

**South Gippsland Shire Council****Planning Delegation Report**

Planning Permit Application 2021/49 - 89 Beach Parade Sandy Point VIC 3959

<b>Application Details</b>	
<b>Application No</b>	2021/49
<b>Proposal</b>	14 lot Subdivision, Native Vegetation Removal and certification
<b>Applicant</b>	M J Reddie Surveys Pty Ltd
<b>Application lodged</b>	11 February 2021
<b>Plan Details</b>	<a href="#">D4606521</a> – Plan of Subdivision prepared by Luke Reddie Version 1
<b>Officer:</b>	Robyn Begg
<b>Property Details</b>	
<b>Property Address</b>	89 Beach Parade Sandy Point VIC 3959
<b>Land Description</b>	LA PS537365N
<b>Land Area</b>	9140m <sup>2</sup>
<b>Restrictions on title</b>	Nil
<b>Existing Use</b>	Caravan Park
<b>Planning Provisions</b>	
<b>Zone</b>	Township Zone
<b>Overlays</b>	Environmental Significance Overlay - Schedule 7 Design and Development Overlay - Schedule 3 Bushfire Management Overlay
<b>Particular Provisions</b>	Clause 52.17 – Native Vegetation Clause 53.02 – Bushfire Planning Clause 56 – Residential Subdivision
<b>General Provisions</b>	Clause 65 - Decision Guidelines
<b>CHMP</b>	Not required <a href="#">D10781821</a> as the subject land has undergone significant ground disturbance and therefore the proposed subdivision is not defined as a high impact activity.
<b>Permit Triggers</b>	
<b>Zone</b>	Township Zone – Subdivision of land
<b>Overlay</b>	Environmental Significance Overlay - Schedule 7 – Subdivision of land Design and Development Overlay - Schedule 3 – Subdivision of land Bushfire Management Overlay – Subdivision of land
<b>Provisions</b>	Clause 52.17 – Removal of Native Vegetation
<b>Notifications</b>	
<b>Advertising</b>	Yes
<b>Number Objections</b>	43 objectors making 51 submissions
<b>Recommendation</b>	
	<b>Notice of Refusal</b>

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**THE PROPOSAL**

The application seeks approval to subdivide land into 14 allotments and the removal of native vegetation at 89 Beach Parade Sandy Point (Sandy Point Caravan Park). The key details are noted in the dot-points below:

- All lots adjoin formed municipal roads.
- There are no proposed roads internal to the subdivision.
- Lots have a uniform rectangular configuration on north/south axis.
- Lots 1-13 inclusive range between 583 – 668m<sup>2</sup> with road frontages of between 12.77-15.91m.
- Lot 14 is irregular in shape and is annotated on the proposed plan of subdivision to be 688m<sup>2</sup>. The full extent of this lot is approximately 1160m<sup>2</sup> with a road frontage of approximately 20m. This lot is majority burdened by an easement for wastewater disposal
- Bushfire construction level of BAL19 for all lots, with associated defendable space of 19m and a 10,000L static water supply for each lot.
- Native and non-native vegetation exists across the subject land which is proposed to be removed.
- Some vegetation in the council road reserve/nature strip is proposed to be removed.
- Scattered vegetation within the site and road side vegetation for the creation of crossovers will need to be removed to facilitate access.

Planning permit documents include the following reports:

- Bushfire Management Statement and Plan
- Land Capability Assessment (wastewater)
- Native Vegetation Impact Assessment
- Native Vegetation Removal Report
- Tree Assessment Report

