

**Referral 46: VCAT Call-ins P1093/2024 and P1099/2024  
810 Boneo Road, Boneo**

**Priority Projects Standing Advisory Committee Report**

*Planning and Environment Act 1987*

**17 June 2025**

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

*Planning and Environment Act 1987*

Priority Projects Standing Advisory Committee Report pursuant to section 25 of the PE Act

Referral 46: VCAT Call-ins P1093/2024 and P1099/2024

810 Boneo Road, Boneo

**17 June 2025**



Sarah Carlisle, Chair



Annabel Paul, Member

## Contents

|   | Page      |
|---|-----------|
| <b>1 Introduction.....</b>                                      | <b>6</b>  |
| 1.1 Terms of Reference and letter of referral.....              | 6         |
| 1.2 Process and procedural matters.....                         | 6         |
| 1.3 The Committee’s approach.....                               | 7         |
| <b>2 The proposal.....</b>                                      | <b>8</b>  |
| 2.1 The site and surrounds.....                                 | 8         |
| 2.2 The proposal.....   | 9         |
| 2.3 Council decision.....                                       | 9         |
| 2.4 The VCAT applications.....                                  | 10        |
| <b>3 Threshold issues.....</b>                                  | <b>11</b> |
| 3.1 Context.....  | 11        |
| 3.2 Characterising the use – indoor skateboarding facility..... | 11        |
| 3.3 Characterising the use – adventure activities.....          | 14        |
| 3.4 The restaurant/function centre.....                         | 15        |
| 3.5 The wakeboarding lakes.....                                 | 17        |
| 3.6 The wastewater treatment dam.....                           | 17        |
| <b>4 Impacts.....</b>   | <b>19</b> |
| 4.1 Landscape and visual impact.....                            | 19        |
| 4.2 Environmental impacts.....                                  | 23        |
| 4.3 Land management impacts.....                                | 24        |
| 4.4 Impacts on neighbouring land.....                           | 29        |
| <b>5 Other matters.....</b>                                     | <b>33</b> |
| 5.1 Bushfire risk.....  | 33        |
| 5.2 Signage requirements.....                                   | 33        |
| 5.3 De facto urbanisation.....                                  | 34        |
| <b>6 Overall assessment.....</b>                                | <b>35</b> |
| 6.1 Context.....  | 35        |
| 6.2 Should the amended permit be issued?.....                   | 35        |
| 6.3 What conditions should apply?.....                          | 38        |
| 6.4 Recommendations.....  | 38        |
| <b>Appendix A Policy context.....</b>                           | <b>39</b> |
| <b>Appendix B Document list.....</b>                            | <b>42</b> |
| <b>Appendix C Recommended permit.....</b>                       | <b>48</b> |

## List of Figures

|   | Page |
|---|------|
| Figure 1 Aerial view of subject site..... | 8    |

## Glossary and abbreviations

|                      |   |
|----------------------|---|
| Council              | Mornington Peninsula Shire Council  |
| D[number]            | tabled document [number] (see Appendix BA)                                    |
| EP Act               | Environment Protection Act 2017   |
| EPA                  | Environment Protection Authority  |
| ESO[number]          | Environmental Significance Overlay Schedule [number]                          |
| GWZ                  | Green Wedge Zone  |
| MPS                  | Municipal Planning Strategy   |
| Officer's Assessment | Officer's Assessment of the application to amend the permit (D3.57)           |
| PE Act               | <i>Planning and Environment Act 1987</i>                                      |
| Permit               | Planning Permit P04/0289 issued by Mornington Peninsula Shire Council in 2004 |
| Planning Scheme      | Mornington Peninsula Planning Scheme  |
| PPV                  | Planning Panels Victoria  |
| Proponents           | Jodi and Aaron Neary  |
| Site                 | 810 Boneo Road, Boneo   |
| SLO[number]          | Significant Landscape Overlay Schedule [number]                               |
| VCAT                 | Victorian Civil and Administrative Tribunal                                   |
| VPO[number]          | Vegetation Protection Overlay Schedule [number]                               |

## Overview

### Referral summary

|                         |  |
|-------------------------|--|
| Referral number         | Referral 46  |
| Land                    | 810 Boneo Road, Boneo  |
| VCAT call-ins           | Call-ins of VCAT proceedings P1093/2024 and P1099/2024, relating to application P04/0289.03 to amend Planning Permit P04/0289 issued by Mornington Peninsula Shire Council in 2004 |
| Brief description       | Expansion of an existing leisure and recreation facility at 810 Boneo Road, Boneo (The Ranch)  |
| Applicants (Proponents) | Jodi and Aaron Neary   |
| Responsible Authority   | Mornington Peninsula Shire Council   |
| Submissions             | 107 objecting, 38 supporting   |

### Committee process

|                        |   |
|------------------------|---|
| The Committee          | Sarah Carlisle (Chair) and Annabel Paul   |
| Supported by           | Gabrielle Trowse, Planning Panels Victoria  |
| Directions Hearing     | First Directions Hearing: 20 February 2025, in person at Planning Panels Victoria and online<br>Second Directions Hearing: 1 April 2025, online   |
| Committee Hearing      | In person at Planning Panels Victoria and online on 22, 23 and 24 April 2025  |
| Site inspections       | First inspection: 26 March 2025, accompanied<br>Second inspection: 17 April 2025, accompanied   |
| Parties to the Hearing | <p><b>Jodi and Aaron Neary (Proponents)</b> represented by Matthew Townsend of Counsel, instructed by Megan Schroor of S&amp;K Planning Lawyers, calling the following evidence:</p> <ul style="list-style-type: none"> <li>- expert planning evidence from Sandra Rigo of Hansen Partnership</li> <li>- expert landscape architecture and master planning evidence from Peter Wilson of Peter Wilson Landscape Architecture</li> <li>- lay evidence on skateboarding from Will Stoye of Skate Australia (written affidavit only)</li> </ul> <p><b>Mornington Peninsula Shire Council (Council)</b> represented by Adeline Lane of Jackson Lane Legal</p> <p><b>Asher Nominees Pty Ltd</b> represented by Hannah Wilson of Planning and Property Partners</p> <p><b>Simon Stuart</b> represented by Luke English of DSA Law, calling the following evidence:</p> <ul style="list-style-type: none"> <li>- expert landscape and visual impact evidence from Brendan Papworth of Papworth Design</li> </ul> |
| Citation               | Priority Projects Standing Advisory Committee Referral 46 [2025] PPV  |
| Date of this report    | 17 June 2025  |

# 1 Introduction

## 1.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (Committee) was appointed by the Minister for Planning (Minister) on 14 June 2020. The purpose of the Committee is set out in its (amended) Terms of Reference dated 9 September 2023:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program, or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

This is the Committee's Referral 46. The members that considered Referral 46 are:

- Sarah Carlisle (Chair)
- Annabel Paul.

The Committee was assisted by Gabrielle Trowse, Project Officer from the Office of Planning Panels Victoria.

The Minister's letter of referral dated 15 January 2025 asks the Committee to provide advice to the Minister on whether the amended planning permit should be issued and, if so, the appropriate permit conditions that should be imposed.

## 1.2 Process and procedural matters

### (i) Directions Hearings

Upon receipt of the letter of referral and the VCAT files, the Committee wrote to all parties to the VCAT proceedings on 23 January 2025 inviting them to attend a Directions Hearing at Planning Panels Victoria on 20 February 2025. In its letter, the Committee directed that all parties seeking to be heard provide a summary of the key issues they intended to rely upon at the Hearing before the Directions Hearing. All parties seeking to be heard complied with that Direction.

The Hearing was originally set down to commence on 1 April 2025. At that stage, the matter was to be chaired by Member Meredith Gibbs. Due to unforeseen circumstances, Member Gibbs was not able to chair the Hearing and the original hearing start date was converted into a second Directions Hearing at which arrangements were made to reschedule the Hearing to start on 22 April 2025, chaired by Member Carlisle.

