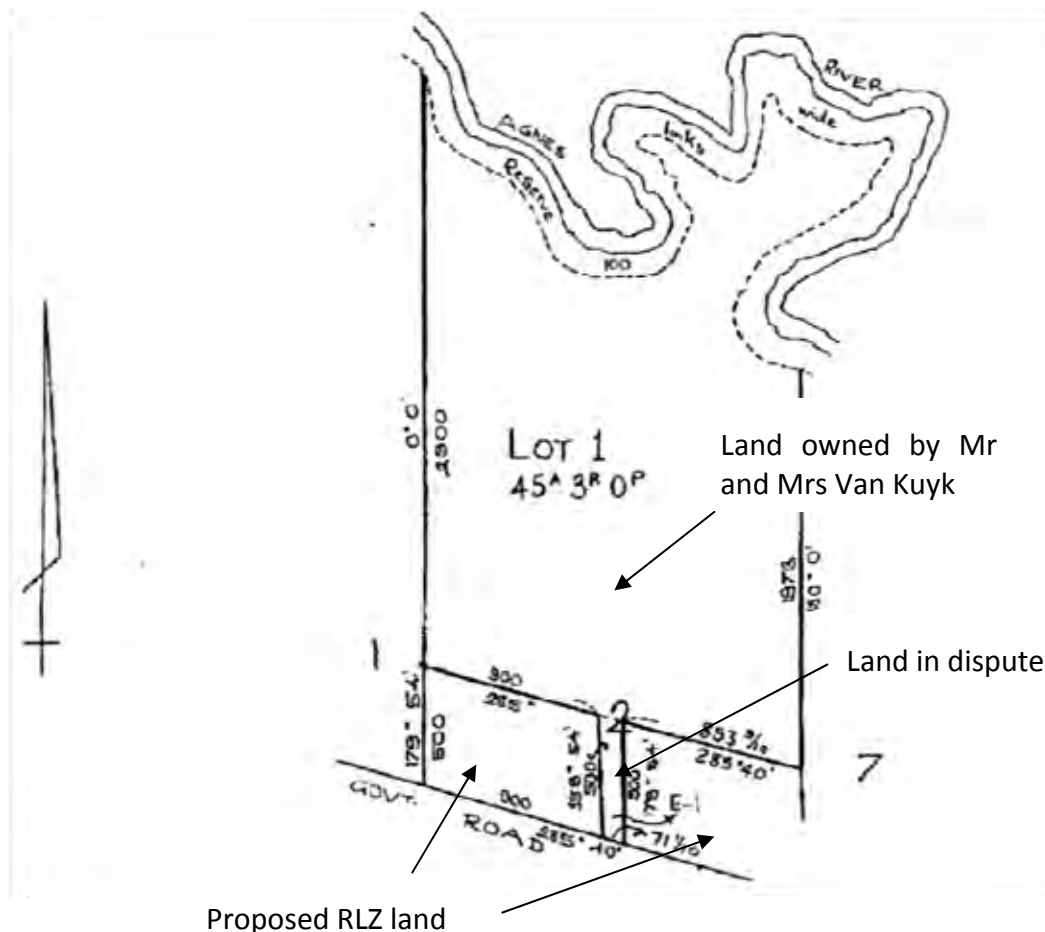
The Amendment proposes to rezone land from 5465 to 5495 South Gippsland Highway, Agnes from the Farming Zone to Rural Living Zone to recognise the existing rural living subdivision and development on the lots.

The ownership of the 'road' between 5479 and 5483 South Gippsland Highway is disputed. This affects whether or not it is deemed to be part of a larger farm lot to the north of the proposed RLZ area and therefore not appropriate to include in the RLZ.

### 4.2 Submissions

Mr and Mrs Van Kuyk (Submission 3) contend that the land is part of the larger farming Lot 1 TP848118, which they took possession of in early 2012. They submitted that the strip of land should be removed from the land to be zoned RLZ as it would result in two zones being applied to the same title. They also wish to retain the future right to utilise the 'road' to connect land that they own to the north and south of the South Gippsland Highway.

Figure 1 Extract of title details Lot 1 TP848118



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Ms Trehwella, representing Mrs Ellen Gilford (Submission 14) and Mr Charles Wilson and Ms Susan Gilford (Submission 15), submitted that Mrs Ellen Gilford has had exclusive possession of the land for the past 22 years and tabled an 'Assignment of Possessory Rights' deed signed in 1991 applying to the disputed strip of land. In her submission Ms Trehwella acknowledged that Mr and Mrs Van Kuyk are the current registered proprietors of the land.

Mrs Gilford has lodged an adverse possession application with the Titles Office and this is currently under consideration.

Ms Trehwella submitted that the strip of land should be included in the land to be rezoned, as to remove it would disadvantage her client and would result in a poor planning outcome with two areas of RLZ separated by a narrow strip of FZ land.

Council initially exhibited the entire parcel of land from 5465 to 5495 South Gippsland Highway as to be rezoned to the RLZ. In response to Mr and Mrs Van Kuyk's submission, Council then modified the map to exclude the land between 5479 and 5483 South Gippsland Highway.

At the Hearing, Council suggested that the Amendment be split and that a decision on the RLZ rezoning at Agnes be deferred until the outcome of the adverse possession application is known.

### **4.3 Discussion**

The Panel believes it is poor planning to have two zones applying to the one lot. This position is supported in the *Manual for the Victoria Planning Provisions 1996* published by the then Department of Infrastructure as a guide to the preparation of new format planning schemes and the contents and concepts of the Victoria Planning Provisions. With respect to placement of zone boundaries the Manual states the following:

*The VPP does not contain special provisions for land in two zones. Zone boundaries should therefore align with title boundaries or other defined features such as road centrelines or watercourses, unless there is a deliberate reason not to.*

The Panel is of the view that there is a clear intent as expressed in the Manual to avoid creating a situation where land is in two zones. Although instances of land being in more than one zone are not unknown, the Panel considers that this would be an unnecessary complication, and does not believe that sufficient argument has been provided that there is a deliberate reason to apply two zones to the land in question.

The Panel believes that it is clear that the land in question is technically in the ownership of Mr and Mrs Van Kuyk at the present time but acknowledges the current application by Mrs Gilford for adverse possession.

### **4.4 Conclusions**

The Panel concludes that if there were time pressures for this component of the Amendment to be decided upon now, then the preferred action would be to exclude the disputed land between 5479 and 5483 South Gippsland Highway from the land to be rezoned.

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The Panel, however, agrees that the current application for adverse possession is relevant as, if successful, it would have the ultimate impact of creating a separate lot and therefore remove the technical planning practice reason for not including the land in the rezoning.

The Panel therefore agrees that Council's suggestion of separating the Amendment into parts has merit and a decision on this part of the amendment should be deferred until the adverse possession claim is resolved.

If the claim is successful, the Panel believes the disputed strip of land should be included in the rezoning. If the claim is unsuccessful and the land remains part of the larger farming lot, the land should be excluded from the rezoning.

#### **4.5 Recommendations**

**The Panel recommends that Council:**

**Separate the proposed RLZ rezoning at Agnes from the balance of the Amendment and defer a decision on that part of the Amendment until such time as the current adverse possession application relating to the land between 5479 and 5483 South Gippsland Highway, Agnes is resolved.**

- **If the adverse possession claim is successful, the Panel recommends that the disputed strip of land should be included in the rezoning.**
- **If the claim is unsuccessful and the disputed land remains part of the larger farming lot, the Panel recommends that the land should be excluded from the rezoning.**



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## 5 Proposed zoning changes

### 5.1 Toora Hall and Mt Best Community Hall

#### (i) The Issue

The Amendment proposes to rezone the Toora Hall from the Township Zone (TZ) to Public Use Zone 7 (PUZ7) and the Mt Best Community Hall from Farming Zone (FZ) to PUZ7.

At the Hearing it was noted that in both cases the land is no longer owned by Council and has been transferred to the respective hall committees, both of which are incorporated bodies.

This raises some questions regarding the appropriateness of applying the PUZ to what is now privately owned land.

#### (ii) Submissions

Council submitted (in further correspondence provided following the Hearing) that the PUZ7 rezoning should continue and referred to *DPCD Practice Note 2 – Public Land Zones June 2011* (PN2).