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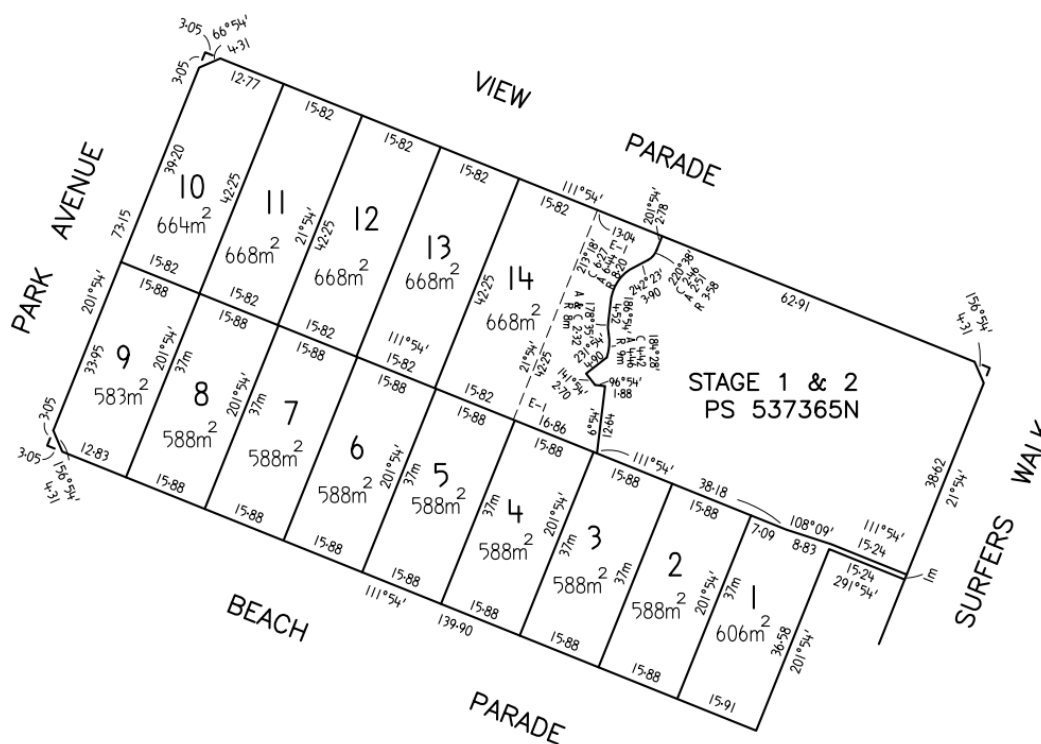


Figure 1: Proposed plan of subdivision

**SUBJECT SITE AND SURROUNDING AREA**

The subject land is located in a predominantly residential precinct in the centre of Sandy Point, adjacent to the Crown foreshore, a general store and a reserve containing tennis courts.

The subject site is bounded by Beach Parade, Park Avenue and Ocean View Parade. The site has an area of 9140m<sup>2</sup> which currently accommodates the Sandy Point Caravan Park. The caravan park is fenced with cyclone fencing. Access to the site is via a vehicle crossover from Beach Parade. The wastewater system for the caravan park is located in the south east section.

Three dwellings and five vacant lots on land adjoining to the north east are serviced by a wastewater system located on proposed lot 14, which is demarked by an easement for 'wastewater purposes'.

Scattered trees and patches of shrubs exist across the subject land, and within the road reserve around the perimeter of the subject land.

**RESTRICTIVE COVENANTS, CAVEATS AND SECTION 173 AGREEMENTS**

There are no restrictions on the title.

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**PLANNING SCHEME CONTROLS & PERMIT TRIGGERS**

<b>Zone/Overlays/Particular Provisions</b>		
<b>Provision</b>	<b>Trigger</b>	<b>Rationale</b>
Township Zone	32.05-5	Subdivision of land
Bushfire Management Overlay	44.06-2	Subdivision of land
Design and Development Overlay – Schedule 3	43.02-3	Subdivision of land
Environmental Significance Overlay Schedule 7	42.01-2	Subdivision of land
	42.01-2	Vegetation removal
Native Vegetation	52.17	Removal of Native Vegetation

**SPECIAL WATER SUPPLY CATCHMENT AREA**

The land is not located within a Special Water Catchment Area.

**ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)**

The applicant has submitted a Preliminary Aboriginal Heritage Test which was approved by the Director Heritage Services 9 November 2021.

**FURTHER INFORMATION**

Further information sought and provided following initial lodgement of the proposal included:

- Cultural Heritage Management Plan
- Address the requirements of Clause 52.17 Native Vegetation
- Address the requirements of Clause 44.06-3 Bushfire Management Overlay and Clause 53.02 Bushfire Planning
- Provision of a Land Capability Assessment
- A condition report for existing wastewater systems
- Stormwater management plan
- Address Clause 53.01 Public open space contribution and subdivision

**NOTIFICATION OF THE PROPOSAL**

The application was placed on notice in accordance with Section 52 of the *Planning and Environment Act 1987* by:

- Notice on site
- Letters to adjoining owners and occupiers

At the time of writing Council has received 43 objections following the advertising period.

Objections related to the following:

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- impact on environment
- neighbourhood character
- impact on vegetation
- future built form
- traffic management
- pressure on public open space

A significant number of submissions raised concern of the potential loss of the caravan park, citing mainly social and economic reasons. Whilst this is a legitimate concern for a local community, the Victorian Planning System does not provide the ability to control a private business from ceasing operation.

