

Priority Projects Standing Advisory Committee Report
Referral 26: Yumbah Abalone Farm Portland
Draft Glenelg Planning Scheme Amendment C109gelg

Advisory Committee Report

Planning and Environment Act 1987

17 April 2023

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located.

The Committee acknowledges the Gunditjmara People as the traditional custodians of the coastal area affected by this proposal.

We pay our respects to their Elders past and present.

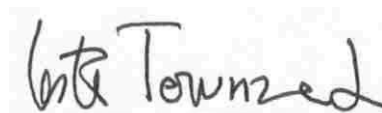
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Priority Projects Standing Advisory Committee Referral 26 Report pursuant to section 151 of the PE Act

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Draft Glenelg Planning Scheme Amendment C109gelg

17 April 2023



Lester Townsend, Chair



Mandy Elliott, Deputy Chair



Ian Hamm Member

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Glossary and abbreviations

AEP	Annual Exceedance Probability
AH Act	<i>Aboriginal Heritage Act 2006 (Vic)</i>
the draft Amendment	draft Glenelg Planning Scheme Amendment C109gelg
ARI	Average recurrence interval
CHMP	Cultural Heritage Management Plan
the Committee	Priority Projects Standing Advisory Committee (Referral No. 26)
Council	Glenelg Shire Council
DEECA	Department of Energy, Environment and Climate Action
DELWP	Department of Environment, Land, Water and Planning (former)
DFP	Development Facilitation Program
DTP	Department of Transport and Planning
EP Act	<i>Environment Protection Act 2017 (Vic)</i>
EPA	Environment Protection Authority
EVC	Ecological Vegetation Class
FFG Act	<i>Flora and Fauna Guarantee Act 1998 (Vic)</i>
FTE	Full time equivalent
GMTOAC	Gunditj Mirring Traditional Owners Aboriginal Corporation
HBC	Hairy Burrowing Crayfish
MAC Act	Marine and Coastal Act 2018
Minister	Minister for Planning
PBC	Portland burrowing crayfish
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
RLZ	Rural Living Zone
SCO	Specific Controls Overlay
VCAT	Victorian Civil and Administrative Tribunal
Yumbah	Yumbah Aquaculture Limited (the Proponent)

Overview

Referral summary

Referral	Priority Projects Standing Advisory Committee Referral 26
Brief description	Amendment C109gelg seeks to facilitate the development of a 500-tonne land-based aquaculture facility by inserting an incorporated document and applying a Specific Controls Overlay to the land.
Subject land	315 Dutton Way, Bolwarra
The Proponent	Yumbah Aquaculture Limited (Yumbah)
Planning Authority	Minister for Planning
Exhibition	11 July and 1 August 2022
Submissions	Number of Submissions: 183 Opposed: 176

Committee proces

The Committee	Lester Townsend (Chair), Mandy Elliott and Ian Hamm
Supported by	Georgia Thomas and Chris Brennan, Planning Panels Victoria
Directions Hearing	Video conference, 2 December 2022
Hearings	Portland, 21, 22, 23, 24, 27, 28 February and 1, 2, 3 March 2023
Site inspections	Accompanied on 21 February 2023, unaccompanied at other times during the Hearing
Citation	Glenelg PSA C109gelg [2023] PPV
Date of this report	17 April 2023

About this Report

(i) Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning (Minister) on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

This is Referral 26. It relates to a proposal for a 500-tonne land-based abalone farm at 315 Dutton Way, Bolwarra and adjacent land.

The Committee was provided with a letter of referral from the Minister on 17 October 2022 (Appendix B) that tasked it to consider draft Glenelg Planning Scheme Amendment C109gelg which proposes to introduce a site specific control by way of an incorporated document to permit the abalone farm.

The Proposal was exhibited by the Minister and 183 submissions received. The letter of referral requested the Committee provide specific advice on the matters raised in submissions and the proposed draft incorporated document.

(ii) Membership

The Priority Projects Standing Advisory Committee members dealing with Referral 26 were:

- Lester Townsend, Chair
- Mandy Elliott, Deputy Chair
- Ian Hamm, Member.

The Committee was assisted by Georgia Thomas and Chris Brennan, Project Officers, of the office of Planning Panels Victoria.

(iii) Background to the Proposal

A previous planning permit application for a larger abalone farm on the site was considered by the Victorian Civil and Administrative Tribunal (VCAT) following an appeal against Glenelg Shire Council's decision to grant a permit. VCAT refused the permit application.

The Committee is tasked with considering a revised Proposal which was considered by the Development Facilitation Program within the Department of Environment, Land, Water and Planning (DELWP), now the Department of Transport and Planning (DTP)) and deemed to meet relevant criteria to be prioritised for accelerated assessment.

The parties consulted included adjoining owners and occupiers of land, all parties to previous VCAT proceeding P797/2019, Glenelg Shire Council, DELWP (Forest, Fire and Regions – Barwon South West), Environment Protection Authority, Glenelg Hopkins Catchment Management Authority, Wannon Water and Fire Rescue Victoria.

Executive summary

This is a revised Proposal for an Abalone Farm that was refused by VCAT. Yumbah, an established aquaculture business, is the Proponent. The Proposal has half the abalone throughput of the refused Original Proposal – 500-tonnes per annum compared to the earlier proposal of 1,000 tonnes per annum.

The Proposal is a ‘pump ashore abalone farm’ which pumps ocean water to the onshore facility where the abalone are raised over three-years. Water is cycled through the farm 24 hours a day to provide oxygen to the abalone. The abalone are housed in different structures over their lifecycle including ‘grow-out tanks’.

The grow-out tanks are relatively shallow tanks housed in buildings covered by shade-cloth to filter out direct sunlight to reflect the conditions 5 metres underwater. The visual impact of these buildings is a critical issues.

In essence VCAT refused the Original Proposal because of its impact on the visual amenity of a number of dwellings that overlook the site and its impact on the surrounding landscape within the Rural Living Zone. Amenity was assessed in terms of the Proposal within the Rural Living Zone that applies to the land. In other respects VCAT found the Proposal acceptable.

Two biodiversity issues have arisen since the time of the VCAT decision. One of these is the presence on the site of the recently listed *Flora and Fauna Guarantee Act 1988* Portland Burrowing Crayfish and the other is the potential for a recently listed seagrass species to be present in the marine environment in the location of the approved inlet and outlet pipes.

The Proposal has been modified to reduce its visual impact. The substantive issues to be considered are:

- impacts of the revised Proposal on:
 - visual amenity of the dwellings that overlook the Proposal, given that the current Proposal is intended to reduce these impacts compared to the Original Proposal
 - the Portland Burrowing Crayfish
 - the seagrass
- whether the existing Cultural Heritage Management Plan approves the current proposal
- whether the proposed conditions on the Proposal are appropriate.

The letter of referral requests that the Committee provide specific advice on the matters raised in submissions and the proposed draft incorporated document. This report does that noting many of the issues raised in submissions were previously dealt with by VCAT.

Community understanding of the Proposal

What is before the Committee and what many submitters think is before the Committee are two different things. Not just in terms of the approval that this report will inform, but of the impacts of the Proposal. This report is focussed on the planning approval of the Proposal with critical environmental approvals already in place.

If the Proposal had the impacts many submitters fear it will have, it would clearly deserve refusal – but it will not have these feared impacts, and the impacts it will have can be appropriately managed. In fact, approval for many of these aspects have already been granted.

For many of the submitters the impact will be a broad landscape impact in their neighbourhood. These impacts are important, and a key issue before the Committee is whether these impacts will be acceptable.

The Proposal will have a marked effect on the outlook of a few dwellings, and these most affected submitters have taken the lead in supporting community submissions to the Proposal. Many of the submitters believe that approval of the Proposal would be a catastrophe, with significant impacts on their lifestyle, and some believe on their mental health. It is not clear the basis on which submitters have reached these conclusions, when the actual impacts of the Proposal are examined and when VCAT specifically determined that a wide range of impacts of the previous larger proposal were acceptable. Yumbah might reflect on its community engagement processes.

This is particularly the case in terms of its engagement with the Gunditj Mirring Traditional Owners Aboriginal Corporation in relation to the cultural heritage issues, noting:

- no further consultation with the Gunditj Mirring Traditional Owners Aboriginal Corporation was considered necessary because of the existing Cultural Heritage Management Plan relating to the Original Proposal, but
- the existing Cultural Heritage Management Plan was approved by a delegate of the Secretary, Department of Premier and Cabinet, not the Gunditj Mirring Traditional Owners Aboriginal Corporation because, at that time, the corporation was under special administration.

The VCAT decision

Many submitters urged the Committee to respect the VCAT decision. VCAT rejected the Original Proposal because it concluded:

... the aquaculture facility presents an imposing volume of built form across the landscape and within the vista from dwellings located on the escarpment. We conclude that this aquaculture facility would change the character of this RLZ. It seeks too much from its location and would result in landscape and visual amenity impacts that are not acceptable, therefore creating a conflict with the purposes of the zone.

The Proposal has been reduced in response to the VCAT decision, its abalone throughput has been halved and substantial landscaping is proposed to mitigate the visual and landscape impacts.

The VCAT decision makes it clear that visual and landscape impact was the only grounds on which the Original Proposal was refused. VCAT said of the other issues:

- 41 While other matters raised against [the Proposal] also rely on policies with respect to amenity and avoiding land use conflicts, protection of biodiversity and natural resources, ..., the Proposal has no case to answer in respect to those matters. Our examination of the evidence points to many of the apprehended impacts to be unfounded or manageable risks that would not lead us to refuse a planning permit.

The Committee agrees with VCAT: many of the perceived impacts of the submitters are unfounded or can be managed.

Summary of reasons

Certainly many people (though not all) will not find the facility appealing to look at, at least until the screening landscape grows, but this impact falls far short of the impacts many submitters feared. It will have a direct visual amenity impact of only a few dwellings. Most submitters will see the Proposal as they drive (or walk) past it along Dutton Way and from this view it will be screened by vegetation, including existing vegetation for a significant length.

There is strong policy support for aquaculture in planning policy. This needs to be balanced against other policies including the purpose of the relevant zone, the Rural Living Zone, which has the purposes:

- To provide for agricultural [which includes aquaculture] land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.

VCAT reached a view that many of the Original Proposal's impacts would be acceptable, and where there has not been a change in circumstances or policy, and the impacts of the Proposal will not be greater than the Original Proposal, VCAT's decision should be accepted.

There is clear policy support for aquaculture and the Committee must assess the Amendment against the principles of net community benefit and sustainable development, as set out in of the Planning Scheme.

In terms of critical impacts:

- The Proposal will be obliged to meet accepted noise and odour standards.
- There is a need to manage impacts on the Portland Burrowing Crayfish.
- The Incorporated Document should include more explicit requirements in respect of landscaping.
- The Proposal will not have a long term adverse impact on the visual amenity of Dutton way.
- The Proposal will not have a significant impact on visual amenity from public vantage points along Princes Highway, the Great Southern Walk and the Frank Lodge Scenic Lookout.
- All guidance in relation to minimisation of visual impacts has been followed.
- There is no strategic basis for rejecting the Proposal on 'landscape and visual' distinct to private amenity issue.
- The change to the views enjoyed by the escarpment properties will be acceptable in the context.

For the reasons set out in this report, the Committee concludes the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

Recommendations

The Committee recommends:

1. **Before the Minister for Planning makes a decision on whether to adopt and approve the Amendment, the Minister for Planning invite the Gunditj Mirring Traditional Owners Aboriginal Corporation and the Proponent to meet and provide a joint statement to the Minister for Planning on whether Cultural Heritage Management Plan 15400 appropriately manages the cultural heritage impacts of the Proposal, and to precisely identify any specific points of disagreement, and the reasons for any divergence of views. If there are points of disagreement, the Minister for Planning seek advice from the**

minister administering the *Aboriginal Heritage Act 2006* on the appropriate course to resolve those points.

- 2 Subject to the outcomes of Recommendation 1, the Minister for Planning adopt and approve Glenelg Planning Scheme Amendment C109gelg with the Incorporated Document in the form shown in Appendix H.**

1 The site, proposal and planning context

1.1 Background

(i) What is before the Committee

The Committee is considering the draft Glenelg Planning Scheme Amendment C109gelg (the draft Amendment) to:

- apply the Specific Controls Overlay (SCO) to the subject land to 'turn off' the rest of the planning scheme
- include an Incorporated Document to facilitate the use and development of the subject land for an abalone farm (aquaculture facility).

A previous planning permit application for a larger abalone farm on the site (the Original Proposal) was considered by the Victorian Civil and Administrative Tribunal (VCAT) following an appeal against Glenelg Shire Council's decision to grant a permit. VCAT refused the permit application.

How abalone is farmed

Over the past 20 years abalone farming has become a key practice in the aquaculture industry in Australia with farms operating in Western Australia, South Australia, Victoria, and Tasmania. Abalone is considered a delicacy by many cultures and is one of the most valuable seafood products in the world.

The Proposal is a 'pump ashore abalone farm' which pumps ocean water to the onshore facility where the abalone are raised over three-years. Water is cycled through the farm 24 hours a day to provide oxygen to the abalone. The abalone are housed in different structures over their lifecycle:

- hatchery
- nursery
- grow-out tank.

In the hatchery mature abalone are induced to spawn eggs and sperm that fertilise and hatch as microscopic larvae. The larvae are then moved to the nursery where they are placed into plastic plates that are inoculated with algae. In the nursery the larvae grow to 10 to 20mm in diameter before they are moved to the grow-out tanks.

The grow-out tanks are relatively shallow tanks housed in buildings covered by shade-cloth to filter out direct sunlight to reflect the conditions 5 metres underwater. The tanks deliver water that flows over the abalone which continuously delivers oxygen and removes waste. The abalone grow to the desired size and are ready for harvesting after approximately 24 months.

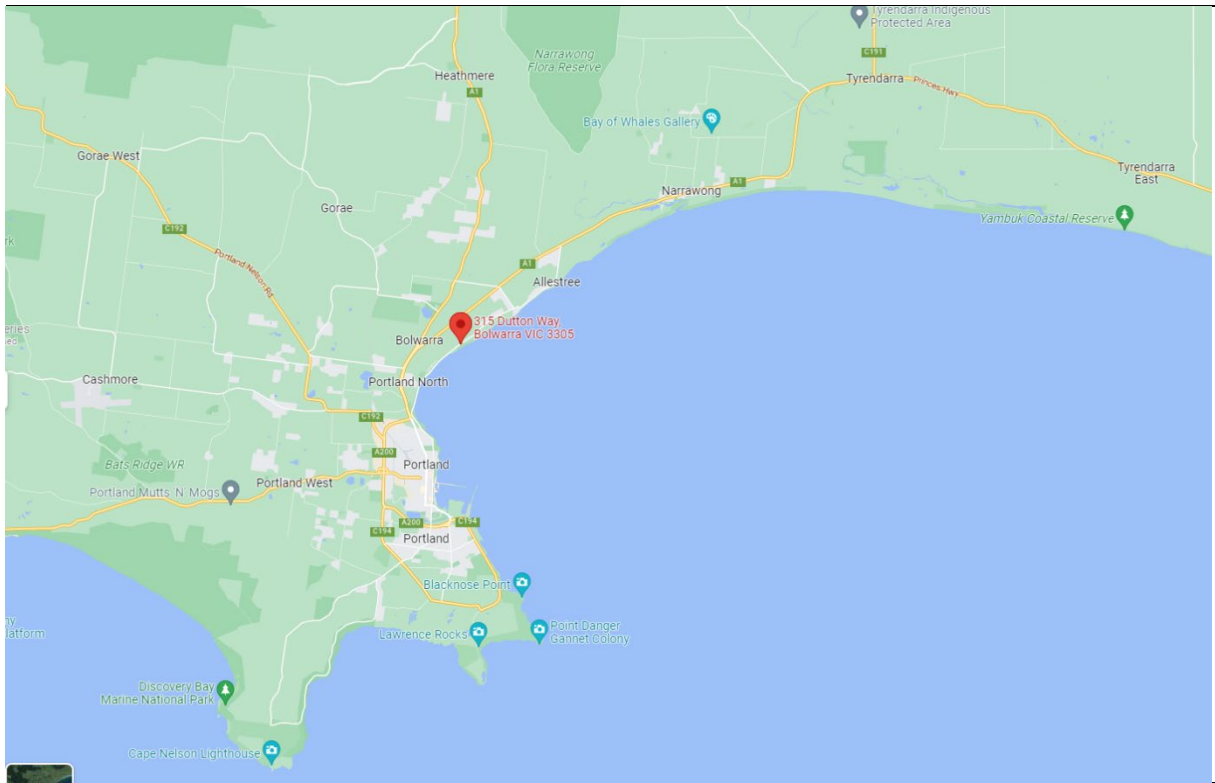
(ii) Site location

The subject land comprises several lots situated between the Princes Highway and Dutton Way known as 315 Dutton Way, Bolwarra, together with some adjoining properties to the southeast of Dutton Way. The subject land is:

- about 3.5 kilometres to the north-east of Portland, the main regional centre of the Glenelg Shire, on the foreshore of Portland Bay (see Figure 1).
- located within a mixed context of low-density rural living, residential subdivision of smaller lots along the waterfront, and agricultural uses (pasture).

The Proposal is called Yumbah Nyamat (pronounced 'NYA-mat', with 'ny' as in 'n' in 'onion', or listen on this [website](#)).

Figure 1 **Site location**



Source: Google maps

Site suitability for abalone

Yumbah submitted that the site was well-suited for abalone farming, setting out the requirements for an abalone farm in its Part B submissions:

- Access to clean, oceanic water (salinity 35 grams per litre) with a temperature range of 10°C to 23°C. This excludes land north of Sydney or Perth and estuaries and shallow bays.
- Access to partly protected ocean water greater than five metres in depth within 500 metres of the shoreline to assist in ensuring cleanliness of water and security and maintenance of offshore infrastructure. Depth is necessary to allow for suction of water from the mid water point – ideally 1 to 2 metres off the ocean floor. Any greater than 500 metres of intake pipe increases capital and residual maintenance costs.
- Low lying ideally between 2 metres and 5 metres above sea level:
 - Less than 2 metres it is almost impossible to engineer gravity flow back to the ocean and the farm is at risk of flooding
 - Greater than 5 metres results in expensive pumping costs and higher carbon emissions.
- Protection from rising sea levels and inundation by the sea.
- Suitably sized land where significant earthworks are not required.
- Access to labour and service providers such as trades people and technicians.
- Access to three phase power and ideally some municipal utilities.
- Access to services such as roads and freight networks.

A specific report the 'Abalone Aquaculture Location Assessment' documented a 'sieve mapping' exercise assessing Victoria's western coast for suitability for abalone aquaculture against some of the criteria above. The assessment demonstrated that there are just five locations between Melbourne and the South Australia border where the criteria above are met. Yumbah submitted that all of the areas other than the subject land itself are unsuitable or constrained.

(iii) About Portland Bay

Early history

What is now called Portland Bay is part of the traditional lands of the Gunditjmara people. Human settlement of Australia is thought to have begun some 65,000 year ago.

Early post contact history

Europeans settled in Portland in 1834. There is substantial evidence of frequent frontier conflict between the European settlers and the Gunditjmara people in the early decades of European settlement in the Portland area.

Portland Bay is home to the 'Convincing Ground' about 5 kilometres east of the subject land. The Convincing Ground is representative of frontier conflict:

The Convincing Ground is of social significance for the Gunditjmara people and other Aboriginal people of Southwest Victoria because of the associations with country. The Convincing Ground is of social significance for all Victorians for its associations with the early encounters with Aboriginal people and Europeans and the violent conflict with whalers and the deaths of members of the Kilcarer gundidj clan. The Convincing Ground is of social significance for all Victorians who look to develop an understanding of the history of contact, conflict and settlement.¹

Residential development


The land near the Proposal was sold for residential development in the 1950s, including a subdivision of over 200 lots known as the Henty Bay Estate. A submitter whose family has a long association with Dutton Way explained:

The Dutton Way became particularly well established during the 1950s and early and mid-1960s as families like mine flocked to purchase housing blocks in order to enjoy its natural attributes.

With its extensive dunes and wide, sandy swimming beach, it was among the prides of the district.

Ms Peterson, giving town planning evidence for Yumbah, described the residential development as an 'inappropriate' subdivision, but there was no indication that the land was inherently unsuitable for residential development.²

Erosion

In 1956–1958 the south wall of Portland harbour was constructed and almost immediately erosion was noticed along the beach front opposite the subject land, shown as  in Figure 2, notably at the Henty Bay Estate on Dutton Way. The beach and dune eroded significantly and in 1964 the first house along Dutton Way washed into the sea.³

¹ http://vhd.heritage.vic.gov.au/places/show_significance/13797

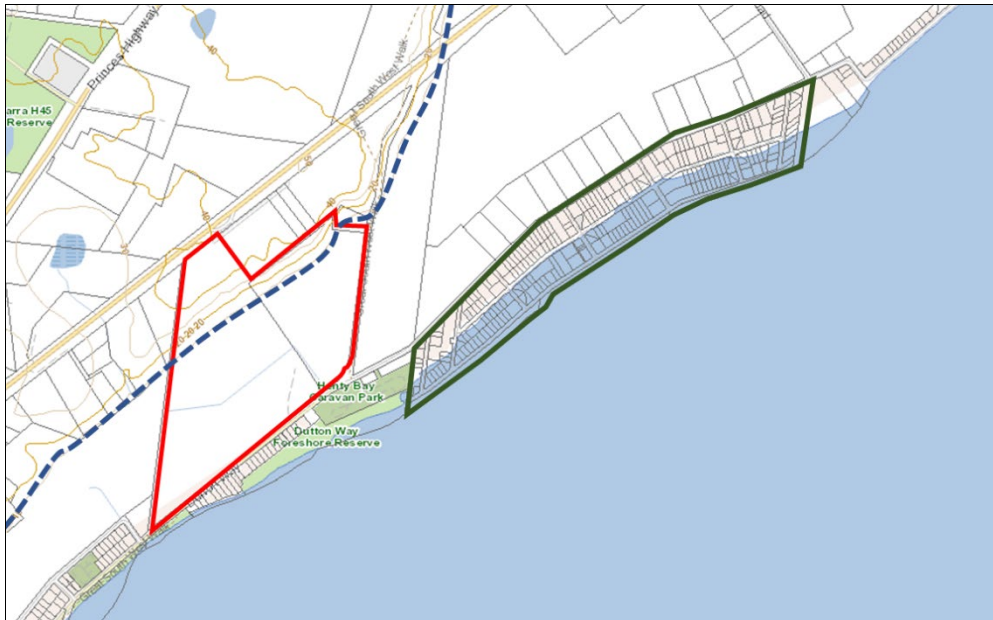
² Some areas in Victoria are recognised as 'old and inappropriate subdivisions' which ought to be restructured and the Restructure Overlay in the Victoria Planning Provisions gives the power to do this. This is not one of those areas.

³ <https://publications.csiro.au/rpr/download?pid=procite:91789445-a586-4397-9cbd-bee517e923c1&dsid=DS1>

The shoreline had receded by up to 200 metres, at the worst location, before ad hoc seawalls were constructed by owners of foreshore property.

Existing private lots in the Henty Bay Estate , now some underwater , are zoned Special Use Zone Schedule 3 which effectively prohibits all use and development.

Figure 2 **The site and the Henty Bay Estate**



Source: Prepared by the Committee

The Dutton Way landscape today

Northwest of Dutton Way the area is partly open, low-lying farmland, before it rises steeply up to the Princes Highway. The base of the escarpment is shown as — — in Figure 2. This land has been (and is currently) used for pastoral and dairy agriculture and is mostly covered with exotic pasture, with some minor wetland flora along drainage lines that pass through the property.

The area is a mix of farming and residential development on a variety of lot sizes. A number of submissions described the area as 'pristine'. The Committee accepts that the waters of Portland Bay are unpolluted, but the area is not pristine.

The southern side of Dutton Road opposite the subject land features the Henty Bay Caravan Park and single and double storey dwellings. The Committee does not agree with reported descriptions of the houses as 'beach shacks', but in its more settled parts the area leans more towards suburbia than a natural setting. This does not mean it does not play host to a great variety of wildlife.

To the north, four properties with dwellings (42 and 46 Beechwood View, 18 Wilkins Lane and 8921 Princes Highway) sit adjacent to the subject land's northern boundary. These properties are positioned above the escarpment and are generally designed to take advantage of the views to the ocean and Portland.

The broader Portland landscape

Portland hosts a range of industrial activities including the Portland Aluminium Smelter. Post-contact settlement of Portland to date has, in the main, favoured industrial development over preservation of natural and cultural values. In the words of one submitter:

With a reputation of extremely poor planning decisions in the past, one only has to drive through and around town and look at the mish mash of residential, industrial planning that has been allowed here.

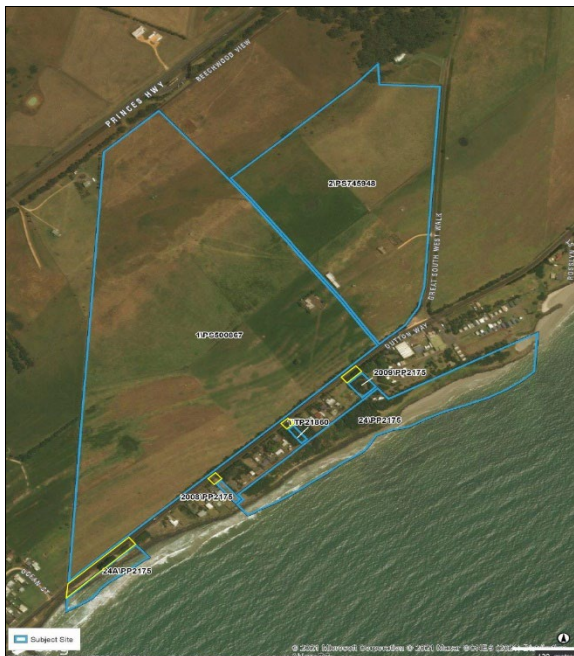
(iv) The subject land

Most of the subject land is located on the northern side of Dutton Way and has an area of approximately 46 hectares, comprising:

- land for the aquaculture facility
- additional titles for pipelines and associated infrastructure
- parts of Dutton Way given the pipes would traverse the road reserve.

Figure 3 shows the subject land and associated sites that will be affected by the draft Amendment. The SCO cover follows title boundaries and so extends way beyond the actual extent of works proposed. It is proposed to include a plan in the Incorporated Document to specify the actual extent of works.

Figure 3 Subject land



Source: Proponent's Part A from Explanatory Report – Draft Amendment C109gelg with updated sections on road reserve.

(v) Existing planning controls

The following planning scheme controls apply to the subject land (see Figures 4 and 5):

- zones:
 - part Rural Living Zone (RLZ)
 - part Public Park and Recreation Zone
- overlays:
 - Environmental Significance Overlay– Schedule 1 'Coastal areas' that has the objective:
 - To ensure the long term protection of coastal and marine environments from development that is likely to prejudice the long term environmental values of the coast
 - Bushfire Management Overlay

- SCO, Schedule 4 'Coastal Land East of Portland between Dutton Way and Narrawong' which states:
 - An application for the use and development of land for a dwelling ... should demonstrate that the dwelling is designed to enable relocation in the event future coastal processes threaten the safety of the land and appurtenant dwelling.