Council submitted that, in both cases, the land fits the PN2 definition of public land as ‘*land otherwise used for a public purpose*’ and that, by association, the incorporated committees should be considered as the ‘public land manager’. Council further submitted that each site would benefit from the flexibility of the PUZ7 as no planning permit would be required for works on the land. Council notes that, in the case of Mt Best, a place of assembly used more than 10 times per calendar year is a section 3 (prohibited) use, although existing use rights will apply.

Council submitted that the proposed rezoning should apply in order to provide flexibility to the hall committees to be able to extend or renovate and be exempt from the surrounding zone provisions.

#### (iii) Discussion and conclusions

The Panel interprets PN2, as it relates to this land, effectively has three tests:

1. Is the land public land?
2. Is there some level of flexibility, protection or exemption required that is different from the surrounding zone provisions?; and
3. Is the surrounding (or in this case existing) zone appropriate to retain?

With regard to the first of these questions, the Panel is not convinced that the land is public land. The only definition in PN2 that could apply is ‘*land otherwise used for a public purpose*’. ‘*Public purpose*’ is, in turn, defined in the *Planning and Environment Act 1987* as including any purpose for which land may be compulsorily acquired under any Act to which the *Land Acquisition and Compensation Act 1986* applies. The *Local Government Act 1989* at section 187 states: ‘*A Council may purchase or compulsorily acquire any land which is or may be required by the Council for or in connection with, or as incidental to, the performance of its functions or the exercise of its powers*’ and the *Land Acquisition and Compensation Act 1986* applies in these situations. The Panel does not, however, think that this provision can

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be applied for a Council to compulsorily acquire land for another incorporated body to operate a place of assembly. The Panel therefore concludes that the land is not public land. The Panel also does not agree that the committees are public land managers.

Even if this interpretation is not correct, the Panel does not agree with Council that there is a need to provide the hall committees with the flexibility to extend or renovate without the need to apply for a planning permit.

In the case of the Toora Hall, the land is in the Township Zone and is surrounded by residential dwellings. The Panel is of the view that any extension or intensification of the use at the hall should be exposed to the same level of planning controls as surrounding properties. If Council is concerned that requiring a planning permit is onerous, it is within their control to assist the committee through the permit process. The Panel concludes that there are no disadvantages in having the existing TZ continue to apply to the Toora Hall land.

In the case of the Mt Best Community Hall the surrounding zone is the FZ. The Panel notes that the proposed new Farming Zone as recently exhibited shows Place of Assembly as a section 2 (permit required) use. As the new zones are a seriously entertained document the Panel believes it is appropriate to take them into account and the Panel therefore concludes that there are no disadvantages in having the existing FZ continue to apply to the Mt Best Community Hall land.

Overall, the Panel believes that the tests set out in PN2 are not met and the land at the Toora Hall and the Mt Best Community Hall should not be rezoned to PUZ7. The existing zones in both cases should be retained.

## **5.2 Rural Activity Zone – 4975 South Gippsland Highway, Toora**

### **(i) The Issue**

What is the most appropriate boundary of the proposed RAZ in the vicinity of 4975 South Gippsland Highway, Toora and what overlays should apply?

### **(ii) Submissions**

As exhibited, the area proposed as RAZ did not include Lot 2 TP845371. The owner of the land, Mr Chapman (Submission 9) requested that all of this lot be included in the RAZ. After discussion between the submitter and Council it was agreed that the lot should be subdivided to separate the steeper land to the north from the relatively flat land in the southern portion of the lot, and apply the RAZ to the southern portion only. Council provided evidence that a planning permit for the subdivision was granted in 2012.

The Amendment, as exhibited, shows the removal of the Environmental Significance Overlay Schedule 5 (ESO5) and Significant Landscape Overlay Schedule 3 (SLO3) from the land to be rezoned RAZ. Council has reconsidered this proposal and now considers it appropriate that those controls continue to apply to development on the proposed RAZ land.

### **(iii) Discussion and conclusions**

The proposed zone boundary is altered to align with the new lot boundary as shown in Appendix B. No submissions were received opposing this boundary change and the Panel agrees that this is a sensible 'squaring-off' of the area to which the RAZ applies.

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The Panel also agrees with Council's reasons for retaining the existing ESO5 and SLO3 on the RAZ land. This change has also been included in the revised overlay maps included in Appendix B.

### **5.3 25 Welshpool Road, Toora**

#### **(i) The Issue**

What is the most appropriate zone to apply to 25 Welshpool Road, Toora?

#### **(ii) Submissions**

25 Welshpool Road was not initially included in the land proposed to be zoned RAZ. It is currently zoned PUZ3 and is occupied by Prom Country Aged Care. Prom Country Aged Care (Submission 18) submitted that they intended to cease the operation of the aged care facility currently operating on the site and requested that it be included in the land to be zoned RAZ.

This was objected to by the Toora Primary School (Submission 19) and the Toora Primary School Council (Submission 20) who both submitted that the site should remain as a public facility.

Mr McLennan, representing Prom Country Aged Care at the Hearing, submitted that they would also like to see some ongoing community use of the site and would be seeking a buyer that could provide a service or business that would benefit the community. He suggested that Council may wish to split the Amendment and defer a decision on 25 Welshpool Road until a future buyer is determined.

Council indicated in the Hearing that this would be an acceptable approach.

#### **(iii) Discussion and conclusions**

The Panel is supportive of the proposal to split the Amendment and defer consideration of the most appropriate zoned for 25 Welshpool Road, Toora. This would seem to acknowledge the concerns raised in submissions. The Panel believes that RAZ would be an appropriate zone if the land is ultimately no longer in public ownership.

### **5.4 Public Land and Industrial zones, Toora**

#### **(i) The Issue**

Are the proposed public land and industrial zone amendments in Toora appropriate?

#### **(ii) Submissions**

Mr Condron (Submission 1) requested that land at 60 Victoria Street, Toora not be included in the land to be rezoned from TZ to Public Park and Recreation Zone (PPRZ) as it is in private ownership and has a dwelling on it. Council accepted this and sought to amend the zone map accordingly, as shown in Appendix B.

There was some initial confusion expressed by the Toora Railway Reserve Parkland Development Advisory Committee (Submission 7) about the intent of the rezoning of part of

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the road reserve south of the rail reserve to Industrial 1 Zone. This was clarified and the submitter accepts the proposed rezoning.

**(iii) Discussion and conclusions**

The Panel concludes that 60 Victoria Street, Toora should be removed from the area to be rezoned to PPRZ.

## **5.5 Port Welshpool**

**(i) The Issue**

Is the proposal to rezone the Crown land at 2 and 6 Port Welshpool Road (north-west corner of Port Welshpool Road and Bowling Club Road) from TZ to PPRZ appropriate?

**(ii) Submissions**

Council submitted that the rezoning was proposed to recognise the public land ownership, the use and development of part of the site for Long Jetty Caravan Park and Corner Inlet Yacht Club, and the future land use change of the area currently occupied by Gippsland Ports.

Mr Sathongnot (Submission 2) raised issues with regard to future access to 72 Ross Street.

**(iii) Discussion and conclusions**

The issues raised by the submitter are not relevant to the Amendment and should be discussed with Council separately.