**REFERRALS UNDER SECTION 55 OR 57C AND INTERNAL REFERRALS**

Authority	Rationale	Date received and response
West Gippsland Catchment Management Authority	Section 52 Notice	WCMA object in relation to flooding and climate change. It states that the egress route for the site is subject to flooding of up to 1.2m, which represents an extreme flood hazard.
Country Fire Authority	Bushfire Management Overlay and clause 66.03	Conditional consent
DELWP (now DEECA)	Removal of native vegetation (Clause 66.02-2)	By letter dated 6 January 2021, DELWP advised that it did not object to the proposed subdivision and recommended several conditions be included on the planning permit.  DELWP requested further information by email dated 14 December 2021 regarding proposed vegetation removal to assess the proposal
AusNet Services	Service authority (clause 66.01)	Conditional consent
EPA Victoria	Development requiring the amendment of a licence under Part 4.3 of the Environment Protection Act 2017	The wastewater system located on proposed lot 14 (that serves development adjoining the subject land) must be maintained by the owner of that lot.  EPA are responsible the wastewater system license and ensuring the conditions of the license are adhered to.

**Internal referrals**

Department	Response
Environmental Health	Conditional consent  Wastewater associated with any and all lots created by this subdivision must be treated and retained on-site in accordance with the <i>Environment Protection Act 2017</i> and must comply with the

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	Onsite Wastewater Code of Practice 2008 (EPA) and Council's Domestic Wastewater Management Plan 2022-2026.  Existing wastewater systems and bores must be decommissioned.
Engineering	Conditional consent, subject to: Engineering plans showing - <ul style="list-style-type: none"> <li>• vehicle crossovers (avoiding vegetation loss)</li> <li>• Treated timber bollards to be provided on Beach Parade along the entire length of the south boundary</li> <li>• Water tanks (3000ltr)</li> <li>• Soakage pits to assist in disposal of storm water</li> </ul>

**ASSESSMENT****MUNICIPAL PLANNING STRATEGY****Cause 02.02 Vision**

The Vision includes the following statements of relevance to Sandy Point:

The South Gippsland Shire Council's vision in the Council Plan 2020-2024 relating to land use and development is:

- To establish the Shire as a thriving and diverse local economy that builds on our region's natural advantages.
- To provide the community with services and infrastructure that enhance liveability and environmental sustainability for current and future generations.

Within the Settlement Hierarchy at clause 02.02, the following guidance exists for Coastal Villages including Sandy Point:

In addition to supplying a limited range of services and facilities to residents, coastal villages service holiday populations as well as significant retiree and partially absentee residents. The character of the coastal villages combined with their environmentally significant surrounds and landscapes, affords them a charming attractiveness.

Council seeks to:

- Contain growth within settlement boundaries to protect the environmental, landscape and agricultural values between and surrounding the settlements.
- Balance growth and development with the associated impacts on vegetation, soil stability and water quality and the risks of climate change.
- Provide an attractive and safe residential environment and strengthen the economic future of each coastal village.

**PLANNING POLICY FRAMEWORK (PPF)**

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The following Planning Policies and Local Planning Policies are relevant to this proposal:

Planning polices	<ul style="list-style-type: none"> <li>▪ Clause 11 (Settlement)</li> <li>▪ Clause 12 (Environment and Landscape Values)</li> <li>▪ Clause 13 (Environmental Risks and Amenity)</li> <li>▪ Clause 15 (Built Environment and Heritage)</li> <li>▪ Clause 16 (Residential Development)</li> </ul>
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**Clause 11 Settlement**

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

Relevantly, planning is to recognise the need for, and as far as practicable contribute towards:

- Health, wellbeing and safety.
- Diversity of choice.
- A high standard of environmental sustainability, urban design and amenity.
- Climate change adaptation and mitigation.
- Protecting, conserving and improving biodiversity, waterways and other natural resources.
- Accessibility.

Clause 11.01-1R (Settlement – Gippsland) includes strategies to support the continuing role of towns and small settlements in providing services to their districts, recognising their relationships and dependencies with larger towns. The strategy also seeks to plan for increased seasonal demand on services and infrastructure in towns with high holiday home ownership.

The Settlement strategy at clause 11.01-1L-01 seeks to encourage consolidated residential development adjacent to central activity districts of settlements to achieve a more efficient use of urban infrastructure, community facilities and transport services.

Policy for coastal villages including Sandy Point are set out at clause 11.01-1L-09. Relevant strategies include:

- Maintain the low scale, holiday character of each coastal village including by maintaining the current housing density.
- Maintain the rural buffer between Sandy Point and Waratah Bay.
- Maintain the rural buffer between Tarwin Lower and Venus Bay.
- Ensure that any expansion into the long-term development areas identified on the relevant framework plans does not occur until:
- A significant proportion of vacant lots within the Township Zone and Low Density Residential Zone has been developed.
- Reticulated water and sewerage is made available.
- Further investigation is undertaken to confirm the extent of potential problems associated with acid sulphate soils and/or flooding.