Figure 4 Zones

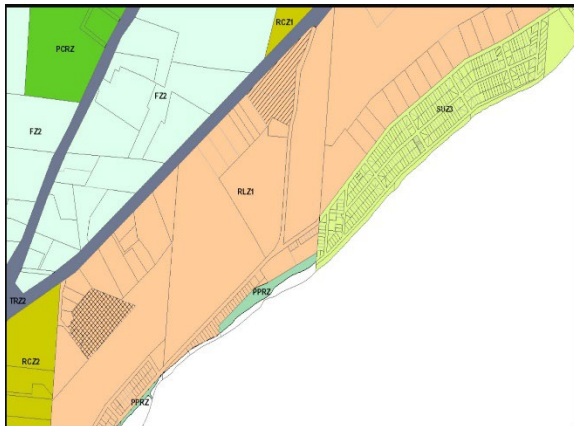
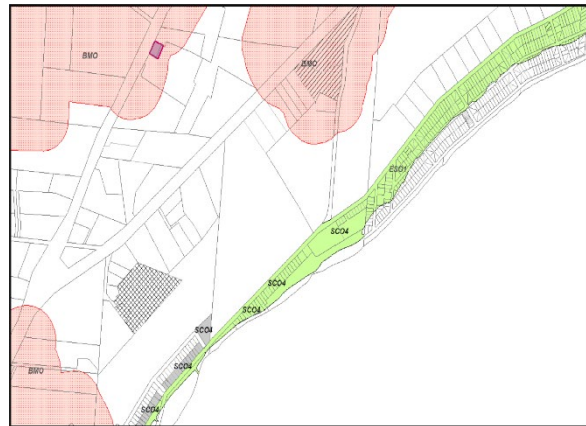


Figure 5 Overlays



1.2 The Proponent

Yumbah is an Australian owned company which breeds, grows, and processes abalone at four regional locations in South-East Australia and produces oysters and mussels at other locations.

Yumbah has an established presence in the Portland community. Its Narrawong farm (located 12 kilometres east of Portland) has a production capacity of 240 tonnes of abalone per annum. It was established 22 years ago and currently employs 25 full time equivalent staff (FTE staff). Yumbah proposes to continue operations at Narrawong if the proposed facility is established.

Yumbah is Australia's largest abalone producer and has the strategic goal to be Australia's leading shellfish aquaculture company. To achieve this goal, Yumbah has developed a growth plan that involves significant investment into greenfield projects in the coming years.

1.3 The Proposal

(i) Original proposal and approvals

In 2019 Yumbah sought approval for the Original Proposal, namely the use and development of an onshore 1,000-tonne abalone farm with an estimated development cost of \$60 million. The Original Proposal was the subject of a joint assessment process under the *Environment Protection Act 1970* (EP Act 1970) and *Planning and Environment Act 1987* (PE Act).

Glenelg Shire Council (Council) and the Environment Protection Authority (EPA) made the following determinations:

- On 10 April 2019, Glenelg Shire Council (Council) issued a notice of decision to grant a planning permit (NOD) in planning application P18147
- On 15 April 2019, the EPA determined to issue Works Approval Number 194725 (Works Approval, now Development Licence).

The Original Proposal was the subject of the following proceedings:

- VCAT Proceeding P797/2019 (Planning Proceeding) concerned an application for review brought by several objectors pursuant to section 82 of the PE Act to review Council's decision to grant a planning permit.
- VCAT Proceeding P802/2019 (WA Proceeding) concerned an application brought by the Port of Portland pursuant to section 33B of the EP Act to review the decision of the EPA to grant the Works Approval.
- VCAT Proceeding P2411/2019 (Declaration Proceeding) concerned an application brought by the Port of Portland pursuant to section 36D of the EP Act 1970 seeking several declarations concerning the EPA's decision to issue the Works Approval.

In respect of the Planning Proceeding, VCAT determined to refuse to issue the planning permit.

VCAT stated:

13. ... we have concluded that the aquaculture facility presents an imposing volume of built form across the landscape and within the vista from dwellings located on the escarpment. We conclude that this aquaculture facility would change the character of this RLZ. It seeks too much from its location and would result in landscape and visual amenity impacts that are not acceptable, therefore creating a conflict with the purposes of the zone.

In summary, the reasons for refusal related to the visual and landscape impact of the facility, principally on views from the properties above the site on the escarpment and also for related reasons concerning consistency with the rural living character of the area and land use zone.

VCAT considered visual amenity and landscape values were adversely impacted by the footprint of the 1,000-tonne proposal in a manner that was inconsistent with the RLZ. VCAT determined there were no other limiting planning matters with the 1,000-tonne facility.

(ii) What is now proposed?

Since VCAT's decision of December 2020, Yumbah told the Committee it considered how it might appropriately respond to the substance of VCAT's decision in order to realise an abalone farm on the subject land.

Yumbah engaged expert visual and planning consultants and developed a revised proposal described in the material prepared by Foresight Engineering (the Proposal) and supporting reports.

Key aspects of the Proposal include:

- adoption of the same technology and methodology as the Original Proposal
- a 50 per cent reduction in production capacity
- separation of buildings to break up the building coverage on the site
- landscaping treatments between and around buildings and open space to screen and break up the building mass across the site.

- Abalone nursery area comprising 11 ‘tunnels’ located northeast of the grow tank area, with two modules separated by a landscape buffer. The tunnels are approximately 110 metres long, 60 metres wide with a height that ranges between 2.4 to 4.4 metres.
- Pumping station with three pump rooms and an emergency generator room located in the southwest corner are setback 20 metres from Dutton Way comprising a 12-metre wide landscape buffer.
- Pump buildings partially set in the ground and rising above ground by about 3.4 metres with landscaping on flat roofs.
- Pump station workshop shed of 21 by 9 metres and 4.3 metres in height adjacent to the pump area, with vehicle access to the pump station area from Dutton Way.
- Two multi-purpose sheds, administration room, staff crib and staff amenities in the northeast corner of the site, accessible via a circular driveway off Dutton Way.
- Multi-purpose sheds including a workshop, storage areas, feed storage harvest depot and mortality freezers. The buildings range between 4.2 metres to 7.6 metres in height, 10.5 metres to 24 metres in length and 8.4 metres and 15 metres in width.
- Car parking area adjacent to the administration and staff crib and amenities buildings with 60 spaces, providing access from Portland Beach Road along the northeastern boundary of the site.
- Seven inlet pipes for fresh seawater from Portland Bay running to the pump station in the southern corner of the site. The inlet pipes run for about 386 metres including under Dutton Way and Crown Land under the management of Parks Victoria.
- Seawater is recirculated through the abalone farm and passed back out to Portland Bay through three pairs of outlet pipes ranging from 157 metres to 175 metres in length from the grow tank modules A, B and C. The outlet pipes run under Dutton Way and then under private or Crown land along three individual easements.
- Solid settlement channels link the grow tank modules and nursery modules.

The construction of the intake and outlet pipelines will include the temporary dismantling of parts of the seawall, to be reinstated once the pipelines are in place. The pipes will be buried by sand and submerged for the whole of their length.

Extensive landscaping is proposed through the site around the facility’s buildings and tanks, and along the boundaries, and the roof of the concrete pump station. The effectiveness of this landscaping was subject to many submissions.

Staff will mostly work on site between 7.30am and 6pm, Monday to Friday with minimal staff on Saturday and Sunday.

The facility will create employment of approximately 50 FTE and 75 indirect positions, including biologists, aquaculture technicians, maintenance staff, and administration. Security staff will be employed for the night-time period.

Deliveries and dispatch from the site will be completed during business hours.

(iii) How is it different to the current operation at Narrawong?

The Proposal is different to the existing facility at Narrawong. Differences include:

- whereas Narrawong has settlement ponds to deal with effluent the Proposal will have narrower and more shallow treatment structures
- the pumps are partially in ground in a concrete structure

- the security fence will be set inside of the proposed landscape screening
- more extensive landscaping in proposed.

1.4 Approvals

The Proposal needs a range of approvals. This Committee process addresses planning approvals. The status of other approvals is shown in Table 1.

Table 1 Status of approvals

Approval	Legislative Source	Status
Marine and Coastal Act Consent	<i>Marine and Coastal Act 2018 (Vic)</i> (MAC Act)	Amended approval issued on 16 November 2022
Amended Development Licence	<i>Environment Protection Act 2017 (Vic)</i> (EP Act)	To be amended following determination of the planning approval
Cultural Heritage Management Plan (CHMP)	<i>Aboriginal Heritage Act 2006 (Vic)</i> (AH Act)	CHMP 15400 approved on 17 January 2019
Permit to take protected flora, associated with removal of native vegetation on Crown land	<i>Flora and Fauna Guarantee Act 1998 (Vic)</i> (FFG Act)	To be obtained prior to construction
A 'works on waterways' licence	<i>Water Act 1989 (Vic)</i>	To be obtained prior to construction
Licence to conduct abalone aquaculture	<i>Fisheries Act 1995 (Vic)</i>	To be obtained prior to operation
Native title	<i>Native Title Act 1993</i> and <i>Traditional Owners Settlement Act 2010</i>	To be determined

Marine and Coastal Act 2018 Consent

Approval under the *Marine and Coastal Act 2018* (Vic) (MAC Act) is required for the use and development of coastal Crown land. This includes the installation of inlet and outlet pipes, the taking and use of seawater, and the reconstruction of the Dutton Way seawall affected by the proposed works.

On 1 February 2019, DELWP issued a consent under the MAC Act. This consent was subsequently amended on 13 December 2019 and further amended on 16 November 2022 to allow the reduced footprint size and reduced number of pipes extending through coastal Crown land and the seabed.

Amended Development Licence

VCAT upheld the EPA's decision to grant a works approval for the 1000-tonne proposal. Accordingly, Works Approval 194725 was issued by the EPA at the direction of VCAT allowing Yumbah:

To construct a new abalone farm, Yumbah Nyamat, at Bolwarra. The proposed farm will include a hatchery, nursery and grow out tanks, pumping seawater to the land-based farm, before discharging the treated water through a series of outlet pipelines

Works Approval 194725 is subject to detailed conditions regulating hydrology, hydrogeology, odour, noise and other on shore and offshore environmental matters.

Section 470 and section 471 of the EP Act together deem that the existing works approval held by Yumbah is a 'development licence'. Yumbah will require amendment to the existing approval for the reduced scale farm.

Cultural Heritage Management Plan

A Cultural Heritage Management Plan (CHMP) was prepared under the *Aboriginal Heritage Act 2006* in advance of the previous planning permit application. The CHMP was approved when the Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) were under administration and so was approved by a delegate of the Secretary, Department of Premier and Cabinet.

This issue is discussed in Chapter 4.3.

Native Title

Native Title issues were addressed during the VCAT Proceedings, with VCAT making preliminary orders requiring submissions in relation to the impact of Indigenous Land Use Agreements under the *Native Title Act 1993 (Cth)* and the *Traditional Owners Settlement Act 2010 (Vic)*. In the course of addressing the preliminary orders, native title issues more generally were addressed.

The submissions to VCAT, from Yumbah and Council setting out the background and the parties' responses, were provided to the Committee (documents 166 and 167).

In closing Yumbah submitted:

68. [VCAT] did not make a formal order on the matter, but by proceeding clearly accepted the position put by Yumbah (consistent with that put by Council) that there is no impediment, from a native title perspective, to the Original Proposal proceeding through the planning process. The same conclusion should be reached in relation to the Proposal.

Native title issues are complex and the Committee expects any issues to be resolved by a separate process. The Committee is not in a position to reach any definitive views on native title, however the Committee notes that native title needs to be resolved prior to works proceeding.

2 The issues

2.1 Consultation

(i) Who is affected

A total of 183 submissions were received in response to targeted notice and engagement on the Draft Amendment documents.

The impact of the Proposal falls unequally on different people:

- people whose houses overlook the subject land
- people whose houses are adjacent in Dutton Way
- people who live (or holiday) along Portland Bay
- the broader Portland community
- Traditional Owners.

(ii) About the targeted consultation

On 29 March 2022, Yumbah submitted a Priority Project Request for consideration of the Draft Amendment by the Development Facilitation Program (DFP).

The Priority Project Request included reports from the experts who provided evidence in the VCAT hearing that considered whether the revised Proposal changed the substance of the evidence provided to VCAT.

The DFP considered the Priority Project Request and determined the draft Amendment met the relevant criteria to be prioritised for accelerated assessment and determination.

From 11 July 2022 and 1 August 2022, a targeted period of notice and engagement invited submissions on the draft Amendment materials (including proposed plans, supporting reports and draft Incorporated Document).

On 17 October 2022, the Minister for Planning (Minister) referred all submissions on the draft Amendment to the Priority Projects Standing Advisory Committee under section 151 of the PE Act, to provide advice and recommendations on whether the draft Amendment will deliver an acceptable planning outcome.

(iii) Consultation with GMTOAC

Concern were raised about consultation with the GMTOAC.

The draft Amendment was exhibited during July 2022. Yumbah told the Committee that DELWP had advised it that no further consultation with the GMTOAC was considered necessary because an existing CHMP was in place.

On 30 November 2022, the Committee invited the GMTOAC to present to it, noting that:

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.

On 5 December 2022, Yumbah emailed the then Acting Chief Executive Officer of the GMTOAC, inviting her to meet to discuss the Proposal including CHMP 15400. The email was acknowledged, but the invitation was not taken up.

The GMTOAC accepted the Committee's invitation to be heard and was heard on 27 February 2023. The GMTOAC raised similar issues to other submitters (dealt with elsewhere in this Report) and expressed particular concerns about a lack of consultation.

Yumbah told the Committee that it had consulted with the GMTOAC during the development of the Original Proposal and that GMTOAC initially supported the development⁴ but withdrew its letter of support during the VCAT proceedings.⁵ Yumbah did not seek to rely on GMTOAC's earlier support, but to make the points that:

- this history demonstrates engagement in relation to the Original Proposal
- GMTOAC did not make any submission opposing the Original Proposal.

Yumbah submitted:

77. There has been a reasonable opportunity for the GMTOAC to be heard, which it has taken. Yumbah remains committed to working with the GMTOAC into the future. Yumbah cannot however be found at fault or penalised for any breakdown in the transfer of corporate knowledge, or in internal communication, within the GMTOAC.

2.2 Issues in submissions

Submissions raised many issues from broad critiques of capitalism to traffic delays from construction. Many submitters also addressed process issues.

Appendix D lists the issues raised in submissions, which included among other things:

- process
- extend of community opposition
- policy inconsistency
- location
- terrestrial ecology
- marine ecology
- visual and landscape
- climate change
- marine water quality
- coastal risks
- amenity and health
- groundwater
- heritage
- economics
- surface water and drainage.

Consideration of submissions

The Committee considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material

⁴ Letter of 26 April 2018 to Yumbah

⁵ Letter 12 February 2019 to Yumbah

presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Advisory Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The structure of this Report

This Report deals with the issues under the following headings:

- The decision making framework
- Critical impacts
- Other issues
- The Incorporated document

3 The decision making framework

3.1 Respecting the VCAT decision

(i) The issue

A number of submissions urged the Committee to respect the previous VCAT decision.

(ii) Background

Summary of VCAT decision

VCAT focussed on two issues:

- Would the grant of planning permission for the aquaculture facility result in an acceptable planning outcome having regard to
 - the purposes of the RLZ
 - the related policies
 - the range of potential amenity impacts such a facility might have on surrounding dwellings or other land uses?
- Would the aquaculture facility result in discharges or emissions that would be contrary to relevant state environmental protection policies, cause pollution or an environmental hazard or affect the interests of the Port?

VCAT determined that:

- the environmental and biodiversity risks have been appropriately assessed and where there are risks of harm or adverse impact, minimised to the extent practicable by way of appropriate engineering or design requirements and the application of appropriate management plans as set out in the works approval conditions
- noise and odour emissions would not be sources of conflict with dwellings and the caravan parks located near to the proposed facility
- increases in staff and commercial traffic generated by the facility would not be a reason to refuse a planning permit
- construction activity could be managed to minimise foreshadowed impacts.

VCAT refused the permit because

- it concluded that the aquaculture facility presents an imposing volume of built form:
 - across the landscape, and
 - within the vista from dwellings located on the escarpment.
- the aquaculture facility would change the character of this RLZ and would result in landscape and visual amenity impacts that are not acceptable, therefore creating a conflict with the purposes of the zone.

To avoid any doubt as to VCAT's decision the Committee extracts VCAT's summary of decision in Figure 7.

Figure 7 Extract of VCAT decision – decision summary

Summary of our decision	
7	Aquaculture is an emerging agricultural activity identified in the planning scheme as worthy of support for economic, social and environmental reasons. Such support is given through a variety of planning policies directed to the exercise of discretion when deliberating on land

	use and development. There are also wide-ranging policies about coastal land management, air quality, noise and other land use conflicts, rural land use and rural living that are relevant to our decision in these proceedings.
8	Notwithstanding reliance on many experts across many days and extensive submissions about such matters, our decisions have focussed on two primary questions: <ol style="list-style-type: none"> Would the grant of planning permission for the aquaculture facility result in an acceptable planning outcome having regard to the purposes of the RLZ, the related policies and the range of potential amenity impacts such a facility might have on surrounding dwellings or other land uses? Would the issue of a works approval to build the aquaculture facility and its consequential use in a manner consistent with that works approval, result in discharges or emissions that would be contrary to relevant state environmental protection policies or – in the absence of such relevant policies – cause pollution or an environmental hazard or otherwise affect the interests of the Port who has brought the works approval proceeding?
9	In order to decide these questions, we must consider and make findings about a range of matters raised against the aquaculture facility by the residents and the Port. Our reasons set out in detail our findings in respect of matters raised about noise, odour, land use conflicts, visual amenity impacts, marine and terrestrial biodiversity impacts and the risks to coastal seawater quality, to name but a few of the matters.
10	Whilst the potential impacts on the environment and Port were matters subject to extensive evidence, we find that the environmental and biodiversity risks have been appropriately assessed and where there are risks of harm or adverse impact, minimised to the extent practicable by way of appropriate engineering or design requirements and the application of appropriate management plans as set out in the works approval conditions.
11	These findings support the issue of the works approval.
12	It follows from our assessment of the environmental issues, that noise and odour emissions would not be sources of conflict with dwellings and the caravan parks located near to the proposed facility. We also similarly conclude that increases in staff and commercial traffic generated by the facility would not be a reason to refuse a planning permit and that construction activity could be managed to minimise foreshadowed impacts. In these matters then, our findings align with those of the Council.
13	However, we have concluded that the aquaculture facility presents an imposing volume of built form across the landscape and within the vista from dwellings located on the escarpment. We conclude that this aquaculture facility would change the character of this RLZ. It seeks too much from its location and would result in landscape and visual amenity impacts that are not acceptable, therefore creating a conflict with the purposes of the zone.
14	Accordingly, we have set aside the Council's decision and directed that no planning permit be granted.
15	Lastly, DP Bisucci has refused to make the declarations sought even though the Tribunal does have the jurisdiction to make such declarations. The declarations have been refused principally because: <ul style="list-style-type: none"> the EPA considered all the relevant material available to it at the time it made its decision; and the works approval is lengthy and contains detailed and thorough conditions that do not permit something different to what was approved.
16	Our detailed reasons for these findings and conclusions follow.

Committee directions

In its letter to submitters regarding the directions hearing (Document 4), referring to the breadth of the previous VCAT Proceeding, the Committee sought the parties' views at the Directions Hearing as to how much of those matters subject of the previous VCAT Proceeding should be revisited during the Committee Hearing. This matter was the subject of submissions by Yumbah (Document 12) and discussion at the directions hearing.

On 14 December 2022, the Committee published directions, providing:

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.

Direction 2 of the Committee's directions provided:

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.

(iii) Evidence and submissions

Four parties responded with submissions on what had changed with key differences including:

- impacts on the Portland burrowing crayfish (PBC) which, since the Original Proposal, have had their vulnerability status recategorised
- Portland Rural Living Assessment Final Draft March 2020
- Biosecurity risks from the Portland abalone Ganglioneuritis virus declared endemic 2022.

A number of submitters also believed the Proposal had not responded to VCAT's ground of refusal. For example, Mr Malseed submitted:

... In so many ways this proposal is as bad or worse than the original one, vast temporary looking grow sheds and nursery tunnels clad in camouflage shade-cloth and plastic, all looking like some military camp or prison with a 3 metre high fence to complete the nightmare. And as for Mr Wyatts landscape plan, it is merely that – a plan that everybody here at Dutton Way knows won't ever be realised due to natural factors and Yumbah's proven indifference to neighbours to bother. On top of that the Proposal comes with half the economic benefits touted for the first but has the same 4 year interruption period to us for it construction. Maybe even longer when they remember they need a hatchery and other fundamental elements to operate

(iv) Discussion and conclusion

The Committee agrees that the previous VCAT decision should be respected, but this does not simply mean saying 'no' to a smaller proposal that has sought to address the concerns flagged by VCAT. It means understanding the conclusions that VCAT reached across all the issues and not revisiting them unless there has been a change since VCAT considered the earlier larger proposal.

Many of the submitters who urged the Committee to respect the earlier decision went on to raise issues that VCAT had already determined in Yumbah's favour for the larger Original Proposal.

Many of the environmental issues raised during the Hearing process have already been through approvals processes either via the EPA Works Approval (now Development Licence) or the MAC Act consent process. These include works associated with the seawall, water quality from inlet and outlet pipes, noise emissions from the pump station, and transport of sand.

Importantly, VCAT found the Original Proposal was acceptable in respect to all ‘technical’ matters. It must be accepted that, at the very least, the Proposal is ‘no worse’ than the Original Proposal in relation to those matters, because the impacts are size-dependent and the size has reduced. Impacts are not halved across the board. For example, there is the same amount of vegetation removal, there are similar impacts on Aboriginal cultural heritage, and the number of pipes and pumps are reduced but not halved (and in any case, halving pump numbers does not halve noise output). However, the majority of impacts have decreased substantially, and none of the impacts have increased.⁶

The Committee concludes:

- Where VCAT reached a view that impacts would be acceptable, there has not been a change in circumstances or policy and the impacts of the Proposal will not be greater than the Original Proposal, VCAT’s decision should be accepted.

3.2 Issues with the Development Facilitation Program

(i) The issue

A number of submissions were concerned that the Proposal did not meet the published eligibility criteria for the DFP.

(ii) Background

The referral letter states:

The Proposal has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be prioritised for accelerated assessment and determination.

The criteria say:

Projects not eligible for the program:

...

Very complex or high impact proposals such as those that require concurrent approvals under several Acts in addition to the *Planning and Environment Act 1987*, as they will not be suitable for the expedited timelines of this pathway. For example, projects that require an Environment Effects Statement (EES) to be prepared, or projects assessed under the *Major Transport Projects Facilitation Act*.

(iii) Submissions

Submitters were concerned that this was a complex project with concurrent approvals, and so not eligible. Many submitters were sceptical of the process, a scepticism reinforced by media commentary from people not party to the Hearing.

An example of the tenor of submissions was:

The Proposal is once again still totally unacceptable to us and we’re disgusted at how we are again fighting against it a second time due to Yumbah being enabled under the auspice of it’s a priority project, and how I believe their misuse of a well-intended social outcome scheme undermines any confidence a Victorian citizen can have towards a successful outcome at VCAT being binding. On top of that it appears our council would allow the Proponent carte blanche on any further development it may make ,via a proposed Specific

⁶ Document 160 para 13

Controls Overlay. To use an analogy – the SCO is like using a huge sledgehammer to smash a big square peg through a round hole in regards to trying to fit Yumbah’s proposal with its industrial sized buildings, equipment and industrial size production outcome into a functioning Rural Residential Zone that has unique qualities and character residents were drawn to.

(iv) Discussion and conclusion

The Minister has broad powers to seek advice from advisory committees, and failure to meet the DFP criteria (if this were the case) would not preclude the Minister seeking advice. However, the Committee records that given the approvals already issued for the Proposal the matters before the Committee are not “*very complex or high impact*”.

The Committee concludes:

- The Committee has been referred the Proposal and will provide advice accordingly.

3.3 The nature of the use

The use was described as ‘Industry’ by many submitters, and as ‘Intensive animal husbandry’. The use is clearly ‘aquaculture’ under the planning scheme, which includes:

Land used to keep or breed aquatic animals, or cultivate or propagate aquatic plants.

Aquaculture is nested directly under the Agriculture definition and that nesting has not changed since 1996.

It is clear that the use is permissible in the RLZ (not that this is relevant when a SCO is proposed). The issue is not whether the use is industry or not, but what its impacts will be. For completeness the Committee notes that ‘Rural industry’ is a permitted use in the RLZ.

The Proposal clearly does not fall under the definition of ‘Intensive animal husbandry’ and the Committee sees this as a deliberate approach by the drafters of the planning scheme as to how these uses are appropriately managed. The impacts of aquaculture are quite different to the impacts of say a poultry farm, which does fall under the definition of Intensive animal husbandry, and this would be obvious to anyone who has visited both types of facility.

It is worth repeating what VCAT determined with respect to amenity and avoiding land use conflicts, protection of biodiversity and natural resources:

- 47 the Proposal has no case to answer in respect to those matters. Our examination of the evidence points to many of the apprehended impacts to be unfounded or manageable risks that would not lead us to refuse a planning permit.

The Committee concludes:

- The Proposal is a type of farm, and as such, a potentially appropriate and permissible use in a rural zone.

3.4 Aquaculture at State, Regional and Local Levels

(i) The issue

Submissions were made about the policy support for aquaculture.

(ii) Background

A plethora of Commonwealth and State strategies and policies are relevant to the Amendment:

- Great South Coast Regional Growth Plan May 2014
- Great South Coast Regional Strategic Plan
- Victorian Aquaculture Strategy 2017-2022
- Victorian Fisheries Authority Strategic Plan 2019-2024
- Planning Guidelines for Land Based Aquaculture in Victoria September 2005
- Siting and Design Guidelines for Structures on Victorian Coast May 2020
- Marine and Coastal Policy 2020
- Marine and Coastal Strategy 2022
- Coastal Spaces Landscape Assessment Study (2006).

The following local strategies are also relevant:

- Glenelg Shire Rural Land Strategy May 2019
- Portland Rural Living Assessment 2020.

The Planning Policy Framework sets out state, regional and local planning policies in the planning scheme. The following clauses are relevant:

- Municipal Planning Statement:
 - 02.01 – Context
 - 02.02 – Vision
 - 02.03 – Strategic directions
 - 02.04 – Strategic framework plan
- Settlement
 - 11.01-1R (Settlement –Great South Coast), 11.01-1L (Settlement)
 - 11.03-4S (Coastal settlement), 11.03-4L (Coastal settlement)
- Environmental and landscape values
 - 12.01-1S and 12.01-1L (Protection of biodiversity)
 - 12.01-2S (Native vegetation management)
 - 12.02-1S and 12.02-1L (Protection of coastal areas)
 - 12.02-2S (Coastal crown land)
 - 12.05-1S (Environmentally sensitive areas)
 - 12.05-2S and 12.05-2L (Landscapes)
- Environmental risks and amenity
 - 13.02-1S (Bushfire planning)
 - 13.04-2S (Erosion and landslip)
 - 13.01-2S (Coastal inundation and erosion)
 - 13.05-1S and 13.05-1L (Noise abatement)
 - 13.06-1S (Air quality management)
 - 13.07-1S and 13.07-1L (Land use compatibility)
- Natural resource management
 - 14.01-1S and 14.01-L (protection of agricultural land)
 - 14.01-2S and 14.01-L (sustainable agricultural land use)
 - 14.02-1S (Catchment planning and management)
- Built environment and heritage
 - 15.01-2S and 15.01-2L (Building design)
 - 15.01-6S (Design for rural areas)
 - 15.03-2S (Aboriginal cultural heritage)
- Economic development

- 17.01-1S (Diversified economy), 17.01-R (Diversified economy– Great South Coast), 17.01-1L (Diversified economy)
- Transport
 - 18.03-1S (Planning for ports), 18.03-R (Planning for ports –Great South Coast)
 - 18.03-2S (Planning for port environs).

(iii) Evidence and submissions

Yumbah submitted (Part A):

78. Aquaculture plays an important role in food supply and ensuring the sustainability of wild fisheries. The aquaculture industry makes a significant and growing contribution to Victoria's economy.
79. Victoria enjoys competitive advantages that place it in a strong position because of the characteristics of its coastal areas, having unique marine assets that are underdeveloped in terms of their potential to support economic growth and offer potential for further aquaculture development. The South Coast of Victoria is a recognised location where aquaculture is encouraged to occur due to the presence of those natural attributes.