## **5.6 Recommendations**

**The Panel recommends the following changes to the Amendment:**

- **Delete the proposed rezoning of the Toora Hall land to PUZ7 and retain the existing TZ.**
- **Delete the proposed rezoning of the Mt Best Community Hall land to PUZ7 and retain the existing FZ.**
- **Adopt the changed RAZ zone boundaries in Toora as shown in the revised zone maps in Appendix B.**
- **Retain the existing ESO5 and SLO3 on 2 Creamery Valley Road, 9 Welshpool Road and part 4975 South Gippsland Highway as shown in the revised overlay maps in Appendix B.**
- **Separate the proposed rezoning of 25 Welshpool Road, Toora from the balance of the Amendment and defer a decision on that part of the Amendment until such time as the future use of the land is known.**
- **Remove 60 Victoria Street, Toora from the area to be rezoned to PPRZ.**

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## 6 Consolidated recommendations

The Panel recommends that Amendment C77 to the South Gippsland Planning Scheme be approved, including the further post-exhibition changes proposed by Council as shown in Appendix B, subject to the following further recommendations:

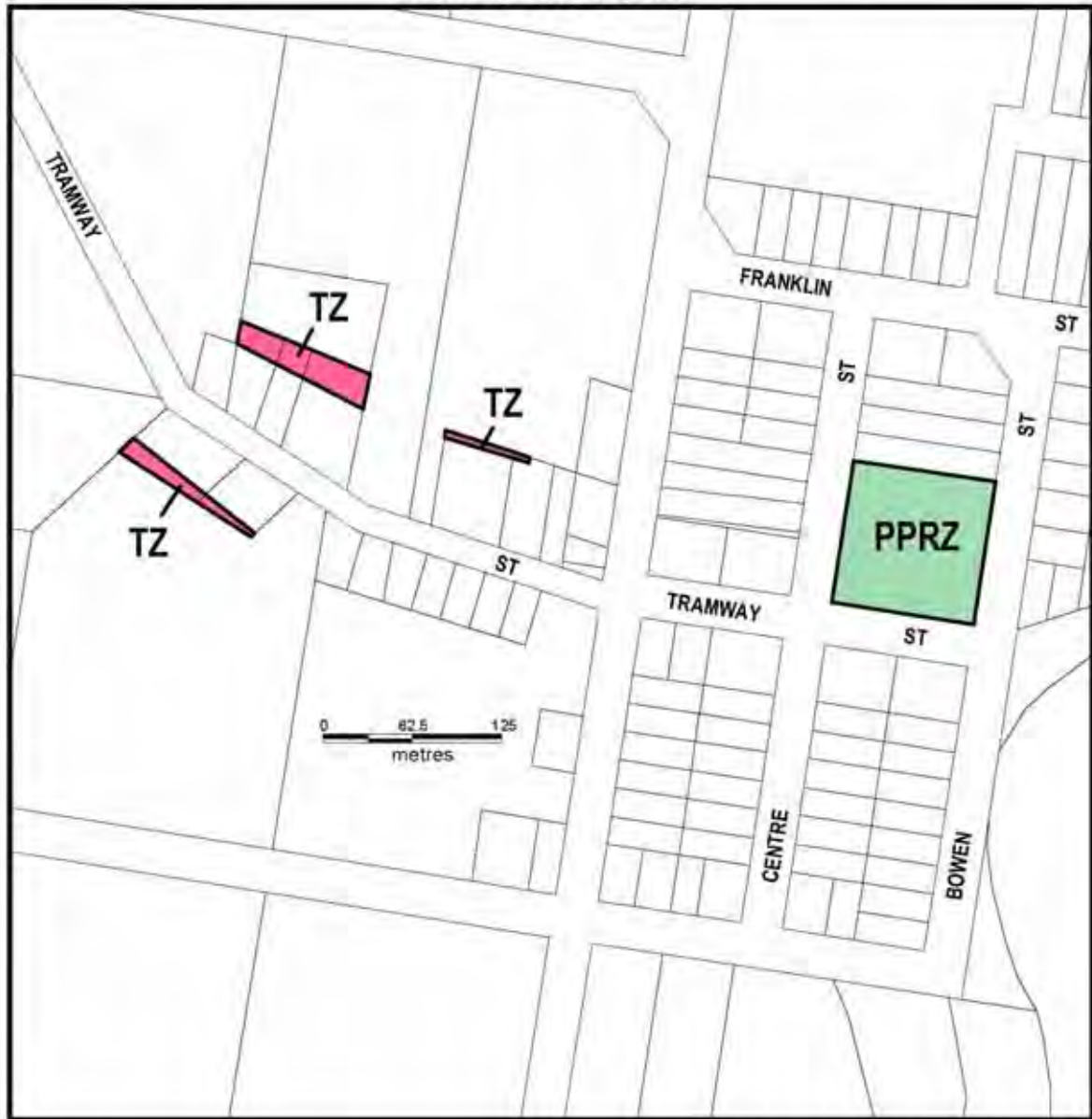
1. Adopt the proposed new clause 21.04-4 in the South Gippsland Planning Scheme subject to the following changes:
  - 9<sup>th</sup> dot point under 'Strategies'
    - ~~Retain the existing heritage character, design and built form of historic buildings~~ Conserve and enhance heritage places, in particular along Stanley Street Toora, in recognition of their contribution to the overall image of the Eastern District towns and localities.
  - 4<sup>th</sup> dot point under 'Actions for implementation'
    - Undertake a review and implement the recommendations of the South Gippsland Heritage Study (2004) for the Eastern District towns and localities. As part of the Heritage Review, investigate application of a ~~precinct-based~~ Heritage Overlay to Stanley Street properties ~~(from the Gray Street intersection to the Victoria Street intersection)~~ to protect and enhance the heritage character of Toora's Town Centre.
2. Separate the proposed RLZ rezoning at Agnes from the balance of the Amendment and defer a decision on that part of the Amendment until such time as the current adverse possession application relating to the land between 5479 and 5483 South Gippsland Highway, Agnes is resolved.
  - If the adverse possession claim is successful, the Panel recommends that the disputed strip of land should be included in the rezoning.
  - If the claim is unsuccessful and the disputed land remains part of the larger farming lot, the Panel recommends that the land should be excluded from the rezoning.
3. The Panel recommends the following changes to the Amendment:
  - Delete the proposed rezoning of the Toora Hall land to PUZ7 and retain the existing TZ.
  - Delete the proposed rezoning of the Mt Best Community Hall land to PUZ7 and retain the existing FZ.
  - Adopt the changed RAZ zone boundaries in Toora as shown in the revised zone maps in Appendix B.
  - Retain the existing ESO5 and SLO3 on 2 Creamery Valley Road, 9 Welshpool Road and part 4975 South Gippsland Highway as shown in the revised overlay maps in Appendix B.
  - Separate the proposed rezoning of 25 Welshpool Road, Toora from the balance of the Amendment and defer a decision on that part of the Amendment until such time as the future use of the land is known.
  - Remove 60 Victoria Street, Toora from the area to be rezoned to PPRZ.

## Appendix A List of Submitters

No.	Submitter	Represented by
1	Mr Michael Condron	
2	Mr Hatsady Sathongnot	
3	Mr Allen Van Kuyk	
4	South Gippsland Water	
5	Ms Lynda and Mr Geoff Meaney	
6	Department of Sustainability and Environment	
7	Toora Railway Reserve Parkland Development Advisory Committee	
8	EPA Victoria	
9	Mr Bruce Chapman	
10	West Gippsland Catchment Management Authority	
11	Mr Roger Harvey	
12	Port Welshpool Working Group	
13	Irene Spooner	
14	Ms Ellen Gilford	Mr Bill Kee
15	Mr Charles Wilson and Ms Susan Gilford	Mr Bill Kee
16	Mr Allen and Ms Lisa Van Kuyk	
17	Ms Cheryl Glowrey	
18	Prom Country Aged Care Inc	
19	Toora Primary School	Ms Barbara Purvis, Principal
20	Toora Primary School Council	Ms Tracey Van Kuyk, President