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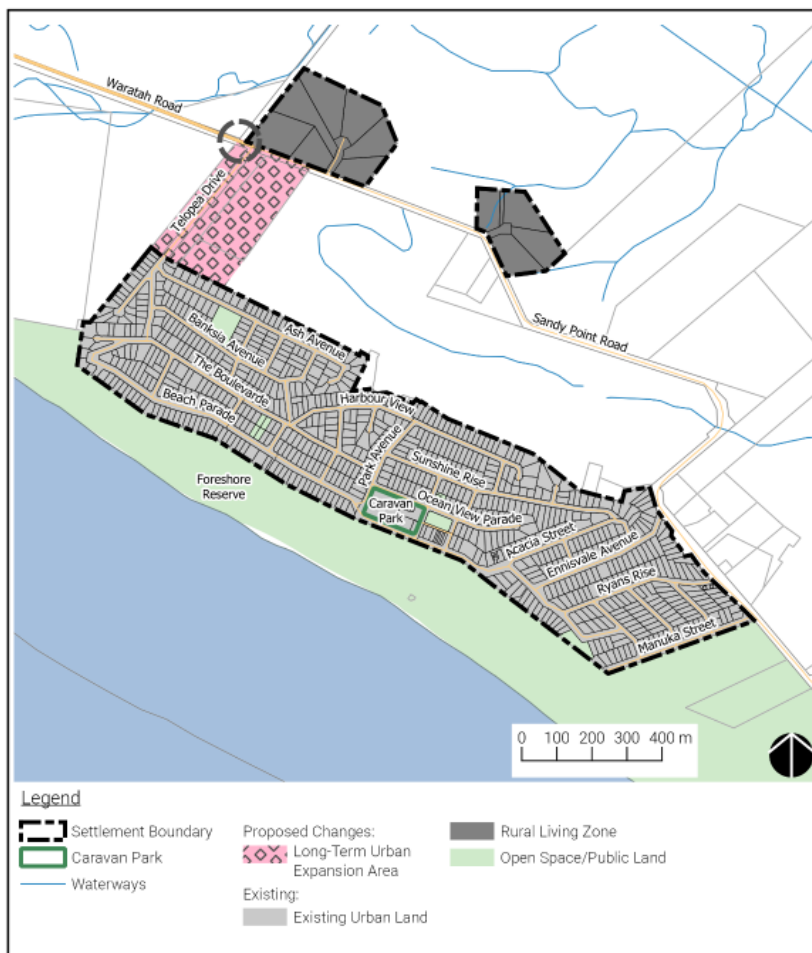
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- Further investigation is undertaken to confirm the location of sites of heritage significance.
- Further investigation is undertaken to confirm the location of sites of environmental significance.
- Development has been designed to minimise the visual impact from key viewing locations, particularly town approaches and high points in the coastal landscape.

Strategy for Sandy Point include:

- Promote development that respects and enhances the coastal character of the village.
- Promote long term development areas in locations that maintain pedestrian accessibility to the nearby foreshore and commercial centre.



**Figure 2: Sandy Point Framework Plan (clause 11.01-1L-09)**



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Policy for Coastal Settlement at clause 11.03-4S includes strategies to:

- Plan and manage coastal population growth and increased visitation so that impacts do not cause unsustainable use of coastal resources.
- Support a network of diverse coastal settlements that provide for a broad range of housing types, economic opportunities and services.
- Limit development in identified coastal hazard areas, on ridgelines, primary coastal dune systems, shorelines of estuaries, wetlands and low-lying coastal areas, or where coastal processes may be detrimentally impacted.
- Ensure a sustainable water supply, stormwater management and sewerage treatment for all development.
- Minimise the quantity and enhance the quality of stormwater discharge from new development into the ocean, bays and estuaries.

**Clause 12.02-1S Marine and coastal environment**

Policy for the protection of the marine and coastal environment includes strategy to:

- Manage privately-owned foreshore consistently with the adjoining public land.
- Enhance the ecological values of the ecosystems in the marine and coastal environment.
- Protect and enhance the overall extent and condition of native habitats and species diversity distributions across public and private land in the marine and coastal environment.
- Encourage revegetation of cleared land abutting coastal reserves.
- Minimise direct, cumulative and synergistic effects on ecosystems and habitats.
- Maintain the natural drainage patterns, water quality and biodiversity in and adjacent to coastal estuaries, wetlands and waterways.
- Maintain and enhance water and soil quality by minimising disturbance of sediments.
- Avoid disturbance of coastal acid sulfate soils.
- Protect and enhance natural features, landscapes, seascapes and public visual corridors.
- Protect the heritage values, the aesthetic quality of locations, cultural links with maritime activities, sea country and sense of place.