### (ii) Site inspections

The Committee undertook an accompanied site inspection on 26 March 2025, which was attended by Member Gibbs, Member Paul, submitter party Simon Stuart and representatives of the Proponents, Council, Planning Panels Victoria (PPV) and the Development Facilitation Program. Following reconstitution of the Committee, Member Carlisle undertook a second site inspection on 17 April 2025 accompanied by representatives of the Proponents and Mr Stuart only.

### (iii) Mr Wilson's evidence

It became clear during the cross examination of the Proponents' landscape expert Peter Wilson that:

- he is a personal friend of the Proponents
- he is the project manager for the proposal, and has been intimately involved in its design since its inception
- he has financially gained from the project to date, and may financially gain from the project if it goes ahead.

Mr Wilson's expertise as a landscape architect was not challenged, and his evidence in relation to the design approach for the project was useful to the Committee. However Mr Wilson cannot be regarded as independent. His evidence has not weighted as such.

### **1.3 The Committee's approach**

The Committee considered all relevant written submissions and material in relation to the application to amend the permit including:

- original application reports and plans
- expert evidence presented to the Committee
- submissions made at the Hearing.

Clause 20 of the Terms of Reference requires the Committee to provide a concise written report to the Minister for Planning. This report focuses on the key determinative issues only and does not seek to deal with every matter raised through the original objections, the submissions of parties at the Hearing and the evidence provided in support. All submissions and materials have been considered by the Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

The Committee has complied with and reported on all relevant matters in accordance with its Terms of Reference, in particular clauses 11, 15, 18, 20 and 21.

## 2 The proposal

### 2.1 The site and surrounds

Planning Permit P04/0289 issued by Mornington Peninsula Shire Council in 2004 (the Permit) applies to land shown in Figure 1, known as 810 Boneo Road, Boneo (the site).

The site is an 80.2 hectare property on the western side of Boneo Road, Boneo. The site sits within an undulating landscape and is relatively clear of vegetation, save for a few patches of largely indigenous vegetation mainly in the northern part of the site.

The site operates as 'The Ranch', offering activities such as horse riding, archery, flying fox, tennis, rock climbing, a rodeo arena, and a mountainboarding course, mostly located in the eastern part of the site. Accommodation on site includes cabins and wagons used for school camps, a dining facility, and a 58 site camping and caravan park in the north central part of the site. The western part of the site is used for horse grazing and horse husbandry and remains largely undeveloped. A single storey dwelling is located near the entrance.

**Figure 1** Aerial view of subject site



Source: Document 3.57 (Council Officer assessment)

The site is located within a unique and significant landscape described as 'the Cups', being a series of semi stabilised dunes that have been formed by accumulation of sand blown from prevailing winds over thousands of years. This landscape creates a series of depressions and rises, which interrupt views to the site from surrounding land.

The site is zoned Green Wedge Schedule 4 (GWZ4) and is subject to the Environmental Significance Overlay Schedule 15 (ESO15) which protects the Cups landscape. Parts of the site are subject to:

- ESO Schedule 23 (ESO23) which applies to the western two thirds of the site and protects the Semi Stabilised Dunes

- ESO Schedule 28 (ESO28) which applies to the Boneo Road roadside and protects the Mornington Peninsula Bushland
- the Significant Landscape Overlay Schedule 3 (SLO3) which applies to the Boneo Road frontage of the site and aims to maintain a varied network of scenic roads and protect their aesthetic and recreational value
- the Vegetation Protection Overlay Schedule 2 (VPO2) which applies to vegetation along the site's frontage and part of the southern boundary and protects significant tree lines.

## 2.2 The proposal

The current uses and development on the site have evolved over many years, and are subject to a series of different permits. The amendment application seeks to amend the Permit, which authorises the use and development of 60 caravan/camping sites.

The amended permit would facilitate an expansion of the existing operations on the site, including:

- new leisure and recreation facilities:
  - indoor and outdoor skateboarding facilities
  - mountainboarding, mountain biking and BMX tracks and trails
  - dry-ski slopes, rope tow lift conveyor belt, snow sport jumps and airbag landings
  - two wakeboard lakes (no planning permit required) with overhead cable systems and aqua chimp course with associated buildings
- new accommodation facilities:
  - expansion of the existing campsite and caravan park from 60 sites to 105 sites
  - conversion of an existing dwelling to staff accommodation
  - three new accommodation cabins
  - a new dwelling for the owners
- a new function centre and restaurant
- associated development:
  - alterations to existing buildings and a new storage building
  - expanded wastewater storage dam
  - alterations of access to Boneo Road and construction of car parking
  - vegetation removal
  - advertising signage
- the sale and consumption of liquor.

The indoor skateboarding facility, restaurant and function centre are proposed to be housed in a large building toward the centre of the site known as 'the Barn'.

## 2.3 Council decision

Council gave public notice of the application to amend the Permit and referred the application to relevant referral authorities and government agencies. 107 objections and 38 letters of support were received.

The Council Officer's assessment of the amendment application dated 6 August 2024 (D3.57) assessed the proposal and responded to concerns raised by objectors. Council determined to grant the application to amend the permit, subject to a range of conditions. The Notice of Decision is dated 18 September 2024 (D3.08).

## 2.4 The VCAT applications

Objectors Mr Stuart and Asher Nominees Pty Ltd applied to VCAT seeking review of Council's decision to grant the amendment application. Mr Stuart's application was P2024/1093 and Asher Nominees' application was P2024/1099.

Proceeding P1093/2024 was scheduled for a compulsory conference on 30 January 2025 and a hearing on 12, 13, 14, 15 and 16 May 2025. Proceeding P1099/2024 was scheduled for a compulsory conference on 18 February 2025 and a hearing on 10, 11, 12, 16 and 17 June 2025.

Prior to the matter being called in by the Minister and referred to the Committee, VCAT had determined that both proceedings would be heard together.

## 3 Threshold issues

### 3.1 Context

#### (i) The proposed activities

The proposed activities are listed in Chapter 2.2, and are grouped under ‘new leisure and recreation facilities’, ‘new accommodation facilities’, ‘new function centre and restaurant’ and ‘associated development’. This Report refers to the activities listed under ‘New leisure and recreation facilities’ as the ‘adventure activities’.

The application nominated the following proposed uses, all of which are defined land use terms in the Mornington Peninsula Planning Scheme (Planning Scheme):

- caravan and camping sites
- leisure and recreation facilities
- group accommodation
- restaurant/function centre.

The Notice of Decision described the uses in the same way.

#### (ii) The planning provisions

Under the GWZ and the Core Planning Provisions in Clause 51.01-2 of the Planning Scheme:

- ‘Leisure and recreation’ is a section 2 (permit required) use
- ‘Outdoor recreation facility’ is a section 2 use
- ‘Indoor recreation facility’ is a section 3 (prohibited) use unless is it for equestrian based leisure, recreation or sport
- ‘Restaurant’ and ‘Function centre’ are prohibited unless they are in conjunction with (relevantly) ‘Agriculture’ or ‘Outdoor recreation facility’
- innominate uses are section 2 uses.

### 3.2 Characterising the use – indoor skateboarding facility

#### (i) The issue

The issue is whether the indoor skateboarding facility, located in the Barn, should be characterised as a separate use of ‘Indoor recreation facility’ (which is prohibited in the GWZ).

#### (ii) Evidence and submissions

Mr Stuart submitted the indoor skateboarding facility should be considered as a separate use to the remaining adventure activities, and characterised as ‘Indoor recreation facility’. He submitted land can be used for more than one separate and distinct purpose, and in this case the indoor skateboarding facility is a key element of the proposal, and should be regarded as an equally (or more) dominant purpose than the other adventure activities.