# Appendix B Final amended zone and overlay maps

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 28

## LEGEND

- TZ TOWNSHIP ZONE
- PPRZ PUBLIC PARK & RECREATION ZONE

## AMENDMENT C77

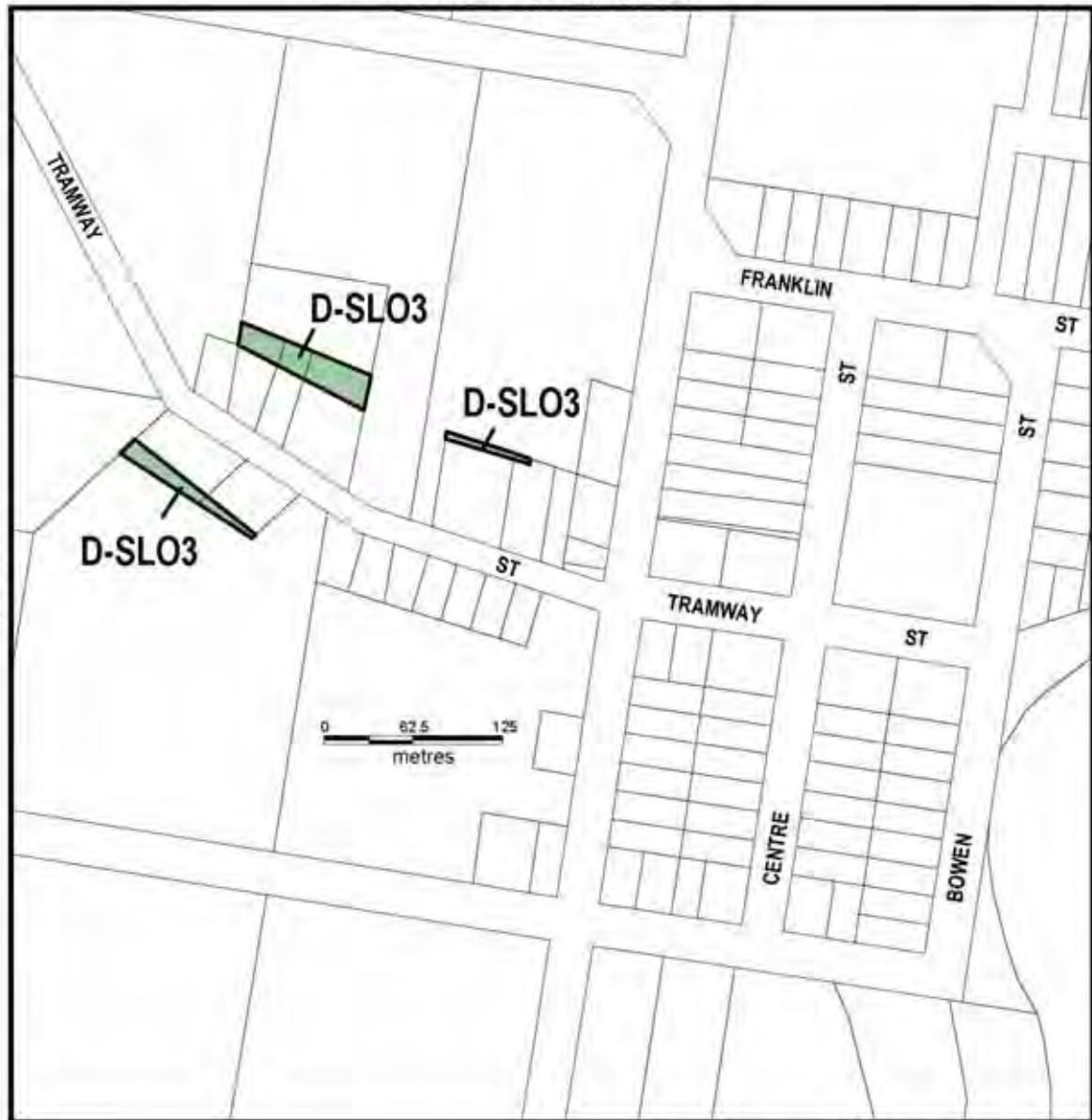
### Port Franklin

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# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 28SLO

## LEGEND

-  D-SLO3 AREA TO BE DELETED FROM A SIGNIFICANT LANDSCAPE OVERLAY

## AMENDMENT C77

### Port Franklin

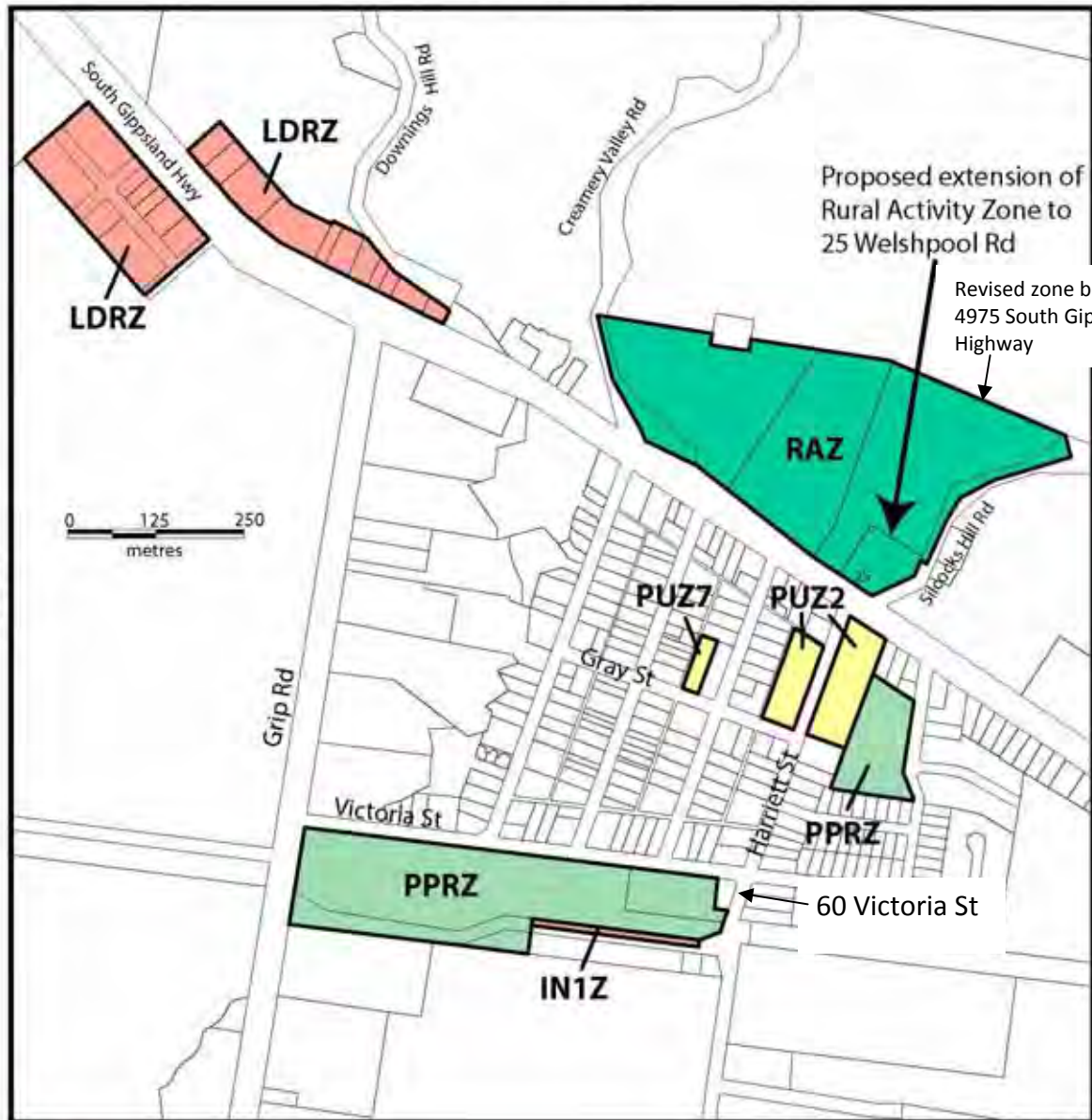
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003

