



Planning Panels Victoria

Department of Environment, Land, Water and Planning

14 December 2022

1 Spring Street
Melbourne Victoria 3000
GPO Box 2392
Melbourne, Victoria 3001

Dear Party

Priority Projects Standing Advisory Committee:

Referral 26 Draft Glenelg Planning Scheme Amendment C109 – 315 Dutton Way, Bolwarra, and Surrounds

The Committee held a Directions Hearing for the above matter on 2 December 2022. Please find attached:

- A short explanation of Procedural issues
- Committee Directions
- Distribution List.

A timetable is currently being prepared.

The following dates apply:

Time	Date	Action	Direction
12 noon	Friday, 23 December 2022	Parties (other than the Proponent) must circulate a dot point list identifying any fact or policy changes since the VCAT assessment and decision that it thinks the Committee will need to consider	2
12 noon	Friday, 16 December 2022	The Proponent must supply documents specified	11
12 noon	Monday, 6 February 2023	The Proponent must circulate its Part A submission	12
12 noon	Monday, 13 February 2023	The Proponent must circulate expert witness reports	14
12 noon	Wednesday, 15 February 2023	Parties calling evidence must circulate expert witness reports	15
12 noon	Friday, 17 February 2023	The Proponent must circulate its Part B submission	20
12 noon	Tuesday, 21 February 2023	Any supplementary submission from a party not appearing at the Hearing must be circulated	27
10 am	Tuesday, 21 February 2023	Hearing commences and will be concluded by 3 March 2023	

If you have questions, please contact Chris Brennan of Planning Panels Victoria on [REDACTED] or planning.panels@delwp.vic.gov.au.

Yours sincerely

Lester Townsend
Committee Chair

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OFFICIAL



Procedural issues

Priority Projects Standing Advisory Committee:

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Gunditjmara Native Title Holders

On 30 November 2022 the Committee wrote to the Gunditj Mirring Traditional Owner Aboriginal Corporation advising:

We understand that the Gunditj Mirring Traditional Owner Aboriginal Corporation have previously approved an existing Cultural Heritage Management Plan (CHMP) for this matter. However, the project has changed significantly, and a few years have passed since the CHMP was approved.

We consider that input from Traditional Owners in planning matters, especially landscape matters is important to ensure the best decisions and outcomes. We would like to invite you to participate in the hearing process for this matter to give you an opportunity to express your views and tell us if there are any additional matters we need to be aware of. You may do this either in person or online at the Hearing, or in writing.

Judy McDonald, the Acting CEO of the Gunditj Mirring Traditional Owners Aboriginal Corporation has advised the Committee:

GMTOAC needs to seek directions from our Gunditjmara Native Title Holders at the next scheduled meeting on this matter. GMTOAC would like to accept the invitation from the Committee to participate in the Hearing, schedule for February 2023.

Requests for the Hearing to be held in Portland

The Committee received requests from Ms Matuschka and Ms Yuill for the Hearing to be held in Portland. This was discussed at the Directions Hearing. Several parties including the Proponent agreed at least part of the Hearing should be conducted in Portland or surrounding areas. Many parties said that they had poor internet access, and this would make it difficult to participate in an online Hearing. After considering these matters, the Committee advises that the Hearing (or a substantial part of it) will be held in Portland. Venue options are being explored.

Scope of the Hearing

At the Directions Hearing the Committee sought the parties' views on how much of the previous VCAT proceeding should be revisited during the Committee Hearing.

In the Directions Hearing letter of 28 October 2022 the Committee observed:

Proceeding P797/2019 was heard in early 2020 over 27 days. After hearing extensive evidence and submissions the Tribunal found that the potential impacts on the environment and the Port had been appropriately assessed and any potential impacts could be appropriately managed through the works approval conditions. They also found that noise, odour emissions, and increases in traffic would not warrant the refusal of a permit. However, the Tribunal ordered no permit be granted because they found the proposal created conflict with the purposes of the Rural Living Zone (RLZ), and that the facility would change the character of the RLZ, creating unacceptable visual amenity impacts.