Mr Stuart pointed to the following factors:

- the size of the indoor skateboarding arena and the associated facilities (the Barn is the largest building proposed on the site by some margin)

- the “*very real prospect*” of large numbers of patrons attending solely for the purpose of using the indoor skateboarding arena
- the descriptions in the application material and Mr Stoyles’ affidavit (see below) of the skateboarding facilities as “*world class*”, suitable for training elite athletes, and offering levels of participation “*previously only available overseas*”
- the significant cost of the Barn (indicated in the application material at \$20.3 million)
- the extended operating hours of the Barn, well beyond those of any of the outdoor activities.

He submitted the indoor skateboarding facility is not a necessary adjunct to the outdoor facilities and there is no close association between the indoor and outdoor activities. He submitted:

While it might be argued that the indoor skate park will ‘enhance’ the outdoor component of the Proposal, it is submitted that the opposite is equally or more correct – the indoor skate park is being pursued as an end in its own right and, for some at least, the outdoor activities will enhance the indoor offering.

The Proponents took a different position. They submitted the indoor skateboarding facility is an ancillary part of the broader adventure activities, and should be regarded as part of that use. They submitted the maximum patron numbers for the adventure activities (excluding special events) is 1,196. The Venue Operations Management Plan (D3.54)<sup>1</sup> estimates 45 patrons would use the indoor skateboarding facility at peak times, which is less than 4 per cent of the maximum patron numbers for the adventure activities.

The Proponents tabled an affidavit sworn by National Pathways Coach Will Stoyles. He trains elite skateboarding athletes, and has been involved in the design of the proposed skateboarding facilities to ensure they meet the requirements of a world class facility. His evidence was:

- the overseas facilities where world class athletes train all have both indoor and outdoor facilities
- indoor training facilities are essential to ensuring athletes have ready access to safe facilities irrespective of time of day and weather conditions
- rain and even the sunlight at certain times of day can make a skate park unsafe for skaters
- his preference would always be to train athletes outdoors in conditions that mirror the conditions they will ultimately compete in, but unless a skatepark has indoor facilities it will not be viable as a training venue for elite athletes
- there are several skateparks in Victoria which have either indoor or outdoor facilities but there is no single park that has both
- the indoor/outdoor skatepark at the Ranch will be critical to supporting and training Australia’s future skaters to a level where they can compete internationally.

Council submitted the indoor skateboarding facility should be characterised as ‘Leisure and recreation’ along with the other adventure activities. It submitted characterising the indoor skateboarding facility separately as ‘Indoor recreation facility’ as proposed by Mr Stuart did not reflect the dominant overall purpose of the adventure activities.

<sup>1</sup> This was part of the application material submitted with the amendment application

### (iii) Discussion

Both Council and Mr Stuart cited and relied on the High Court decision in *Shire of Perth v O'Keefe*<sup>2</sup> in support of their positions on how the indoor skateboarding facility should be characterised.

*Shire of Perth v O'Keefe* is the leading authority on characterising a proposed land use, and establishes the following key principles:

- in planning law, a use must be for a purpose
- a use of land can be for two or more purposes, and it may be necessary to determine if one purpose is subservient to another
- the task of characterisation involves questions of fact and degree
- the appropriate characterisation of the use should not be approached through a meticulous examination of the details or processes or activities
- the characterisation of the use ought not be answered by reference to defined terms, but by reference to the 'real and substantial purpose' of the use of the land.

Based on these principles, the land use proposed in the amendment application should be characterised holistically and by reference to the real and substantial purpose (or purposes) of the use.

There is no doubt the indoor skateboarding facility makes up a substantial element of the proposal. As Mr Stuart pointed out, it (or the Barn, which also includes the restaurant and function centre) represents a significant financial investment, a large component of the total project cost and a very significant proportion of the floor area of the proposed new buildings. The Barn, including the indoor skateboarding facility, is proposed to operate into the night, with longer operating hours than the outdoor activities.

The Proponents argued that the indoor skateboarding facility will have less than 4 per cent of the patrons of the adventure activities, and should therefore be regarded as ancillary to the adventure activities. The Committee found the material in relation to patron numbers unpersuasive. There is little analysis supporting the estimated 45 patrons per day at the indoor skateboarding facility. The Venue Operations Management Plan states the patron numbers are "*an educated prediction based on other similar operators*", but no details are provided. Further, it seems unlikely that such a substantial investment would be made in the facility if only 45 patrons are expected to use the facility at peak times.

That said, the Committee considers that the indoor skateboarding facility is not such a dominant purpose as to be appropriately characterised as a separate use. The Committee is satisfied based on the application material, Mr Stoyles' affidavit and Ms Rigo's evidence that the skateboarding facilities are part of a broader suite of adventure activities proposed to take place at the site.

In particular, the Committee is satisfied based on Mr Stoyles' affidavit that the indoor skateboarding facility is not functionally separate from the outdoor skate park. Rather, it provides an alternative when weather conditions and time of day mean the outdoor skate park cannot be used. Even if the skateboarding facilities (together) could be regarded as a separate dominant purpose to the other adventure activities, the indoor skate park is functionally associated with the outdoor skate park and it would not be appropriate to characterise it separately as an 'Indoor recreation facility'.

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<sup>2</sup> (1964) 110 CLR 529

**(iv) Findings**

The Committee finds the indoor skateboarding facility:

- is not a separate or dominant purpose of the proposed use, rather it is part of the use of the land for the dominant purpose of adventure activities
- is not prohibited on the basis that it constitutes a separate use of 'Indoor recreation facility'.

**3.3 Characterising the use – adventure activities****(i) The issue**

The issue is whether the adventure activities should be collectively characterised as 'Leisure and recreation' or as 'adventure park' (an innominate use). Leisure and recreation and innominate uses are both section 2 (permit required) uses in the GWZ.

**(ii) Evidence and submissions**

Council submitted the adventure activities (including the indoor skateboarding facility) should be grouped together and characterised as 'Leisure and recreation'. It submitted:

- this is the dominant purpose of the various activities proposed on the site
- this is what was sought in the application
- characterising the adventure activities using the innominate term 'adventure park' as proposed by Ms Rigo risks allowing a broader scope of activities than what was applied for
- it makes sense to use a defined land use term where one is available rather than an innominate term.

Council pointed to the Officer's Assessment which stated:

It is considered appropriate for the permit description to authorise 'Leisure and recreation' in this instance as it covers the broad scope of uses and the permit conditions and endorsed plans will clearly explain the intent and limitations on the permission being granted.

The Proponents submitted the adventure activities should be grouped and characterised as 'adventure park'. They acknowledged that the application sought permission for 'Leisure and recreation', but submitted:

... the complexity associated with this framing is that it requires prying into the broader term 'recreation and leisure' to extract the component use 'outdoor recreation facility' which must then be linked to the 'function centre' and 'restaurant' uses (which are required to be in conjunction with an 'outdoor recreation facility' [to be permissible in the GWZ]).

Ms Rigo's evidence was that the proposal does not neatly fall into a specific land use term and is better characterised as 'adventure park'. She said:

- there are clearly elements of leisure, recreation and sport in a predominately nature-based setting in the various activities currently offered and proposed to be expanded
- various forms of 'Accommodation' are also provided on the site as well as a restaurant and function centre use (in the existing Chapel building)
- while the adventure park could be considered as falling under 'Leisure and recreation', given the existing accommodation, restaurant/function centre and sports and recreational uses occurring on the site the better characterisation is as an 'adventure park'

- ‘adventure park’ would encompass all the activities under the proposal, other than those associated with the distinct ‘caravan and camping park’ use.

Ms Rigo said:

Whilst I agree that in isolation, specific components of the adventure park, such as the Barn or the restaurant could arguably fit into specific land use definitions, the dominant use of the site is an adventure park. Given the Permit specifically allows for caravan and camping sites, it follows that there are two dominant uses on the site.