# SOUTH GIPPSLAND PLANNING SCHEME

## LOCAL PROVISIONS



Part of Planning Scheme Maps 28 & 30

### Legend

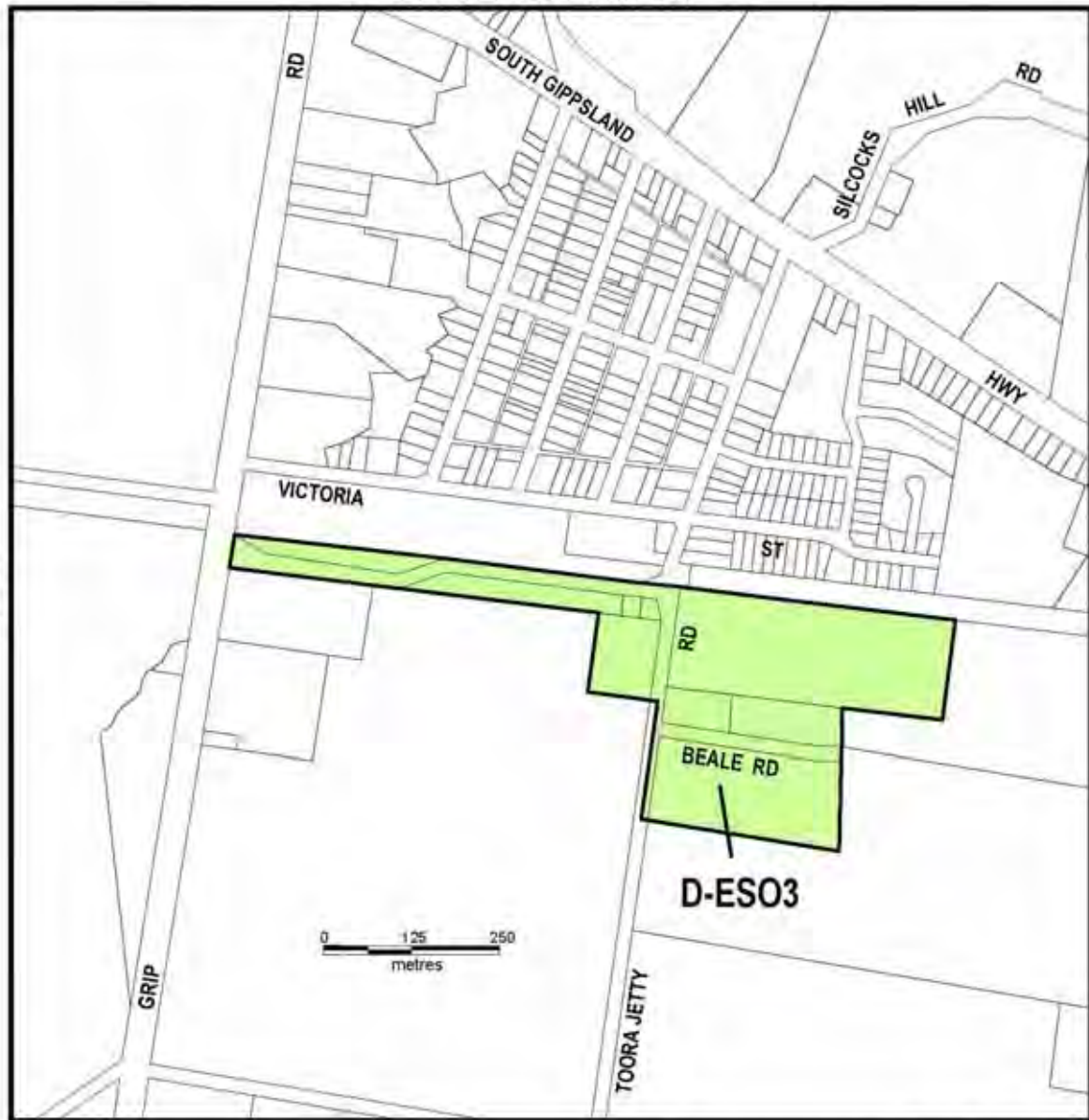
	Low Density Residential Zone
	Rural Activity Zone
	Industrial 1 Zone
	Public Use Zone - Education
	Public Use Zone - Other Public Zone
	Public Park and Recreation Zone