(iv) Discussion and conclusion

The Victorian Fisheries Authority (2018) *Victorian Aquaculture Strategy 2017-2022* identifies Portland as a 'key production location' for abalone.

The Great South Coast Regional Growth Plan 2014 states:

Aquaculture is a new industry in the region but has potential for development. Sufficient zoned land should be made available to take advantage of opportunities while ensuring there is flexibility to allow for changes to agricultural production and support diversification of production and processing enterprises; and

Clause 14.01-2S of the Planning Policy Framework – sustainable agricultural land use, expressly requires consideration of the *Planning Guidelines for Land based Aquaculture*.

Clause 14.01-2L of the Planning Policy Framework contains a strategy to support a diversity of agricultural uses including agroforestry, aquaculture and horticulture, and Council's *Rural Land Use Strategy*, also acknowledges the role of aquaculture.

The Committee concludes:

- There is clear policy support for aquaculture.

3.5 Rural living

(i) The issue

Submissions were made about the impact of the facility on rural living land, and the potential for further development of the land.

(ii) Evidence and submissions

There were suggestions in submissions that the recent Glenelg Planning Scheme Amendment C106gelg that addressed issues to do with rural living land among other issues had changed the policy settings applicable to the subject land. It was approved on 20 January 2023. The Amendment C106gelg explanatory report states:

The amendment applies to approximately 17,560 parcels of land throughout the Glenelg Shire. The amendment focuses on land in the urban areas of Portland, Tyrendarra,

Condah, and rural land throughout the entire Shire. The amendment primarily affects land by the way of new or updated schedules to a zone, the introduction of schedule numbers for zones and overlays, rezoning, adding overlays, and the introduction of local planning policy.

Amendment C106gelg introduced the *Portland Rural Living Assessment March 2020* which most relevantly:

- concluded that there is 15 years of 'dormant' rural residential supply and 6 years of 'immediate' rural residential supply in Dutton Way, with more than 20 years rural living land supply within the municipality
- noted that much of the land within the Dutton Way precinct is constrained from being developed at rural residential densities due to infrastructure constraints
- acknowledged the possibility of the subject land being unavailable for rural residential development by virtue of the abalone farm proposal
- supported the retention of rural living land within Allestree, Bolwarra, Dutton Way, Narrawong and Portland West. The strategy includes an analysis of these areas including Dutton Way
- for Dutton Way, recommended preparation of a localised structure plan and consideration of rezoning of sewerred small lots, with consideration of reducing the minimum lot size as supply reduces.

Amendment C106gelg amended the schedule to Clause 74.02 Further Strategic Work of the planning scheme. There is no strategic further work proposed within the clause for Dutton Way.

Possible rural residential development of the land

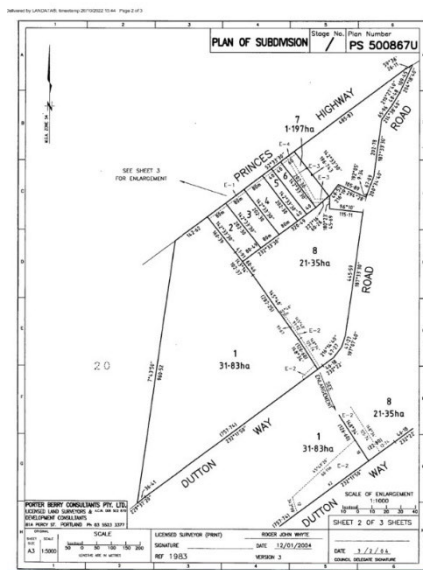
The site is capable of some further rural residential development. The subject land is burdened by Agreement AD087981W (Section 173 Agreement) which relevantly restricts subdivision and residential development, providing as follows:

4. Further Subdivision

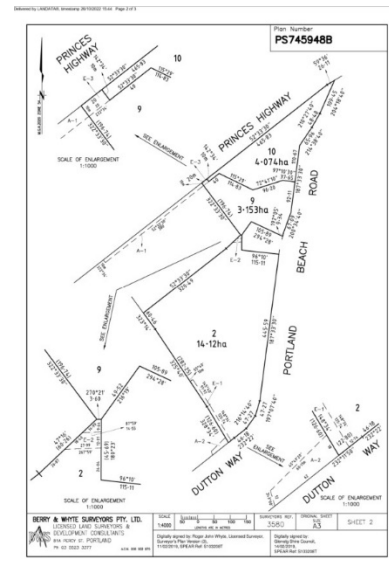
1. The Owner shall not further subdivide the land except that Lot 1 on a proposed subdivision may be further subdivided into a maximum of 6 allotments and Lot 8 on the proposed subdivision may be subdivided into a maximum of 3 Allotments.
2. If the zoning of the land contained in this agreement is amended pursuant to the Planning & Environment Act allowing for a subdivision further that the existing zoning of the land as at the date of the Planning Permit permits, then the further subdivision will be allowed pursuant to the new zoning.

The Lots described on the then Plan of Subdivision are shown in Figure 8. Lot 8 has since been re-subdivided into the maximum three lots via Plan of Subdivision (PS745948B), shown in Figure 9.

It follows that the subject land as constrained by the section 173 agreement could realise a maximum of 7 rural living lots being the existing child lot of the former 'Lot 8' (Lot 2 on PS PS745948B) and 6 lots derived from 'Lot 1'.

Figure 8 Plan of subdivision of the subject land

Source: Proponent Part A

Figure 9 Resubdivision of the subject land

(iii) Discussion and conclusion

Amendment C106gelg did not change the zoning or policy settings for the area around the Proposal. There is no immediate shortage of rural residential land or policy settings that suggest the Proposal should not proceed because the land is needed for rural residential development. The land is capable of being developed into seven rural residential lots and this should inform the reasonable expectations of the development of the land if the Proposal does not proceed.

The Committee concludes:

- Amendment C106gelg did not change the zoning or policy settings for the area.

3.6 Alternative sites

A number of submitters suggested alternative sites would be more appropriate, or that the existing facility at Narrawong should expand instead.

These submissions were made in the context that Yumbah states on its website that:

Yumbah has carefully sited its farms in isolated areas where the vast and ancient continent of Australia meets the Great Southern Ocean. (emphasis added)

Many submissions to the Hearing stated the proposed site was not 'isolated'.

Nothing can be inferred from the current website which describes existing facilities. At worst the website text might need to be adjusted if the Proposal proceeds, though in a global context the subject land is isolated.

There may be other sites that do not have the same visual impacts, but those are not before the Committee. In relation to alternative sites, the Committee adopts the approach of the panel for Ballarat C185 (PSA) [2015] PPV 103 which commented:

We agree that it is not our task to identify alternative locations (including the upgrade of the existing facility). While panels and [VCAT] do not assess alternative sites (or proposals), they do, when required, assess the strategic logic of a selected site. This is not to determine that the site is the optimum location, or indeed that it is suitable compared to other sites, but rather that there has been some analysis of what makes a suitable site, and the subject site

meets those criteria. The benefit of fully informing a panel about site selection is to help inform the assessment of what makes a site suitable.

As discussed in Chapter 1.1(ii) Yumbah made detailed submissions on the strategic logic of the site.

The Committee concludes:

- The task of the Committee is to consider the Proposal on this site. The fact that other sites may be suitable is not a matter before the Committee.

3.7 Use of the Specific Controls Overlay

(i) The issue

Submissions raised concerns about the use of the SCO.

(ii) Evidence and submissions

The use of the SCO as a facilitative planning tool was discussed with a focus on the “*extraordinary*” circumstances that should underpin the use of the SCO as a planning tool.

Ms Matuschka noted that ‘A Practitioner’s guide to the Victorian Planning Schemes’ states that the SCO should only be used for exceptional cases or to achieve a particular land use and development outcome that is consistent with a major issue of policy and is necessary to achieve or develop the planning objectives of Victoria.

Submitters were concerned that the Proposal was not an exceptional case, but “*just a company trying to take advantage of an existing seawall to protect a site which is in the middle of a residential zone*”.

It was submitted that the Proposal was not a major policy issue.

(iii) Discussion and conclusion

The draft Amendment essentially ‘grants permission’ for a specific proposal. The controls are similar in form to a permit. This is not unusual for projects proceeding under the SCO.

It is certainly the case that the Proposal could be progressed by way of a Permit, either though:

- A conventional permit process ultimately determined by VCAT
- A permit application called-in by the Minister from the responsible authority (Council in this case) where the Minister makes the final decision with no appeal to VCAT
- A permit application called-in by the Minister from VCAT with the final decision made by the Governor in Council, on the recommendation of the Minister
- A permit granted as part of a planning scheme amendment process.

It is clear that the Minister has significant powers to permit projects. The legal mechanism by which this project will proceed, if it proceeds under this Committee’s processes, is a section 20(4) amendment to the planning scheme. It is the statutory test for the exercise of that power that ultimately determine the acceptability of the process and use of the SCO.

Submissions that we should not ‘bend the rules’ misunderstand the nature of the Victorian planning system which relies less on fixed rules and more on achieving objectives. If this submission were taken literally there would be no need for the SCO because by this logic any application of the SCO ‘bends the rules’. It is not a matter of ‘not bending the rules’, it is a matter of achieving planning policy.

The Committee concludes:

The Specific Controls Overlay is a tool for facilitating site specific developments. In this regard it is the merits of the development assessed against planning policy that is the central justification for its use.

3.8 Fundamental approach

(i) The issue

Submissions were made about the fundamental approach to decision making the Committee should take and its broader implications.

(ii) Evidence and submissions

One submitter captured a common sentiment that the project was:

Not just about Dutton Way, it is about so much more.

It is clear from submissions that for many submitters the Proposal is about much more than the specific impacts of what it is proposed; the Proposal was seen through the lens of past poor decision making, inadequate responses to the consequences of those decisions, and against a more hopeful future that had not contemplated the Proposal.

Ms Peterson opined:

- 268. The application of the SCO effectively lifts and expands the considerations of the Proposal beyond the purpose and decision making direction of the zone as the SCO defines that the land and the proposed use and development that warrants a different control. In my opinion, it allows for the consideration of the merit and benefits associated with the Proposal including but also above the provisions of the zone.
- 269. Of course, the zone remains relevant as it provides the context for the planning controls that have underpinned the surrounding development and will continue to do so into the future. Therefore, the amenity considerations and expectations of adjoining properties remain relevant.

(iii) Discussion and conclusion

The fundamental approach to decision making is set of in the planning scheme:

Clause 71.02-3 (Integrated decision making)

... Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

The test that the Committee ought to apply is potentially different to the test VCAT applied. VCAT determined:

- 43 Thus, Yumbah is correct that net community benefit is relevant to the question of acceptable planning outcomes. But it is not the sole consideration and nor did Yumbah say that it was. Our analysis necessarily encompasses those matters under clause 65.01 that are relevant to deciding whether the Proposal results in net community benefit, sustainable development and benefits for present and future generations as viewed through the prism of the RLZ purposes and related planning policy.

The Committee agrees with Ms Peterson that where a planning scheme amendment is seeking to apply the SCO and include an incorporated document in the planning scheme, the zone carries less weight in determining the appropriateness of the proposed use and development than if this were

a planning permit application. The relevant tests are those applicable to an amendment, rather than to those applicable to a permit. This involves a broader policy consideration. Having said this the fact the Proposal is permissible under the RLZ suggests that policy considerations have already been assessed in the drafting of the zone controls and that aquaculture proposals will need to be assessed primarily on their merits.

The mistakes of the past are not a reason to do nothing, nor a reason to curtail individual initiative. They are a reason to be thoughtful about what we want to achieve as a community, how we want to move forward doing what is best for our community now and into the future, and for caring for our land. This is essentially what the planning scheme tells decision makers to do at Clause 71.02-3 (Integrated decision making), albeit in more bureaucratic language.

This does not mean that it always easy to tell what will deliver net community benefit, or what sustainability looks like, or that policy is up to date and comprehensive, but it does mean that planning seeks to ensure we avoid the mistakes of the past, and deliver a positive future.

The Committee concludes:

- The Committee must assess the Amendment against the principles of net community benefit and sustainable development, as set out in of the planning scheme.

4 Critical impacts

This Chapter addresses critical impacts, many of which were previously addressed and accepted by VCAT.

4.1 Noise and odour amenity impacts

(i) The issues

Submissions were made about amenity concerns, particularly noise from the proposed pump house and odour from the operational activities of the abalone farm.

(ii) Background

VCAT determined [paragraphs 117 – 158] that operational noise would be below applicable criteria for all periods and presented a low risk, and construction noise could be managed via works approval and permit condition to not cause an unreasonable impact.

VCAT was satisfied [159 – 184] that odour would not be a risk to the character of this rural environment and thus not a reason to refuse the grant of a planning permit.

(iii) Evidence and submissions

Submitters stated that the Proposal would be unacceptably noisy and would smell. Submitters were concerned that the ‘acceptable criteria’ were set for other areas and might not be acceptable for the Dutton Way locality.

A report by Mr Tardio (Document 002a) confirmed that his technical assessment of acceptability and recommendations would not change, and confirmed the Proposal would, with conditions as proposed, comply with the Noise Protocol.

A report by Dr Iain Cowan of Tonkin + Taylor (Document 002m) confirmed that new requirements are similar to those under the EP Act regime and that if the measures proposed in relation to the Original Proposal were implemented in relation to the Proposal, the general environmental duty under the EP Act would be met, and the Environment Reference Standard (May 2021) would be met. Dr Cowan also recommended minor changes to development licence conditions (odour survey methodology), which Yumbah expects will be implemented when the development licence is amended.

(iv) Discussion and conclusion

Will acceptable standards be met?

The Proposal will meet acceptable noise and odour standards.

Noise will be regulated by:

- Development Licence condition DL_R1(4)
- Requirements in the Incorporated Document.

Odour will be regulated by:

- Development Licence condition DL_R1(3)
- Requirements in the Incorporated Document.

Are the acceptable standards appropriate for Dutton Way?

In respect of submissions about acceptable standards, the Committee observes that as we go about our lives as Victorians we impact our fellow citizens in ways we are not aware of: for example, if we eat eggs there are potentially rural dwellings smelling the poultry farm from which they came; if we use power it may well come from a wind farm that not all members of that local community welcomed; if we see live music there may be local residents who are impacted. Planning schemes and environmental regulations are intended to ensure that impacts are reasonable for all citizens.

The Committee accepts that residents of Dutton Way and surrounds have suffered severe impacts from previous development in the form of coastal erosion impacts, but in terms of the reasonableness of amenity impacts of the Proposal they are treated the same way as other residents of Victoria and there is no justifiable reason why the same standards that apply to everywhere else should not apply.

The Committee concludes:

- The Proposal will be obliged to meet accepted noise and odour standards.

4.2 Coastal processes

(i) The issue

Submissions raised concerns about the impact of the Proposal on coastal processes and the seawall from pipe construction and the effect of drawing suspended sand from the bay, as part of pumping seawater ashore, and disposing it to landfill.

(ii) Background

Approval under the MAC Act is required for the use and development of coastal Crown land. This includes the installation of inlet and outlet pipes, the taking and use of seawater, and the reconstruction of the Dutton Way seawall affected by the proposed works.

The Original Proposal was granted a MAC Act consent on 1 February 2019 and amended on 13 December 2019. The MAC Act consent was further amended on 16 November 2022 to allow the reduced footprint size and reduced number of pipes extending through coastal Crown land and the seabed.

The revised Proposal required a new MAC Act consent because of the changes to the number and size of the intake and outlet pipes. The increase in outfall diameter was required to deal with the 100 year (rather than the 20 year) average recurrence interval storm coinciding with full pumping duty, which was an EPA requirement via the Works Approval (now the Development Licence).

These changes are shown in Table 2.

Table 2 Inlet and outlet pipes

Feature	Original Proposal	Proposal
Intake pipes		
Number	8	7
Diameter	1,000 mm	1,000 mm
Length	420 metres	420 metres
Outlet pipes		
Number	8	6
Diameter	1,000 mm	1,200 mm
Length	112–238 metres	112–175 metres

Source: Document 161

(iii) Evidence and submissions

Yumbah (Document 161) explained:

The decrease in outfall length was a response to the halved throughput of water and waste: the length proposed for the Original Proposal is unnecessary for the Proposal because of the lower volumes. The shorter length is more efficient and reduces seagrass impacts and marine disturbance ...

There has been a reduction of just one intake pipe in order to reduce friction losses and improve the pumping efficiency, reducing energy consumption, at the request of EPA.

Yumbah's Part B submission (page 21) stated that the *Marine and Coastal Strategy 2022*, introduced since the VCAT decision, has "*limited direct application to the Proposal*".

There were submissions made about the *Siting and Design Guidelines for Structures on the Victorian Coast (May 2020)* and the Marine and Coastal Policy 2020.

The Siting and Design Guidelines most directly affect development of coastal Crown land. While they apply within 5 kilometres of the coast, it is clear that they apply primarily to structures on coastal Crown land (for which a MAC Act consent is required). Put another way, they are intended to have determinative weight in relation to coastal Crown land but in relation to other land only to set out matters to be considered as relevant in relation.

In any case the Siting and Design Guidelines are consistent with, an evolution of, pre-existing policy in relation to planning for coastal areas, such as the Marine and Coastal Policy, including clauses 11.03-4S, 11.03-4L, 12.02 (including as it existed prior to updating for the Marine and Coastal Policy) and 13.01. This policy was considered by VCAT and is considered in Yumbah's Part A and B Submissions and Ms Peterson's evidence.

Since the VCAT decision, the number of pipes crossing the sea wall has been reduced, and the diameter of some of the pipes has increased. Dr Riedel (for the Proponent) has confirmed that these changes make no difference to the construction methodology or design for the sea wall. He confirms his opinion that:

...any works associated with upgrades to the existing seawall in relation to pipeline installation will not affect the integrity of the existing seawall structure with respect to climate change, nor the ability to upgrade the whole structure in the future. Therefore, there are no unacceptable impacts on the Proposal.⁶

Impact on sand

VCAT considered sand erosion issues [paragraphs 287 – 311] and concluded that:

- sand bypassing should be assumed to continue and would ensure that the pipes are likely to self-bury in the seabed
- the design of the facility and of the sea wall section that is to be redesigned as part of the Proposal, is appropriate for projected sea level rises and climate change risks have been properly identified and considered
- sand bypassing will not be prevented and although there is no other proposal for beach renourishment, such sand renourishment is not precluded by the Proposal.

Ms Matuschka and Mr Wright submitted that the quantities of sand being extracted by Yumbah – in seawater – may have some sort of impact on the integrity of the sea wall.

Yumbah submitted (Document 161):

8. ... the total volume of sand that would be removed by the Proposal would be between 13.5 and 53.5 tonnes per annum depending on detailed design, which will determine what size sand will be filtered out. This is the quantum of sand expected to be removed, along with other settled solids, from the site annually. The sand and other solids will settle out in the settlement channels, which are cleaned out as necessary, with the 'sludge' dewatered before disposal in accordance with EPA requirements.
9. In the context of the Port's sand bypassing obligation of 150,000 cubic metres per 3 years, or 50,000 cubic metres per annum, or 80,000 tonnes per annum (using a conversion rate of cubic metres to tonnes of 1.6), this is a tiny fraction of a per cent of the sand bypassed.
10. Even at 400 tonnes per annum, it would be 0.5 per cent of the annual bypassing.

(iv) Discussion and conclusion

Issues of the impact of the Proposal on the integrity of the sea wall section relevant to the Proposal (100 metres) and coastal process are addressed under the MAC Act approval. There is nothing before the Committee to suggest that these issues have not been appropriately dealt with by that approval.

The Committee concludes:

- The impact of the Proposal on the integrity of the sea wall section relevant to the Proposal (100 metres) and on coastal processes has been determined under the *Marine and Coastal Act 2018* approval.

4.3 Aboriginal Cultural Heritage impacts

(i) The issue

Submissions raised concerns about heritage impacts.

(ii) Background

The AH Act and *Aboriginal Heritage Regulations 2017* require a CHMP to be prepared and approved for various activities, including a high impact activity conducted within an area of 'Aboriginal cultural heritage sensitivity'. The subject land is such an area, and the Proposal is such an activity.

Under Section 46 of the AH Act, the Proposal cannot proceed without an approved CHMP.

CHMP 15400 was prepared by cultural heritage advisor Zachary Jones of Andrew Long and Associates and was approved on 17 January 2019 by a delegate of the Secretary, Department of Premier and Cabinet under section 65(2) of the AH Act.

The Secretary was responsible for assessing and approving CHMP 15400 because, at that time, the Registered Aboriginal Party for the area, the GMTOAC, was under special administration. That administration ended in early 2018.

CHMP 15400 documents that representatives of the GMTOAC attended the field component of CHMP 15400 and were consulted in regard to the field testing strategies, outcomes, and conditions. It states:

6.4 Summary of consultation

1. An onsite meeting was held with Bill Bell (GMTOAC) on 20/12/2017, prior to the commencement of field work to discuss the approaches to the standard assessment.
2. The GMTOAC provided representatives for the standard and complex assessment phases of the CHMP. These representatives were consulted throughout the field component of the CHMP. This consultation took the form of informal discussions regarding the testing methodology and results, as well as issues relating to any oral history information known about the study region. The outcomes of this consultation are reflected in the description of the testing methodology, the discussion of the results and the recommendations presented within this management plan.

Table 3 reproduces 'Table 8: Participants in the Assessment in the CHMP'.

Table 3 Participants in the Assessment in the CHMP

Participant	Organisation Position	Date
Damien Bell	GMTOAC Chief Executive Officer	18/12/2017 – 12/10/2018
Bill Bell	GMTOAC Cultural Heritage Co-ordinator	18/12/2017 – 12/10/2018
Walter Saunders	GMTOAC Representative	23/07/18 – 25/07/18
Nicole Hudson	GMTOAC Representative	30/04/18 – 04/05/18 26/07/18 – 27/07/18
Bethany Hudson	GMTOAC Representative	30/04/18 – 04/05/18 17/05/18 – 18/05/18
Brad Williams	GMTOAC Representative	14/05/18 – 16/05/18 3/07/18 – 25/07/18
John Kina	GMTOAC Representative	26/07/18 – 27/07/18

(iii) Submissions

In its submissions the GMTOAC raised concerns about Aboriginal cultural heritage impacts.

Other submitters also raised issues of cultural heritage. For example, one submitter stated:

And it would permanently remove from this location its beauty, but more importantly its history. This 46ha of land holds extremely significant Indigenous and cultural heritage, and this same land is being proposed to be excavated, levelled and concreted over, losing forever our history, both Indigenous and European.

This is an absolutely important history that goes back for well over 60,000 of years for its First Nations people. To concrete over and build on this land would be extremely sacrilegious.

Yumbah relied on CHMP 15400 as providing authorisation under the AH Act for the Proposal.

Section 52(1) of the AH Act provides that:

The decision maker must not grant a statutory authorisation for the activity unless a cultural heritage management plan is approved under this Part in respect of the activity.

Yumbah submitted that section 52 was not directly relevant here. Yumbah submitted that a planning scheme amendment is not a 'statutory authorisation and section 52 does not apply. Yumbah further submitted that if, contrary to Yumbah's view, an amendment of CHMP 15400 were required in order to authorise the Proposal, that amendment could be obtained at any time prior to the commencement of works on the Proposal and is not a precondition to the approval of the Amendment:

Whether Yumbah can rely on CHMP 15400 is not in fact a matter that the Committee needs to decide. The effect of the AH Act is that Yumbah cannot – even if the Amendment is approved – proceed unless CHMP 15400 does authorise the Proposal, in the same way that Yumbah cannot proceed without, say, the necessary licence to take protected flora on Crown land under the *Flora & Fauna Guarantee Act 1988*.

Ultimately a decision will need to be made as to whether CHMP 15400 authorises the Proposal. Yumbah submitted that it does. Yumbah provided detailed submission (Document 119) why it considered that CHMP 15400 authorises the Proposal:

- the broad description in Chapter 4 of CHMP 15400:

The sponsor proposes to develop the activity area for use as an aquaculture farm. The development will include the installation of module tanks for the purpose of farming abalone, and potentially other shellfish species, in a controlled environment which provides a stress free environment for the shellfish and minimises handling by operators. The module tanks will account for the greater portion of the activity area, however substantial land surface will also be developed to facilitate support infrastructure.
- the statements in Chapter 4 of CHMP 15400 outline extensive works within and beyond the footprint of proposed structures across all of the southern part of the subject land
- the authorisation not being linked to compliance with a set of plans or specific metrics
- there being no areas of significant ground disturbance where significant ground disturbance was not previously proposed
- the fact that a complex assessment was undertaken of the entire subject land – there is no possibility that more rigorous assessment would have been required had the Proposal been specifically considered
- the fact that CHMP 15400 allowed disturbance of all of each of the registered sites on the subject land – there were no sites avoided that are no longer being avoided (one site was required to be considered further; that consideration is ongoing).

In summary Yumbah submitted (Document 119):

Overall, CHMP 15400:

- envisages widespread – effectively boundary to boundary (or, in the case of the north, base of hill slope) ground disturbance to a depth of at least 600 mm, if not 1.5 metres
- envisages the development of an abalone aquaculture facility that involves grow out tanks and all necessary supporting development
- provides flexibility as to the specifics of the development.

CHMP 15400 has clearly been deliberately drafted to allow for refinement of the Proposal.

The relevant Registered Aboriginal Party is the GMTOAC, and any application for amendment would be made to the GMTOAC, notwithstanding that CHMP 15400 was initially approved by the Secretary, Department of Premier and Cabinet.

(iv) Discussion and recommendation

The site does not hold any registered Aboriginal cultural heritage significance, unlike, for example, the nearby Convincing grounds.

Whether CHMP 15400 authorises the current proposal is a matter for VCAT or the courts to decide. On the material before the Committee there are good reasons to conclude it does. Whether the Minister should adopt and approve the draft Amendment without further engagement of the GMTOAC, is a matter for the Minister to decide. This Committee provides advice to the Minister.

The Committee sees two competing principles here:

- the clear benefit in having existing statutory approvals stand and their applicability to be determined by law
- the need to consult the GMTOAC on approval of a CHMP that affects their country in a time that government policy is evolving around Traditional Owner self-determination.

The Committee accepts that the CHMP documents the persons consulted about the CHMP, but it is not clear to the Committee whether the CHMP sufficiently meets the standards of genuine consultation. The GMTOAC was under administration when the CHMP was approved.

This is particularly the case given the GMTOAC's submissions opposed the Proposal. It is not immediately clear to the Committee whether the GMTOAC's opposition is based on an assessment of the Proposal they have made themselves or what they have been told about the development, and whether what they have been told properly reflects the Proposal's impacts. These are not matters the Committee can determine, but the Committee notes that a number of claims made in the GMTOAC's submission to the Committee are not factually correct.

The most desirable approach is that the current GMTOAC endorse or approve a CHMP based on the Proposal. This would, in the mind of the Committee, properly reflect the intention of the AH Act. The Committee does not say that this is a legal necessity, only that it is the most desirable outcome that properly respects all stakeholders. This should happen before approval of the draft Amendment to postpone the need for legal rulings on the current CHMP.

The Committee observes that the GMTOAC's submissions about lack of respect in the process can only refer to recent processes given the GMTOAC's earlier endorsement of the Original Proposal. Direct conversations between Yumbah and the GMTOAC may clarify the actual impact on cultural heritage and country.

If the GMTOAC does not approve or endorse the current or an amended CHMP, then the choice before the Minister will be approval of the Amendment with Yumbah relying on the existing CHMP.