In response to questions from Council and the Committee, Ms Rigo did not consider there was a risk that describing the permitted use as ‘adventure park’ would allow a broader range of activities than those applied for. She pointed out that the plans (when endorsed) will form part of the permit, and will define the activities allowed on the site with more clarity.

### **(iii) Discussion**

While the Committee accepts that it is preferable to use a defined land use term if there is an appropriate one available, in this case the Committee considers ‘Leisure and recreation’ is not suitable to characterise the proposed adventure activities. The Committee prefers Ms Rigo’s approach of classifying the proposed adventure activities as an innominate use of ‘adventure park’. This better reflects the holistic nature of the proposal, including the existing uses occurring on the site.

The Committee is satisfied the risk of ‘scope creep’ if the use is defined in the amended Permit as ‘adventure park’ is minimal. The endorsed plans (which will include the Venue Operations Management Plan) will clearly establish what the permitted activities are.

### **(iv) Finding**

The Committee finds:

- The adventure activities (including the indoor skateboarding facility) should be holistically characterised as ‘adventure park’ rather than ‘Leisure and recreation’.

## **3.4 The restaurant/function centre**

### **(i) The issue**

The issue is whether the restaurant/function centre is prohibited.

### **(ii) Evidence and submissions**

Council submitted that the restaurant and function centre are proposed to be used in conjunction with agriculture and/or outdoor recreation, and are therefore not prohibited under Clause 51.01-2.

Mr Stuart submitted the restaurant and function centre (proposed to be located in the Barn) are prohibited, and the permit cannot be amended to allow them.

He pointed to the GWZ Core Planning Provisions in Clause 51.01-2 of the Planning Scheme, which state that ‘Restaurant’ and ‘Function centre’ are prohibited unless they are in conjunction with (relevantly) ‘Outdoor recreation facility’.

He submitted the restaurant, function centre and indoor skateboarding facility are all located in the Barn, and are “*inextricably linked*”. He submitted the restaurant and function centre should therefore be regarded as being in conjunction with an ‘Indoor recreation facility’, not an ‘Outdoor recreation facility’. He noted the application was not put forward on the basis that the adventure activities should be characterised as an ‘Outdoor recreation facility’. Rather, it was put forward on the basis of a use of ‘Leisure and recreation’ – a position that the Council officer assessing the application accepted as correct.

The Proponents submitted the mere fact that the restaurant and function centre are located in the Barn does not mean they are not used in conjunction with outdoor uses. They submitted the Barn is located centrally so that it is accessible from the range activities which would fall under ‘Outdoor recreation facility’ or ‘adventure park’.

Ms Rigo described the restaurant and function centre as an ‘associated use’ to the dominant uses of adventure park and caravan and camping park.

### **(iii) Discussion**

Clause 64.01 of the Planning Scheme provides that where there are multiple uses of land, each must comply with the scheme unless one is ancillary to the other.

The Committee accepts that the application nominated the restaurant and function centre as a separate use for which permission was being sought. It also accepts that Council treated it as such, listing ‘Restaurant/function centre’ as a separate use in the preamble in the Notice of Decision.

Notwithstanding, the Committee considers that the restaurant and function centre are ancillary to the ‘adventure park’ use. This is reinforced in the Proponents’ final preferred permit conditions (D46), which include:

63. The kiosk and restaurant/function centre must only be used ancillary to the adventure park use hereby approved, to the satisfaction of the responsible authority.
64. The kiosk and restaurant/function centre must not be promoted or advertised independently of the adventure park at the Land.

Given the restaurant and function centre are not separate uses, they do not need to be in conjunction with one of the uses listed in Clause 51.01-2. Provided the dominant use (in this case ‘adventure park’ is permitted, the restaurant and function centre are also permitted.

### **(iv) Findings**

The Committee finds the restaurant and function centre:

- are ancillary to the dominant use of the site as ‘adventure park’
- do not require separate use permission
- do not need to be ‘in conjunction with’ one of the uses listed in Clause 51.01-2
- are not prohibited.

## 3.5 The wakeboarding lakes

### (i) Context

Clause 62.02-1 of the Planning Scheme states that any requirement in the Planning Scheme relating to the construction or carrying out of works (other than a requirement in a Public Conservation and Resources Zone) does not apply to:

- Buildings and works associated with a dam if a licence is required to construct the dam or to take and use water from the dam under the *Water Act 1989*.

### (ii) The issue

The issue is whether the impacts of the wakeboarding lakes are relevant matters for consideration.

### (iii) Evidence and submissions

Mr Stuart raised several concerns over the impacts of the wakeboarding lakes, including their impacts on the landscape character of the area, as discussed in Chapter 4.1. At the Hearing, the Proponents submitted verbally that these are not relevant considerations. It submitted:

- the wakeboarding lakes (which it described as dams) will require a licence under the Water Act
- the wakeboarding lakes are therefore exempt from the need for a building and works permit under the Planning Scheme
- the impacts of the wakeboarding lakes are therefore not relevant matters for consideration in assessing the amendment application.

### (iv) Discussion

The Committee does not agree with the Proponents that the impacts of the wakeboarding lakes are not relevant considerations. The exemption in Clause 62.02-1 only applies to buildings and works – not use aspects. The use of the wakeboarding lakes will have amenity and landscape character impacts, and the Committee considers these are relevant considerations, even if impacts associated with buildings and works (such as the impacts of a potential dam wall failure) are not.

### (v) Finding

The Committee finds:

- The amenity and landscape character impacts of the wakeboarding lakes are relevant considerations.

## 3.6 The wastewater treatment dam

### (i) The issue

The issue is whether the impacts of the wastewater treatment dam are relevant matters for consideration.

**(ii) Evidence and submissions**

Mr Stuart raised several concerns over the wastewater treatment dam and its potential impacts on the environment and land management, as discussed in Chapter 4.3.

Council and the Proponents submitted that impacts of the wastewater treatment dam will be considered and managed by the Environment Protection Authority (EPA) under the *Environment Protection Act 2017* (EP Act), and do not require detailed consideration as part of the planning process.

**(iii) Discussion**

Like its conclusions in relation to the wakeboarding lakes, the Committee considers that the planning impacts of the wastewater dam are relevant considerations in the planning process.

Unlike the wakeboarding lakes, the wastewater dam is proposed to be centrally located on the site and will have limited visibility from outside the site. It will therefore not have broader landscape or visual impacts to the same degree as the wakeboarding lakes. The planning impacts are generally limited to impacts to groundwater which could impact the use of neighbouring land for agriculture purposes. This is addressed in Chapter 4.3.

**(iv) Finding**

The Committee finds:

- While the planning impacts of the wastewater dam are relevant considerations, they are largely limited to impacts to groundwater which could impact the use of neighbouring land for agriculture purposes.

## 4 Impacts

### 4.1 Landscape and visual impact

#### (i) The issue

The issue is whether the proposed buildings and works result in acceptable outcomes in terms of landscape character and visual impact. Impacts on the visual amenity of adjoining private properties is addressed in Chapter 4.4.

#### (ii) Evidence and submissions

Ms Rigo's planning evidence was that the proposal satisfies the various policy objectives and strategies relating to siting and designing new development to minimise the visual impact on the landscape. She considered that this had been achieved by the thoughtful siting of buildings and works:

- "well setback" from boundaries
- in previously disturbed parts of the site
- in locations where the extent of vegetation required to be removed had been avoided or minimised
- in locations where the natural contours of the site are suited to the particular activity, to minimise the extent of earthworks (noting that some earthworks will still be necessary).

Her evidence was that landscaping and the undulating topography would assist in screening buildings and structures. In particular, the setback of the Barn, the largest proposed building, approximately 400 metres from Boneo Road, together with surrounding hills and slopes, would screen direct views of the building from the frontage of the site.