## AMENDMENT C77

### Toora



# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 30ES03

## LEGEND

**D-ES03** AREA TO BE DELETED FROM AN ENVIRONMENTAL SIGNIFICANCE OVERLAY

## AMENDMENT C77

Toora

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006

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Maps 28ESO5 & 30ESO5

## LEGEND

-  D-ES05 AREA TO BE DELETED FROM AN ENVIRONMENTAL SIGNIFICANCE OVERLAY

## AMENDMENT C77

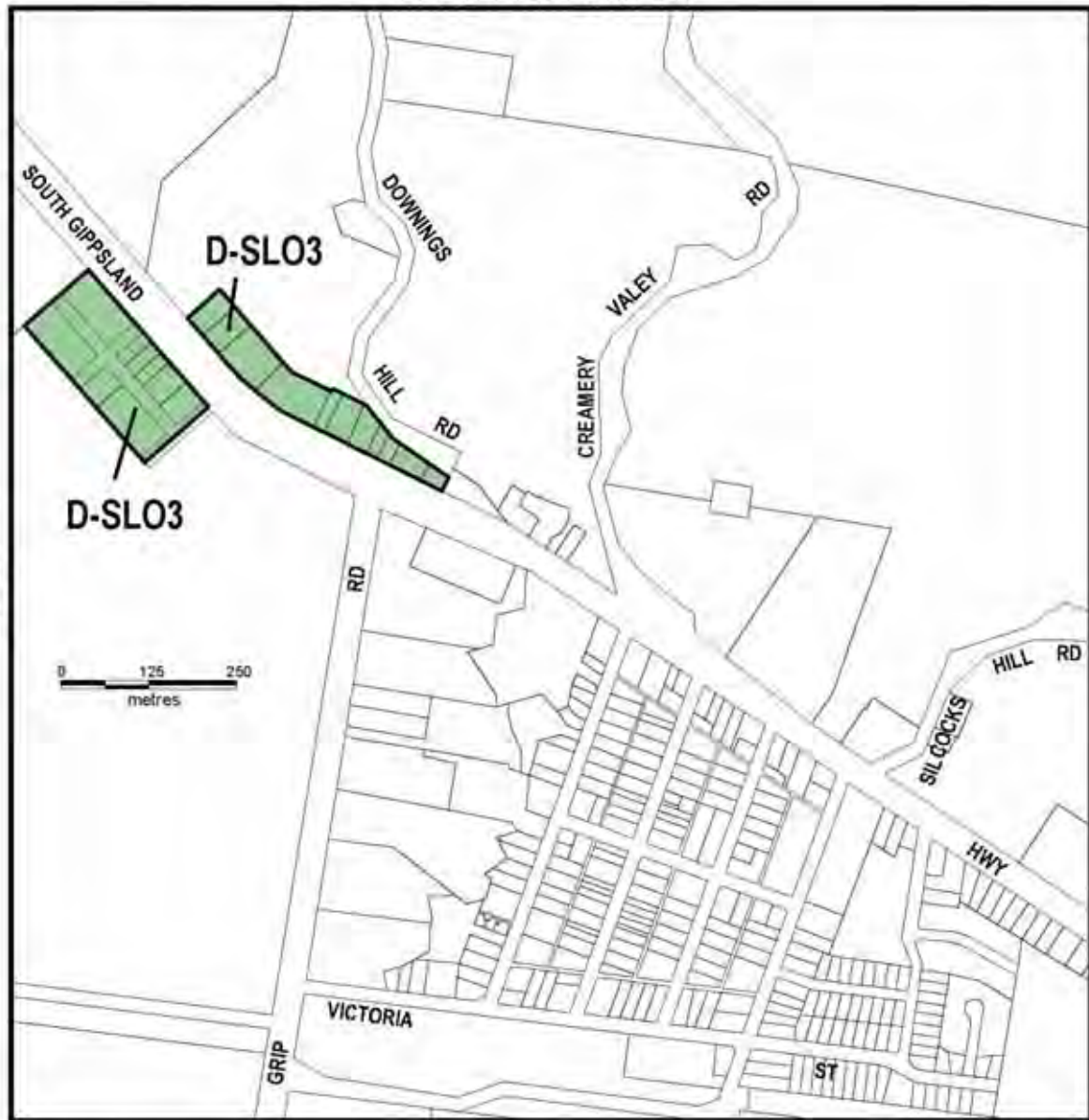
Toora

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006

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Maps 28SLO & 30SLO

## LEGEND

**D-SLO3** AREA TO BE DELETED FROM A  
SIGNIFICANT LANDSCAPE OVERLAY

## AMENDMENT C77

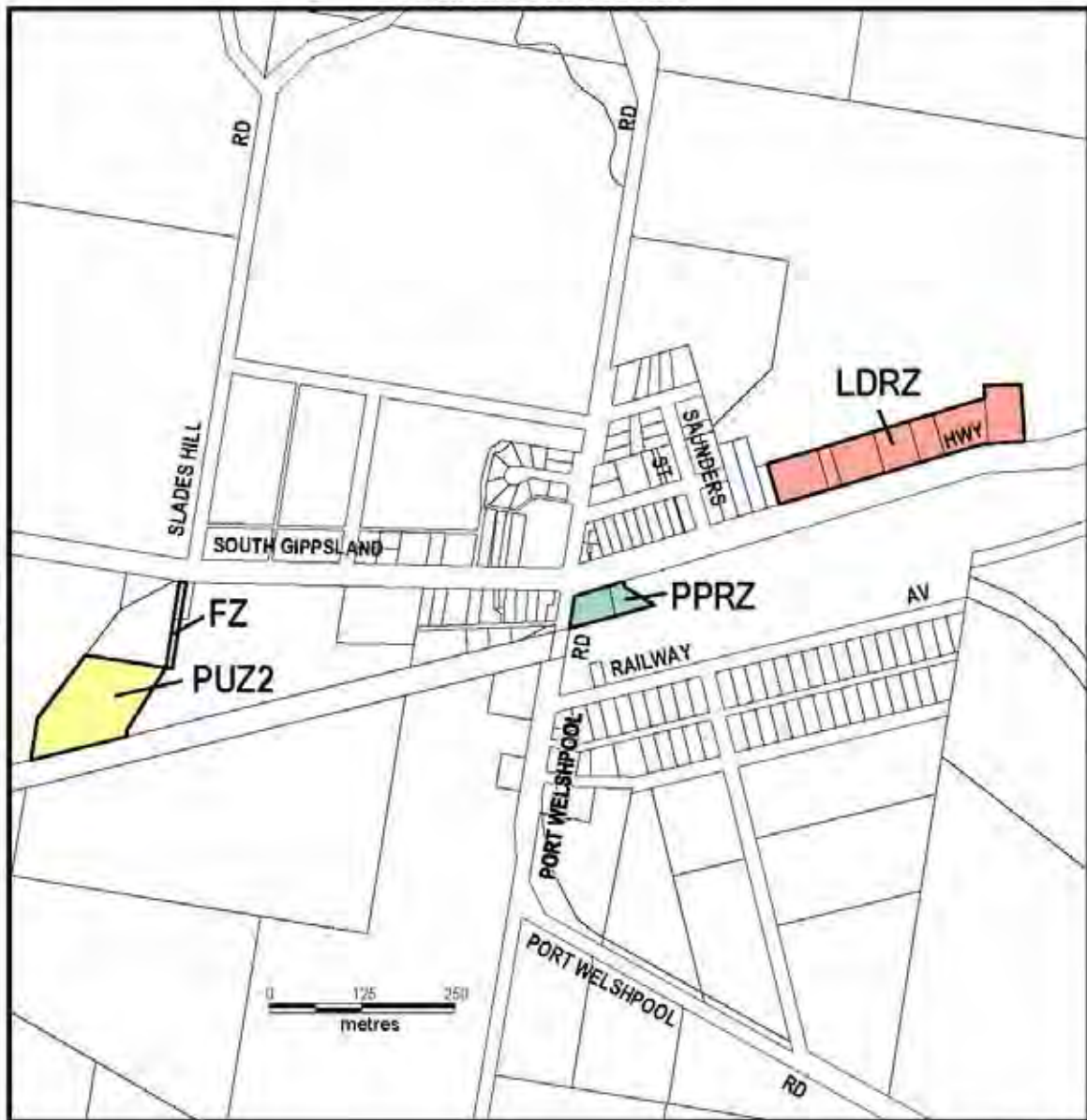
Toora

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007

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 32

## LEGEND

	<b>LDRZ</b> LOW DENSITY RESIDENTIAL ZONE
	<b>FZ</b> FARMING ZONE
	<b>PUZ2</b> PUBLIC USE ZONE - EDUCATION
	<b>PPRZ</b> PUBLIC PARK & RECREATION ZONE

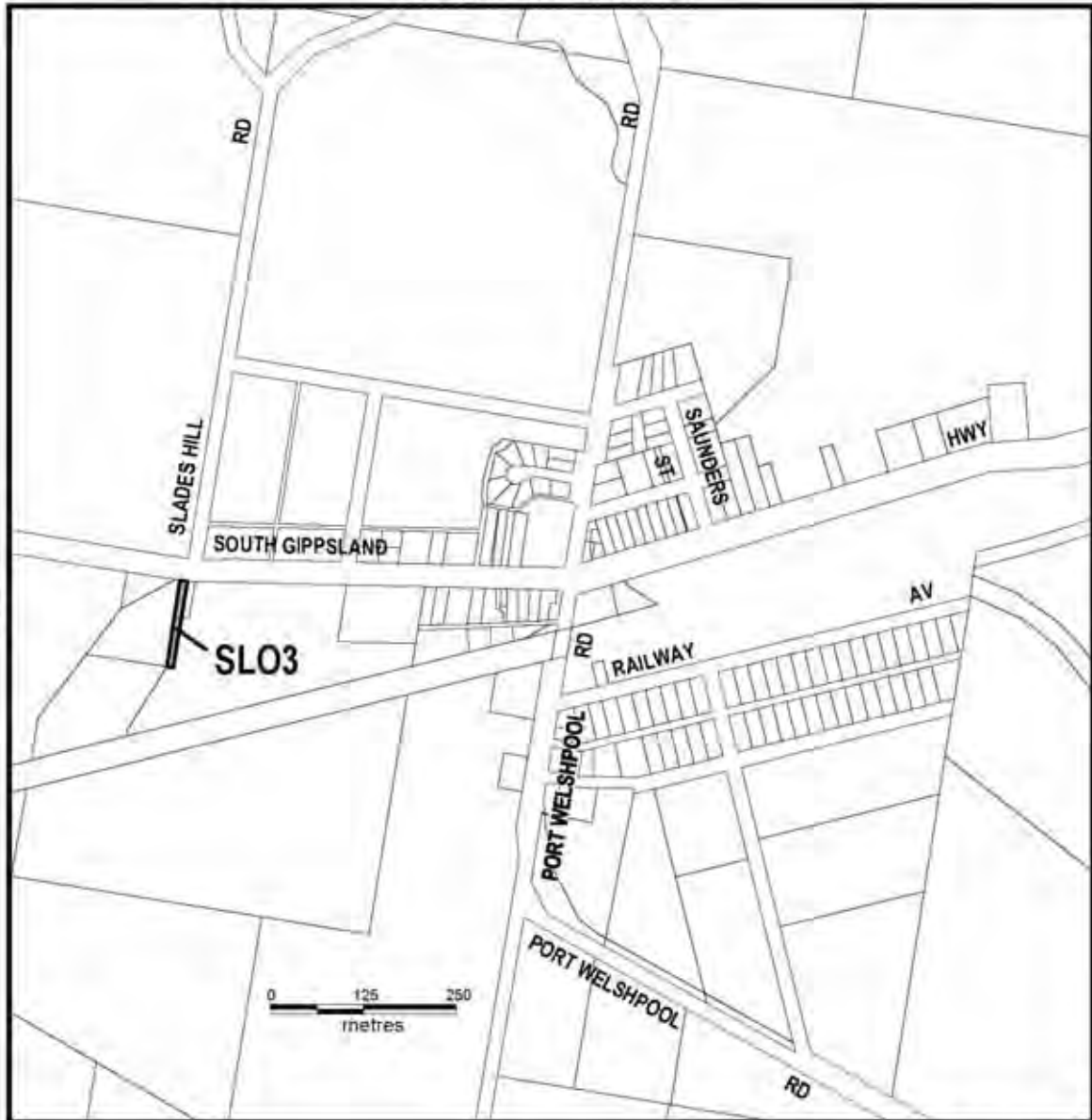
## AMENDMENT C77

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# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 32SLO