GMTOAC's concerns as presented to the Committee were very broad in nature, and did not address any specific deficiencies in the approved CHMP or other approvals. Until the GMTOAC and Proponent have had an opportunity to speak directly about how CHMP 15400 and other conditions on the Proposal, do or do not address the GMTOAC's concerns about the cultural impacts of the Proposal, the Committee is not in a position to advise on whether the GMTOAC's objections have merit.

In oral submissions the GMTOAC expressed a willingness for Yumbah to meet with them, and for them to have more time to consider the Proposal.

The Committee recommends:

- 1. Before the Minister for Planning makes a decision on whether to adopt and approve the Amendment, the Minister for Planning invite the Gunditj Mirring Traditional Owners Aboriginal Corporation and the Proponent to meet and provide a joint statement to the Minister for Planning on whether Cultural Heritage Management Plan 15400 appropriately manages the cultural heritage impacts of the Proposal, and to precisely identify any specific points of disagreement, and the reasons for any divergence of views. If there are points of disagreement, the Minister for Planning seek advice from the minister administering the *Aboriginal Heritage Act 2006* on the appropriate course to resolve those points.**

4.4 Ecological impacts

4.4.1 Introduction

VCAT considered ecological impacts. Two biodiversity issues have arisen since the time of the VCAT decision. One of these is the presence on the site of the recently listed FFG Act Portland burrowing crayfish (PBC) and the other is the potential for a recently listed seagrass species to be present in the marine environment in the location of the approved inlet and outlet pipes.

The issue of potential acid sulfate soils was also raised by a number of submitters which is addressed in this section.

4.4.2 The Portland burrowing crayfish

(i) The issue

The issue is whether the proposed abalone farm would significantly impact on the PBC.

(ii) Background

Land crayfish are one of 34 species in the genus *Engaeus*. Many of these species have a quite limited geographic range and some confined only to a single catchment. Land crayfish live in damp environments, they burrow down to the level of the water table. Water fills a small chamber at the bottom of the branching burrowing system. As the crayfish excavates the burrow it brings soil to the surface and places the pellets around the entrance until a 'chimney' grows up to about 13 centimetres high.

(iii) Evidence and submissions

At the Direction Hearing, Mr Wright raised the issue of the potential for the recently listed PBC to be present on the proposed abalone farm site and that this matter had not been considered previously and ought to be assessed. The Committee agreed and Yumbah provided the expert witness statement of Mr Jenkin (Document 74).

Yumbah's Part B submission explained:

Portland burrowing crayfish (PBC) and Hairy Burrowing Crayfish (HBC) are species of burrowing crayfish found in south-east Australia. These species are listed under the Flora and Fauna Guarantee Act 1988 (FFG Act) as 'endangered' and 'vulnerable' respectively. Very little is known about burrowing crayfish, including about their distribution, described by Mr Jenkins as "patchy, not clearly defined and based on a paucity of records". Both PBC

and HBC are endemic to the Portland Bay area, and are threatened by a decline in quantity and quality of habitat, both underground and on the surface. ...

Listing under the FFG Act does not have any specific consequence in relation to private land other than declared critical habitat. The Land is not declared critical habitat. However, impacts on the PBC are impacts on the environment that must be considered by the Committee in assessing the Amendment. Because burrowing crayfish are not well-studied species, no specific guidance exists for how to assess or mitigate impacts on burrowing crayfish. Yumbah has however, consistent with the approach taken under the EPBC Act and native vegetation regimes, looked at whether reduction (avoidance/minimisation) of disturbance is possible, and at what can be done to minimise impacts on species.

Mr Jenkin undertook a targeted survey over two consecutive days and one night on the site on 30th and 31st of January 2023 to determine whether burrowing crayfish were currently present on the site with a particular focus on the potential presence of the FFG Act 'endangered' PBC (*E. strictifrons*) and 'vulnerable' hairy burrowing crayfish (*E. sericatus*). Mr Jenkin stated in his report that surveying for burrowing crayfish during late summer is not the optimal timing, with crayfish activity generally at its lowest, individuals usually in refuge in the lower chambers of their burrows and their burrow entrances/chimneys plugged.⁷

Mr Jenkin found:

A total of seven burrowing crayfish were caught in traps ...

An additional eight traps had signs of crayfish activity (that is a crayfish as present but not trapped)...

The survey results indicate that a population of PBC is widespread across the lower lying wetter areas of the site, broadly bound by the daker green vegetation area running diagonally through the site from northeast to southwest...

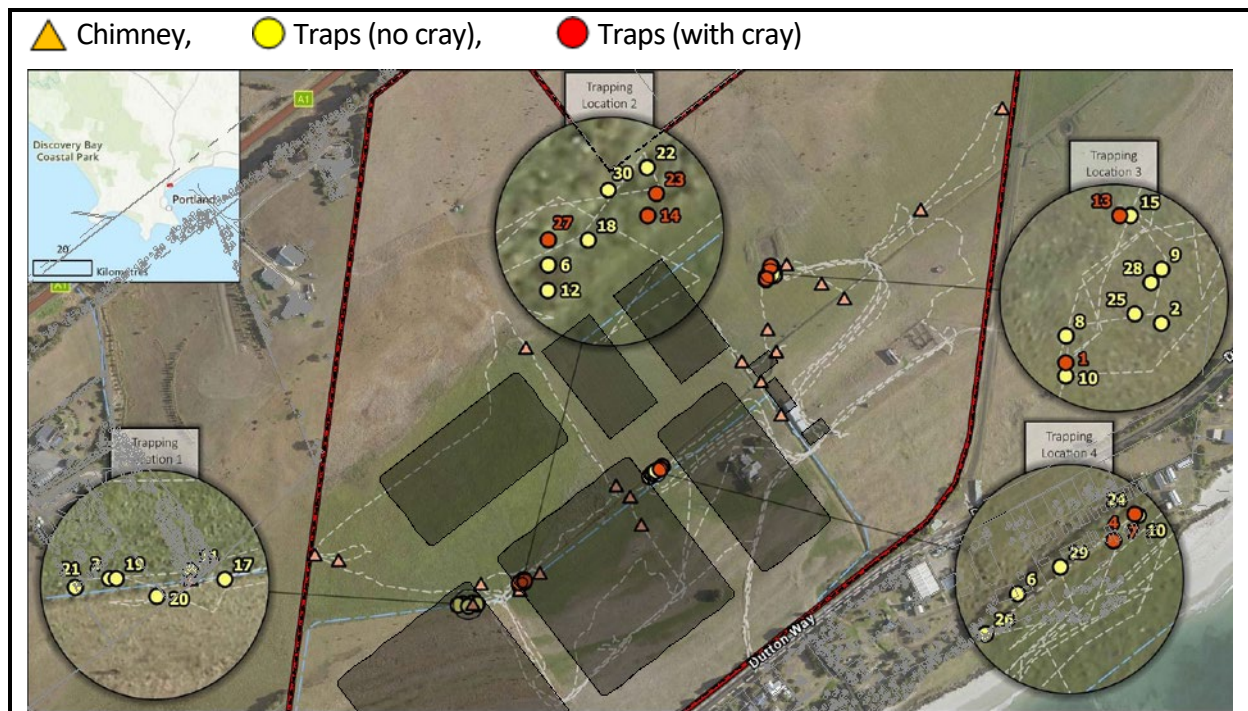
No HBC [Hairy Burrowing Crayfish] or other burrowing crayfish species were detected during the survey.⁸

Mr Jenkin stated the Proposal will avoid some areas of existing PBC habitat and reduce the overall area of impact to PBC habitat than the Original Proposal. However, Mr Jenkin acknowledged the abalone farm will impact on some areas currently inhabited by PBC.

In response to a request from the Committee, Yumbah produced a plan that overlaid the Proposal footprint with the locations of PBC found in Mr Jenkins survey (Document 95).

⁷ Document #74, page 18

⁸ Document #74, page 19

Figure 10 Proposal footprint with the locations of Portland burrowing crayfish found by Mr Jenkins

Source: Document 95

Mr Jenkin proposed management measures to reduce impacts to PBC such as salvage and relocation on site to an on-site area/s earmarked for protection and enhancement for the benefit of the species. He did state however that there are limited examples of salvage and relocation programmes for burrowing crayfish in existence. At the request of the Committee, Yumbah provided an example of a burrowing crayfish management plan (Document 99), similar to what could be proposed through the Incorporated Document for this site. That management plan 'the Latrobe Council Levee system Preliminary Documentation (11 February 2022)' included an offset and monitoring plan for the Central north burrowing crayfish in Tasmania. The Commonwealth Environment and Biodiversity Protection Act approval conditions of this projects' Preliminary Documentation (6 June 2022) (Document 98) included comprehensive conditions for a salvage and translocation plan, monitoring and an annual compliance report.

Mr Jenkin proposed an outline of a burrowing crayfish salvage and translocation management plan in his expert witness statement and the fundamentals from this proposed plan have been included in Yumbah's 'closing' Incorporated Document (Document 170).

Yumbah asked Mr Jenkin if the proposed measures were typical for a listed FFG Act species. Mr Jenkin replied that what Yumbah is proposing is greater management typically seen for a FFG listed species and that historically there is no consideration for protection of the species on private land.

Mr Wright asked about the success of salvage and translocation plans at which Mr Jenkins replied that there can be no guarantee of success which is why monitoring is an important part of the plan.

Ms Matuschka asked about the impacts to the PBC if a dewatering process on site reduced the water table. Mr Jenkin replied that this would be an impact and hence monitoring needs to be in place to ensure appropriate hydrological conditions remain. He also noted that the current

agricultural practice impacts (by trampling) on the PBC chimneys t, which he observed during the site survey.

The Committee asked Mr Jenkin if it would be likely that the PBC would be found in the Crown land areas of the development which were not surveyed by Mr Jenkin. Mr Jenkin replied that it is *'probably unlikely'* that the PBC would be present in the areas of the Crown reserve however suggested that a survey of the area be undertaken prior to the preparation of the management plan. He did note during further questions of the Committee that the *"PBC in this area could be widespread"*.

Mr Jenkin recommended that prior to development of the site, a detailed survey of PBC beyond the site be undertaken to determine and map the distribution/extent and density of the species on and near the site. This should occur during an optimal time of year (spring to early summer).

(iv) Discussion and conclusions

The Committee notes that the PBC was listed as endangered under the FFG Act in 2021. Mr Jenkin explained that not much was known about the species or its distribution, however based on the few known records, the PBC occurs along the floodplains of creeks, swamps and drainage channels, in forested or partly cleared catchment areas. Mr Jenkin also suggested that the PBC could be widespread across the area.

What is known is that PBC does occur within the low lying areas of the site and PBC in these areas will be impacted. They are proposed to be salvaged and translocated to an area in the western part of the site in which PBC were located and which is not proposed to be disturbed by works associated with the abalone farm. The proposed conditions in the Incorporated Document would require this area (the Crayfish Habitat Area) to be set aside and managed for crayfish purposes, and for translocation of crayfish from the habitat areas that will be disturbed.

The area proposed to be enhanced for habitat and protection for the PBC will need to be clearly designated on amended plans required under the Incorporated Document.

Mr Jenkin acknowledged that the Crown land areas of the development proposal have not been surveyed, and although he stated that it is unlikely these areas have PBC, a predevelopment survey should include these areas. The Committee agrees this would be beneficial and should occur prior to the Salvage and Translocation Management Plan being prepared. This needs to be included as the first condition under the new Crayfish Management Plan clause within the Incorporated Document.

The Committee agrees with Yumbah's proposed wording in the Incorporated Document which requires the Crayfish Management Plan be *"to the satisfaction of the Department of Energy, Environment and Climate Action"*.

The Committee accepts the expert opinion of Mr Jenkin that with appropriate technical input from relevant specialists into the development of a PBC management plan for the site, including the protection and enhancement of an area/s on the site for the PBC's benefit, it is reasonable to conclude the plan could be successfully implemented. The Committee notes that a monitoring program is part of the proposed Crayfish Management Plan in the Incorporated Document. This will be important to ensure its success.

The Committee concludes:

- A Portland burrowing crayfish survey should be undertaken during the optimal time of year (spring to early summer) to determine the presence and therefore any potential impacts to the Portland burrowing crayfish within coastal Crown land as this has not yet occurred. This is included the Committee's preferred version of the Incorporated Document at Appendix H.
- A Salvage and Translocation Management Plan is supported as a condition of the Incorporated Document., including the proposed monitoring program to ensure the Plan is successful.

4.4.3 Seagrass

(i) The issue

The issue is whether the October 2021 FFG Act listed seagrass occur within the area of the inlet and outlet pipes.

(ii) Submissions

The Committee queried the assessment of seagrasses within the municipal boundary for the purposes of clause 52.17 of the planning scheme, and the need to avoid, minimise and offset native vegetation removal since seagrasses were newly listed and not considered previously under clause 52.17.

Yumbah had previously assessed and mapped the relevant seagrass species across the development footprint of the inlet and outlet pipes as part of its MAC Act consent application.

Yumbah tabled extracts from the marine investigation undertaken as part of the MAC Act Consent Application and aerial photographs demonstrate that there is no seagrass within the footprint of the pipes within the municipal boundary.

The marine impact assessment contained within the MAC Act application (Document 137) states:

The habitat along the transect lengths was found to be generally dominated by *Amphibolis* seagrass beds, interspersed with bare sands. Occasional patches of reef and red and brown algae were also noted along the transects. (page 5)...

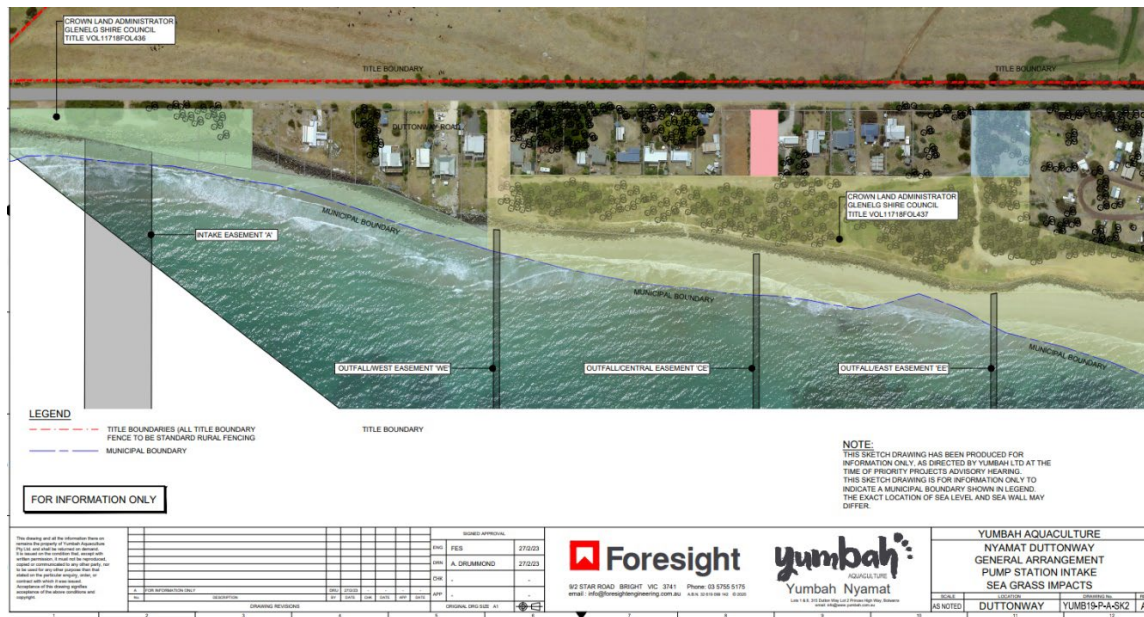
The marine environment adjacent to the proposed Yumbah Nyamat abalone farm is in a healthy condition with extensive areas of *Amphibolis* seagrass present.

The Yumbah Nyamat abalone farm will discharge seawater with slightly elevated levels of nutrients with respect to receiving environment concentrations. Risks of the discharge are associated with potential eutrophication of the receiving environment and increased algal growth and prevalence of drift algae. Overall, impacts would be expected to be localised in nature and unlikely to have any significant adverse impacts.

The risk of significant impacts occurring to [matters of national environmental significance] are considered low, with all species predicted or known to occur in the wider area being sufficiently mobile to avoid risk of long-term exposure to the effects of eutrophication. (page 17)

Document 142 presented the extent of the municipal boundary and the inlet / outlet pipes and demonstrated that no seagrass is present within the municipal boundary (see Figure 11). There is seagrass present beyond the municipal boundary (refer to extract from Document 139 in Figure 12) that will be disturbed and this has been assessed as part of the MAC Act consent process for these works.

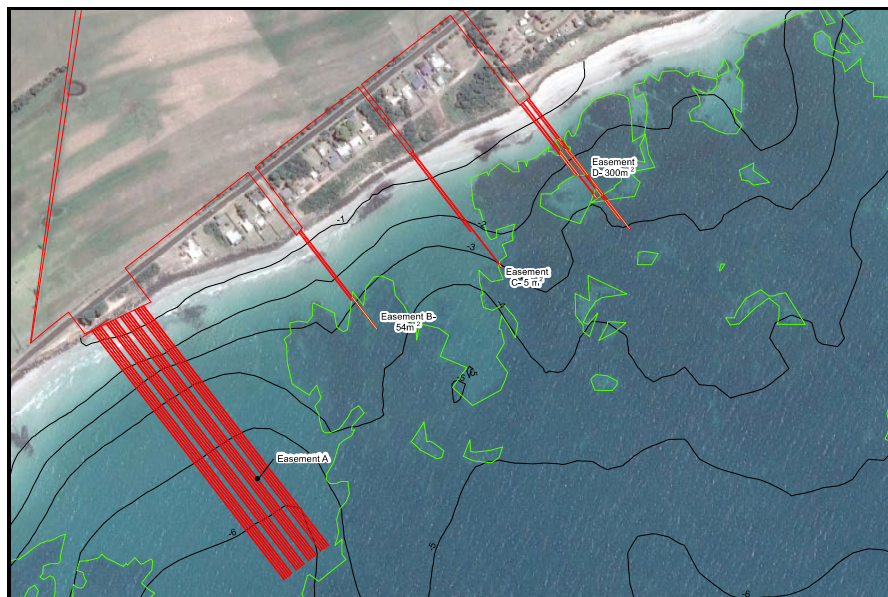
Figure 11 Municipal boundary and potential seagrass



Source: Extract from Document 142

Figure 12 Areas of seagrass

Seagrass, Proposal inlet and outlet pipes in red



Source: Extract from Document 139

(iii) Discussion and conclusion

The Committee acknowledges the MAC Act consent has been provided in 2019 for the Original Proposal and subsequent amendment to the consent provided on 16 November 2022. The matter of seagrass was therefore before the Department of Energy, Environment and Climate Action (DEECA) as part of this process and is not before the Committee past the municipal boundary.

Yumbah has provided sufficient information to indicate that there is no seagrass within the municipal boundary which is the extent of the amendment before the Committee.

The Committee concludes:

- The areas of the inlet and outlet pipes that are within the Amendment area (that is, within the municipal boundary) do not include the FFG Act listed seagrass and therefore native vegetation offsets are not required to be included for seagrass.

4.4.4 Acid Sulfate Soils

(i) The issue

The issue is whether the site has the potential for acid sulfate soils.

(ii) Submissions

The Committee queried what investigations had been completed in relation to acid sulfate soils and whether enough was known about them to proceed on the basis that they could be adequately managed with the management plan referenced in the Day One Incorporated Document.

Yumbah tabled an extract from its submissions to VCAT on this issue, along with relevant extracts of relevant documents included in the Tribunal Book and the *Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulfate Soils* (2010). The conclusion in those submissions was that acid sulfate soils “*can appropriately be dealt with in a construction management plan, and that no further investigation is required at this stage.*”

Yumbah tabled an extract from the VCAT material that summarised the issue of potential acid sulfate soils. In that document⁹, it states:

- Acid sulfate soils have not been identified at the site during preliminary geotechnical investigations.
- A more detailed analysis of the potential for acid sulphate generation from excavated material will be conducted prior to any construction works involving areas of deep excavation. The risks of acid sulfate soils are deemed to be low.

Yumbah stated that the material now before the Committee shows that it is realistic to manage acid sulfate soils through the proposed management plan mechanism, and that acid sulfate soils are not a threshold issue that requires further consideration now.

(iii) Discussion and conclusion

The Committee accepts that the matter was diligently tested at the former VCAT proceeding and agrees with Yumbah that acid sulfate soils (if found on site during construction), can be managed appropriately.

The Committee concludes:

- The proposed condition regarding acid sulfate soil management within the Incorporated Document is sufficient to manage this issue.

4.4.5 Other ecological impacts

A number of submitters including the GMTOAC raised concerns about the impact of the Proposal on marine ecology especially Southern Right Whales. VCAT considered ecological impacts, in respect of the Southern Right Whales. VCAT determined [203] – [212] that the evidence

⁹ Document 130

demonstrated a low risk to the Southern Right Whales from acoustic and vibration impacts from the operation of the aquaculture facility.

VCAT recorded evidence presented to it that:

- 208 ... Southern Right Whales have been observed in acoustically noisier conditions than that expected from the proposal. Because the noise levels are similar to background noise (in the 50-500 Hz range), the operation of the inlet pipes is unlikely to impact on the Southern Right Whales. Indeed, it is [Ms Ward's] evidence that the whales sometime stay within or close to the noisier surf zone to acoustically mask calves from predators.

4.5 Visual and landscape impact

4.5.1 Introduction

The acceptability of the visual impact of the Proposal is a key issue for the Committee.

Impacts can be categorised as:

- visual impact from the escarpment
- visual impact from Dutton Way and surrounds
- impacts on the landscape and rural setting.

VCAT determined:

- 428 ... we find that the Proposal represents an unacceptable planning outcome because:
- the scale of the Proposal, its proximity to residential use and development and the inability to mitigate the visual impacts are inconsistent with the purpose of the RLZ namely, to provide for residential use in a *rural setting*.¹⁰ The setting in this area is of open landscapes in a seaside setting. The sheer size of the Proposal and its footprint on the site are at odds with the character and appearance of this particular location in the RLZ; and
 - there will be significant and unacceptable impacts to the vistas presently enjoyed by the occupants of the dwellings surrounding the site but particularly to those that sit atop the escarpment.

VCAT found that views from public vantage points and from the Dutton Way area around the subject land were, with landscaping, acceptable.

How does policy treat this landscape?

The Victorian planning system has mechanism to protect significant landscapes. The next section discusses landscape policy in more detail, but it is worth stating upfront that this is a landscape of local significance and is not protected by a Significant Landscape Overlay or other specific control.

What has changed since the VCAT decision?

The visual impact of the Proposal (at least from some views) has been reduced. The following figures (13–15) illustrate the change in the visual impact from the rejected Original Proposal to the revised Proposal (with and without the growth of the landscaping) being considered by the Committee.

¹⁰ VCAT said 'rural setting' here but the scheme uses 'rural environment' as did VCAT in the bulk of its discussion. Nothing turns on this.

Figure 13 Photomontage of Original Proposal with landscaping



Source: Orbit Visualization, Drawing 5B.2

Figure 14 Photomontage of revised Proposal without landscaping



Source: Orbit Visualization, Photomontage 03 (O3C.04, dated 13 February 2023)

Figure 15 Photomontage of revised Proposal with landscaping



Source: Source: Orbit Visualization, Photomontage 03 (O3C.05, dated 13 February 2023)

Is it a reduced impact?

It is clear from the material before the Committee that the Proposal will have a reduced visual impact compared to the Original Proposal, even before the landscape is established. This is because the built form is less in scale and bulk.

4.5.2 Is the landscaping achievable?

(i) The issue

Concerns were expressed that the proposed landscaping would not grow in the harsh conditions of Dutton Way and would take 15 years to be realised (if indeed successful).

(ii) Background

The Landscape Concept Plan, by XUrban, dated 30 November 2022, includes a combination of Acacia, Banksia and Eucalypt species.

The buffer planting on the Dutton Way frontage and around the nursery, grow tanks and buildings will be a mixture of indigenous tall shrubs and trees. Mass planting of indigenous tree species is proposed to be planted along the western boundary and through the north of the site.

The boundary landscaping treatment will include rows of trees within a buffer between the post and wire boundary fence and an inner security fence.

Grass and rush species will be planted on the pump station roof.

(iii) Evidence and submissions

The Proposal relies on the buffer planting to achieve an acceptable visual and landscape impact. Yumbah accepts that will take some years for the planting to reach maturity; local submitters doubt the screening will grow at all.

The Committee was told seed would be collected from local native plants and this would be planted in five rows of deep ripped soil. It was expected that a percentage of plants would die and these would need to be replanted.

Ms Yuill submitted:

Xurban have created a beautiful desktop graphic interpretation with scenic montages showing how they believe it could look I have worked with graphic designers for over 9 years in my previous occupation as a Project Coordinator for a major stand builder in the Exhibition Industry, building and installing massive custom stands, and I can tell you from experience, the difference between a design by a graphic designer and the practicability of how something will work is further apart than chalk and cheese.

But the plain fact is, and this can be verified by everyone who lives on the Dutton Way and who tries to get trees and shrubs to grow, it is virtually impossible.

Sitting at a desk drawing images as opposed to decades of back breaking and heart breaking (and costly) efforts to establish trees and a garden, now that's where we are the experts.

We live on the coastline of the Southern Ocean, and Bass Strait, one of the roughest oceans in the world. The winds here come up from the Antarctic. The trees you see along the Dutton Way are decades old, and stunted by their location and the belting onshore southerly salt laden winds. When these are not belting us for the other half of the year we are getting it from the Westerlies.

You've got to deal with the sandy soil, as well as strong to gale force winds, onshore winds laden with salt. Trees get blown out of the ground. We will never in any of our lifetimes see the type of growth on the trees depicted in these images.

In giving landscape architecture evidence for Yumbah, Mr Murphy acknowledged that growing conditions in a coastal location are harsh and subjected to salt-laden winds:

61. The coastal location of the facility means that the growing conditions on the site are somewhat harsh. As noted earlier, the harshness of this environment is evident in the form of the existing vegetation around the site which exhibits varying degrees of wind shear and form adaption to the wind environment and its frequently salt-laden nature.

Ms Matuschka noted that Mr Murphy's assessment was supported by the residents of the Dutton Way. Mr Murphy also stated that plant heights are extremely variable:

63. On this issue I note some important realities:

- Plant growth rates and ultimate heights are extremely variable. Matters of seed source location, micro-variations in ground conditions, location in relation to other vegetation to provide a wind break, slope of site etc. all create variations, let alone the fact that some species are simply categorised as “highly variable”.
- there is extremely little published data on actual growth heights after particular periods of time.

Ms Matuschka submitted that it is very likely a high percentage of the suggested plantings will not survive and will not reach their full maturity. Instead of lush green landscape as envisaged by Mr Wyatt and depicted in Orbit Solutions photomontages, *“we will forever be burdened to look upon industrial landscape that is completely out of character for this location”*.

(iv) Discussion and conclusion

The Committee accepts that the area is a harsh environment for most plants that does not lend itself to gardening. The issue is whether landscape planting on the scale proposed could be successful.

There are areas of established vegetation along Dutton Way. The issues are whether:

- such vegetation can be established now given the area is no longer protected by a primary dune and is effectively 200 metres closer to the water (the result of the Port induced erosion)
- it will grow tall enough and quickly enough to mitigate the visual impact of the Proposal.

The Committee is left with the competing views of the experts who are confident the proposed landscaping can be achieved and the local residents who are sceptical.

It is clear that vegetation can survive in the area (the area is not devoid of all vegetation) and the Committee therefore concludes that species, selected from similar locations with respect to soil and exposure, would grow to maturity. The Committee accepts that the plants taking the brunt of sea winds might not grow very tall, but would provide shelter for the plants behind.

It was accepted in evidence that thousands of plants will be required and these will need to be drawn from local plants adapted to local conditions.