The wakeboarding facilities are the closest buildings and structures to Boneo Road. Ms Rigo was satisfied they would not visually dominate the surrounding landscape due to the:

- existing and proposed landscaping along the roadside and within the property
- setback of 13.4 metres of the wake park facilities building (noted on the architectural plans as 'Building B01')<sup>3</sup>
- transparency of the higher elements such as the wakeboarding towers and 'aqua chimp' facility.

In contrast, Mr Papworth's landscape evidence (for Mr Stuart) was that the wakeboarding facilities would be clearly visible and would detrimentally affect the landscape character of the area. He considered the wakeboarding facilities, along with the Barn and the snow board/aerial sports zone facilities, would be highly visible from the neighbouring property to the south from multiple vantage points including:

- a dwelling on the land (sited closest to Boneo Road), being at an elevated point looking north towards the site
- the paddocks closer to the common boundary, including from the ridgeline looking north-east.

<sup>3</sup> The architectural plans are part of the application material, Document 1.18 in the VCAT file for P1093/2024

His evidence was that with the additional buildings, structures and other works proposed, the site would cease to be viewed as 'rural'. He considered the size and scale of the proposed wakeboarding lakes to be at odds with the Cups landscape. He said large bodies of water are not typical in the landscape, and are usually only seen in the form of agricultural dams or small water features within golf courses.

In relation to the Radiata Pine trees proposed to be removed along the southern boundary to allow construction of the wakeboarding lakes, Mr Papworth's evidence was that these are a significant cultural element in the landscape and are a prominent feature seen from the neighbouring property and for drivers heading north along Boneo Road. He referenced their protection under the VPO2, which includes the following objective:

To ensure consideration of the cultural landscape significance of all tree lines, including those composed of introduced vegetation species, such as Monterey or Radiata Pines.

Mr Papworth considered the removal of these trees was not an acceptable outcome in the context of the fully exposed views of the wakeboarding facilities that will be created, both from Boneo Road and from the neighbouring property to the south.

Finally, Mr Papworth noted there is a lack of a landscaping around many of the proposed adventure park facilities such as the Barn, outdoor skate park, ski jump and overflow car parking, increasing the visibility of these features from neighbouring land.

Council was satisfied the siting, design, setbacks and nature of the topography and existing vegetation were sufficient to protect the visual amenity and landscape character of the area.

### **(iii) Discussion**

The existing buildings and works on the site are largely screened from the public realm by the undulating landscape, existing vegetation and siting of structures away from Boneo Road. There is some visibility of buildings and works more broadly in the landscape, but given the relatively low building heights and large setbacks, the site maintains a rural character when viewed from the surrounds.

The proposed expansion of the Ranch includes a range of buildings and structures of greater height and scale, sited much closer to Boneo Road and neighbouring boundaries. The assessment required is whether these will have an acceptable impact on the landscape character of the area.

There were differing views expressed in submissions and at the Hearing about whether, in protecting landscape character, the Planning Scheme seeks to protect only public views (mainly from Boneo Road), or private views from neighbouring land as well. While the SLO3 (Scenic Roads) seeks to protect public views along and from Boneo Road, the broader policy framework relating to the protection of the scenic qualities of the green wedge and the policies around distinctive areas and landscapes are also relevant.

The wakeboarding lakes and associated building, towers and aqua chimp facility are closer to Boneo Road, higher than the existing buildings and structures that are visible from Boneo Road, and higher than other buildings and structures typically found within the surrounding landscape. The wakeboarding building (Building B01) is proposed to be set back approximately 13.4 metres from Boneo Road and is described as a single storey building. However, with the fill created to align the building with the surface of the lake, and large pitched roof (over 4 metres), the plans

indicate the overall height above natural ground level is 9.6 metres (RL 55.56), which is more akin to a three-storey building.

The SLO3 seeks to ensure the recreational value of scenic routes is not compromised by the inappropriate siting and design of buildings. Boneo Road has an 80 kilometre per hour speed limit with roadside vegetation that largely obscures views into the site. However the vegetation around the entrance to the site is sparser with gaps allowing views into the site, even if views from passing traffic will be fleeting.

The Landscape Visual Impact Assessment dated June 2023 and prepared by Peter Wilson Landscape Architecture<sup>4</sup> provided montages of the proposal from various points along Boneo Road. In the more distant views, the proposed development is barely perceptible. However around the main entrance, the proposed wakeboarding facilities will be visible.

Some new planting is proposed along the Boneo Road frontage, noted as reaching a mature height of 5 to 8 metres, although the existing powerlines provide a constraint. This vegetation, together with the existing vegetation, will partially obscure and soften views to the wakeboarding building.

The Committee acknowledges that the Planning Scheme does not require buildings and works to be totally concealed. However, given the importance of this landscape and proximity of the proposed wakeboarding building to Boneo Road, the Committee consider the building should be reduced in height. Based on the mature heights of the proposed plantings, a reduction to a maximum height of 8 metres is considered appropriate.

The equipment shed located near the wakeboarding building has a proposed height of 10.9 metres, but a much smaller footprint than the wakeboarding building. The shed appears to be sited behind denser roadside vegetation. The Committee considers the heights and siting of the shed to be acceptable in terms of landscape and visual impacts.

The Committee agrees with Ms Rigo that elements such as the cable tower and aqua chimp course, while tall (RL 62.37 and RL 52.4 respectively) are not solid structures and will therefore not be visually dominant when viewing the site from Boneo Road.

The Proponents advised the Committee the removal of the stand of Radiata Pine trees along the southern boundary is required to accommodate the optimal design of the southern wakeboarding lake including the curved alignment for the wakeboarding circuit.

The arborist report submitted with the application material notes that most of these trees are in fair condition and have a useful life expectancy of 10 to 20 years. The report rated them as 'low' to 'moderate' in terms of amenity value and retention value, and raised no concerns about their removal.

While recognising that some individual trees may fail over the next two decades, the pines are a protected 'significant tree line' not just for their arboriculture value but for cultural values. The 'Statement of Nature and Significance of Vegetation to be Protected' under the VPO2 states (Committee's emphasis):

Tree lines within roadside reserves, along streamlines and within properties form important habitat and landscape elements on the Mornington Peninsula. Tree lines often act as habitat corridors linking other, more substantial, areas of remnant vegetation. These factors are emphasised in the Shire's Road Side Management Strategy. Many tree lines, including

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<sup>4</sup> Part of the application material, Document 1.18 in the VCAT file for P1093/2024

those composed of non-indigenous trees, such as Monterey or Radiata Pines, are culturally significant elements of the Peninsula landscape.

These trees have a significant role in mitigating views to the site from Boneo Road and the neighbouring property to the south, and have a reasonably long life expectancy. Further, having regard to the decision guidelines of the VPO2, the Committee is not satisfied that there has been appropriate consideration of the cultural impact of their removal.

While the Proponents made some commitment to replanting in this area ‘subject to engineering advice’, the Committee is not satisfied that adequate justification has been provided to remove these trees. In the Committee’s view, removing the Radiata Pines to accommodate the wakeboarding lakes does not strike the appropriate balance between the policy objectives of encouraging tourism and recreation uses in the green wedge, the objectives of the VPO2 to consider and protect the cultural landscape significance of all tree lines, and policy objectives of protecting the rural character, landscape values and scenic qualities of the green wedge.

The Committee therefore recommends a condition requiring this tree line to be retained, or (if removal is unavoidable) replaced with planting that has regard to both cultural landscape and environmental values. The Committee recognises retention of the Radiata Pines may require a redesign of the wakeboarding lakes. It was not persuaded on the material before it that there is no other way the lakes could be designed or sites to accommodate retention of the trees.