Policy for Coastal and hinterland landscapes at clause 12.05-2L-01 includes strategy to:

- Ensure that development is subordinate to the natural, visual and environmental landscape character and significance.
- Protect views of Mt Hoddle, the Welshpool Hills and the Corner Inlet Amphitheatre and other hinterland areas by avoiding development in these areas that is visually intrusive, particularly when viewed from the South Gippsland Highway, as well as from other key touring routes, lookouts and residences.
- Discourage development on prominent ridgelines, particularly those close to the coast. Where development cannot be avoided in steep locations or prominent hill faces:
- Site development in the lowest third of the visible slope wherever possible.
- Set buildings and structures among existing vegetation or establish gardens with locally indigenous species.
- Design buildings to follow the contours or step down the site to minimise earthworks.

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- Articulate buildings into separate elements and avoid visually dominant elevations.
- Encourage the planting of indigenous vegetation for rehabilitation works and landscaping around development.
- Retain existing shelterbelts and non-indigenous feature planting where they are features of the area and the species are non-invasive.

Other strategies seek to:

Scale the height and form of new development at the coastal edge of settlements to be sensitive to surrounding development, the surrounding landform and the visual setting of the settlement, particularly when viewed from the foreshore.

The site is within Landscape Character Area 1.5 as mapped within clause 12.05 (Waratah Bay/corner Inlet). Relevant guidance for this area includes:

- Manage development at the Corner Inlet coastal edge to retain intact natural coastal character by:
  - Restricting heights of dwellings.
  - Using colours that blend with the natural environment.
  - Clustering development at already developed centres (e.g. Port Welshpool).
- Minimise clutter of built elements throughout hinterland areas to protect the rural character.

**Clause 13 Environmental risks and amenity**

Policy for floodplain management seeks to assist the protection of:

- Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.
- The natural flood carrying capacity of rivers, streams and floodways.
- The flood storage function of floodplains and waterways.
- Floodplain areas of environmental significance or of importance to river, wetland or coastal health.

*Clause 15 (Built Environment and Heritage)* seeks to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity. Relevant strategies include:

- Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.
- Ensure the interface between the private and public realm protects and enhances personal safety.
- Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport.
- Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.

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Relevant strategies for subdivision design include:

- Creating urban places with a strong sense of place that are functional, safe and attractive.
- Providing a range of lot sizes to suit a variety of dwelling and household types to meet the needs and aspirations of different groups of people.
- Creating landscaped streets and a network of open spaces to meet a variety of needs with links to regional parks where possible.
- Protecting and enhancing habitat for native flora and fauna and providing opportunities for people to experience nature in urban areas.
- Creating an urban structure that responds to climate related hazards.

*Clause 16.01 (Residential Development)* seeks to facilitate well-located, integrated and diverse housing that meets community needs.

Clause 17.04-1L (Tourism) includes strategy to:

Encourage small-scale tourism within the Township Zones in the Villages and Hamlets that complement the natural environment, agricultural and landscape values of the region and takes advantage of proximity to tourist routes and access to the Great Southern Rail Trail.

**Policy assessment**

Whilst community concerns regarding the closure of the caravan park are understandable, the planning process does not have the ability to compel a landowner to continue to operate the caravan park. Planning involves the management of change.

At the same time the site is centrally located and any future development will play an important role in defining the character of the town and its sense of place. It is important to protect the 'charm' of the coastal village. The presence of vegetation within the road reserves is an important element of this coastal setting. Visual integration with the coastal setting is also sought to be achieved.

The proposal fails to meet policy objectives and strategies relating to:

- a) Impact on coastal/ neighbourhood character
- b) Defendable space and impacts on vegetation within the public realm
- c) Effluent planning for wastewater management system
- d) Stormwater planning
- e) Vehicle access
- f) Future climatic conditions

The reliance on external defendable space is regarded as excessive. The proposal fails to translate how the density of the proposal reduces off-site impacts that threaten the character of the location, and does not demonstrate clearly that effluent can be managed on site, having regard to rising groundwater levels and sea level rise. Provision of a land contribution towards public open space is an important aspect of any subdivision, given its central location within the town.

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Notice of the proposal was given to the West Gippsland Catchment Management Authority under section 52 of the Act as the relevant floodplain manager. The WGCMA objected to the proposal on the basis that:

*While the property is not likely to be subject to inundation during a 1% AEP flood event, the egress route to a location where emergency services can be accessed is likely to be subject to flood depth of up to 1.2 metres, which represents an extreme flood hazard. Victorian Planning Policy and the Authority's Guidelines for Development in Floodprone Areas do not support the intensification of development where additional residents or landowners would be subject to an unacceptable flood hazard.*

The WGCMA objected, citing policy at clause 13.01-1S (natural hazards and climate change) and clause 13.01-2S (Coastal inundation). It also referred to policy at clause 21.04-2, 21.04-4 and WGCMA policy for development viability in coastal areas and its flood guidelines.