The Committee considers that the landscape proposal will be achievable over time, but will need to be appropriately managed. The landscape plan will need to move beyond simple specifying the locations and species of plants, but address:

- where the plants are sourced from the ensure local natives adapted to the specific site conditions
- soil preparation
- weed management
- replanting schedule.

The Committee concludes:

- the Incorporated Document should include more explicit requirements in respect of landscaping. The Committee preferred version makes these changes.

4.5.3 Public views including views from Dutton Way

(i) The issue

The issue is the visual impact from Dutton Way and the surrounding public realm.

(ii) Background**Landscape policy**

The planning scheme sets out relevant policy in a number of clauses. Key points are:

- the area is of local landscape significance – the lowest assessment for a coastal area
- development should respond to its coastal setting, and visual intrusion should be minimised.

Relevant clauses include:

02.03-2 Environmental and landscape values**Coastal areas**

The Shire's coastal areas are major natural, economic and environmental resources that need to be managed to balance development opportunities while protecting the landscape and environment.

The Shire seeks to protect coastal areas by:

- ...
- Encouraging coastal related development that responds to the landscape setting, character and desired future character directions.
- Maintaining locally significant views that contribute to the character of the coast and coastal hinterland region.

12.02-1S (Protection of the marine and coastal environment)**Objective**

To protect and enhance the marine and coastal environment.

Strategies

Enhance the ecological values of the ecosystems in the marine and coastal environment.

Encourage revegetation of cleared land abutting coastal reserves.

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

12.05-2S Landscapes**Objective**

To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

Strategies

Recognise the natural landscape for its aesthetic value and as a fully functioning system.

12.05-2L Landscapes**Strategies**

Protect significant views and vistas, including:

- Long and extensive views of the coastal and hinterland landscape from main roads.
- Largely natural and unbuilt views of lakes and other water bodies from their edges.
- Gateway views at topographic rises along roads, in particular those that terminate at the coast, walking tracks, recreational facilities and formal scenic lookouts.

Design and site buildings to minimise their visual intrusion into the landscape by encouraging low building heights, open style fencing and using vegetation to provide screening.

Minimise views of buildings and structures from road corridors other than those that have been traditionally located adjacent to the road.

Minimise the visual dominance of buildings from ridge tops and prominent hill faces by:

- Siting development in the lower third of the visible slope, wherever possible.

- Setting buildings and structures amongst existing vegetation, and/or establishing gardens of locally compatible species.
- Designing buildings to follow the contours or step down the site to minimise earthworks.
- Articulating buildings into separate elements and avoiding visually dominant elevations.
- Encourage buildings or structures to be set back from the foreshore, coast and natural coastal landforms.

Use materials and colours that are durable and complement the coastal environment, and minimise contrast with the surrounding landscape.

Minimise visual clutter of the hinterland landscape with built development to retain open spaces that provide views to the coast, capes and hinterland.

Retain the dominance of the pastoral landscape in the hinterland areas.

Encourage planting to delineate property boundaries, instead of fencing. If fencing is necessary, this should be of an open style and not visually obtrusive (e.g. post and wire style traditionally used in rural areas).

Views from Dutton Way

Figure 16 Views of Dutton Way



The VCAT decision at paragraph 198 suggests that the impact on residential properties along Dutton Way and Dutton Way itself were not a determinant of the decision:

- 198 We find that the strip of dwellings and two holiday parks along Dutton Way, that sit between the site and the ocean, including Mr Wright's property, will experience a change in the vista. Views that are currently experienced from the front of their properties, facing Dutton Way, will be changed from the rolling pastoral hills, glimpsed through sparse vegetation, that is characteristic of this area. At worst, during the first few years of construction and vegetation establishment, their vista will consist of construction site activity and the expanse of grow out tanks covered in shade-cloth. However, this amenity impact could be mitigated by the requirement to plant advanced species along Dutton Way prior to the commencement of any construction. A view of dense vegetation along a public road is common in a seaside setting, as demonstrated further north along Dutton Way.

The impact from other publicly accessible viewpoints was also assessed and found acceptable. This was set out in paragraph 197 which stated:

- 197 In light of the material before us, including the evidence of Mr Barlow, Mr Milner, Mr Wyatt and Mr Goss, and informed by our site inspection, we find that the Proposal will not have a significant impact on visual amenity from public vantage points along Princes Highway, the Great Southern Walk and the Frank Lodge Scenic Lookout. This is due to the distance between the viewpoints and the site, and the intervening topography that will block views of the site.

(iii) Evidence and submissions

A number of submitters did not accept VCAT's assessment of this issue, or believed that because the revised shade-cloth structures were higher there would now be a visual impact.

Submissions from other parties did not directly engage with the policy settings for landscape in this area, but stressed the attractiveness of the area to them personally, or as an element in a less industrial presentation of Portland.

Mr Wyatt gave evidence that because of the set back of the structures from the existing and proposed landscaping they would not have an unacceptable visual impact when viewed from Dutton Way.

Yumbah submitted that while visual impacts are amenity impacts, not all visual impacts are equal. The protection of significant landscapes is an important focus of state, regional and local planning policy, but careful examination of the policy context here demonstrates that visual impacts should not be given great weight in this location.

Yumbah submitted that the starting point should be to look at the planning scheme for guidance about the importance of the landscape setting generally. It observed:

168. Neither the Land nor the surrounding area is within a Significant Landscape Overlay designating a landscape as significant, nor a Design and Development Overlay requiring specific consideration of the impact of development on views. An Environmental Significance Overlay does apply to part of the Land – ESO1. Neither the statement of significance nor the environmental objectives of that schedule expressly raise matters of landscape; ESO1 is concerned with environmental, not landscape, values.

In the absence of specific guidance about the treatment of this particular landscape the default position is to examine the general policy framework:

- Clauses 11.03-4S and 11.03-4L Coastal settlement – general policy
- Clause 12.02-1S Protection of the marine and coastal environment – provides broad strategies around protecting and enhancing the coastal environment
- Clause 12.02-1L Protection of coastal areas, clauses 12.05-2S and 12.05-2L Landscapes – provide guidance about managing visual prominence.

Yumbah submitted that the policy framework applicable to landscapes that are not designated significant is best described as focusing on minimisation of visual dominance or intrusion, particularly from the public realm, with little strategic recognition of the importance of views from, or the need to share those views, from the private realm.

(iv) Discussion and conclusions

The Committee accepts VCAT's assessment of the visual impact on Dutton Way properties.

Applying the policy framework to the proposed development in relation to views from the public realm, the Proposal performs well:

- The topography of the land means that none of the structures protrude above the escarpment.
- Buildings are articulated, do not have visually dominant elevations and are set amongst vegetation.
- The development is setback from the foreshore and does not interfere with any natural landforms.
- The proposed buildings will not be visible from the public road network surrounding the subject land because of vegetation – retained and planted – in combination with internal setbacks from the boundaries.
- The facility will not be visible at all from the Frank Lodge Scenic Lookout.

- Glimpses of the development will be available at limited points along the Princes Highway to the west, but these glimpses will be fleeting.
- the proposed development will not be visible from the beach or the foreshore.

The Committee concludes:

- The Proposal will not have a long term adverse impact on the visual amenity of Dutton way.
- The Proposal will not have a significant impact on visual amenity from public vantage points along Princes Highway, the Great Southern Walk and the Frank Lodge Scenic Lookout.
- All guidance in relation to minimisation of visual impacts has been followed.
- There is no strategic basis for rejecting the Proposal on 'landscape and visual' distinct to private amenity issue.

4.5.4 Views from escarpment properties

(i) The issues

The Proposal will impact of the views from properties on the escarpment. The issue is whether the revised Proposal adequately addresses the concerns identified by VCAT.

(ii) Background

VCAT determined that the Proposal represents an unacceptable planning outcome because:

428 ...

- there will be significant and unacceptable impacts to the vistas presently enjoyed by the occupants of the dwellings surrounding the site but particularly to those that sit atop the escarpment.

In order to address VCAT's concerns about the Original Proposal was revised based on a 'first principles' assessment of the visual impact of the design.

(iii) Evidence and submissions

Yumbah called landscape evidence from Mr Wyatt and Mr Murphy. Mr Wyatt was involved in preparation of the Proposal and provided an assessment of its visual impact. Mr Murphy had no prior involvement with Yumbah or the preparation of the Proposal and concluded that with implementation of the landscaping plan, the impacts are acceptable.

Photomontages prepared by Mr Goss were discussed in other witnesses' reports. These show the changes in the views from the escarpment properties.

Mr Wyatt gave evidence that the scale and impact of the proposed development is much reduced from the Original Proposal. The amended application plans show that the visual impact after construction for these elevated properties on the escarpment edge has been assessed as 'medium' (as opposed to 'high' in his original assessment) after construction.

The present view from the escarpment properties takes in largely uninterrupted views of the horizon, the subject land and the foreshore. Yumbah acknowledged that it was an impressive view, as elevated views of the coast are.

The subject land sits in the foreground at a lower level, and because it is presently used for agricultural purposes, has the appearance of a coastal paddock, noting that it must reasonably be expected that, over time, the paddock will be developed.

Yumbah noted:

- The Proposal would not interrupt views available to the foreshore, to the water or to the horizon
- It would change the appearance of the subject land in the foreground of the views from the escarpment properties but the extent of that change is limited. As Mr Wyatt described, the extent and massing of built form, the articulation of built form and the landscaping proposal (both the extension of landscaping between built form elements and increased landscaping) have been designed to reduce visual impact
- Mr Murphy suggested selecting a range of different shade-cloth colours to adopt a mottled effect when viewed from above.

Ms Yuill submitted that:

Yumbah proposes to build this huge complex of factories to grow their abalone and take this piece of land out of a Rural Living Zone and set it in our midst.

Simply put we will lose every aspect of why we chose to live here.

...

In words from Mr Murphy in his review of XUrban's landscape approach, the words he stated were that - "all that can be offered is to 'Soften' the views from the escarpment." And he admitted that the built form will not be visually obscured" Will the 8.5 metres high buildings with mottled and varied shades of plastic, make what we look down on acceptable... No, it won't.

Ms Yuill submitted that *"I will see this monstrosity .. And it's not acceptable"*. Ms Yuill disputed that the landscaping and mottled shade-cloth colours would result in an acceptable outcome.

Ms Matuschka submitted:

Most of us on the ridge have built our homes on an angle and with windows to take in the commanding view that living on the ridge of this valley affords. The sight of this proposal cannot be avoided, we cannot mitigate with landscape screening due to the angle and height of the ridge face. And Yumbah have not remedied it with this so-called 'reduction' in scale.

The view of not only the sea but of the rural setting is a major part of our amenity and why we purchased land here. The scale and vast change this project would bring to the existing landscape could only be deemed to have a negative impact on our current visual amenity ...

(iv) Discussion and conclusion

There appears to be two elements to the submitters concerns:

- how the Proposal looks in terms of visual complexity and attractiveness
- the fact that the use is an abalone farm which is conceived of a 'factory'.

There is policy support for the use: the Committee considers the critical issue is the visual contrast of the Proposal with the existing landscape, and the visual complexity and attractiveness of the Proposal.

The Committee has had the benefit of viewing photomontages and a site visit to the escarpment.

The escarpment dwellings enjoy excellent long-range views to the ocean (which are not impacted by the Proposal), but also encompass the diverse Dutton Way area with its variable mixed form

and pattern of development, and mid-range views to Portland, the Port of Portland and the Alcoa smelter. They are not pristine or uniform views.

The first thing to observe about the views from the escarpment is the Proposal does not block views, it changes what is seen. The issue is the degree to which it is appropriate to require a new element to adopt certain design features to achieve a particular outcome for viewers, and if a particular outcome cannot be achieved whether it is appropriate to refuse a development wholly or partly on the basis of how something looks.

Issues about how a development looks often play out in development in urban areas in terms of requiring a proposal to respect the character of an area. Character can be the existing character or a preferred future character. The Committee agrees Yumbah that it must reasonably be expected that, over time, the coastal paddock of the subject land will be developed in some form within the existing RLZ.

The Proposal would not interrupt views available to the foreshore, to the water or to the horizon. It would change the appearance of the land in the foreground of the views from the escarpment properties. The Committee agrees with evidence that the Proposal reduces the visual impact from the Original Proposal as a result of the:

- extent and massing of built form
- articulation of built form
- proposed landscaping.

The Committee agrees with Mr Wyatt's description of the impact as 'medium' without landscaping, and no higher than 'low' with landscaping, and Mr Murphy's conclusion that the impacts are acceptable.

It is often said in planning that there is 'no right to a view'. Planning will often seek to balance the sharing of views, especially in coastal locations. Here we have a case of needing to share the landscape between a use that will diversify the economy in keeping with planning policy and existing residents who enjoy a particular visual amenity.

VCAT found that the impacts on the visual amenity of the Original Proposal were too great, that it *"demanded too much of the location"* – in other words it did not appropriately share the landscape. The Committee agrees with this assessment because the Original Proposal presented a large 'blank' area of shade-cloth that changed a visually complex view to a visually simple view. The use of shade-cloth is a necessary feature of abalone farming. The Proposal seeks to be less intrusive in the landscape by being visually more complex: breaking up the area of shade-cloth with planting, angling the shade-cloth so that it produces areas of light and shade, and using a variety of shade-cloth colours. The Committee thinks it can achieve this in the longer term accepting a greater impact until the landscaping is established.

The Committee accepts that there will be visual impacts and changes to the existing landscape; however, the revised Proposal has reduced the magnitude of these impacts to an acceptable level. The Committee acknowledges that to be considered a low visual and landscape impact, the Proposal relies upon the success of the landscaping plan.

The Committee concludes:

- The change to the views from the escarpment properties will be acceptable in the context of:

- the physical context of the subject land and the reasonable expectations of its development
- landscape policy in the planning scheme and the 'strategically unprotected' nature of the views from the escarpment properties and the landscape of the area
- the nature of the views enjoyed by the escarpment properties.

4.5.5 The rural setting

(i) The issue

The impact of the Proposal on the broader rural setting was raised by submitters.

(ii) Background

In refusing the Original Proposal VCAT said:

- the scale of the Proposal, its proximity to residential use and development and the inability to mitigate the visual impacts are inconsistent with the purpose of the RLZ namely, to provide for residential use in a *rural setting*. The setting in this area is of open landscapes in a seaside setting. The sheer size of the Proposal and its footprint on the site are at odds with the character and appearance of this particular location in the RLZ

(iii) Evidence and submissions

Many submitters referred to the Proposal as 'industrial'. In a landscape sense the Committee takes this to mean the structures will look industrial. Many submissions did not progress much past statements such as the submitter did not want to look at the shade-cloth structures.

Some submitters were concerned they will see another example of the environmental destruction that they see in the Portland aluminium smelter, others may see a locally distinctive farming practice that continues a long history of aquaculture.

In an answer to a question from the Committee, Mr Murphy opined that the ultimate landscape would be 'different' to what is there at the moment but would not be 'better' or 'worse'.

Yumbah submitted that the Proposal was consistent with the RLZ (that is, if a permit for the Proposal were to be applied for, it should be granted), and that while consistency with the RLZ was a significant 'tick' for the Proposal, inconsistency would not be fatal. This is because the Committee is not considering and application for a planning permit, in which the purposes of the zone are of great importance. Yumbah submitted because this was a planning scheme amendment, in which the benefits and disbenefits of the Proposal can be weighed up on a 'first principles', policy approach, without overriding weight on the zone. The zone remains a relevant consideration, but not a determinative one.

194. In fact, some of the rationale for the use of the SCO and Incorporated Document is that there is or might be inconsistency between the Proposal and the zone.

Yumbah drew the Committee's attention to the advisory committee that considered Draft Amendment Casey C273case. That amendment proposed a SCO and incorporated document to facilitate the Rosemaur Gallery – an international art gallery proposal that was comparable to the Proposal in the sense of being an extraordinary project that was said to justify departing from the Green Wedge A Zone that applied to the land. That advisory committee observed:

In the mind of the Advisory Committee, the more unusual or significant a proposition is the higher up the policy hierarchy one needs to go to properly consider it. This is an unusual

proposal, not because of the nature of the uses, but by dint of the nature of the quality of the art that is proposed to be displayed.

(iv) Discussion and conclusion

The pertinent purposes of the RLZ are:

- To provide for residential use in a rural environment.
- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.
- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.

In the first instance the Committee will consider whether the Proposal (as revised since VCAT) would change the area to the extent that it would no longer be a 'rural environment'.

Rural environments cover a range of aesthetic and character outcomes and the Committee thinks the zone purpose merely states that the outcomes expected are not so dense to be urban, and may well include activities that would not be appropriate in an urban residential context. The Committee notes ongoing debates about the precise character of rural areas in VCAT decisions and planning policy in general, especially in respect of amenity expectations, but clearly agriculture uses are part and parcel of a 'rural environment'. The use would not change the area from being a rural environment. The issue is the degree to which it would be a less attractive rural environment.

Amenity includes visual amenity, and so an issue is whether the Proposal has an unacceptable impact on the visual amenity of surrounding uses distinct from the impacts on specific properties that was considered in the previous section. Here the Committee considers broader visual impacts. The issue is whether the Proposal would have unacceptable landscape amenity impacts. Such a consideration must be based on reasonable expectations.

Within the landscape context, visual impact depends on:

- the visual qualities of the built form
- how much of the structure can be seen
- the meanings associated with that impact.

The structures will be visible but have muted colours and (despite some submissions) are not highly reflective.

The structures will be visible, though for residents driving along Dutton Way not as visible as some submissions suggested. Existing vegetation and the site layout will mean the structures will not be completely visible even before screening vegetation grows.

Visual impact cannot be divorced from the meaning associated with the that impact – it is not simply how something looks, but the meanings people attribute to what they see (or know to be there). Just as some words are offensive, not because of their specific phonemes but because of what they symbolise, some residents may find the built form offensive because of what it symbolises to them. This is not to discount these concerns.

The Committee notes the submissions that some local residents anticipate that the visual impact will be worse than unacceptable, it will be distressing. This is a difficult issue to resolve. There are no 'standards' to apply and it would be wrong to simply dismiss local concerns, but critically and of concern to the Committee is that these concerns need to be tested against a dispassionate assessment of the actual impacts.

The Proposal replaces a pastoral vista with built form. The pastoral environment is far from 'natural' in an ecological sense, and will have displaced local fauna, but it does read visually as a natural environment. The Committee accepts people are attached to their local area, but nothing about the area (except the sea water itself) is 'pristine' as described in submissions. The grow tanks will not read as natural, but are a use that is intrinsically linked to the specific location. The Committee thinks this colours how the Proposal should be viewed. It is not a generic use that could locate anywhere, it is a very specific response to local conditions, and a use supported by planning policy.

In terms of overall landscape character the Committee accepts that the area will be 'different' as a result of the Proposal. As with VCAT, the Committee agrees that the aquaculture facility would change the character of this RLZ, however the Committee concludes that the revised Proposal can fit into this rural living landscape and in its revised form does not *"seek too much from its location"*.

And there is the prospect that existing and future residents will come to view the Proposal as a locally distinctive and interesting part of a Portland that uses its farmland to grow a distinctly local food.

The Committee concludes:

- the Proposal will result in a different rural character, but this new character will not be inappropriate given its actual visual impact, and the fact it is a use intrinsically connected to the ocean.

5 Other issues

5.1 Issues determined by VCAT

VCAT determined a number of issues that were raised again before the Committee. These are set out briefly below. The Committee accepts VCAT's approach to these issues.

Air quality impact – dust

VCAT determined [113 – 116] that dust can be managed via a construction environmental management plan within the conditions of a works approval and planning permit. Incorporated Document, condition 6.11, addresses this issue.

Native vegetation

VCAT determined [213 – 216] there was no dispute as to the findings of the native vegetation removal assessment nor the adjustments required. Incorporated Document, condition 6.10, addresses this issue.

Impacts on seawater quality

VCAT determined [452 – 470] that it is expected that no environmental quality indicators would exceed Statement of Environmental Planning Policy – Waters beyond the mixing zone, and it is appropriate to allow for a mixing zone.

Surface water and drainage impacts

VCAT determined [244 – 273] that appropriate stormwater management of the site can be achieved, and that the proposed stormwater infrastructure will manage surface water flows, so as to ensure acceptable water quality in the drainage channels, and at ocean outlets.

At the time of the VCAT decision the EP Act 1970 applied. On 1 July 2021, the EP Act 2017 commenced. The relevant part of the State Environment Protection Policy (Waters) has been repealed, but relevant parts of this publication are now found in the Environment Reference Standard (May 2021) applicable under the EP Act 2017 and best practice requirements continue unamended.

Expert report by Mr Warwick Bishop of Water Technology, January 2022 (Document 50) – surface water can be appropriately managed on-site, with a requirement for further documentation of details regarding stormwater management.

Incorporated Document, condition 6.7 Drainage engineering, addresses this issue.

Potential impacts on quality and quantity of local groundwater

VCAT determined [274 – 286] there is a low risk of impact to other groundwater users or wetlands on adjoining land.

Geotechnical impacts

VCAT determined [276 – 279] there is a low risk of changes to groundwater conditions and hence slope stability, and any dewatering would be regulated under the Water Act 1989 and subject to appropriate conditions.

Traffic impacts

VCAT determined [226 – 243] operational traffic is relatively low and not a substantive change in conditions, construction traffic can be managed by conditions, and provision for access, loading and loading and car parking is appropriate.

Impacts on port

VCAT determined [312 – 364] the evidence does not support the Port's case of a conflict between Port operations and Yumbah operations.

5.2 Issues raised in submissions

A broad range of issues were raised in submissions.

Yumbah maybe sold overseas

Submissions were concerned that Yumbah may be privately listed or sold overseas.

The Committee does not see the ownership of Yumbah as a relevant planning issue: what matters is the merits of the Proposal and whether the Proposal delivers net community benefit in a sustainable way.

Future expansion

Submissions were concerned that the Proposal may be extended in the future.

Any future expansion would be subject to a separate process. There is no suggestion that the Proposal would not be viable at the size proposed and hence need to expand, especially given that a smaller facility already successfully operates a few kilometres away.

Impact on property values

Submitters raised concerns about the impact of properties values, and some submitters advised that real estate agents had provided advice in respect to decreases in property values. The Committee is not in position to assess the assumptions or motivations behind the estate agents' advice, and so this information is of no assistance to the Committee.

Impacts on property values is not a planning issue. As explained at the Hearing the amenity or other impacts that might affect property values are considered, but not any change in property value in and of itself.

Precedent

Some submitters were concerned about the "*whole area opening up to industrial*". The Proposal is not an industrial use, and proposals do not automatically set precedents. The planning system often considers cumulative impacts, that is, certain uses will be permitted in an area up until a specific cumulative impact is reached.

Project not sustainable

Submitters were concerned that the Proposal was not sustainable and that "*we can grow the economy without destroying the planet*". There is no suggestion or evidence that the Proposal is not sustainable, or has unacceptable environmental impacts.

The area to be placed under concrete

The abalone tanks are concrete structures on the land and the Proposal does involve significant areas of concrete tanks. Concerns were expressed about the extent of the concrete. Areas of the subject land will be concreted, but this concrete is the base for the tanks on which the abalone grow. Unlike the impervious paving of roads and driveways, or indeed the hard surfaces of house roofs, the tanks are integral to the life of the farm, they are a substrate for nature (albeit a highly modified environment) not inimical to it, like most other paved areas.

Power supply

Concerns were expressed on how power would be supplied to the site. There is sufficient power in the existing transmission lines. A small 'kiosk' substation will be constructed on site.

Generator noise

Concerns were expressed about generator noise in the event of a power failure. The noise assessment addressed this scenario.

Bushfire impacts

Concerns were expressed about the bushfire risk of the new planting. A fire management plan is required as part of the Incorporated document. Incorporated Document, condition 6.4, addresses this issue.

Effluent

Concerns were expressed about the effluent load from the Proposal going out to sea. Stringent EPA criteria will need to be met for wastewater emissions as part of the Development Licence under the EP Act.

Abalone virus

Concerns were expressed about the potential impact of the Abalone Viral Ganglioneuritis which was detected in waters off Portland on the 1st of May, 2021. This is not a planning issue.

Security lights

Concerns were expressed about security lighting at night. Abalone are light sensitive and so night-time lighting will be minimal.

No need for extra employment

Submitters suggested that because Portland has low unemployment rates at present there was no need for additional jobs. The Committee does not accept this argument. The Proposal will diversify the local economy and this is a benefit in the short and longer term.

Impact on Tourism

Concerns were expressed that the Proposal would adversely impact tourism, stating the Portland was *"just starting to shine as a tourist town – do not want to be an industrial town again"*. There is no evidence that the Proposal would adversely impact tourism. The Committee notes that the adjacent caravan park advised the Committee (document 86) that as a result of discussions with Yumbah and the changes agreed to it did not wish to participate further in the Hearing and do not intend to appear.

Seasonal workers

Concerns were expressed that the Proposal would employ a seasonal workforce as opposed to stable on going employment. Yumbah advised that most jobs are permanent ongoing jobs and the use of seasonal worker is limited.

Abalone industry

Concerns were expressed that abalone were not an essential product and that too much product will ruin the industry. Food is an essential product and it is not the role of planning to restrict entry of new producers to safeguard an existing industry.

6 The Incorporated document

6.1 The Proponent's final position on the Incorporated Document

Appendix G present the Proponent's final day version of the Incorporated Document. It has been tracked against the exhibited version. Changes include the following.

Operational, numbering and editorial

A number of technical operations changes, changes to numbering, and editorial changes are made (for example changing 'shall' to 'must'). The Committee accepts these changes.

Include road reserves

It is now proposed to include the road reserves under which the inlet and outlet pipes run. The Committee accepts this change.

Update plans

It is proposed to update the plan references to the current versions of the plans. The Committee accepts this change.

Limiting area of works plan

The SCO applies to a broader area than is required to authorise the works because it follows title boundaries. It is proposed to more clearly delineate the extent of works. The Committee accepts this change.

Operations plan

It is proposed to include a requirement for an operations plan. This is to be approved by the responsible authority which is the Council. The Committee accepts this change, but considers all approvals should be by the Minister for Planning.

Landscape plan more detail

Further detail is proposed in relation to the landscaping plan. The Committee accepts these changes, but recommends further changes to better address issues of plant provenance and sourcing.

Pavement testing

Council has sought a requirement for pavement testing of roadways as part of the 'Construction and Operational Traffic Management Plan'. This issue appears to be more comprehensively dealt with in Condition 6.12(f). The Committee does not support this change.

Crayfish habitat management plan

A 'Crayfish Habitat Management Plan' is proposed. The Committee supports these changes subject to minor addition of 'The survey must occur during an optimal time of year (spring to early summer)'.

Drainage plan detail

More detail is proposed in relation to the drainage plan. The Committee accepts these changes.

Odour and noise link to EPA

It is proposed to link condition back to the odour and noise conditions in the EPA approval specifically and more generally at Condition 6.15. The EPA does not see this as necessary. The Committee supports the reference to the EPA conditions as it provides greater transparency on how this issue is to be managed, given the number of submissions regarding these issues.

Post occupancy noise assessment

It is proposed to include a requirement for a post occupancy noise assessment. The Committee accepts these changes.

Five year expiry

It is proposed to extend the expiry period from four to five years. The Committee accepts this change.

6.2 Committee recommended changes

Numbering and editorial

The Committee proposes some further numbering and editorial refinements as shown in Appendix H.

Substantial changes:

The Committee includes changes to:

- make landscaping requirements more explicit
- delete the requirement for detailed pavement testing of Keillors Beach Road and Dutton Way
- ensure that the Portland burrowing crayfish survey occurs during an optimal time of year (spring to early summer).

Appendix A Terms of Reference

Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:

- a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.
 - e.
10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.