In relation to the visual impact of the other structures and buildings proposed on the site, the Committee accepts that the siting has generally had regard to the topography and sought to minimise the removal of vegetation. The Barn building is very large in the context of this landscape, with heights between 12 and 19.1 metres above natural ground level, and a length (albeit angled) of approximately 100 metres. However, it is sited at a low point on the site and is set back approximately 400 metres from Boneo Road, and will not be directly viewed from the public realm along the site’s frontage. Parts of the building are likely to be visible from neighbouring properties, however this will be from a reasonable distance, and the intervening Cups topography will minimise its visibility in the landscape.

The proposed snow board/aerial sports zone facilities, being up to 12.6 metres in height and sited close to the southern boundary of the site, will be a foreign element in the landscape. The hills and slopes on the site and surrounds will partially mitigate views more broadly in the landscape, however depending on extent of vegetation retention and new landscaping, these elements could be visually intrusive in the landscape.

The application material does not include detailed landscape plans. The Landscape Masterplan generally focuses on revegetation in the northern part of the property, and shows minimal landscaping around the Barn or the snow board/aerial sports zone. The Committee agrees with Mr Papworth that the landscaping around these buildings and structures is minimal, and recommends condition 1A(b)(i) (requiring a Landscaping Plan) be amended to increase landscaping around these structures. This will help soften these elements into the landscape and protect the landscape values of the area.

#### **(iv) Findings**

The Committee finds:

- The wakeboarding building (Building B01) should be reduced in height given its scale and its proximity to and visibility from Boneo Road.

- The removal of the Radiata pine trees protected under the VPO2 has not been justified and they should be retained. If retention is unavoidable, they should be replaced with suitable species to provide for the long term maintenance of identified landscape values.
- Additional landscaping, including tree planting, should be provided around the new buildings and facilities to protect the identified landscape values of the area.

## 4.2 Environmental impacts

### (i) The issue

The issue is whether the proposal will have unacceptable environmental impacts, particularly in relation to native vegetation.

### (ii) Evidence and submissions

The Proponents relied on the geo-technical, land capability, ecological and biodiversity assessments submitted in support of the application to demonstrate that the proposal would have acceptable environmental outcomes. They submitted the site had been significantly revegetated with native vegetation since they took ownership of it, and the vegetation removal and landscaping associated with the proposal had been designed to increase high quality native vegetation in appropriate areas. They noted Mr Wilson's evidence that:

- vegetation to be removed had been assessed as lower quality
- the lost vegetation would be offset as required by conditions of the Notice of Decision
- under the Masterplan for the site, 1.6 hectares of land would be fenced as Conservation Zones for revegetation
- the proposal also includes planting an additional 1.64 hectares of indigenous vegetation and 500 Moonah Trees in and around the lakes, carparks and built form.

Mr Stuart submitted the removal of 95 trees and an impact to a further 90 trees is unacceptable in the context of the green wedge and associated policies that seek to preserve the rural landscape character.

Mr Papworth was critical of the level information provided about impacts to existing trees and limited detail shown in the Landscape Masterplan.

Asher Nominees submitted that any permit issued should require detailed conditions relating to revegetation and landscaping along the boundary with its property to the north and west. It submitted this was required to ensure consistency with the provisions of the GWZ and associated policies that seek to ensure the preservation and enhancement of the landscape and biodiversity values and minimise amenity impacts on neighbouring land.

### (iii) Discussion

As previously noted, the Committee is generally satisfied the proposed buildings and works (with the exception of the southern wakeboarding lake) have been sited to retain the most significant vegetation. The Committee is satisfied the revegetation program will result in a net gain. Permit conditions require native vegetation offsets to be secured in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (2017).

Permit conditions require:

- a Tree Management and Protection Plan to be approved before works commence, to ensure retained trees will be protected
- landscaping of the site and protection of vegetation in accordance with the endorsed landscape plans and Land Management Plan.

The Committee is satisfied that this will appropriately require revegetation and landscaping along the boundary with the Asher Nominees property to the north and west.

The Committee does not support the removal of the stand of Radiata Pines on the southern boundary of the site, for the reasons set out in Chapter 4.2.

Other environmental values on the site will be protected by conditions requiring:

- approval of plans for the wastewater dam
- management of wastewater generated on the site
- approval of a Land Management Plan
- approval of a Farm Management Plan
- protection of fauna
- approval of a Construction Management Plan.

On the basis of the application material, the Committee is generally satisfied that the permit conditions are appropriate to ensure the proposal delivers acceptable environmental outcomes.

Impacts of the wastewater dam are addressed in more detail in Chapter 4.3.

#### **(iv) Finding**

The Committee finds:

- With the proposed permit conditions, the proposal can deliver acceptable environmental outcomes.

### **4.3 Land management impacts**

#### **(i) The issue**

The issue is whether the proposal will have acceptable land management impacts.

#### **(ii) Evidence and submissions**

##### **Wastewater**

Mr Stuart submitted there was no information to determine whether the site could adequately deal with the large volumes of wastewater to be generated. He pointed to the fact that the application was supported by a letter from Strata Geoscience and Environmental Pty Ltd that set out a scope of works for the Land Capability Assessment submitted with the application, but there was no assessment of whether the site was capable of dealing with the quantum of wastewater.

Mr Stuart said and any leakage or discharge of effluent or other wastewater to the water table could have devastating impacts on the viability of his agricultural use. He submitted that while the volume of wastewater to be treated triggers an assessment by the EPA, this does not obviate the need to determine at the planning stage whether the site has the capacity to accommodate wastewater.

Council advised that based on the volume of wastewater exceeding 5000 litres per day, the wastewater dam would require EPA approval under the EP Act. Council referred the application under Clause 66.02-1 of the Planning Scheme and the EPA provided no objection, and confirmed that EPA approval would be required for the wastewater dam.

The Proponents submitted that because impacts of the wastewater dam will be considered and managed under the EP Act, they do not require detailed consideration as part of the planning process.

Ms Rigo's evidence was that the upgraded wastewater treatment system, including the dam, should ensure the sustainable collection and treatment of wastewater. She was satisfied this could be dealt with through conditions of permit, given the relatively large size of the site and comparatively small area of land to be developed.

### **Land stability**

Another key area of concern raised by Mr Stuart was land stability. He submitted the geotechnical work supporting the application was only preliminary, and further engineering design, environmental management procedures, inspection and monitoring was required to allow a proper assessment of the geotechnical risks and impacts of the proposal.

Mr Stuart noted the Preliminary Geotechnical Risk Assessment made a number of recommendations, including:

- earthworks (cut and fill) be kept to a minimum
- revegetation of existing and proposed slopes should be provided where possible.

Mr Stuart submitted that contrary to these recommendations, cut and fill had not been kept to a minimum. He noted the large amount of cut and fill required for the wakeboarding lakes, mountain bike trials, mountain board ramps and buildings, all of which involved significant changes to the topography of the site. He also noted the absence of a detailed revegetation proposal for the slopes of the wakeboarding lakes.

The Proponent submitted that while further geotechnical work would be required, the work done to date was sufficient for this stage of the planning process. It tabled three geotechnical assessments, all prepared by Ground Science Pty Ltd:

- Geotechnical Desktop Study – The Ranch, Water Sports Lake South, Cape Schanck dated 12 May 2022 (D37)
- Geotechnical Investigation – 810 Boneo Road, Boneo dated 19 May 2023 (D39)
- Preliminary Geotechnical Risk Assessment – 810 Boneo Road, Boneo dated 19 May 2023 (D41).

The Preliminary Geotechnical Risk Assessment concluded:<sup>5</sup>

This document has been prepared to support the planning permit for The Ranch development. Detailed civil design and earthworks plans were not provided at the time of the preparation of this report, and hence the findings and recommendations herein are preliminary. The sole purpose of this report is to guide the next phases of design and support planning permit for development.

Given our general understanding of the site surface and subsurface conditions and proposed development features, we are of the consideration that a tolerable risk level for erosion and landslide can be achieved within the subject site where the proposed correct

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<sup>5</sup> D41 at Appendix D

control measures engineering design, environmental management procedures, and inspection and monitoring (where practicable) are implemented.