The position of the floodplain manager is relevant. The findings of the assessment of the risks associated with providing safe access to the development are valid, and represent the best available data to assist in decision making. For over a decade it can be observed that all tiers of policy have been evolving to place an increased weight on inundation and climate change factors in decision making. The reasons the WGCMA have put forward are supported, and there is no information contained in the proposal to overcome the access issues.

**ZONE**

Within the Township Zone, the purposes include:

- To provide for residential development and a range of commercial, industrial and other uses in small towns.
- To encourage development that respects the neighbourhood character of the area.

A permit is required to subdivide land at clause 32.05-5. An application must satisfy the relevant objectives and standards of Clause 56. For a 14-lot subdivision, the objectives and standards of the following clause 56 clauses must be met:

- Clauses 56.03-5, 56.04-2 to 56.04-5, 56.05-1, 56.06-2, 56.06-4, 56.06-5, 56.06-7 and 56.06-8 to 56.09-4.

**Assessment**

The Township Zone anticipates residential subdivision however, this does not translate to 'any subdivision' should be supported. Respecting neighbourhood character features as a purpose of the Township Zone and is reinforced in relevant objectives and standards of Clause 56 *Residential Subdivision*. Additionally, it is a requirement to ensure stormwater and wastewater is adequately managed.

The proposal is assessed to be inconsistent with the Township Zone:

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- In consideration of neighbourhood character and thus future built form outcomes and how this could affect neighbourhood character, it is relevant to consider the following:
  - lots sizes,
  - building envelope requirement by the Bushfire Management Overlay, and 10,000 litre water tank for firefighting purposes, 3,000 litre water tank to assist in meeting sensitive water use objectives,
  - the as-yet unknown size or location of wastewater disposal areas;
  - no detail vehicle access points and impact on onsite and road side vegetation.

These matters present significant constraints for the proposed lots to be developed in a way that would meet the technical requirements and present an acceptable built form/neighbourhood character outcome. With this in mind it is not considered appropriate or reasonable to defer these matters to a point in the future when lots would be passed onto new individual owners.

- Wastewater envelopes have not been identified for each lot to demonstrate the ability to accommodate wastewater generated from future dwelling development resulting from the subdivision. The Land Capability Assessment provides 'A suitable area for disposal through shallow sub-surface irrigation exists to the rear of the proposed Sub-division lots'. However, wastewater envelope size and location has not been established, and as a result it is not clear how this may affect the future development of the lots.

**OVERLAYS**

Environmental Significance Overlay, Schedule 7

Schedule 7 to the Environmental Significance Overlay (Coastal Settlements) has the following Statement of Environmental Significance:

*South Gippsland contains some of Victoria's most significant coastline areas. The settlements of Venus Bay, Sandy Point, Tarwin Lower and Waratah Bay are situated along this coastline and contribute to the areas appeal by providing accommodation opportunities in environmentally significant areas. They are characterized by their predominance of native vegetation, easily erodible soils and their proximity to foreshore reserves, coastal parks and other public land and their rugged appeal.*

The following environmental objectives are to be achieved:

- To protect and enhance the natural beauty of the coastal townships.
- To protect and enhance the environmental quality of the townships.
- To minimise the risk of erosion, and destruction of the environment through poorly managed development.
- To ensure that development adjacent to coastal areas is compatible with the environment and does not result in adverse impacts on coastal processes.

At clause 42.01-2 a permit is required for subdivision.

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A range of decision guidelines relevantly require consideration of:

- Whether the proposal will assist in achieving the vision, objectives and strategies for Venus Bay, Waratah Bay, Sandy Point and Tarwin Lower
- The impact of the proposal on the extent of natural vegetation retained on the site.
- The impact of the proposal on the conservation of any areas of environmental importance or significance.
- Whether the development of the land will be detrimental to the natural environment.

**Assessment**

The Environmental Significance Overlay Schedule 7 specifically relates to coastal settlement, and identifies values that contribute the 'appeal' of coastal settlements such as Sandy Point, and seeks protection and enhancement of these values. These values broadly being natural beauty of townships, and environmental quality. In meeting these objectives, it is sought for development to protect and enhance, avoid poorly managed development and seek to achieve development that is compatible with the environmental values. The proposed subdivision raises a range of matters in relation to impact on vegetation both on-site and off-site. Reports provided with the application material identify that all vegetation across the site is to be removed, and multiple areas of vegetation in the road reserve will be removed. It is unclear (in each instance vegetation removal is proposed) as to the reasons removal is required, for example defensible space requirement, effluent disposal areas, building areas or vehicle access.

It is noted that a vegetation removal plan shows 'some' vegetation in the road reserve to be removed, but this removal alone would not meet the requirements of defensible space that 'overlaps' the road reserve/nature strip. It is observed that substantial areas of roadside vegetation would be impacted in providing and maintaining defensible space.