**LEGEND**

SLO3	SIGNIFICANT LANDSCAPE OVERLAY - SCHEDULE 3
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## AMENDMENT C77

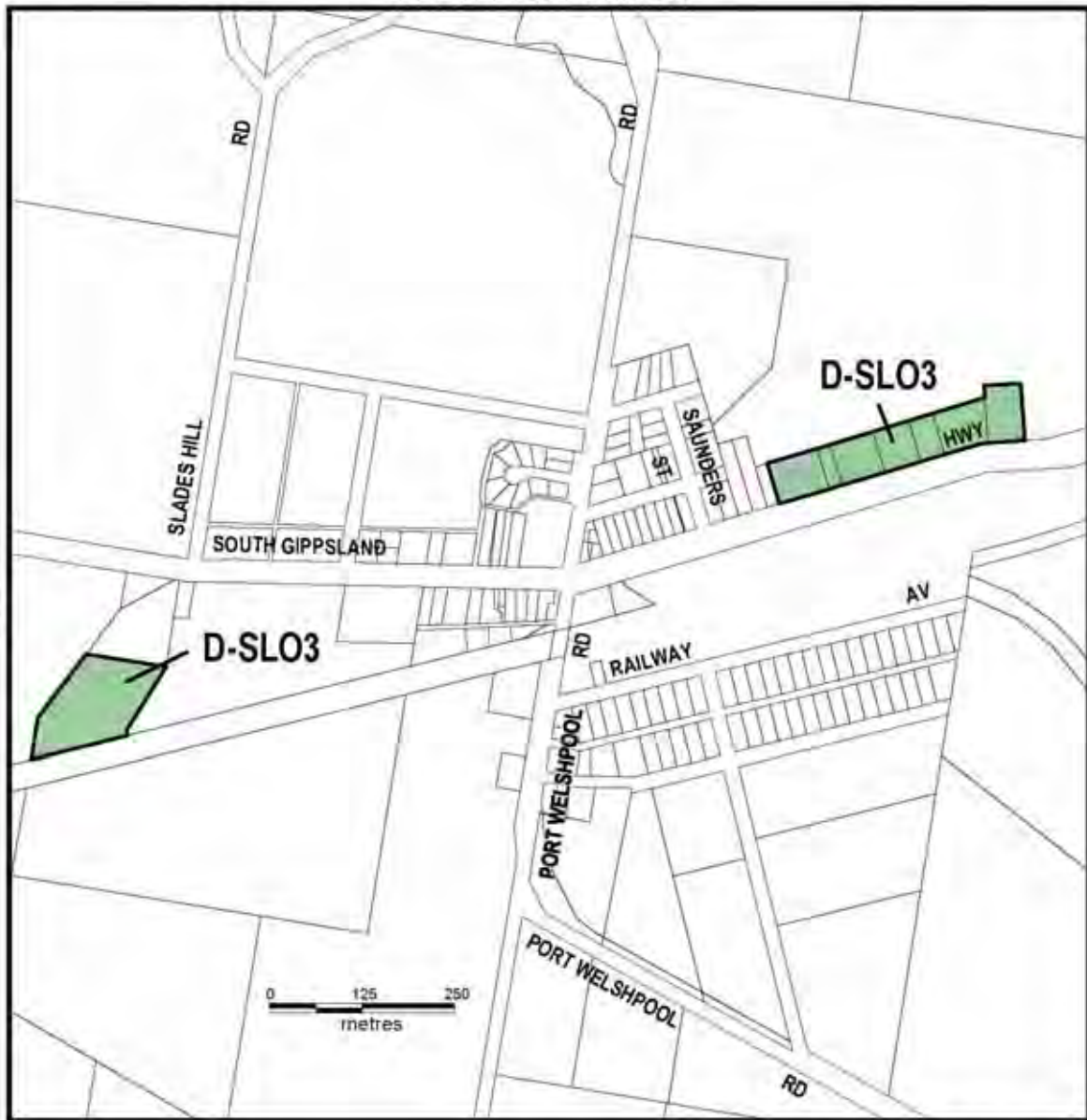
### Welshpool

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# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 32SLO

**LEGEND**

- D-SLO3 AREA TO BE DELETED FROM A SIGNIFICANT LANDSCAPE OVERLAY

## AMENDMENT C77

### Welshpool

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# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 33

## LEGEND

 PUBLIC PARK & RECREATION ZONE

## AMENDMENT C77

Port Welshpool

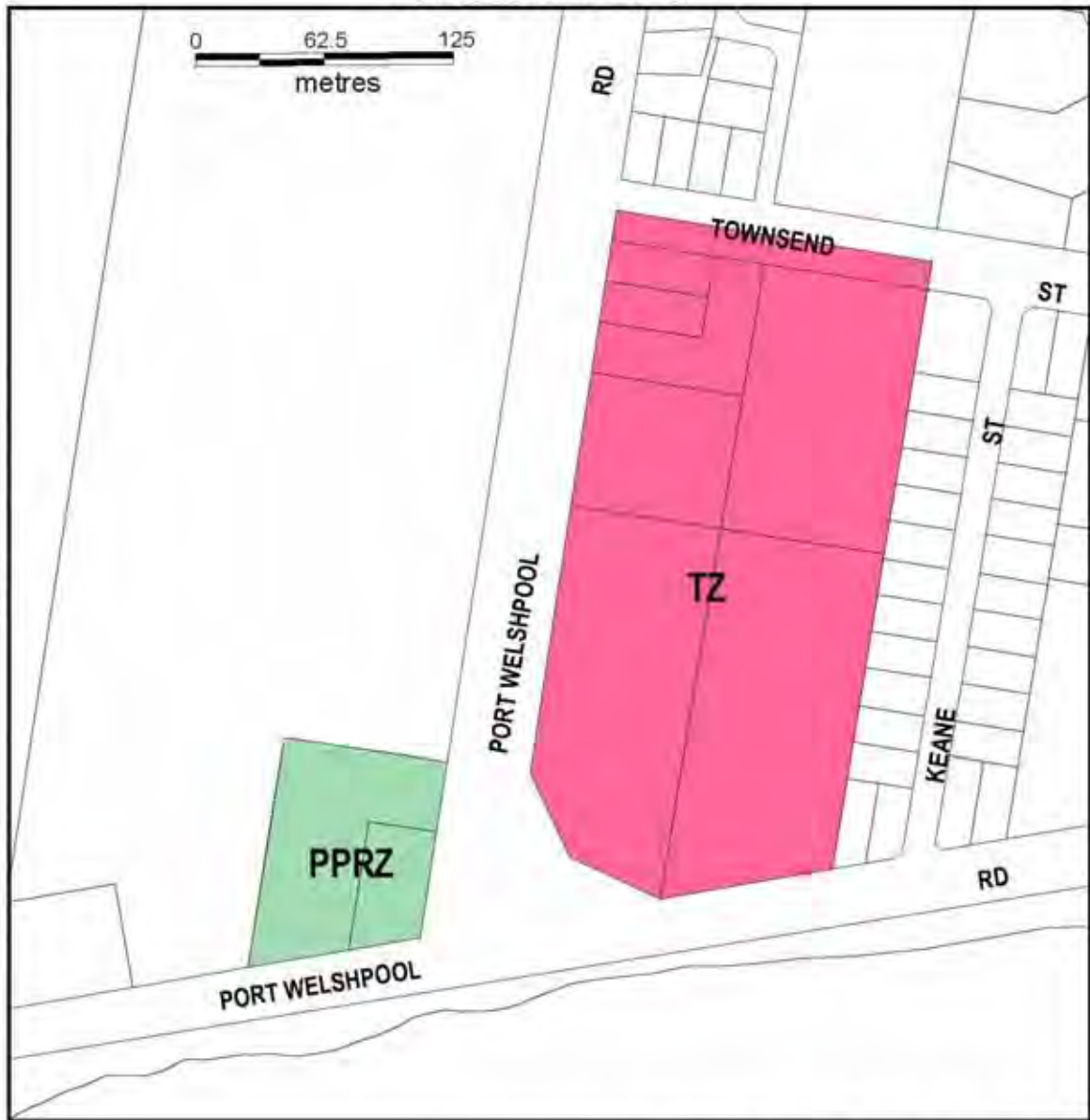
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002