- b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.
22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Referral letter



Hon Lily D'Ambrosio MP

Minister for Energy
Minister for Environment and Climate Action
Minister for Solar Homes

8 Nicholson Street
East Melbourne, Victoria 3002
Telephone: 03 9637 9504
DX210098

Ms Kathy Mitchell AM
Panel Chair, Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Dear Ms Mitchell AM

DRAFT GLENELG PLANNING SCHEME AMENDMENT C109 – 315 DUTTON WAY, BOLWARRA AND SURROUNDS

I refer to draft Planning Scheme Amendment C109 to the Glenelg Planning Scheme affecting land at 315 Dutton Way, Bolwarra, and surrounds. The Proposal has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be prioritised for accelerated assessment and determination.

I am considering whether to prepare, adopt and approve draft Amendment C109 to the Glenelg Planning Scheme and exempt myself under section 20(4) of the *Planning and Environment Act 1987* (PE Act) from the requirements of section 17, 18 and 19 of the PE Act and the Regulations. Draft Amendment C109 seeks to facilitate the use and development of a 500-tonne land-based aquaculture facility (abalone farm) by inserting an incorporated document and applying a Specific Controls Overlay (SCO) to the subject land.

To inform my decision about whether to prepare, adopt and approve draft Amendment C109, consultation was undertaken under section 20(5) of the PE Act. Parties consulted included adjoining owners and occupiers of land, all parties to previous Victorian Civil and Administrative Tribunal proceeding P797/2019, Glenelg Shire Council, Department of Environment, Land, Water and Planning (DELWP) (Forest, Fire and Regions – Barwon South West), Environment Protection Authority, Glenelg Hopkins Catchment Management Authority, Wannon Water and Fire Rescue Victoria.

A total of 183 submissions were received, from 158 parties, including 176 objections. The main grounds of objection relate to the intervention process, requests to maintain a previous VCAT refusal decision, environmental impacts, including coastal erosion, impact on marine species, residential amenity, including odour and visual impact, and compatibility of the use with rural living.

I have determined to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether I should approve draft Amendment C109. I request your specific advice on the matters raised in submissions and the proposed draft incorporated document.

The draft amendment documentation, including application and supporting documents, and submissions will be provided to the committee.

The cost of the committee process will be met by the Proponent, Yumbah Aquaculture Limited.

If you have any questions about this matter, please contact Bart Gane, Manager, Priority Projects, DELWP, on 0448 048 704 or email bart.gane@delwp.vic.gov.au.

Yours sincerely

Hon Lily D'Ambrosio MP
Minister for Energy
Minister for Environment and Climate Action
Minister for Solar Homes

Appendix C Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Karen Dalton	30	Andrea Plantinga
2	Lesley Nutter	31	Brian and Liz Malseed
3	Kirra Nutter	32	Sue Robertson
4	Sally Kerr	33	Francis (Buddy) Gartlan
5	Cheryl (Almond) Duffin	34	Pam McLeod
6	Justine	35	Stephen Liddicut
7	Valia Palmer	36	Tanya and Andrew Mibus
8	Michael Nutter	37	Robyn Hoe
9	Carolyn Silva	38	Ann Fairman
10	Angela Phillips	39	Brian Jennings
11	Judith Angel	40	Jen Merrett
12	Travis Mitchell	41	Sam Kalta
13	Karen Hunter	42	Theresa Stastny
14	Keith Kallie	43	EPA (Kaylee Thompson)
15	Georgia Craigie	44	Ady Topala
16	Glenelg Hopkins Catchment Management Authority	45	Theresa Stastny
17	Jenny Kirkwood	46	Theresa Stastny
18	Rhonda and Peter Root	47	Janet MacDonald
19	James Phillips	48	Finlay MacDonald
20	Ebony Ball	49	Darryl MacDonald
21	Amy Saunders	50	Rachael & Gary Matuschka
22	Karina Hogan	51	Lyndi & Neil Ball
23	R & S Mellblom	52	Tony Wright
24	Gloria and John Malseed	53	Tanya Mibus
25	Hayley Ball	54	Tony Wright
26	Scott McFarlane	55	Julie Hoffmann
27	Helen Carey	56	Julie Hoffmann
28	Tanya & Andrew Mibus	57	Lesley Yuill
29	Melinda Radcliffe	58	Lesley Yuill

*Several submitters made multiple submissions. Each submission was given a separate number.

No.	Submitter	No.	Submitter
59	Peter Stirling	88	Don Campbell
60	Lesley Yuill	89	Jessica Coles
61	Lesley Yuill	90	G Coles
62	Dave Errey (Lesley Yuill)	91	Katrina Archer
63	Jane Thomas	92	Brad Eldridge
64	Sandra Barrett	93	Deborah Jones
65	Kay Robertson	94	Susan Bryan
66	Ray & Heather Fitzgerald	95	Narelle Young
67	Alan Dalton	96	Courtney Ball
68	Lesley Yuill	97	Tanya Hulbert
69	Debra Craib & John Piasente	98	Sharna Brown
70	Debra Craib & John Piasente	99	Shae Spry
71	Stefan Wagner	100	Graeme Barr
72	Stefan Wagner	101	Evie Hulbert
73	Lucas Mibus	102	Marg Price
74	Lucas Mibus & Brooke Smith	103	Crystel Treloar
75	Glenelg Shire Council (Matt Berry)	104	Margaret Dal Pozzo
76	Elfreda Phillips	105	Laura Lovett-Murray
77	the Port of Portland	106	Fern McCarthy
78	Linda & Bryan Bowman	107	Lee Harrison
79	Linda Bowman	108	Aidan Murphy
80	Bryan Bowman	109	Shea Rotumah
81	Lyndi & Neil Ball	110	Linda Owen
82	Rachael & Gary Matuschka	111	Steven Owen
83	Ellie Matuschka	112	Paul Kerr
84	Patricia Thornton	113	Paul Kerr
85	Leah Cavanagh	114	Linda Jemmett
86	Simon Makoman	115	Daryl McMahon
87	Peter & Pauline Elletson	116	Peter Stirling

No.	Submitter	No.	Submitter
117	Keith Kallie	146	Lance Grace
118	Rachael Matuschka	147	Jodi Nepean
119	Joanne Cole	148	Christina MacDonald
120	Joanne Cole & Ian Hunter	149	Kay Robertson
121	Phil Oakley	150	Therese Grinter
122	Brian Jennings	151	Christina MacDonald
123	Paige Wirtanen	152	Deline Briscoe
124	Ben Dunwoodie	153	Shirley Stanford
125	Kathleen & Graeme Baugh	154	Joan Stanford
126	Western Abalone Divers Assoc. C/- Harry Peeters	155	Robert George
127	Daniel Hulbert	156	Loryn & Warren Redding
128	Ella Hulbert	157	Katie Kaminsky
129	Debra Craib	158	Carmel Wallace
130	Fiona Wright	159	James Wallace
131	Kendra Vann	160	Grant Wallace
132	Anne Vann	161	Nick Sturgess
133	Robin and Daryl Parry	162	Noah H
134	Denise Dowsley	163	Anne Grahame
135	Trudy Cotter	164	Alexis Sealey
136	Sally Poehland	165	Peter Sealey
137	Laurelle Jasper	166	Lorna May Bell
138	Irene Hatton	167	Alexis Sealey
139	L Clarke Developments Pty Ltd & Holiday Lifestyle Development Australia Pty Ltd C/- Paul Beeson of Equipe Lawyers	168	Lilja Sigurpals & Grant Robers
140	Biddy Connor	169	Marcelle Holdaway
141	Gunditj Goddess	170	Jarod Imaged
142	Julie Tyson	171	Finn Koren
143	Kira Wilkie	172	Port of Portland
144	Luen Credlin	173	Evita Ferguson & Glen Bowman
145	Jo Credlin	174	Michelle Ransom-Hughes

No.	Submitter
175	Milly Cameron
176	Neil Cameron
177	David Fish
178	Stephen Chapple
179	Peter Lovell
180	Susan Bryan
181	Kay Robertson
182	Barwon South West Region, DELWP c/- Geoff Brooks
183	Fire Rescue Victoria c/- Brendan Brown

Appendix D Issues raised in submissions

Process

- Process
 - VCAT rejected previously / abuse of power
 - Inappropriate process
 - Insufficient time for consultation
 - Not appropriate use of section 20(4) of the *Planning and Environment Act 1987*
- Tools
 - SCO not appropriate use of Victoria Planning Provisions
 - Conditions of Incorporated Document inadequate

Settlement

- Community
 - Community opposition
 - Impact on local community
 - Impact on traditional owners Gunditjmara
- Policy inconsistency
 - Inconsistency with Planning Policy Framework (state and local)
 - Inconsistency with Rural Living Zone
 - Inconsistency with Portland Rural Living Assessment
 - Loss of rural living opportunities
- Location
 - Should be further from town
 - Should be somewhere else
 - Wrong zone / should be an industrial area
 - Should be located somewhere else
 - Should extend Narrawong instead

Values

- Terrestrial ecology
 - Impacts on native flora and fauna
- Marine ecology
 - Whales – construction and operation
 - Marine ecology impacts generally
 - Impacts on wild abalone
- Visual and landscape
 - Impact on views from escarpment
 - Impact on views from Dutton Way area
 - Visual impact on beach
 - Inadequate/unrealistic landscaping

Risks

- Climate change
 - Failure to consider climate change impacts (sea level rise)
- Marine water quality
 - Pollution of seawater
- Coastal risks

- Risk to sea wall
- Impact on beach (visual, access during construction and operation - climbing required / exclusion zone)
- Prevent beach restoration (Port of Portland compensatory sand pumping)
- Geotechnical
 - Impact on integrity of local structures of vibrations and drainage
 - Destabilisation of ridge with construction
 - Acid sulfate soils
- Amenity and Health
 - Noise and vibration – construction and operation
 - Odour impacts – operation
 - Air quality impacts – construction, including dust and silica
 - Mental health impacts
 - Impacts on character
 - Impacts on residential amenity

Natural resource

- Groundwater
 - Groundwater impacts – quantity and quality
- Agriculture
 - Loss of grazing land

Heritage

- Heritage
 - Impact on Aboriginal cultural heritage significance
 - Impact on post-contact heritage significance

Economic development

- Economics
 - Impacts on tourism
 - Impacts on Great South West Walk
 - Impact on caravan parks and holiday accommodation
 - Exacerbate shortage of accommodation - construction workers
 - Exacerbate shortage of labour
 - Jobs and investment won't be local
 - Decreased demand for abalone means decreased benefits
 - No local benefit
 - Insufficient economic benefit to outweigh disbenefits

Transport

- Traffic
 - Construction traffic impacts (including road closure)
 - Operational traffic impacts
- Port operations
 - Impact on port operations

Infrastructure

- Surface water and drainage
 - Drainage/surface water impacts

Other

- Other
 - Impact on property value
 - Biosecurity risks, with recent Abalone Viral Ganglioneuritis outbreak
 - Vermin
 - Excessive energy usage
 - Contamination of tank water by birds
 - Concern about future expansion
 - Concern about remediation of land post-development

Appendix E Parties to the Hearing

Submitter	Represented by
Yumbah Aquaculture Limited	Alexandra Guild of Counsel, instructed by Greg Tobin of Harwood Andrews, calling the following expert evidence: <ul style="list-style-type: none"> town planning from Colleen Peterson of Ratio landscape from Allan Wyatt of XUrban landscape from Barry Murphy of Murphy Landscape Consultancy economics from Sean Stephens of Ethos Urban
Gunditj Mirring Traditional Owners Aboriginal Corporation	Donna Wright, Masita Maher, Amy Saunders and Shea Rotumah
Tony Wright	
Rachael Matuschka	
Gary Matuschka	Rachael Matuschka
Lesley Yuill	
Deborah Jones	Lesley Yuill
Stefan Wagner	Lesley Yuill
Peter Stirling	Lesley Yuill
Rhonda Root	Lesley Yuill
Alexis Sealey	Lesley Yuill
Neil and Lyndi Ball	Damien Leeson
Brian Malseed	
Joanne Cole	
Ian Hunter	
Shea Rotumah	
Linda Owen	
Steven Owen	
Daniel Hulbert	
John Piasente	
Fiona Wright	
Julie Hoffmann	
Keith Kallie	
Sally Kerr	
Paul Kerr	
Jo Credlin	

Luen Credlin

Pam McLeod and Graeme Barr

Debra Craib

Kathleen Baugh

Graeme Baugh

Stephen Liddicut

Robyn Hoe

Linda Jemmett

Tanya Hulbert

Amy Saunders

Ray Fitzgerald

Irene Hatton and Joel Sealey

Tanya Mibus

Linda Bowman

Bryan Bowman

Phillip Oakley

Kay Robertson

Appendix F Document list

No.	Date	Description	Presented by
1	14 Jun 20	Terms of Reference	Minister for Planning
2	17 Oct 22	Letter of Referral	Minister for Energy, Environment, Climate Action
2a	17 Oct 22	Acoustic assessment	"
2b	17 Oct 22	Approved Cultural Heritage Management Plan	"
2c	17 Oct 22	Economic assessment	"
2d	17 Oct 22	Flora and fauna review – part 1	"
2e	17 Oct 22	Flora and fauna review – part 2	"
2f	17 Oct 22	Landscape and visual assessment	"
2g	17 Oct 22	Landscape plan	"
2h	17 Oct 22	Proposed Site Plan Part A part-1	"
2i	17 Oct 22	Proposed Site Plan Part A part-2	"
2j	17 Oct 22	Proposed Site Plan Part A part-3	"
2k	17 Oct 22	Proposed Site Plan Part B part-1	"
2l	17 Oct 22	Proposed Site Plan Part B part-2	"
2m	17 Oct 22	Odour Impacts Assessment	"
2n	17 Oct 22	Seawall and Pipeline Construction	"
2o	17 Oct 22	Southern Right Whale Acoustic Impacts Assessment	"
2p	17 Oct 22	Surface Water Management prepared by Water Technology	"
2q	17 Oct 22	Title Details	"
2r	17 Oct 22	Town Planning Report	"
2s	17 Oct 22	Traffic Report Traffic	"
2t	17 Oct 22	Traffic Swept Paths Traffic	"
2u	17 Oct 22	Visual Impact Analysis Orbit Solutions	"
2v	17 Oct 22	Matuschka v Glenelg SC [2020] VCAT 1452	"
3	21 Oct 22	Letter to Committee	Proponent
4	28 Oct 22	Directions Hearing Letter	Committee
5	4 Nov 22	Letter to Committee	Proponent
6	9 Nov 22	Email advising of Directions Hearing date change	Committee
6a	9 Nov 22	Directions Hearing Letter (version 2)	Committee

No.	Date	Description	Presented by
7	10 Nov 22	Request to record the Directions Hearing and Committee response	Stephen Liddicut
8	11 Nov 22	Request to hold hearing in Portland	Lesley Yuill
9	15 Nov 22	Request to hold hearing in Portland	Rachael Matuschka
10	24 Nov 22	Email filing without prejudice draft permit conditions	Glenelg Shire Council (Council)
11	24 Nov 22	Without prejudice draft permit conditions	Council
12	1 Dec 22	Outline of submissions for Directions Hearing	Proponent
13	14 Dec 22	Directions and explanation of procedural issues	Committee
14	16 Dec 22	Marine and Coastal Act 2018 consent (dated 16 November 2022)	Proponent
15	16 Dec 22	Siting and Design Guidelines for Structures on Victorian Coast 2020	Proponent
16	19 Dec 22	Letter to Committee enclosing table of suggested hearing order	Proponent
17	22 Dec 22	Response to Direction 2	Pam McLeod and Graeme Barr
18	23 Dec 22	Email advising expert witness details	Proponent
19	23 Dec 22	Response to Direction 2	Rachael Matuschka
20	23 Dec 22	Response to Direction 2	Port of Portland
21	23 Dec 22	Response to Direction 2	Lesley Yuill
22	23 Dec 22	Letter from Committee enclosing version 1 hearing timetable	Committee
23	23 Dec 22	Copy of correspondence from parties dated 20.12.22 in response to the Proponent's suggested hearing order	Committee
24	30 Jan 23	Nominated site inspection locations	Rachael Matuschka
25	6 Feb 23	Part A Submission	Proponent
26	6 Feb 23	Part A Submission - Annexure A - Issues identified in submissions on public consultation	Proponent
27	6 Feb 23	Part A Submission - Annexure B - Index to Proponent Part A Materials	Proponent
27a	6 Feb 23	Department of Primary Industries (2005) Planning Guidelines for Land Based Aquaculture in Victoria	Proponent
27b	6 Feb 23	Coastal Spaces Landscape Assessment Study (2006)	Proponent
27c	6 Feb 23	Great South Coast Regional Growth Plan (2014)	Proponent

No.	Date	Description	Presented by
27d	6 Feb 23	Great South Coast Region Strategic Plan	Proponent
27e	6 Feb 23	Victorian Coastal Strategy (2014)	Proponent
27f	6 Feb 23	Victorian Aquaculture-Strategy (2017-2022)	Proponent
27g	6 Feb 23	Rural Land Strategy (May 2019)	Proponent
27h	6 Feb 23	Marine and Coastal Policy (March 2020)	Proponent
27i	6 Feb 23	Marine and Coastal Strategy (May 2022)	Proponent
27j	6 Feb 23	Portland Rural Living Assessment (April 2020)	Proponent
27k	6 Feb 23	Siting and Design Guidelines for Structures on the Victorian Coast (May 2020)	Proponent
27l	6 Feb 23	Victorian Fisheries Authority Strategic Plan 2019-2024	Proponent
27m	6 Feb 23	Cultural Heritage Management Plan Letter of Advice dated 23 January 2023	Proponent
28	7 Feb 23	Letter – Plans published to Engage Victoria 23-31 (07.02.23)	Proponent
29	7 Feb 23	Part C Plans	Proponent
30	7 Feb 23	Email regarding Part C Plans	Development Facilitation Program (DFP)
31	8 Feb 23	Timetable (version 2)	Committee
32	10 Feb 23	Withdrawal from the Hearing	Port of Portland
33	10 Feb 23	Letter – Extension request for expert evidence and Port Withdrawal	Proponent
34	13 Feb 23	Response to extension request	Committee
35	14 Feb 23	Letter filing evidence	Proponent
36	14 Feb 23	Barry Murphy - Expert Witness Statement	Proponent
37	14 Feb 23	Sean Stephens - Expert Witness Statement	Proponent
38	14 Feb 23	Allan Wyatt - Expert Witness Statement	Proponent
38a	14 Feb 23	Annexure 1 - Allan Wyatt - Curriculum Vitae	Proponent
38b	14 Feb 23	Annexure 2 - Revised site layout February 2022 - Landscape & Visual Assessment	Proponent
38c	14 Feb 23	Annexure 3 - Landscape Concept Plan - Option 1 ARCH LYT 500T, 30 November 2021	Proponent
39	14 Feb 23	Chris Goss - Statement of Methodology	Proponent
40	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 01	Proponent
41	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 02	Proponent
42	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 03	Proponent

No.	Date	Description	Presented by
43	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 04	Proponent
44	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 05	Proponent
45	14 Feb 23	Chris Goss - V23001 Visual Amenity Document - View 06	Proponent
46	14 Feb 23	Letter filing further material	Proponent
47	14 Feb 23	MAC Act Consent dated 5 February 2019	Proponent
48	14 Feb 23	MAC Act Consent variation dated 16 November 2022	Proponent
49	14 Feb 23	MAC Act Consent (amended) dated 12 December 2019	Proponent
50	14 Feb 23	Statutory Document Amended (issue date - 15 April 22) (amended 23 December 2022)	Proponent
51	14 Feb 23	Water Technology (Warwick Bishop) - Assessment of Revised Proposal (18 January 2022)	Proponent
52	14 Feb 23	Coastal Space Landscape Assessment Study - State Overview Report (September 2006)	Proponent
53	14 Feb 23	Colleen Peterson - Expert Witness Statement	Proponent
54	14 Feb 23	Dr Peter Riedel - Expert Witness Statement	Proponent
55	14 Feb 23	Schedule of Plans - Draft Amendment C109gelg	Proponent
56	16 Feb 23	Timetable and distribution list (version 3)	Committee
57	17 Feb 23	Email filing site inspection itinerary	Proponent
57a	17 Feb 23	Nominated Site Inspection Locations - Draft Amendment C109gelg	Proponent
58	17 Feb 23	Email - site inspection itinerary	Rachel Matuschka
59	17 Feb 23	Email in response to Ms Matuschka	Proponent
60	17 Feb 23	Email - site inspection itinerary	Tony Wright
61	17 Feb 23	Email - site inspection itinerary	Lesley Yuill
62	17 Feb 23	Email – response to Proponent’s email (document 59)	Rachel Matuschka
63	17 Feb 23	Response to emails regarding site inspection itinerary	Committee
64	17 Feb 23	Email filing site inspection material	Proponent
65	17 Feb 23	Proposed Site Inspection Itinerary (excluding maps)	Proponent
66	17 Feb 23	Nominated Site Inspection Locations	Proponent
67	17 Feb 23	Map #1 - Nominated Site Inspection Locations	Proponent
68	17 Feb 23	Map #2 - Yumbah Narrawong - Site Layout and Buildings	Proponent
69	17 Feb 23	Part B Submission	Proponent
70	17 Feb 23	C109gelg draft Incorporated Document (Part B Submission)	Proponent
71	17 Feb 23	Response to Direction 2 (Part B Submission)	Proponent
72	17 Feb 23	Response to Submissions (Part B Submission)	Proponent

No.	Date	Description	Presented by
73	17 Feb 23	Water Cycle (table and plan) (Part B Submission)	Proponent
74	17 Feb 23	Aaron Jenkin - Expert Witness Statement	Proponent
75	17 Feb 23	Prof Paul McShane - Expert Witness Statement	Proponent
76	17 Feb 23	Chris Charles - Expert Witness Statement	Proponent
77	17 Feb 23	23010317_Figures_A2_ScreeningMap	Proponent
78	17 Feb 23	23010317_Figures_A3_FocusArea-A - Portland	Proponent
79	17 Feb 23	23010317_Figures_A3_FocusArea-B - Bolwarra	Proponent
80	17 Feb 23	23010317_Figures_A3_FocusArea-C - Port Fairy	Proponent
81	17 Feb 23	23010317_Figures_A3_FocusArea-D - Killarney	Proponent
82	17 Feb 23	23010317_Figures_A3_FocusArea-E - Barwon Heads	Proponent
83	17 Feb 23	Opening presentation - abalone and aquaculture	Proponent
84	17 Feb 23	Opening presentation - comparison of proposals	Proponent
85	17 Feb 23	Opening presentation - photomontage extracts	Proponent
86	20 Feb 23	L Clarke Developments Pty Ltd – Withdrawal from the Hearing	Mr A Natoli representing L Clark Developments
87	21 Feb 23	Incorporated Document Day 1 tracked changes version	Proponent
88	21 Feb 23	Addendum – Barry Murphy (Landscape Peer Review) Expert Witness Statement 18.02.23	Proponent
89	21 Feb 23	Additional Photomontages x 4 (Chris Goss – Orbit Solutions) Positions 2A and Position 3D	Proponent
90	22 Feb 23	Presentation of Barry Murphy	Proponent
91	23 Feb 23	Presentation of Aaron Jenkin (Aquatica Environmental - ecology)	Proponent
92	23 Feb 23	Opening speaking notes - Mr Wright	Mr Wright
93	23 Feb 23	Opening speaking notes - Ms Matuschka	Ms Matuschka
94	24 Feb 23	Email filing additional material	Proponent
95	24 Feb 23	Portland Burrowing Crayfish Overlay Plan	Proponent
96	24 Feb 23	Section 173 materials (Agreement and Plans of Subdivision)	Proponent
97	24 Feb 23	Security Fence Plan	Proponent
98	24 Feb 23	EPBC 2020 8846 Approval Decision	Proponent
99	24 Feb 23	EPBC Latrobe Levee Revision - 5 February 2022	Proponent
100	24 Feb 23	Glenelg Planning Scheme - 02.03 Strategic Directions	Proponent
101	24 Feb 23	Glenelg Planning Scheme - 11.01 Victoria	Proponent

No.	Date	Description	Presented by
102	24 Feb 23	Glenelg Planning Scheme - 12.02 Marine and Coastal Environment	Proponent
103	24 Feb 23	Glenelg Planning Scheme - 12.05 Significant Environment and Landscapes	Proponent
104	24 Feb 23	Glenelg Planning Scheme - 14.01 Agriculture	Proponent
105	24 Feb 23	Glenelg Planning Scheme - 17.01 Employment	Proponent
106	24 Feb 23	Hydrology Conclave Report	Proponent
107	24 Feb 23	Opening speaking notes – Ms Yuill	Ms Yuill
108	28 Feb 23	Final submissions	Mr Wright
109	28 Feb 23	Media release re unemployment rate	Mr Wright
110	28 Feb 23	Submissions	Ms Matuschka
111	28 Feb 23	Ms Matuschka VCAT submission	Ms Matuschka
112	28 Feb 23	Ms Matuschka VCAT closing submission	Ms Matuschka
113	28 Feb 23	Rhonda Root submissions	Represented by Ms Yuill
114	28 Feb 23	Deborah Jones submissions	Represented by Ms Yuill
115	28 Feb 23	Stefan Wagner submissions	Represented by Ms Yuill
116	28 Feb 23	Submissions	Ms Yuill
117	28 Feb 23	Peter Stirling submissions	Represented by Ms Yuill
118	28 Feb 23	Alexis Sealey submissions	Represented by Ms Yuill
119	28 Feb 23	Submissions on the Cultural Heritage Management Plan (CHMP)	Proponent
120	1 Mar 23	Submission	Brian Malseed
120a	1 Mar 23	Landscape Concept Plan Site Layout - Option 1 ARCH LYT 500T	Brian Malseed
120b	1 Mar 23	Media article – Southwest unemployment rate	Brian Malseed
120c	1 Mar 23	Photomontage - position 02 (Orbit Solutions)	Brian Malseed
120d	1 Mar 23	Yumbah Nyamat general arrangement pump station intake plan – easement A (Foresight 2021)	Brian Malseed
120e	1 Mar 23	Yumbah Nyamat general arrangement pump station intake plan – easement A (Foresight 2018)	Brian Malseed
120f	1 Mar 23	Pipe comparison graph	Brian Malseed

No.	Date	Description	Presented by
120g	1 Mar 23	Yumbah Nyamat Works Approval Application October 2018 Appendix J Geotechnical Site Investigation	Brian Malseed
120h	1 Mar 23	Yumbah Nyamat Works Approval Application October 2018 – expected electricity use extract	Brian Malseed
120i	1 Mar 23	Extract – suitability of alternative sites	Brian Malseed
120j	1 Mar 23	Aerial photo of Narrawong site	Brian Malseed
120k	1 Mar 23	Aerial photo – size comparison of proposed site	Brian Malseed
120l	1 Mar 23	Soil site investigation and classification report for 8921 Princes Highway Bolwarra (2012) page 1	Brian Malseed
120m	1 Mar 23	Soil site investigation and classification report for 8921 Princes Highway Bolwarra (2012) page 2	Brian Malseed
120n	1 Mar 23	Glenelg Planning Scheme extract 13.04-2L erosion and landslip	Brian Malseed
120o	1 Mar 23	Glenelg Planning Scheme extract 21.02-43 soil degradation	Brian Malseed
120p	1 Mar 23	Drone footage of Dutton Way	Brian Malseed
120q	1 Mar 23	Bore log record	Brian Malseed
121	1 Mar 23	Presentation	Fiona Wright
122	1 Mar 23	Submission	Steve Owen
123	1 Mar 23	Submission	Linda Owen
124	1 Mar 23	Photos	Karen Dalton
125	1 Mar 23	Email filing documentation	Proponent
126	1 Mar 23	Victorian Best Practice Guidelines for Managing Coastal Acid Sulfate Soil (CASS) (Dept of Sustainability and Environment 2010)	Proponent
127	1 Mar 23	Framework Construction Environment Management Plan	Proponent
128	1 Mar 23	Hydrogeological Assessment (2019)	Proponent
129	1 Mar 23	Works Approval Application appendix J geotechnical site investigation	Proponent
130	1 Mar 23	Works Approval Application response to stakeholder submissions (2019)	Proponent
131	1 Mar 23	Yumbah VCAT submission extract	Proponent
132	1 Mar 23	Yumbah Nyamat Abalone Farm Works Approval Application 2018	Proponent
133	1 Mar 23	CHMP general site layout (2018)	Proponent