It is for the reasons identified that the proposal would have an unreasonable impact on vegetation and coastal character (noting that roadside vegetation in particular forms a strong element of the unique character of this coastal settlement) and therefore fails to meet the purpose, objectives and decision guidelines of this overlay.

**Design and Development Overlay, Schedule 7**

Schedule 7 specifically relates to Sandy Point. It seeks to protect and manage coastal village character of Sandy Point and protect vegetated character. To do so it provides a range of methods in meeting these objectives such as achieving quality built-form, achieve appropriate setbacks from sensitive environmental boundaries, minimise building coverage and integration of best practice water sensitive urban design into the landscape treatments of new development, and minimising the impact of vegetation removal. In addition, it is a requirement to improve management of stormwater and run-off.

**Assessment**

In consideration of whether the proposal is consistent with the design objectives and decision guidelines of this overlay, the proposal seems to solely rely on the argument that the lot configuration of the subdivision is similar to the surrounding lots. Whilst the configuration, orientation and size are comparable to the

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existing pattern in the area, assessment of the appropriateness of subdivision requires consideration of other issues in arriving at an acceptable outcome.

It should be noted that surrounding subdivision patterns were predominantly established at a time when planning controls in relation to streetscape character, vegetation protection, bushfire mitigation and contemplation of the future development were either absent from decision making, or undefined.

The combination of the impact of site constraints, impact on vegetation on site and in the public realm, uncertainty about future built form, vehicle and pedestrian movement provision and open space result in a proposal that is inconsistent with the objectives of the Design and Development Overlay for Sandy Point.

**Bushfire Management Overlay**

The purposes of the Bushfire Management Overlay seek to implement policy, prioritise human life and ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

The relevant reports have been provided with the application documentation:

- A bushfire hazard site assessment
- A bushfire hazard landscape assessment
- A bushfire management statement (including an assessment against Clause 53.02 Bushfire Protection)

**Assessment**

The proposal presents a lot yield that results in the 'transfer' of the impacts of meeting contemporary planning controls such as provision of defensible space and subsequent loss of vegetation. The bushfire provisions allow defensible space to extend outside site boundaries 'where that area of encroachment can be reasonably expected to be maintained'. An example is a road, oval or carpark, that through 'general up keep' would meet the specific defensible space maintenance criteria. The proposal shows vegetation removal in the road reserve/nature strip. However, in meeting the defensible space criteria, that includes restriction on 'clumps of vegetation to 5 m<sup>2</sup>' it is clear that the vegetation in the road reserve would need to be largely removed, and have continual pressure for roadside vegetation not removed to be maintained by future lot owners (or indeed Council). This is an unacceptable outcome given the impact on coastal character.

An overriding requirement of the Planning Scheme is to ensure protection of human life is prioritised over all other planning considerations. This does not mean encroaching bushfire mitigation measures onto public land is acceptable or appropriate. Given that the proposed solution in reducing bushfire risk to an acceptable level cannot be practically achieved, the proposal fails to meet the core premise of protecting human life.

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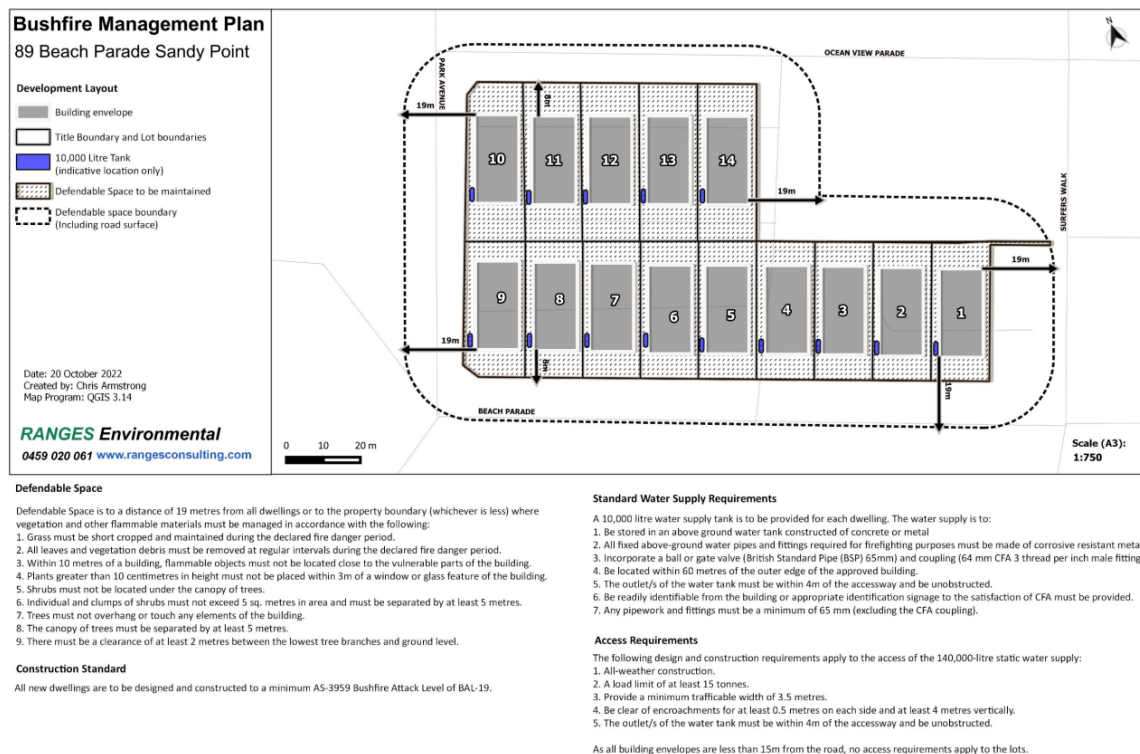