In reference to Appendix D, some areas of “Moderate to High risk” levels have been assigned based on potential development conditions that may occur and the existing ground conditions present. The risks can be mitigated and achieve a residual risk factor of “Low” with the correct planning, design and geotechnical support.

In response to questions from the Committee about whether the proposal had responded appropriately to geotechnical risks and the ESO23, the Proponents included additional conditions in their final proposed permit conditions (D46):

#### **Geotechnical Report**

74. Prior to the commencement of each Stage, a Geotechnical Report for that Stage must be submitted to and approved by the Responsible Authority. The Geotechnical Report must, in respect of works to be undertaken on any part of the Land affected by the Environmental Significance Overlay (Schedule 23) within the applicable Stage:
  - a. detail all erosion mitigation and land stability measures to be undertaken, based on finalised design levels for works across relevant part of the Land, that result in a proposed cut or fill batter slope steeper than 1V:6H;
  - b. provide for the following:
    - i. engineering solutions to keep earthworks (cut and fill) to a minimum, where practicable;
    - ii. drainage to be:
      1. designed by a suitably qualified civil engineer (with particular experience in land sensitive to landslide and erosion conditions); and
      2. provided for all areas of proposed and existing development to reduce the potential for landslide and erosion;
    - iii. a geotechnical investigation and global stability analysis to be undertaken where surcharge is proposed within 10m of the crest of any moderate to steeply sloping natural slopes, or within existing slopes;
    - iv. structures supported on footings and developed within existing slopes or near the crest of slopes to have suitable footing design, with footings to be designed generally to:
      1. a depth of weathered bedrock; or
      2. where the surcharge of the footings does not daylight within the slope,
    - v. re-vegetation of existing and proposed slopes to be provided where possible;
  - c. require strict implementation of risk control measures where ‘moderate’ or ‘high’ risk levels are assessed, to decrease the landslide/ erosion risk to a tolerable ‘Low’ risk level;
  - d. specify any areas for further assessment and investigation, subject to the observed residual risk rating;
  - e. require design documents to be assessed by a suitably qualified geotechnical engineer or engineering geologist and, if necessary (in the opinion of the geotechnical engineer or engineering geologist):
    - i. further targeted geotechnical investigations must be conducted to:
      1. establish a robust geotechnical model; and
      2. ensure that site-specific slope stability assessment is undertaken to assess both short-term and long-term risks; and
    - ii. a detailed landslide risk assessment must be undertaken generally accordance with the Australian Geomechanics Society (AGS) Practice Note Guidelines (2007).

75. Once approved, the Geotechnical Report will be endorsed to form part of the planning permit. The endorsed Geotechnical Report must be implemented to the satisfaction of the responsible authority.

### (iii) Discussion

#### Wastewater

In Chapter 3.6, the Committee concluded that the planning aspects of the wastewater dam are relevant considerations in the planning process. For this proposal the relevant planning considerations are generally limited to impacts to groundwater which could impact the use of neighbouring land for agriculture purposes.

The application was supported by a Land Capability Assessment (D36). It noted there are multiple bores onsite and on neighbouring land, and that effluent could pose a significant risk to groundwater without proper treatment and management. The report recommended a minimum Class C treatment of effluent with a minimum buffer of 100 metres from any groundwater bore and 30 metres to surface waters. The report noted that the site is capable of meeting the land area and buffer distance requirements, and concluded:

If the prescriptions of the report are followed, the likely human and environmental health risks with effluent disposals over the site is low.

While the Land Capability Assessment is limited in scope, the Committee is satisfied it is sufficient for this stage of the process. It establishes that the site is large enough to accommodate the recommended buffer distances. EPA approval will be required for the wastewater dam, which is reflected in the conditions:

10. All wastewater from the approved development must be disposed to the EPA approved sewerage system to the satisfaction of the responsible authority.
40. All wastewaters generated within the Land must be treated and retained by an EPA approved sewerage system to the satisfaction of the relevant authority.

The conditions also require additional plans for the wastewater dam, and operation of an EPA approved sewerage treatment plant for the total facility.

The Committee is confident that the proposed permit conditions, combined with EPA approval processes for the wastewater dam, will ensure there that:

- with appropriate treatment and management, the likely risks from effluent are low
- the risks of offsite impacts to groundwater that might impact on neighbouring agricultural uses is low.

#### Land stability

The western two thirds of the site is contained within the ESO23. The overlay states:

The stability of semi stabilised dunes is critical to sustainable land management and the maintenance of environmental values. These areas may become unstable if the top surface is removed in steeper sections and exposed to wind erosion.

Environmental objectives to be achieved are to:

- maintain the stability of the Cups landform, which the ESO23 states may become unstable if the top surface is removed in steeper sections
- prevent surface erosion by ensuring buildings are sited to prevent unnecessary wind turbulence
- ensure a sustainable intensity of development in semi stable dune areas

- avoid development on land with a ground slope greater than 25 per cent.

Most of the proposed works are within the eastern part of the site that is not affected by ESO23. However part of the development is within this overlay area, including (potentially) part of the wastewater dam.

The preliminary geotechnical assessments submitted with the application material:

- identify moderate and high landslide and erosion risk levels associated with the proposed development<sup>6</sup>
- appear to identify (but don't clearly map) areas of earth slump or potential instability on the site and/or adjoining land<sup>7</sup>
- document signs of minor erosion on the site, which were consistent with the Committee's observations on its site visits<sup>8</sup>
- contain no analysis of the matters requiring consideration under the ESO23.

The Committee notes the conclusion of the preliminary geotechnical assessments that the site is generally suitable for the proposed development, subject to detailed design. However it is not satisfied this has been demonstrated by the preliminary assessments. Given the geotechnical sensitivities of the site (particularly the part within the ESO23), more detailed assessments should have accompanied the application.

That said, the Committee accepts that the Geotechnical Report required under the Proponents' condition 74 will ensure land stability matters are properly assessed before works in each stage begin. If these assessments do not demonstrate to Council's satisfaction that land stability matters can be dealt with appropriately and without adverse impact on the site or surrounding land, the works will not be able to proceed.

The preliminary geotechnical assessments do not clearly identify which parts of the site may be subject to potential instability or erosion risk, other than a reference to the area around the entrance (which is outside the ESO23). The Committee also notes that the ESO15 applies to the whole site, and seeks to protect land and soil stability, drainage patterns and ground water quality. The Committee therefore considers detailed Geotechnical Report(s) should be prepared for the whole site, not just the parts within the ESO23. Condition 74 should be amended accordingly.

Decision guidelines in the ESO23 include:

- Whether there is any reasonable alternative site for the proposed buildings and works, including the installation of effluent disposal and stormwater discharge areas, outside of the overlay area, or any alternative land management or construction practices, that would better meet the objectives of this schedule.
- The means of treatment and disposal of all sewerage, sullage and other wastes where connection to a reticulated sewerage system is not available.

To better respond to the decision guidelines, the Geotechnical Report(s) required under condition 74 should also assess whether the proposed wastewater dam can be located entirely outside the area affected by ESO23.

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<sup>6</sup> D41 at Appendix E

<sup>7</sup> D41 at page 7 and Appendix B

<sup>8</sup> D41 at Appendix E

#### **(iv) Findings**

The Committee finds:

- There is room on the site to locate the wastewater dam to provide appropriate buffers to groundwater bores on the site and on neighbouring properties.
- Further EPA approval will ensue that the wastewater treatment system does not cause adverse impacts on the environment, including groundwater used on surrounding agricultural properties.
- Additional geotechnical assessment will be required before works commence on any part of the site.
- Condition 74 in the Proponent's final preferred permit conditions is generally appropriate to ensure this occurs, but the condition should be modified to:
  - apply to the whole site (not just the area within the ESO23)
  - require assessment of whether the proposed wastewater dam can be located entirely outside the area affected by ESO23.