No.	Date	Description	Presented by
134	1 Mar 23	Lake Park Holdings Pty Ltd v East Gippsland SC & Ors (includes Summary) (Red Dot) [2014] VCAT 826 (22 July 2014)	Proponent
135	1 Mar 23	VCAT concept plan (Wyatt 2019)	Proponent
136	1 Mar 23	Native vegetation removal report (DELWP 2022)	Proponent
137	1 Mar 23	Yumbah Nyamat Marine Impact Assessment (2018)	Proponent
138	1 Mar 23	Draft Amendment C109 Glenelg - Rockwall to Municipal Boundary	Proponent
139	1 Mar 23	Extract – Marine Impact Assessment Attachment 1 – Assessment of habitat to be impacted by pipes	Proponent
140	1 Mar 23	Glenelg Planning Scheme 72.02 What area is covered by this planning scheme	Proponent
141	1 Mar 23	Glenelg Planning Scheme Schedule to clause 72.02 what area is covered by this planning scheme	Proponent
142	1 Mar 23	Yumbah Nyamat general arrangement pump station intake sea grass impacts 2023	Proponent
143	1 Mar 23	Historical Photographs Shoreline	Proponent
144	1 Mar 23	Works Approval Application CEE Seawater and Wastewater Treatment and Solids Handling Facilities – Options Study and Concept Design (2018)	Proponent
145	1 Mar 23	Presentation	Debra Craig and John Pisante
146	3 Mar 23	Works Approval Application - Appendix E Water Technology (2018)	Rachael Matuschka
147	3 Mar 23	Duplicate document	
148	3 Mar 23	New article	Keith Kallie
149	3 Mar 23	Submission	Ray Fitzgerald
150	3 Mar 23	Submission	Tanya Hulbert
151	3 Mar 23	Submission	Tanya Mibus
152	3 Mar 23	Submission	Stephen Liddicut
153	3 Mar 23	Video submission	Stephen Liddicut
154	3 Mar 23	Confidential submission	Irene Hatton and Joel Sealey
155	3 Mar 23	Submission	Fiona Wright
156	3 Mar 23	Submission	Julie Hoffman
157	3 Mar 23	Submission	Luen and Joanne Credlin

No.	Date	Description	Presented by
158	3 Mar 23	Photos	Kay Robertson
159	3 Mar 23	Submission	Kay Robertson
160	3 Mar 23	Closing submission	Proponent
161	3 Mar 23	Response to Committee questions	Proponent
162	3 Mar 23	Ballarat C185 Panel Report and report of the Chair of the Works Approval Conference (7 September 2015)	Proponent
163	3 Mar 23	Extracts - Nyamat Marine and Coastal Application 2018	Proponent
164	3 Mar 23	Mottled Patchwork Shade-cloth Plan prepared by Murphy Landscape Consultancy	Proponent
165	3 Mar 23	Comparisons to Intensive Animal Husbandry	Proponent
166	3 Mar 23	VCAT Additional Information of Glenelg Shire Council – Native Title Issues and attachments	Proponent
167	3 Mar 23	Yumbah VCAT submission – Native Title and Indigenous Land Use Agreements	Proponent
168	3 Mar 23	Request on behalf of Mr Rotumah to make a further submission	Lesley Yuill
169	5 Mar 23	Further correspondence regarding late request	Shea Rotumah
170		Draft Glenelg C109 315 Dutton Way Bolwarra Incorporated Document (PDF with track changes)	Proponent
171		Draft Glenelg C109 315 Dutton Way Bolwarra Incorporated Document	Proponent
172		Submission	Graeme Baugh
173		Submission	Kathleen Baugh
174		Submission	Linda Jemmet
174a		Aerial Image	Linda Jemmet
174b		Aerial Image	Linda Jemmet
174c		Aerial Image	Linda Jemmet
175		Further submission	Shea Rotumah

Appendix G Proponent final day version of Incorporated Document

GLENELG PLANNING SCHEME

INCORPORATED DOCUMENT

315 Dutton Way, Bolwarra – Yumbah Aquaculture Facility

~~JULY 2022~~

March 2023

This document is an incorporated document in the Glenelg Planning Scheme under Section 6(2)(j) of the *Planning and Environment Act 1987*.

1.0 INTRODUCTION

This document is an incorporated document in the schedules to Clause 45.12 (Specific Controls Overlay) and 72.04 (Documents Incorporated in this Planning Scheme) of the Glenelg Planning Scheme (the scheme).

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific controls and clauses contained in Clauses 5.0 [and 6.0](#) of this document.

The provisions of this document prevail over any contrary or inconsistent provision in the scheme.

2.0 PURPOSE

The purpose of this document is to facilitate the staged use and development of land described in Clause 3.0 of this incorporated document for the purposes of aquaculture facility, generally in accordance with the plans approved in Clause 5.0 of this document and subject to the clauses at Clause 6.0 of this document.

3.0. LAND

The controls in this document apply to land at 315 Dutton Way, Bolwarra, Dutton Way, and properties south of Dutton Way, formally described as:

- Lot 1 on Plan of Subdivision 500867
- Lot 2 on Plan of Subdivision 745948
- Allotment 24A Parish of Bolwarra
- Allotment 2008 Parish of Bolwarra
- Parcel 24\PP2175 Parish of Bolwarra
- Lot 1 on Title Plan 21860
- Allotment 2009 Parish of Bolwarra

that is affected by the Specific Controls Overlay (SCO10) as shown on Planning Scheme Map 35SCO in the scheme and identified in Figure 1 below.

Despite any provision to the contrary or any inconsistent provision in the scheme, no planning permit is required for, and no planning provision in the scheme operates to prohibit, restrict or regulate the use and development of the land for the purposes of the project as described in Clause 5.0 and 6.0 of this document.

The use and development permitted by this document must be consistent with any approved Cultural Heritage Management Plan.

This document allows the use and development of the land for:

- The use and development must be generally in accordance with the following plans as endorsed by the Minister for Planning, and modified to include any changes required by Clause 6.0 of this incorporated document:

- [YUMB19-P-A_001-, Rev C](#)
- [YUMB19-P-A_002, Rev D](#)
- [YUMB19-P-A_003, Rev D](#)
- [YUMB19-P-A_004, Rev C](#)
- [YUMB11-P-A_005, Rev D](#)
- [YUMB19-P-A_006, Rev D](#)
- [YUMB19-P-A_007, Rev C](#)
- [YUMB19-P-A_008, Rev C](#)
- [YUMB19-P-A_009, Rev C](#)
- [YUMB19-P-A_010, Rev C](#)
- [YUMB19-P-A_011, Rev C](#)
- [YUMB19-P-A_012, Rev C](#)
- [YUMB19-P-A_013, Rev C](#)

- [YUMB19-P-A 014, Rev C](#)
- [YUMB19-P-A 015, Rev C](#)
- [YUMB19-P-A 016, Rev B](#)
- [YUMB19-P-A 017, Rev B](#)
- [YUMB19-P-A 018, Rev B](#)
- [YUMB19-P-A 019, Rev C](#)
- [YUMB19-P-A 020, Rev B](#)
- [YUMB19-P-A 021, Rev B](#)
- [YUMB19-P-A 022, Rev B](#)
- [YUMB19-P-A 023, Rev C](#)
- [YUMB19-P-A 024, Rev B](#)
- [YUMB19-P-A 025, Rev B](#)
- [YUMB19-P-A 026, Rev B](#)
- [YUMB19-P-A 027, Rev B](#)
- [YUMB19-P-A 028, Rev C](#)
- [YUMB19-P-A 029, Rev B](#)
- [YUMB19-P-A 030, Rev B](#)
- [YUMB19-P-A 031, Rev ~~C~~B](#)

b) [Landscape Plan prepared by XUrban \(LS03, Rev B~~C~~\)](#);

c) [Security Fence Plan prepared by Foresight Engineering \(YUMB19-P-A-SK1, Rev B\)](#); and

d) [Shade-cloth Colour Plan Alternative B prepared by Murphy Landscape Consultancy \(31 January 2023\)](#).

And including any amendment of the plans that may be approved from time to time under the requirements of this document. Once approved, these plans will be the endorsed plans.

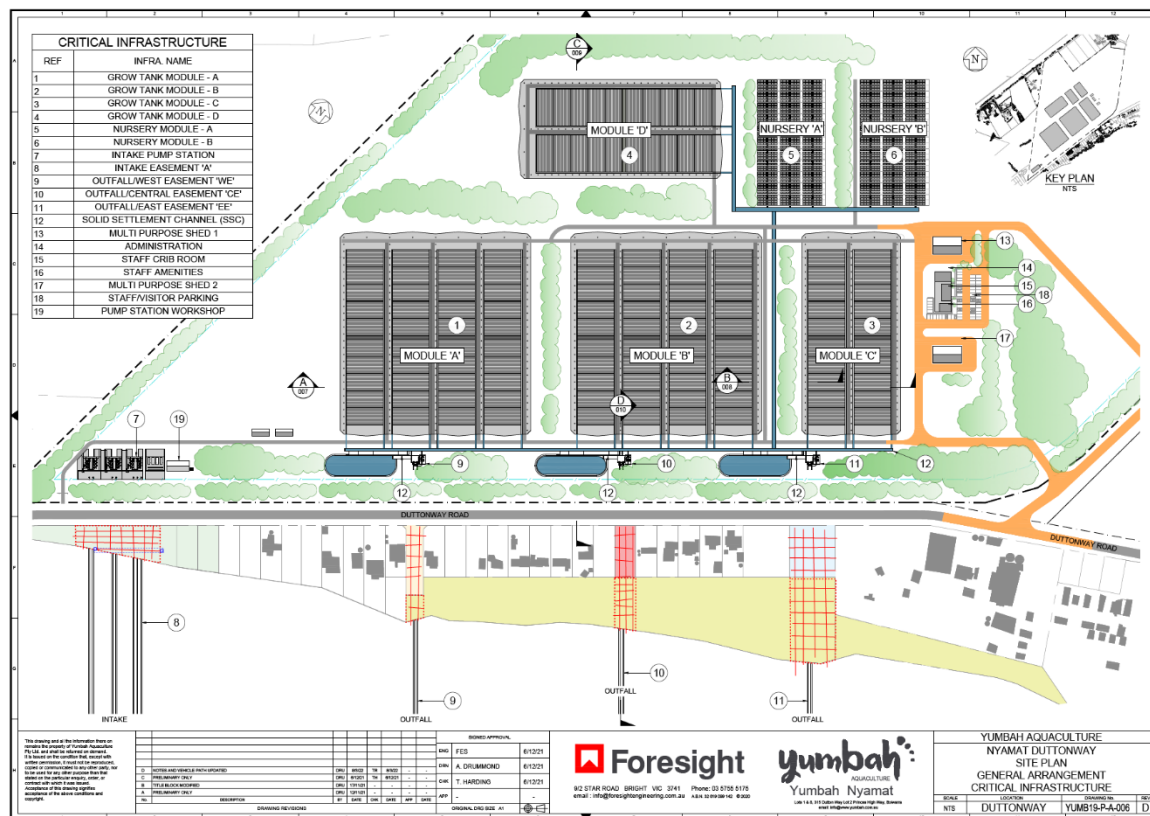
For avoidance of doubt, any plans [approved and](#) endorsed by the Minister for Planning pursuant to any clause of this document may be amended with the written consent of the Minister for Planning.

[The Minister for Planning must not consent to any amendment under this clause if the plans are not generally in accordance with the plans specified in this clause.](#)

6.0 THE FOLLOWING REQUIREMENTS APPLY TO THIS DOCUMENT:

XX [Exclusion of use and development within the foreshore](#)

- a) [With the exception of temporary works \(such as construction of the rock wall, trenching or temporary storage of machinery or materials during construction\) the use and development must not occur outside of the areas marked hatched in red in the plan below within the foreshore.](#)



XX Amended plans

- a) ~~6.1~~ — Before the development starts, amended plans to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning. When approved, the plans will be the endorsed plans. The plans must be drawn to scale with dimensions and three copies must be provided. The amended plans must be generally in accordance with the plans listed at Clause 5.0, but modified where necessary, to show:

XX Staging Plan

- a) A staging plan must be submitted and approved. The staging plan must be consistent with the endorsed landscape plan in so far as any early landscaping works are identified. The use and development must proceed in order of the stages as shown on the endorsed plan(s), unless otherwise agreed to in writing by the Minister for Planning.

XX Detailed Development Plans

- a) ~~b)~~ — Before the commencement of development for each stage, detailed plans to the satisfaction of the Responsible Authority for that stage must be submitted to and approved by the Minister for Planning. The plans must be generally in accordance with the plans ~~prepared by Foresight (YUM19-P-A_001-031, Rev C)~~, identified above, except as otherwise agreed by the Minister for Planning.

XX Operations Plan

- a) An operations plan must be prepared and submitted for approval to the Responsible Authority. The operations plan must detail hours, typical staffing requirements inside and outside of typical hours, relevant delivery, and waste collection restrictions.
- b) Once approved the operations plan must be implemented to the satisfaction of the Responsible Authority.

6.2. Landscape Plan

- a) Before the commencement of development for each stage, a Landscaping Plan to the satisfaction of the Minister for Planning for that stage must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The landscape plan must be generally in accordance with the landscape concept plan prepared by XUrban (LS03, Rev B), except as agreed by the Minister for Planning, but modified to:
 - (i) identify any practical opportunities where early screening planting can occur and the timing of those early planting works;
 - (ii) include any amendments necessary to ensure clear sightlines for traffic exiting onto Dutton Way from the site or Portland Beach Road;
 - (iii) include a schedule of all proposed trees, shrubs and ground cover, which will include the location, number, and size at maturity of all plants, the botanical names of such plants and the location of all areas to be covered by grass, lawn or other surface materials as specified;
 - (iv) include the method of preparing, draining, watering and maintaining the landscaped area; and
 - (v) include the weed management program.
- b) Where appropriate for screening purposes and available vegetation plantings on the slopes and below the ridgeline should include species indigenous species from EVC 23 Herb-Rich Foothill Forest. Where appropriate for screening purposes and available, species chosen within the coastal plain should include species from EVC 160 Coastal Dune Scrub.
- c) Before the commencement of the use for each stage, the landscaping works shown on the endorsed plans must be carried out and completed for that stage to the satisfaction of Minister for Planning.
- d) The landscaping works shown on the endorsed plans must be maintained to the satisfaction of the Minister for Planning in consultation with the Responsible Authority, and so as to achieve an effective visual screen of the aquaculture facility. Any dead, diseased or damaged plants must be replaced to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.3. Construction and Operational Traffic Management Plan

- a) Before the commencement of development for each stage, a traffic management plan for both construction and operational traffic to the satisfaction of the Responsible Authority must be submitted to and approved by the Minister for Planning. The traffic management plan must be generally in accordance with the assessment and recommendations of the traffic report prepared by Traffix Group (reference G26935A-02), except as agreed by the Minister for Planning in consultation with the Responsible Authority. The traffic management plan may be staged. Traffic and parking operations on and accessing the site must conform to this endorsed plan and must include:
 - (i) identification of the route and number of movements expected to be undertaken by construction and operational traffic using local roads;
 - (ii) identification and an existing conditions survey (to be undertaken via video survey) of local roads (excluding the Princes Highway) to be used for the development and subsequent use;
 - (iii) the location of all areas to be used for construction traffic, truck movements including swept path diagrams showing vehicles safely entering and exiting roads, including all intersections between the Princes Highway and the site;
 - (iv) quantity and types of construction vehicles expected;
 - (v) demonstrated allowance for safe access of vehicle traffic, cyclists and pedestrians in accordance with Infrastructure Design Manual specifications;
 - (vi) recommendations on the need for road and road intersection upgrades to accommodate additional traffic or site access requirements, whether temporary or ongoing; ~~and~~
 - (vii) servicing of the drainage and maintenance of construction traffic routes.

(viii) measures to minimise the potential for disruption and impacts to the adjacent caravan park access and operations, particularly during holiday seasons;

(ix) detailed pavement testing of Keillers Beach Road and Dutton Way. [Condition Sought By Council and Disputed]

b) Detailed design plans for access to the satisfaction of the Glenelg Shire Council. The plans must be drawn to scale with dimensions. All the works within the road reserve are to be designed in accordance with the Infrastructure Design Manual (IDM).

c) All assets returning to the Responsible Authority must be designed and constructed in accordance with Infrastructure Design Manual specifications.

d) All access and traffic constructed must be in accordance with the approved access and traffic management plan.

6.4. Bushfire Management Plan

a) Before the commencement of development, a Bushfire Management Plan to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning in consultation with ~~the Country-Fire Authority~~ Rescue Victoria.

b) The bushfire protection measures shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on a continuing basis.

6.5. Waste Management Plan

a) Before the commencement of development for each stage, a Waste Management Plan must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The Waste Management Plan should detail waste storage and collection arrangements and should be prepared in accordance with Glenelg Shire's requirements for waste management.

6.6. Acid Sulphate Soil Plan

a) Before the commencement of development, the site must be assessed and a report (Assessment Report) provided in respect of such assessment, in accordance with the Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulphate Soils. Such report must be produced by a suitably qualified expert with appropriate experience in such matters and must be submitted to the satisfaction of the Minister for Planning.

b) In any case where the Assessment Report recommends, or the Minister for Planning directs, or where acid sulphate soils are encountered during construction an Acid Sulphate Soil Management Plan must be prepared in accordance with Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulphate Soils, DSE 2010 to the satisfaction of the Minister for Planning and when approved must be endorsed and complied with.

XX Crayfish Habitat Management Plan

a) Prior to the commencement of works, a Crayfish Management Plan, based on detailed survey for the Portland Burrowing Crayfish (*engaeus strictafrons*) of the land described at Clause 3.0, must be prepared by a suitably qualified aquatic expert to the satisfaction of the Department of Energy, Environment and Climate Action. The plan must detail, at a minimum:

(i) approvals required for salvage and translocation;

(ii) timing of salvage and translocation;

(iii) collection and release procedures;

(iv) record keeping;

(v) monitoring and reporting requirements;

(vi) hydrological conditions within the Crayfish Habitat Area that should be maintained or replicated to optimise its habitat value for Crayfish;

- (vii) requirements to be incorporated within the Construction Management Plan to minimise impacts on Crayfish within the Crayfish Habitat Area;
- (viii) works required to the Crayfish Habitat Area prior to translocation (if any);
- (ix) ongoing management requirements for the Crayfish Habitat Area. The Crayfish Management Plan must be implemented to the satisfaction of DEECA.
- b) Prior to the commencement of works, the boundary of the Crayfish Habitat Area must be clearly marked to the satisfaction of DEECA.
- c) The Crayfish Habitat Area must be managed in accordance with the Crayfish Management Plan.

6.7. Drainage Engineering

- a) Before the commencement of development for each stage, a drainage plan with computations to the satisfaction of the Minister for Planning in consultation with the Responsible Authority must be submitted to and approved for that stage. The drainage plan must be generally in accordance with the assessment and recommendations of the surface water management letter dated 18 January 2022 prepared by Water Technology, except as agreed by the Minister for Planning in consultation with the Responsible Authority, and except as agreed by the Minister for Planning in consultation with the Responsible Authority show:
 - (i) where applicable drainage line separate/independent of/from the council drainage networks to a separate outfall;
 - (ii) details of how the works on the land are to be drained;
 - (iii) computations including total energy line and hydraulic grade line for the proposed drainage;
 - (iv) underground pipe drains conveying stormwater to the legal point of discharge;
 - (v) measures to enhance stormwater discharge quality from the site and protect downstream waterways including the expected discharge quality emanating from the development (output from MUSIC or similar) and design calculation summaries of the treatment elements;
 - (vi) evidence showing structural stability of the proposed stormwater underground pipe under Dutton Way to take any vehicle loading;
 - (vii) documentation demonstrating approval from the relevant authority for the legal point of discharge;
 - (viii) detail design of outfall structures including erosion & sediment control;
 - (ix) any existing overland flow paths to the east be retained and demonstration that the use and development will not increase these flows;
 - (x) analysis of back flow from the ocean during critical rainfall event;
 - (xi) stormwater emanating from the development must not be drained into neighbouring properties; and
 - (xii) evidence of control of the 1% Annual Exceedance Probability (AEP) rainfall run-off to ensure 1% AEP rainfall flows from the development will not enter neighbouring properties.
- b) The drainage plan must address and be consistent with the Crayfish Habitat Management Plan.
- c) Before the use begins all works constructed or carried out must be in accordance with those plans to the satisfaction of the Minister for Planning and must be thereafter maintained.
- d) A completion report, including photographs and CCTV footage (where applicable) is to be provided as evidence of works completed and compliance to the endorsed plans and this permit to the satisfaction of the Responsible Authority.

~~6.8. Odour~~

- ~~a) Before the commencement of use, an odour management plan must be prepared to the satisfaction of the Minister for Planning in consultation with the Environment Protection Authority. The odour~~

~~management plan must be generally in accordance with the assessment and recommendations of the Odour Impacts at Yumbah Aquaculture report dated March 2022 prepared by Tonkin & Taylor, except as agreed by the Minister for Planning in consultation with the Environment Protection Authority.~~

- ~~b) If the odour survey results indicate that the use of the land is generating offensive off-site odours, the odour management plan must be updated to eliminate offensive odour.~~

6.8. Odour [EPA recommends deletion of 6.8a and 6.8b – as shown in track change version]

- a) The use must be conducted in accordance with the requirements of the odour management plan under related approvals under the Environment Protection Act 2017 (Vic).

6.9. Noise [EPA recommends deletion of 6.9a]

- a) Noise levels emanating from the land during construction and operation, must comply with the requirements of the Environment Protection Authority's Noise Protocol: Publication 1826 or any equivalent future noise guidelines, and be in accordance with any development licence issued for the aquaculture facility.
- b) Within three months of commencement of operation on each stage of development, an acoustic assessment report must be prepared by a qualified acoustic consultant and submitted to the Responsible Authority. The report must:
- (i) Assess compliance with of the Environment Protection Authority's Noise Protocol: Publication 1826 or any equivalent future noise guidelines (the Noise Protocol);
 - (ii) Assess the operation against the Environment Protection Authority's Noise guideline - assessing low frequency noise: Publication 1996 or any equivalent future noise guidelines (the Noise Guideline).
- c) If an exceedance of the Noise Protocol is identified, the acoustic assessment must make recommendations to mitigate that exceedance.
- d) The acoustic assessment must detail any recommendations arising from the assessment under the Noise Guideline.
- e) Within six months of the commencement of operation of each stage of development, the recommendations of the acoustic assessment must be implemented to the satisfaction of the responsible authority.
- f) Within three months of the recommendations of an acoustic assessment report being implemented, a further assessment by a qualified acoustic consultant must be prepared to demonstrate the effectiveness of the measures and submitted to Responsible Authority.

6.10. Native vegetation removal

- a) Before the commencement of development, the Proponent must advise all persons undertaking the vegetation removal or works on site of all relevant clause requirements and associated statutory requirements or approvals.
- b) Before the commencement of development, a construction environmental management plan must be prepared to the satisfaction of Minister for Planning in consultation with ~~DELWP~~DEECA Forest, Fire and Regions. When approved, the construction environment management plan will be endorsed.
- c) To offset the removal of ~~XX~~1.218 hectares of native vegetation, the Proponent must secure the following native vegetation offset in accordance with 'Guidelines for the removal, destruction or lopping of native vegetation' (DELWP 2017).
- d) ~~—~~A general offset of ~~XX~~0.298 general habitat units:
- (i) located within the Glenelg Hopkins Catchment Management boundary or Glenelg Shire Council municipal area;
 - (ii) with a minimum strategic biodiversity value of at least ~~XX~~0.379.

- e) Before any native vegetation is removed, evidence that the offset required by this permit has been secured must be provided to the satisfaction of Minister for Planning in consultation with ~~DELWP~~[DEECA](#) Forest, Fire and Regions. This evidence must be one or both of the following:
 - (i) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or
 - (ii) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.
- f) Where the offset includes a first party offset(s), the Proponent must provide an annual offset site report to the Minister for Planning by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
- g) Before the vegetation removal starts, the boundaries of all vegetation to be removed and retained must be clearly marked with temporary fencing to the satisfaction of the Minister for Planning in consultation with DELWP Forest, Fire and Regions. Removal must accord with the endorsed plan.

6.11. Construction Environmental Management Plan

- a) Before the commencement of development for each stage, a construction management plan ~~shall~~[must](#) be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The plan must show:
 - (i) measures to control erosion and sediment and sediment laden water runoff, including the design details of structures;
 - (ii) measures to retain dust, silt and debris on site, both during and after the construction phase;
 - (iii) locations of any construction wastes and the method of disposal, equipment, machinery and/or earth storage/stockpiling during construction;
 - (iv) all access to the site for construction vehicle traffic;
 - (v) any tree protection zones;
 - (vi) the location of trenching works, boring, and pits associated with the provision of services;
 - (vii) the location of any temporary buildings or yards;
 - (viii) heavy vehicle movements;
 - (ix) construction hours, details of a site contact/site manager;~~and~~
 - (x) [\[EPA recommend deletion\]](#) details of how the construction phase will comply with EPA Publication 1254.2, Noise Control Guidelines, 2021 as amended and replaced~~;~~ [and](#)
 - (xi) [any relevant measures required by the Acid Sulphate Soil Plan.](#)
- ~~b) [The Construction Environmental Management Plan must be consistent with the Crayfish Habitat Management Plan.](#)~~
- c) During the construction phase all measures identified in the endorsed construction management plan must be implemented to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.12. Assets Conditions (Traffic)

- a) The loading and unloading of goods from vehicles must only be undertaken entirely within the land.
- b) [\[EPA recommend deletion\]](#) For the diesel fuel tank a secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with EPA Publication 347.1 Bunding Guidelines 2015 or as amended to the satisfaction of the Minister for Planning.
- c) Areas shown as driveway and car parking spaces on the endorsed plans must be constructed and surfaced with an approved material for all weather use to the satisfaction of the Minister for Planning.

- d) All the parking associated with the use and development ~~shall~~must be contained within the premises.
- e) Prior to development, detailed design plans for access must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The plans must be drawn to scale with dimensions. All the works within the road reserve are to be designed in accordance with the Infrastructure Design Manual (IDM).
- f) Before the development starts, the owner or developer must submit to the Responsible Authority a written report and photos ~~of~~recording the existing condition and any prior damage to public infrastructure. Listed in the report must be the condition of kerb & channel, footpath, seal, street lights, signs and other public infrastructure fronting the property to the coastal waters and abutting at least two properties either side of the development. Unless identified with the written report, or otherwise evidenced by the owner or developer to the satisfaction of Council, any damage to infrastructure ~~post~~during the construction period will be attributed to the development. The owner or developer of the subject land must pay for any damage caused to the Responsible Authority's assets/Public infrastructure caused as a result of the development or use permitted by this permit. At the conclusion of the construction period a final inspection will be required to be undertaken by the owner or developer with the Responsible Authority officer attendance to determine if any damage has occurred. The owner or developer of the subject land must pay for any damage caused to the Councils assets/Public infrastructure caused during the construction period.