Given the breadth of the previous VCAT proceeding, the Committee will seek parties' views at the Directions Hearing on how much of the previous VCAT proceeding should be revisited during the Committee Hearings.

The Proponent came prepared to give its view on this issue. Other parties did not. The Proponent noted that in response to the VCAT's decision, the Proponent now proposes an abalone farm that is half the size of the Original Proposal (Revised Proposal), and seeks a planning scheme amendment to authorise the Revised Proposal via an Incorporated Document and SCO.

The Proponent circulated a document to the Panel on 1 December 2022 (attached) which was also read out at the Directions Hearing. It stated:

Directions:

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24. It follows that the technical matters can be treated as largely resolved, if for no other reason than that what is now proposed is half the size of what was proved to be acceptable before the Tribunal.
25. The central question is a strategic planning question, whether or not the Land would be better used to facilitate aquaculture notwithstanding the impacts on visual amenity and potential inconsistency with the purposes of the Rural Living Zone, all other matters having been resolved by the Tribunal, and since then all impacts considered by the Tribunal, in effect, halved.

The Proponent submitted that the following matters should not be pursued in submissions or evidence:

- | | |
|---|---|
| (a) dust | (g) groundwater, including but not limited to geotechnical/ground stability issues and groundwater quality/quantity issues |
| (b) noise | (h) coastal risks and sea level rise, including but not limited to issues associated with breaching the sea wall and sand migration |
| (c) odour | (i) coastal water quality and impacts of Port of Portland activities on the proposal. |
| (d) biodiversity impacts – terrestrial and marine | |
| (e) traffic and parking/access matters | |
| (f) surface water and drainage | |

The Committee agrees with the Proponent that the previous VCAT matter adequately addressed issues listed above, but notes that the assessment was based on the material that was before it at the time, and the policy settings and requirements at the time.

The Committee will proceed on the basis that only matters that are materially different to the previous VCAT decision need to be pursued in submissions or evidence from the Proponent. These include:

- issues related to visual and landscape impacts because these will be different with the new proposal
- matters where fact or policy has changed since the VCAT assessment and decision
- strategic planning considerations related to the use of the Specific Controls Overlay including any broader implications for the Rural Living Zone in the region
- whether the proposed requirements or 'conditions' in the Specific Controls Overlay will appropriately manage issues.

The Committee does not seek, at this stage, to limit the scope of issues that people objecting to the proposal can raise, noting that no party has indicated its intention to call evidence revisiting the matters determined by VCAT. The Committee does not require the Proponent to call evidence or provide detailed submissions on matters it thinks were resolved by VCAT ahead of submissions by other parties. If those submissions raise specific issues, leave will be granted to the Proponent to make submissions or call evidence to address these issues.

To facilitate this process, the Committee directs all parties to lodge a short statement identifying matters where fact or policy has changed since the VCAT assessment and decision (see direction 2 attached).

Committee Directions

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Before the Hearing

Scope of the Hearing

1. Noting that many issues were addressed by the previous VCAT decision, the Committee will be assisted by a Hearing process that is focussed on:
 - a) issues related to visual and landscape impacts because these will be different with the new proposal
 - b) matters where fact or policy has changed since the VCAT assessment and decision
 - c) strategic planning considerations related to the use of the Specific Controls Overlay including any broader implications for the Rural Living Zone in the region
 - d) whether the proposed requirements or 'conditions' in the Specific Controls Overlay will appropriately manage issues.
2. Parties who have identified fact or policy changes since the VCAT assessment and decision that it thinks the Committee will need to consider must circulate a dot point list identifying those changes in fact or policy by **12 noon on Friday, 23 December 2022**

Confirmation of expert witnesses

3. Any party who is yet to confirm expert witnesses to be called must advise the Committee by **12 noon on Friday, 23 December 2022**.

Hearing administration

4. The Proponent must liaise with Planning Panels Victoria regarding:
 - a) A suitable venue in Portland
 - b) Hosting and managing a concurrent video conference of the in person hearing.
5. The Proponent must host and manage online document sharing.