Figure 3: Proposed bushfire management plan

## PARTICULAR PROVISIONS

### Clause 53.01 – Public Open Space

The Schedule to Clause 53.01 specifies a minimum of 5% as the required contribution for public open space for residential, commercial or industrial land. The proposal seeks to provide a financial contribution in preference to setting aside land within the proposal.

### Clause 53.02 - Bushfire Planning

The Bushfire Assessment provides an assessment against both the Bushfire Management Overlay and clause 52.03. Compliance with these requirements is predicated on the provision of defendable space within the external road network. Discussion of this problematic issue is provided in the Bushfire Management Overlay assessment above.

Having regard to the decision guidelines at clause 53.02--4.5, it is considered that:

- The current design is at odds with aspects of policy relating to neighbourhood character as reflected within the Municipal Planning Strategy and Planning Policy Framework;
- The proposal does not confine defendable space within the plan of subdivision;



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- There are unresolved questions as to the practical implementation of the Bushfire Management Plan and water supply requirements;
- Alternative design, or alternative approved measure to provide an opportunity to balance bushfire risk management with landscape character through a revised design response has not been provided.

**Clause 52.17 - Native Vegetation**

The Native Vegetation Assessment lodged in support of the proposal asserts reliance on particular exemptions within clause 52.17. For example, clearing to enable the upgrade of a fence. This exemption is not clearly available, as the fence appears to be a new fence, rather than the operation or maintenance of an existing fence. Furthermore, clause 52.17 applies to the minimum extent. As such, where it is possible to operate or maintain a fence without removing vegetation, then the exemption is not applicable.

Exemptions relate to 0.65 hectares of clearing. The assessment asserts that 0.045 hectares requires a permit, but the total amount to be removed is 0.116 ha. The reliance on exemptions has the result that the assessment is within the basic assessment pathway. However, it is not clear that this is correct, given the likelihood that more than 0.5 ha of native vegetation is to be removed.

Furthermore, the assessment does not include vegetation to be removed within the road reserves for defensible space.

The assessment suggests that there is limited scope to avoid and minimise removal of native vegetation. That may be so for the subdivision proposed, but alternatives may be able to avoid or minimize removal of vegetation.

**GENERAL PROVISIONS****Clause 65.02 - Approval of an application to subdivide land.**

In the context of subdivision, clause 65.02 calls for consideration of the following:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.

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As land within the Township Zone that is centrally located, subdivision can typically be anticipated. Whether or not the land is suitable for subdivision however, depends on how effectively the land can be serviced at the density proposed, and whether the design response allows for a respectful interface with the surrounding area, in terms of native vegetation retention and future built form and design.

In terms of whether there is a need for creation of further lots, Sandy Point is not identified as a focus for growth. It is a coastal village with a focus on the tourism economy. Striking a balance between tourism accommodation and permanent accommodation is a relevant consideration in this context.

A different form of subdivision could place less reliance on public land as defensible space, thereby maintaining the established vegetated character that is typically associated with the coastal environment.

In the absence of detailed plans showing how waste and stormwater are to be managed, it is not possible to conclude that the proposal strikes the right balance at the density proposed. In addition, the location of wastewater infrastructure that serves a different development on land outside the subject land is not practical, nor does it result in orderly planning.

**Declaration of Conflict of Interest:**

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

**Conclusion and Recommendation:**

Council has considered the matters under Section 60 of the *Planning and Environment Act 1987*. It considers that the proposed subdivision is not appropriate having regard to the relevant matters, and cannot be managed through appropriate conditions.

It is recommended that Council issue a Notice of Refusal for the proposed 14 lot subdivision of the land at 89 Beach Parade, Sandy Point.