6.13. Amenity

- a) The uses hereby permitted ~~shall~~must not cause nuisance to persons on adjoining land or prejudicially affect the amenity of the neighbourhood, to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- b) Any external lighting must be designed, baffled and located to prevent ~~any adverse effect on~~light spill towards adjoining land to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- c) The subject land must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality. The operator must submit for approval a schedule or maintenance and renewal of shade-cloth, poly covers and once approved must implement that schedule. Outside of the schedule, repairs should be carried out promptly should shade-cloth, poly covers or building materials become dilapidated or torn.
- d) Facilities must be provided for the collection and storage of solid and liquid waste awaiting disposal and/or removal from the site. All waste ~~shall~~must be disposed of, to the satisfaction of the Responsible ~~authority and the Environment Protection~~ Authority.
- e) Vehicles under the control of the operator or staff of the operator must not be parked along Dutton Way without the consent of the Responsible Authority.
- f) The applicant must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused during construction, does not cause a nuisance to surrounding properties to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- g) All roads/storage areas/external stockpiles/vacant areas must be covered and/or maintained to avoid dust, smell, and waste and or grit nuisance to any neighbouring area to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.14. Decommissioning Plan

- a) Within three months of the aquaculture facility use ending, a decommissioning and rehabilitation management plan prepared by a suitably qualified person to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. When approved, the plan will be endorsed. The plan must include (unless otherwise agreed by the Minister for Planning) but is not limited to:
 - (i) identification of structures to be removed, including but not limited to all tanks, coverings, nursery, recirculation ponds, buildings (if they are not useful for ongoing use), piping and electrical

infrastructure, including underground infrastructure to be removed and how they will be removed; and

- (ii) details of how the land will be rehabilitated to allow it to be used for agricultural purposes (or proposed alternative use).
- b) Within 12 months of the endorsement of the decommissioning and rehabilitation management plan, all the decommissioning and rehabilitation must be completed to satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.15. Environment Protection Authority (EPA) [\[EPA recommend deletion\]](#)

- a) The use and development of the aquaculture facility approved by this document must be conducted in accordance with any development licence issued by the Environment Protection Authority.
- b) The use and development of the aquaculture facility approved by this document must not commence until the required development licence is issued by the Environment Protection Authority.

6.16. Endorsed Plans

- a) The plans and/or documents endorsed under this document must not be altered or modified without the prior written consent of the Minister for Planning.

7.0 EXPIRY

The control in this document expires if any of the following circumstances apply:

- a) The development of the land has not commenced within two (2) years after the gazettal date of Amendment C109;
- b) The development of the land is not completed within ~~four~~ [\(4 five \(5\)\)](#) years after the gazettal date of Amendment C109.

The Minister for Planning may extend these periods if a request is made in writing before the expiry date or within six months afterwards.

End of Document

Appendix H Committee preferred version of the Incorporated document

[Tracked Added](#) | ~~Tracked Deleted~~ | Clause numbering not tracked.

GLENELG PLANNING SCHEME

INCORPORATED DOCUMENT

315 Dutton Way, Bolwarra – Yumbah Aquaculture Facility

~~March 2023~~

[April 2023 – Committee preferred version](#)

This document is an incorporated document in the Glenelg Planning Scheme under Section 6(2)(j) of the *Planning and Environment Act 1987*.

1.0 INTRODUCTION

This document is an incorporated document in the schedules to Clause 45.12 (Specific Controls Overlay) and 72.04 (Documents Incorporated in this Planning Scheme) of the Glenelg Planning Scheme (the scheme).

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific controls and clauses contained in Clauses 5.0 and 6.0 of this document.

The provisions of this document prevail over any contrary or inconsistent provision in the scheme.

2.0 PURPOSE

The purpose of this document is to facilitate the staged use and development of land described in Clause 3.0 of this incorporated document for the purposes of aquaculture facility, generally in accordance with the plans approved in Clause 5.0 of this document and subject to the clauses at Clause 6.0 of this document.

3.0. LAND

The controls in this document apply to land at 315 Dutton Way, Bolwarra, Dutton Way, and properties south of Dutton Way, formally described as:

- Lot 1 on Plan of Subdivision 500867
- Lot 2 on Plan of Subdivision 745948
- Allotment 24A Parish of Bolwarra
- Allotment 2008 Parish of Bolwarra
- Parcel 24\PP2175 Parish of Bolwarra
- Lot 1 on Title Plan 21860
- Allotment 2009 Parish of Bolwarra

that is affected by the Specific Controls Overlay (SCO10) as shown on Planning Scheme Map 35SCO in the scheme and identified in Figure 1 below.



4.0 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary or any inconsistent provision in the scheme, no planning permit is required for, and no planning provision in the scheme operates to prohibit, restrict or regulate the use and development of the land for the purposes of the project as described in Clause 5.0 and 6.0 of this document.

4.1 Aboriginal Cultural Heritage

The use and development permitted by this document must be consistent with any approved Cultural Heritage Management Plan.

5.0 THIS DOCUMENT ALLOWS

This document allows the use and development of the land for:

- Aquaculture facility
- and associated buildings and works
- Native vegetation removal.

5.1 The use and development must be generally in accordance with the following plans as endorsed by the Minister for Planning, and modified to include any changes required by Clause 6.0 of this incorporated document:

a) Drawings prepared by Foresight Engineering:

- YUMB19-P-A_001, Rev C
- YUMB19-P-A_002, Rev D
- YUMB19-P-A_003, Rev D
- YUMB19-P-A_004, Rev C
- YUMB11-P-A_005, Rev D
- YUMB19-P-A_006, Rev D
- YUMB19-P-A_007, Rev C
- YUMB19-P-A_008, Rev C
- YUMB19-P-A_009, Rev C
- YUMB19-P-A_010, Rev C
- YUMB19-P-A_011, Rev C
- YUMB19-P-A_012, Rev C
- YUMB19-P-A_013, Rev C
- YUMB19-P-A_014, Rev C

- YUMB19-P-A_015, Rev C
 - YUMB19-P-A_016, Rev B
 - YUMB19-P-A_017, Rev B
 - YUMB19-P-A_018, Rev B
 - YUMB19-P-A_019, Rev C
 - YUMB19-P-A_020, Rev B
 - YUMB19-P-A_021, Rev B
 - YUMB19-P-A_022, Rev B
 - YUMB19-P-A_023, Rev C
 - YUMB19-P-A_024, Rev B
 - YUMB19-P-A_025, Rev B
 - YUMB19-P-A_026, Rev B
 - YUMB19-P-A_027, Rev B
 - YUMB19-P-A_028, Rev C
 - YUMB19-P-A_029, Rev B
 - YUMB19-P-A_030, Rev B
 - YUMB19-P-A_031, Rev B
- b) Landscape Plan prepared by XUrban (LS03, Rev B);
- c) Security Fence Plan prepared by Foresight Engineering (YUMB19-P-A-SK1, Rev B); and
- d) Shade-cloth Colour Plan Alternative B prepared by Murphy Landscape Consultancy (31 January 2023).

And including any amendment of the plans that may be approved from time to time under the requirements of this document. Once approved, these plans will be the endorsed plans.

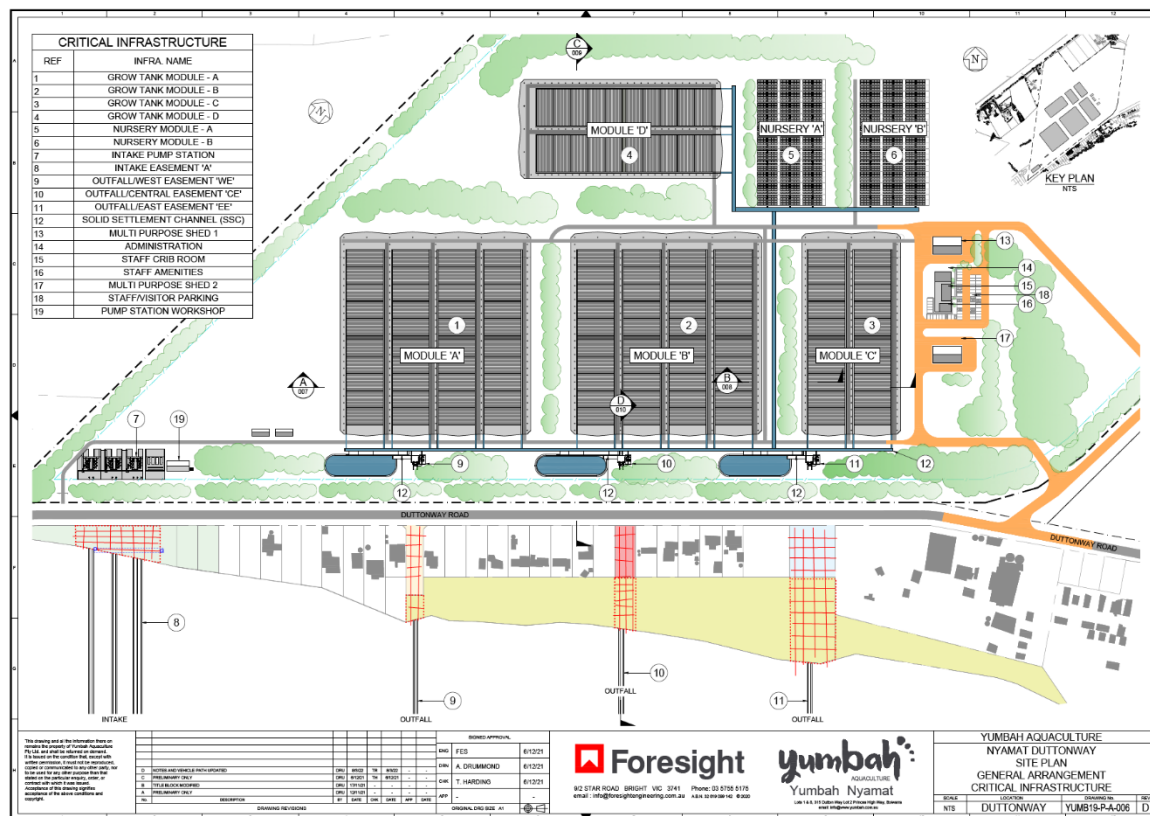
For avoidance of doubt, any plans approved and endorsed by the Minister for Planning pursuant to any clause of this document may be amended with the written consent of the Minister for Planning.

The Minister for Planning must not consent to any amendment under this clause if the plans are not generally in accordance with the plans specified in this clause.

6.0 THE FOLLOWING REQUIREMENTS APPLY TO THIS DOCUMENT:

6.1. Exclusion of use and development within the foreshore

- a) With the exception of temporary works (such as construction of the rock wall, trenching or temporary storage of machinery or materials during construction) the use and development must not occur outside of the areas marked hatched in red in the plan below within the foreshore.



6.2. Amended plans

- Before the development starts, amended plans to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning. When approved, the plans will be the endorsed plans. The plans must be drawn to scale with dimensions and three copies must be provided. The amended plans must be generally in accordance with the plans listed at Clause 5.0, but modified where necessary, to show:

6.3. Staging Plan

- A staging plan must be submitted and approved. The staging plan must be consistent with the endorsed landscape plan in so far as any early landscaping works are identified. The use and development must proceed in order of the stages as shown on the endorsed plan(s), unless otherwise agreed to in writing by the Minister for Planning.

6.4. Detailed Development Plans

- Before the commencement of development for each stage, detailed plans to the satisfaction of the Responsible Authority for that stage must be submitted to and approved by the Minister for Planning. The plans must be generally in accordance with the plans identified above, except as otherwise agreed by the Minister for Planning.

6.5. Operations Plan

- An operations plan must be prepared and submitted for approval to the Responsible Authority. The operations plan must detail hours, typical staffing requirements inside and outside of typical hours, relevant delivery, and waste collection restrictions.
- Once approved the operations plan must be implemented to the satisfaction of the Responsible Authority.

6.6. Landscape Plan

- Before the commencement of development for each stage, a Landscaping Plan to the satisfaction of the Minister for Planning for that stage must be submitted to and approved by the Minister for Planning in

consultation with the Responsible Authority. The landscape plan must be generally in accordance with the landscape concept plan prepared by XUrban (LS03, Rev B), except as agreed by the Minister for Planning but modified to:

- (i) identify any practical opportunities where early screening planting can occur and the timing of those early planting works;
- (ii) include any amendments necessary to ensure clear sightlines for traffic exiting onto Dutton Way from the site or Portland Beach Road;
- (iii) include a schedule of all proposed trees, shrubs and ground cover, which will include the location, number, and size at maturity of all plants, the botanical names of such plants and the location of all areas to be covered by grass, lawn or other surface materials as specified;

b) The Landscaping Plan must be accompanied by a Landscape Implementation Plan that details:

(i) where the proposed plants are sourced from to ensure the use of local natives adapted to the specific site conditions

~~(ii)~~ include the method of preparing, draining, watering and maintaining the landscaped area; ~~and~~

~~(iii)~~ include the weed management program;

(iv) anticipated plant failure rate and replanting schedule.

c) Where appropriate for screening purposes and available vegetation plantings on the slopes and below the ridgeline should include species indigenous species from EVC 23 Herb-Rich Foothill Forest. Where appropriate for screening purposes and available, species chosen within the coastal plain should include species from EVC 160 Coastal Dune Scrub.

~~ed)~~ Before the commencement of the use for each stage, the landscaping works shown on the endorsed plans must be carried out and completed for that stage to the satisfaction of Minister for Planning.

~~de)~~ The landscaping works shown on the endorsed plans must be maintained to the satisfaction of the Minister for Planning in consultation with the Responsible Authority, and so as to achieve an effective visual screen of the aquaculture facility. Any dead, diseased or damaged plants must be replaced to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.7. Construction and Operational Traffic Management Plan

a) Before the commencement of development for each stage, a traffic management plan for both construction and operational traffic to the satisfaction of the Responsible Authority must be submitted to and approved by the Minister for Planning. The traffic management plan must be generally in accordance with the assessment and recommendations of the traffic report prepared by Traffix Group (reference G26935A-02), except as agreed by the Minister for Planning in consultation with the Responsible Authority. The traffic management plan may be staged. Traffic and parking operations on and accessing the site must conform to this endorsed plan and must include:

- (i) identification of the route and number of movements expected to be undertaken by construction and operational traffic using local roads;
- (ii) identification and an existing conditions survey (to be undertaken via video survey) of local roads (excluding the Princes Highway) to be used for the development and subsequent use;
- (iii) the location of all areas to be used for construction traffic, truck movements including swept path diagrams showing vehicles safely entering and exiting roads, including all intersections between the Princes Highway and the site;
- (iv) quantity and types of construction vehicles expected;
- (v) demonstrated allowance for safe access of vehicle traffic, cyclists and pedestrians in accordance with Infrastructure Design Manual specifications;
- (vi) recommendations on the need for road and road intersection upgrades to accommodate additional traffic or site access requirements, whether temporary or ongoing;

- (vii) servicing of the drainage and maintenance of construction traffic routes;
- (viii) measures to minimise the potential for disruption and impacts to the adjacent caravan park access and operations, particularly during holiday seasons;

~~(ix) detailed pavement testing of Keillers Beach Road and Dutton Way.~~

- b) Detailed design plans for access to the satisfaction of the Glenelg Shire Council. The plans must be drawn to scale with dimensions. All the works within the road reserve are to be designed in accordance with the Infrastructure Design Manual (IDM).
- c) All assets returning to the Responsible Authority must be designed and constructed in accordance with Infrastructure Design Manual specifications.
- d) All access and traffic constructed must be in accordance with the approved access and traffic management plan.

6.8. Bushfire Management Plan

- a) Before the commencement of development, a Bushfire Management Plan to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning in consultation with Fire Rescue Victoria.
- b) The bushfire protection measures shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on a continuing basis.

6.9. Waste Management Plan

- a) Before the commencement of development for each stage, a Waste Management Plan must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The Waste Management Plan should detail waste storage and collection arrangements and should be prepared in accordance with Glenelg Shire's requirements for waste management.

6.10. Acid Sulphate Soil Plan

- a) Before the commencement of development, the site must be assessed and a report (Assessment Report) provided in respect of such assessment, in accordance with the Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulphate Soils. Such report must be produced by a suitably qualified expert with appropriate experience in such matters and must be submitted to the satisfaction of the Minister for Planning.
- b) In any case where the Assessment Report recommends, or the Minister for Planning directs, or where acid sulphate soils are encountered during construction an Acid Sulphate Soil Management Plan must be prepared in accordance with Victorian Best Practice Guidelines for Assessing and Managing Coastal Acid Sulphate Soils, DSE 2010 to the satisfaction of the Minister for Planning and when approved must be endorsed and complied with.

6.11. Crayfish Habitat Management Plan

- a) Prior to the commencement of works, a Crayfish Management Plan, based on detailed survey for the Portland Burrowing Crayfish (*Engaeus strictifrons*) of the land described at Clause 3.0, must be prepared by a suitably qualified aquatic expert to the satisfaction of the Department of Energy, Environment and Climate Action. [The survey must occur during an optimal time of year \(spring to early summer\).](#) The plan must detail, at a minimum:
 - (i) approvals required for salvage and translocation;
 - (ii) timing of salvage and translocation;
 - (iii) collection and release procedures;
 - (iv) record keeping;
 - (v) monitoring and reporting requirements;

- (vi) hydrological conditions within the Crayfish Habitat Area that should be maintained or replicated to optimise its habitat value for Crayfish;
- (vii) requirements to be incorporated within the Construction Management Plan to minimise impacts on Crayfish within the Crayfish Habitat Area;
- (viii) works required to the Crayfish Habitat Area prior to translocation (if any);
- (ix) ongoing management requirements for the Crayfish Habitat Area. The Crayfish Management Plan must be implemented to the satisfaction of DEECA.
- b) Prior to the commencement of works, the boundary of the Crayfish Habitat Area must be clearly marked to the satisfaction of DEECA.
- c) The Crayfish Habitat Area must be managed in accordance with the Crayfish Management Plan.

6.12. Drainage Engineering

- a) Before the commencement of development for each stage, a drainage plan with computations to the satisfaction of the Minister for Planning in consultation with the Responsible Authority must be submitted to and approved for that stage. The drainage plan must be generally in accordance with the assessment and recommendations of the surface water management letter dated 18 January 2022 prepared by Water Technology, except as agreed by the Minister for Planning in consultation with the Responsible Authority and except as agreed by the Minister for Planning in consultation with the Responsible Authority show:
 - (i) where applicable drainage line separate/independent of/from the council drainage networks to a separate outfall;
 - (ii) details of how the works on the land are to be drained;
 - (iii) computations including total energy line and hydraulic grade line for the proposed drainage;
 - (iv) underground pipe drains conveying stormwater to the legal point of discharge;
 - (v) measures to enhance stormwater discharge quality from the site and protect downstream waterways including the expected discharge quality emanating from the development (output from MUSIC or similar) and design calculation summaries of the treatment elements;
 - (vi) evidence showing structural stability of the proposed stormwater underground pipe under Dutton Way to take any vehicle loading;
 - (vii) documentation demonstrating approval from the relevant authority for the legal point of discharge;
 - (viii) detail design of outfall structures including erosion & sediment control;
 - (ix) any existing overland flow paths to the east be retained and demonstration that the use and development will not increase these flows;
 - (x) analysis of back flow from the ocean during critical rainfall event;
 - (xi) stormwater emanating from the development must not be drained into neighbouring properties; and
 - (xii) evidence of control of the 1% Annual Exceedance Probability (AEP) rainfall run-off to ensure 1% AEP rainfall flows from the development will not enter neighbouring properties.
- b) The drainage plan must address and be consistent with the Crayfish Habitat Management Plan.
- c) Before the use begins all works constructed or carried out must be in accordance with those plans to the satisfaction of the Minister for Planning and must be thereafter maintained.
- d) A completion report, including photographs and CCTV footage (where applicable) is to be provided as evidence of works completed and compliance to the endorsed plans and this permit to the satisfaction of the Responsible Authority.

6.13. Odour

- a) The use must be conducted in accordance with the requirements of the odour management plan under related approvals under the Environment Protection Act 2017 (Vic).
- a) Noise levels emanating from the land during construction and operation, must comply with the requirements of the Environment Protection Authority's Noise Protocol: Publication 1826 or any equivalent future noise guidelines, and be in accordance with any development licence issued for the aquaculture facility.
- b) Within three months of commencement of operation on each stage of development, an acoustic assessment report must be prepared by a qualified acoustic consultant and submitted to the Responsible Authority. The report must:
 - (i) Assess compliance with of the Environment Protection Authority's Noise Protocol: Publication 1826 or any equivalent future noise guidelines (the Noise Protocol);
 - (ii) Assess the operation against the Environment Protection Authority's Noise guideline - assessing low frequency noise: Publication 1996 or any equivalent future noise guidelines (the Noise Guideline).
- c) If an exceedance of the Noise Protocol is identified, the acoustic assessment must make recommendations to mitigate that exceedance.
- d) The acoustic assessment must detail any recommendations arising from the assessment under the Noise Guideline.
- e) Within six months of the commencement of operation of each stage of development, the recommendations of the acoustic assessment must be implemented to the satisfaction of the responsible authority.
- f) Within three months of the recommendations of an acoustic assessment report being implemented, a further assessment by a qualified acoustic consultant must be prepared to demonstrate the effectiveness of the measures and submitted to Responsible Authority.

6.14. Native vegetation removal

- a) Before the commencement of development, the Proponent must advise all persons undertaking the vegetation removal or works on site of all relevant clause requirements and associated statutory requirements or approvals.
- b) Before the commencement of development, a construction environmental management plan must be prepared to the satisfaction of Minister for Planning in consultation with DEECA Forest, Fire and Regions. When approved, the construction environment management plan will be endorsed.
- c) To offset the removal of 1.218 hectares of native vegetation, the Proponent must secure the following native vegetation offset in accordance with 'Guidelines for the removal, destruction or lopping of native vegetation' (DELWP 2017).
- d) A general offset of 0.298 general habitat units:
 - (i) located within the Glenelg Hopkins Catchment Management boundary or Glenelg Shire Council municipal area;
 - (ii) with a minimum strategic biodiversity value of at least 0.379.
- e) Before any native vegetation is removed, evidence that the offset required by this permit has been secured must be provided to the satisfaction of Minister for Planning in consultation with DEECA Forest, Fire and Regions. This evidence must be one or both of the following:
 - (i) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10-year management actions and ongoing management of the site, and/or
 - (ii) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

- f) Where the offset includes a first party offset(s), the Proponent must provide an annual offset site report to the Minister for Planning by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
- g) Before the vegetation removal starts, the boundaries of all vegetation to be removed and retained must be clearly marked with temporary fencing to the satisfaction of the Minister for Planning in consultation with DELWP Forest, Fire and Regions. Removal must accord with the endorsed plan.

6.15. Construction Environmental Management Plan

- a) Before the commencement of development for each stage, a construction management plan must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The plan must show:
 - (i) measures to control erosion and sediment and sediment laden water runoff, including the design details of structures;
 - (ii) measures to retain dust, silt and debris on site, both during and after the construction phase;
 - (iii) locations of any construction wastes and the method of disposal, equipment, machinery and/or earth storage/stockpiling during construction;
 - (iv) all access to the site for construction vehicle traffic;
 - (v) any tree protection zones;
 - (vi) the location of trenching works, boring, and pits associated with the provision of services;
 - (vii) the location of any temporary buildings or yards;
 - (viii) heavy vehicle movements;
 - (ix) construction hours, details of a site contact/site manager;
 - (x) details of how the construction phase will comply with EPA Publication 1254.2, Noise Control Guidelines, 2021 as amended and replaced; and
 - (xi) any relevant measures required by the Acid Sulphate Soil Plan.
- b) The Construction Environmental Management Plan must be consistent with the Crayfish Habitat Management Plan.
- c) During the construction phase all measures identified in the endorsed construction management plan must be implemented to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.16. Assets Conditions (Traffic)

- a) The loading and unloading of goods from vehicles must only be undertaken entirely within the land.
- b) For the diesel fuel tank a secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with EPA Publication 347.1 Bunding Guidelines 2015 or as amended to the satisfaction of the Minister for Planning.
- c) Areas shown as driveway and car parking spaces on the endorsed plans must be constructed and surfaced with an approved material for all weather use to the satisfaction of the Minister for Planning.
- d) All the parking associated with the use and development must be contained within the premises.
- e) Prior to development, detailed design plans for access must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. The plans must be drawn to scale with dimensions. All the works within the road reserve are to be designed in accordance with the Infrastructure Design Manual (IDM).
- f) Before the development starts, the owner or developer must submit to the Responsible Authority a written report and photos recording the existing condition and any prior damage to public infrastructure. Listed in the report must be the condition of kerb & channel, footpath, seal, street lights,

signs and other public infrastructure fronting the property to the coastal waters and abutting at least two properties either side of the development. Unless identified with the written report, or otherwise evidenced by the owner or developer to the satisfaction of Council, any damage to infrastructure during the construction period will be attributed to the development. The owner or developer of the subject land must pay for any damage caused to the Responsible Authority's assets/Public infrastructure caused as a result of the development or use permitted by this permit. At the conclusion of the construction period a final inspection will be required to be undertaken by the owner or developer with the Responsible Authority officer attendance to determine if any damage has occurred. The owner or developer of the subject land must pay for any damage caused to the Councils assets/Public infrastructure caused during the construction period.

6.17. Amenity

- a) The uses hereby permitted must not cause nuisance to persons on adjoining land or prejudicially affect the amenity of the neighbourhood, to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- b) Any external lighting must be designed, baffled and located to prevent light spill towards adjoining land to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- c) The subject land must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality. The operator must submit for approval a schedule for the maintenance and renewal of shade-cloth, poly covers and once approved must implement that schedule. Outside of the schedule, repairs should be carried out promptly should shade-cloth, poly covers or building materials become dilapidated or torn.
- d) Facilities must be provided for the collection and storage of solid and liquid waste awaiting disposal and/or removal from the site. All waste must be disposed of, to the satisfaction of the Responsible Authority.
- e) Vehicles under the control of the operator or staff of the operator must not be parked along Dutton Way without the consent of the Responsible Authority.
- f) The applicant must ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused during construction, does not cause a nuisance to surrounding properties to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.
- g) All roads/storage areas/external stockpiles/vacant areas must be covered and/or maintained to avoid dust, smell, and waste and or grit nuisance to any neighbouring area to the satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.18. Decommissioning Plan

- a) Within three months of the aquaculture facility use ending, a decommissioning and rehabilitation management plan prepared by a suitably qualified person to the satisfaction of the Minister for Planning must be submitted to and approved by the Minister for Planning in consultation with the Responsible Authority. When approved, the plan will be endorsed. The plan must include (unless otherwise agreed by the Minister for Planning) but is not limited to:
 - (i) identification of structures to be removed, including but not limited to all tanks, coverings, nursery, recirculation ponds, buildings (if they are not useful for ongoing use), piping and electrical infrastructure, including underground infrastructure to be removed and how they will be removed; and
 - (ii) details of how the land will be rehabilitated to allow it to be used for agricultural purposes (or proposed alternative use).
- b) Within 12 months of the endorsement of the decommissioning and rehabilitation management plan, all the decommissioning and rehabilitation must be completed to satisfaction of the Minister for Planning in consultation with the Responsible Authority.

6.19. Environment Protection Authority (EPA)

- a) The use and development of the aquaculture facility approved by this document must be conducted in accordance with any development licence issued by the Environment Protection Authority.
- b) The use and development of the aquaculture facility approved by this document must not commence until the required development licence is issued by the Environment Protection Authority.

6.20. Endorsed Plans

- a) The plans and/or documents endorsed under this document must not be altered or modified without the prior written consent of the Minister for Planning.

7.0 EXPIRY

The control in this document expires if any of the following circumstances apply:

- a) The development of the land has not commenced within two (2) years after the gazettal date of [Glenelg Amendment C109](#)[gelg](#);
- b) The development of the land is not completed within five (5) years after the gazettal date of [Glenelg Amendment C109](#)[gelg](#).

The Minister for Planning may extend these periods if a request is made in writing before the expiry date or within six months afterwards.

End of Document