Circulation and sharing of documents

6. Documents must be circulated electronically to all parties on the distribution list.
7. File names should be as short as possible and written in the following format:
 - 'Party' - 'document name'
8. The Proponent must upload circulated documents to the document sharing platform as soon as practicable or provide a mechanism for parties to directly upload themselves. Any party that uploads documentation to the file share must also send a courtesy email to all parties on the distribution list to advise it is available.
9. Files should not exceed 20MB in size. Documents larger than 20MB should be broken down into smaller files less than 20MB.
10. Paper documents will only be permitted in exceptional circumstances. If any party has issues supplying documents electronically, they should contact Planning Panels Victoria.
11. The Proponent must provide the following documents to parties on the distribution list by **12 noon on Friday, 16 December 2022**:
 - a) A copy of the Marine and Coastal Act 2018 consent (dated 16 November 2022)
 - b) The Siting and Design Guidelines for Structures on Victorian Coast 2020

Proponent Part A submission

12. The Proponent must circulate a Part A submission to parties on the distribution list by **12 noon on Monday, 6 February 2023** that includes:
- a) background to the Amendment including chronology of events
 - b) strategic context and assessment
 - c) issues identified in submissions
 - d) any suggested changes to the Amendment in response to submissions.

Note: The Part A submission will be taken as read by the Committee at the Hearing. The Proponent should allow time for questions about its Part A submission on Day 1.

Witness reports

13. A witness report must:
- a) comply with the Guide to Expert Evidence ([Expert witnesses \(planningpanels.vic.gov.au\)](https://www.planningpanels.vic.gov.au))
 - b) not refer to any individual submitter by name – if necessary, submitters should be referred to by submission number (*Note: it can refer to community groups, organisations, corporations, and government agencies*)
 - c) be provided to the Committee as an unlocked document.
14. The Proponent must circulate its witness reports to parties on the distribution list by **12 noon on Monday, 13 February 2023**.
15. Other parties calling evidence must circulate their witness reports to parties on the distribution list by **12 noon on Wednesday, 15 February 2023**.

At the Hearing

Submissions and information

16. Parties must present material at the Hearing electronically.
17. Electronic information must be circulated to parties on the distribution list by **12 noon on the day before** the information is to be presented at the Hearing.
18. If the Committee has allowed you to present a paper document at the Hearing:
- a) at least six (6) copies must be provided, two-hole punched and stapled (not bound)
 - b) after presenting to the Panel, submissions (preferably in MS Word) should be emailed to planning.panels@delwp.vic.gov.au as an unlocked document.
19. All information presented at the Hearing is a public document for the purposes of the Committee process unless the Committee directs otherwise.

The Proponent Part B submission

20. At the Hearing, the Proponent must present its Part B submission, as circulated **on Friday, 17 February 2023**, that includes:
- a) its response to submissions and evidence
 - b) key items to be addressed
 - c) its final position on the Amendment.

Evidence and cross examination

21. Unless agreed by the Chair, evidence-in-chief must be no longer than 30 minutes – *all expert witness reports will be read before the Hearing.*

22. An expert witness may refer to a presentation which summarises their evidence, but it must:
 - a) not include new evidence
 - b) be provided to parties by 12 noon the day before that witness is scheduled to appear.
23. Parties, advocates, and the Committee may question a witness.
24. If cross-examining a witness, a party must:
 - a) be present for the whole of the giving of the evidence
 - b) ask clear and relevant questions, directed to matters of fact or professional opinion, that genuinely assist the Panel in understanding the issues
 - c) allow a witness time to explain their answer.
25. If giving evidence remotely, a witness must:
 - a) be alone in the room from which they give evidence and not make or receive any communication with another person while giving evidence except with permission from the Committee
 - b) inform the Committee immediately should another person enter the room from which they are giving evidence
 - c) not discuss their evidence with any other person during breaks in evidence when under cross-examination
 - d) not have before them any document, other than their expert witness statement and relevant supporting documents.
26. The Committee will regulate cross-examination.

Written submissions

27. A party who intends to supplement their original submission (without orally presenting that submission) must circulate their written submission to parties on the distribution list by **12 noon on Tuesday, 21 February 2023**.