# SOUTH GIPPSLAND PLANNING SCHEME

## LOCAL PROVISION



Part of Planning Scheme Map 33

**LEGEND**

- TZ TOWNSHIP ZONE
- PPRZ PUBLIC PARK & RECREATION ZONE

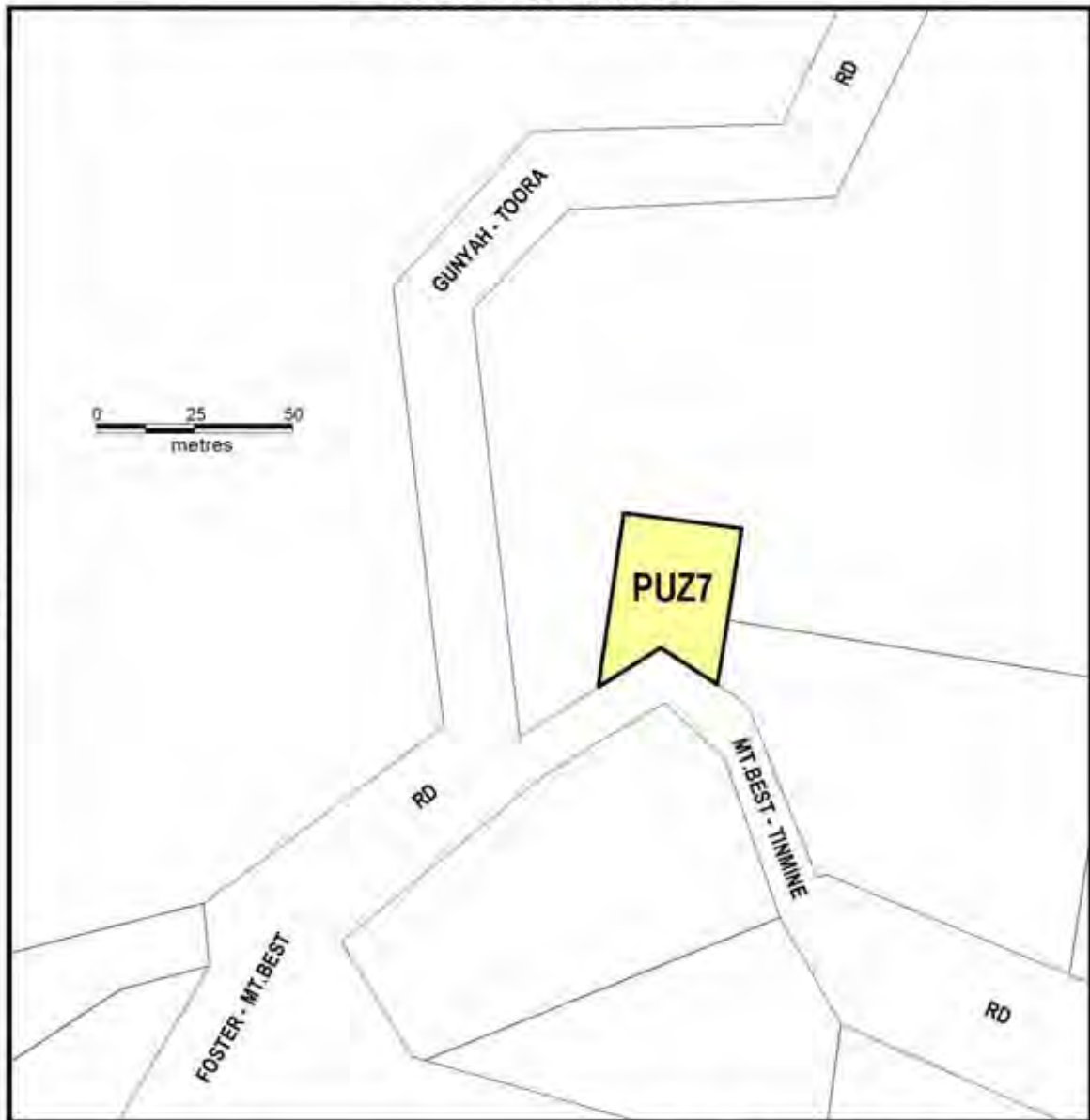
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### Port Welshpool

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# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 21

## LEGEND

**PUZ7** PUBLIC USE ZONE - OTHER PUBLIC USE

## AMENDMENT C77

### Mt Best

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012

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



## LEGEND

 RLZ RURAL LIVING ZONE

Part of Planning Scheme Map 31

## AMENDMENT C77

Agnes

(As exhibited)

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013

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 31

## LEGEND

 **RLZ** RURAL LIVING ZONE

## AMENDMENT C77

**Agnes**

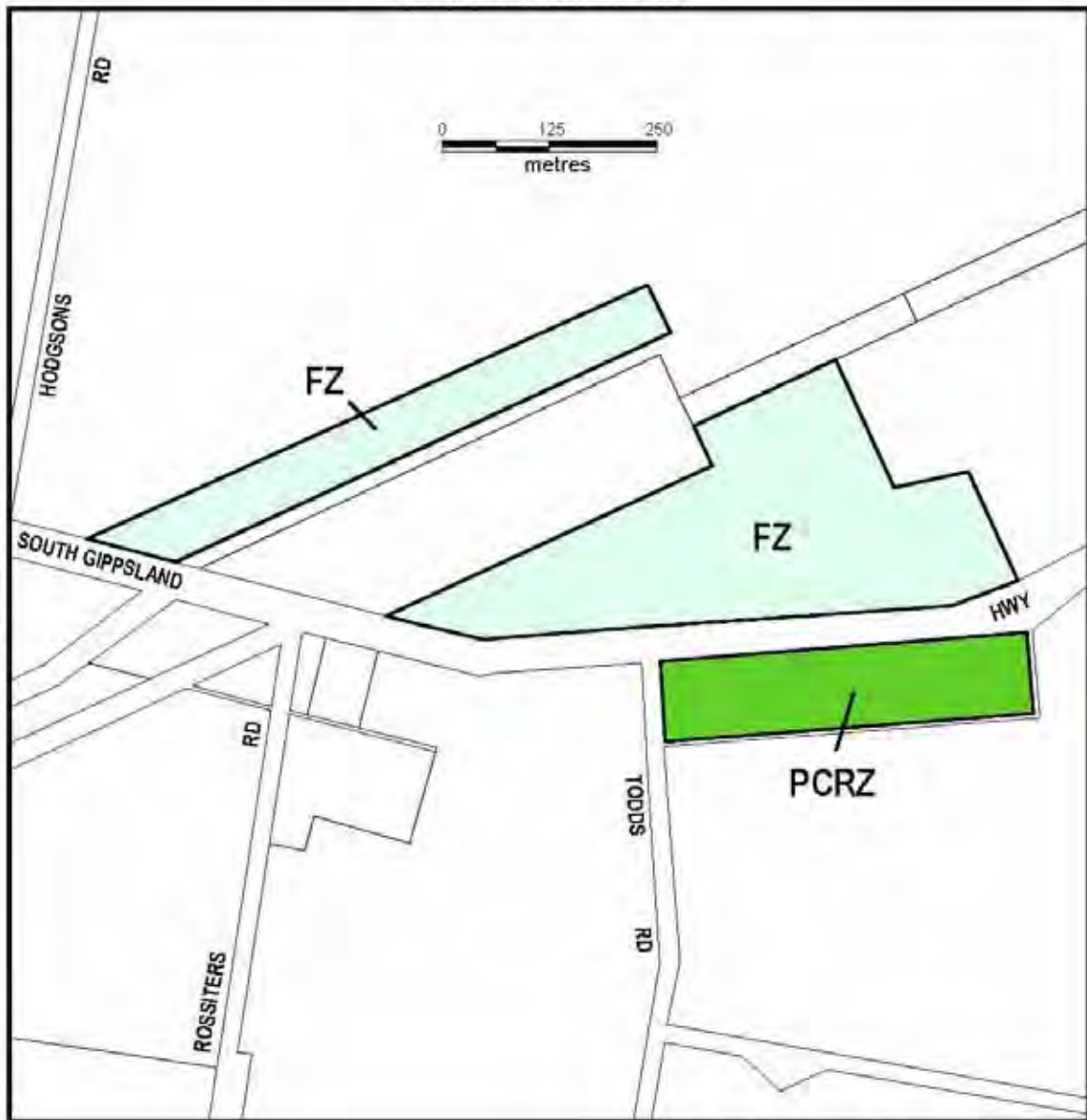
**(Amended form)**

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013

# SOUTH GIPPSLAND PLANNING SCHEME LOCAL PROVISION



Part of Planning Scheme Map 31

## LEGEND

FZ	FARMING ZONE
PCRZ	PUBLIC CONSERVATION & RESOURCE ZONE

## AMENDMENT C77

Hedley

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# SOUTH GIPPSLAND PLANNING SCHEME

## LOCAL PROVISION



Part of Planning Scheme Map 31 SLO

### LEGEND

SLO3	SIGNIFICANT LANDSCAPE OVERLAY - SCHEDULE 3
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## AMENDMENT C77

**Hedley**

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