Closing submissions

28. The Proponent will be provided time to present a closing submission.
29. The closing submission must not raise new matters but should respond to matters raised in other parties' submissions or evidence. If submissions by other parties raise specific issues that were not dealt with by the earlier VCAT decisions, leave will be granted to the Proponent to make further submissions or call evidence to address these issues.

Recording Hearings and use of personal information

30. Parties must not record any part of an electronic hearing by any means without permission from the Panel.
31. In exceptional cases, the Chair may direct that the Hearing be recorded. A party who wishes proceedings to be recorded must make a request to the Committee at least five business days before the commencement of the Hearing, outlining its reasons.
32. If Planning Panels Victoria records an electronic hearing, any party provided with a copy of the recording on request must not publish or distribute that recording or use it for any purpose other than for the Hearing.
33. Parties must not record, keep, distribute, or publish contact details of any other party obtained during an electronic hearing session, or use those contact details for any purpose other than for the Hearing.

Directions:

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Compliance with Committee directions

34. All directions must be complied with. It is an offence to not comply with a direction without lawful excuse. [section 169 of the *Planning and Environment Act 1987*]
35. If you anticipate being unable to comply with a direction (for example, meeting a deadline for the circulation of evidence), you must provide the Committee with advance notice, and a written statement explaining why you are unable to comply with the direction, and permission from the Committee to vary the direction.
36. The Committee may:
 - a) refuse to hear from anyone who fails to comply with a direction. [section 159(b)]
 - b) not accept evidence if permission to vary a direction for the circulation of evidence is not sought or granted.

Distribution list

Priority Projects Standing Advisory Committee:

Referral 26 Draft Glenelg Planning Scheme Amendment C109 – 315 Dutton Way, Bolwarra, and Surrounds

Use this list to circulate expert witness statements and other information requested by the Committee. It must not be used for any other purpose.

Version 1

Electronic documents

Party	email address
Planning Panels Victoria	planning_panels@delwp.vic.gov.au
Department of Environment, Land, Water and Planning	[REDACTED]
Yumbah Aquaculture Limited (Proponent)	[REDACTED]
Alexis Sealey	[REDACTED]
Amy Saunders	[REDACTED]
Brian Malseed	[REDACTED]
Bryan Bowman	[REDACTED]
Daniel Hulbert	[REDACTED]
Deborah Jones	[REDACTED]
Debra Craib	[REDACTED]
EPA Victoria	[REDACTED]
Fiona Wright	[REDACTED]
Gary Matuschka	[REDACTED]
Graeme Baugh	[REDACTED]
Ian Hunter	[REDACTED]
Irene Hatton and Joel Sealey	[REDACTED]
Jo Credlin	[REDACTED]
Joanne Cole	[REDACTED]
John Piasente	[REDACTED]
Julie Hoffmann	[REDACTED]
Karen Dalton	[REDACTED]
Kathleen Baugh	[REDACTED]
Kay Robertson	[REDACTED]
Keith Kallie	[REDACTED]
L Clarke Developments Pty Ltd and Holiday Lifestyle Developments Australia Pty Ltd	[REDACTED]
Lesley Yuill	[REDACTED]
Linda Bowman	[REDACTED]
Linda Jemmett	[REDACTED]

Party	email address
Linda Owen	[REDACTED]
Luen Credlin	[REDACTED]
Neil & Lyndi Ball	[REDACTED]
Pam McLeod & Graeme Barr	[REDACTED]
Paul Kerr	[REDACTED]
Peter Stirling	[REDACTED]
Phillip Oakley	[REDACTED]
Port of Portland	[REDACTED]
Rachael Matuschka	[REDACTED]
Ray Fitzgerald	[REDACTED]
Rhonda Root	[REDACTED]
Robyn Hoe	[REDACTED]
Sally Kerr	[REDACTED]
Shea Rotumah	[REDACTED]
Stefan Wagner	[REDACTED]
Stephen Liddicut	[REDACTED]
Steven Owen	[REDACTED]
Tanya Hulbert	[REDACTED]
Tanya Mibus	[REDACTED]
Tony Wright	[REDACTED]