### **4.4 Impacts on neighbouring land**

#### **(i) The issue**

The issue is whether the proposal will have acceptable offsite amenity impacts.

#### **(ii) Evidence and submissions**

##### **Visual amenity**

Ms Rigo's evidence noted that adjoining properties are pastoral grazing (with residential use), horticulture and rural lifestyle properties in a rural zone. She considered there were different amenity expectations for rural zoned land than land in residential or rural living zones.

Ms Rigo did not consider the proposal would have unreasonable impacts on the visual amenity of adjoining properties, given the setbacks proposed for the new buildings and works. She noted the closest structures to adjoining private properties were the proposed snow board/aerial sports zone and the southern wakeboarding lake. She considered these elements as discrete built form elements that could be landscaped to minimise their visual impact on the adjoining property to the south. To the northwest and west, the nearest activity is the caravan and camping zone which Ms Rigo considered was significantly separated with intervening ridgelines to have minimal impact on the visual amenity of the neighbouring property to the north and west.

Mr Papworth said from the elevated position of the dwelling on the neighbouring property to the south:

All of the proposed components of the central part of the site such as the indoor skate facility and function centre, ski jump and skate park and camping area will all be clearly visible and will have a significant visual impact.

##### **Noise**

Ms Rigo observed that there were existing noise sources in the area including traffic along Boneo Road, agricultural activities on the surrounding properties and the existing adventure park. She referred to the acoustic report submitted with the application prepared by Renzo Tonin & Associates (November 2022) that concluded that all new use and development is expected to meet the relevant noise criteria. Ms Rigo was satisfied that with the Venue Operations

Management Plan and conditions of permit, there would be no significant off-site amenity impacts with respect to noise.

Asher Nominees submitted the proposed conditions were “*manifestly inadequate*” given the nature of the proposal in the GWZ, but could be strengthened to ensure appropriate outcomes. In particular, Asher Nominees sought a condition requiring a post commencement acoustic report to be completed to test that the proposal is meeting the noise criteria as predicted by the modelling. It considered this appropriately puts in the onus on the Proponents (as the agent of change) to demonstrate that noise impacts are acceptable, rather than relying on neighbour complaints triggering a compliance investigation.

### **Lighting**

Mr Papworth’s evidence was:

Night views over the landscape and lighting impacts at night are unable to be fully understood or rendered for the purpose of this report but would be significant in my opinion.

He stated the Mornington Peninsula green wedge was notable for its lack of any significant illuminated elements at night in rural areas. In his opinion, the proposal would have a significant visual impact at night through the illumination of the Barn together with lighting of external activities such as the ski jump in the snow board/aerial sports zone.

Mr Stuart submitted that the lighting associated with the night-time uses and car parks, accessways and the like, is likely to have a significant detrimental impact on the rural amenity of the area.

### **(iii) Discussion**

#### **Visual amenity**

The visual impact of the proposed facilities on the broader landscape has been discussed in Chapter 4.1.

In relation to visual amenity as viewed from neighbouring properties, the Committee disagrees with Ms Rigo’s assessment that all new works are “*well setback*” from adjoining properties. The Snowboard Jump Office and Viewing Platform in the snow board/aerial sports zone are set back only 7.4 metres from the southern boundary, with a height of 8.6 metres to the deck and 12.9 metres to the top of the frame. The Committee notes that the jump has been sited to take advantage of the natural contours of the land, but in the context of a rural property of 80 hectares, this is not a generous setback.

The new dwelling, overflow car park, and wakeboard lake are also sited relatively close to the southern boundary, and the camping and caravan extension is sited close to the northern boundary.

While dwellings on neighbouring properties have greater separation to the proposed facilities, there is very limited (and in some cases no) screening vegetation proposed within these setback areas.

The Committee considers further planting is required around new buildings and structures along key parts of the common boundaries, to mitigate visual impacts of the new facilities to neighbouring properties. This should include planting along the southern edge of the overflow car park and the snow board/aerial sports zone. Some views from neighbouring properties are from

elevated locations, so the additional landscaping will not obscure the new built form elements. It will, however, soften their appearance.

The retention of the Radiata Pines at the southern end of the wakeboard lake as discussed in Chapter 4.2 will also assist in mitigating the impacts of the proposal on the visual amenity of the neighbouring property to the south.

### **Noise**

The acoustic report assessed predicted noise levels from mechanical services, 'action sports' activities, background music and car park noise. It concluded the development will meet the applicable noise criteria and would not unreasonably affect amenity in the area by reason of noise emissions.

The Committee considers the condition suggested by Asher Nominees requiring a post commencement noise compliance assessment to be reasonable. While neighbouring dwellings are located between 200 and over 500 metres away from noise sources within the site, post commencement testing is relatively standard practice and will demonstrate compliance with the applicable noise criteria (or, if non-compliance is detected, will address measures to bring the proposal into compliance). The Committee considers this to be a reasonable approach in a green wedge area and a rural setting, particularly given the extent of activity proposed on the site.

### **Lighting**

The Committee accepts there is a need to provide lighting for the safety and enjoyment of patrons using the facility, but lighting must also recognise the rural context in which the site is located. Light impacts on the surrounds should be minimised.

The application was accompanied by lighting details for the outdoor skate park and snowboard jumps, with a plan showing seven lights for the skate park and six for the ski jump, mounted at 8 to 10 metres high. No details were provided of lighting within car parking areas, along accessways, or around other facilities within the site including the Barn, although the Committee notes this is relatively centrally located within the site and is some distance from any neighbouring dwellings.

The Committee considers lighting can be appropriately managed by conditions, and notes the Notice of Decision includes a condition requiring a Lighting Management Plan that details lighting to the car parking areas, the cable park, the outdoor skate park and other spotlighting in accordance with the Australian Standard. Other conditions require lights associated with the adventure park facilities to be switched off within an hour of the operating hours each day and lighting associated with signs to be baffled to prevent adverse effects on adjoining land. The Committee consider these conditions to be appropriate.

## **(iv) Findings**

The Committee finds:

- Additional planting should be provided around new buildings and facilities located close to neighbouring property boundaries to soften visual impacts from neighbouring properties. This includes the southern edge of the overflow car park and snow board/aerial sports zone.
- The permit should include a condition requiring a post commencement noise compliance assessment.

- Permit conditions can manage lighting impacts.

## 5 Other matters

### 5.1 Bushfire risk

Objectors did not raise bushfire risk as a key concern. However the site and broader surrounds are within a designated bushfire prone area. While not in a Bushfire Management Overlay, given the relatively large numbers of people capable of being accommodated on the site, including for overnight stays, the policy considerations at Clause 13.02-1S of the Planning Scheme (relating to bushfire planning for land within a designated bushfire prone area) are relevant.

Ms Rigo's evidence was that the Emergency Plan, Land Management Plan and Venue Operations Management Plan appropriately address the requirements of Clause 13.02. She noted new buildings will also need to address the building regulations for construction in bushfire prone areas, through the building permit process.

The Committee considers that condition 1A(k) appropriately requires the implementation of bushfire protection measures:

An emergency plan generally in accordance with the plan entitled The Ranch Mornington Peninsula Emergency Plan and including specific procedures to be followed in the event of bushfire.

New buildings will also need to meet the applicable bushfire standards under building regulations.

### 5.2 Signage requirements

Three signs are proposed to be located near the entry of the site:

- a flood lit pole sign with four panels of 18 square metres total area
- two business identification signs on the entrance gate (2.88 square metres each).

Ms Rigo's evidence was that the signs would not contribute to visual clutter and were compatible with the amenity and appearance of the location.

Council was satisfied with the siting of the signs and considered they would not be obtrusive in the environment, given the topography of the site and surrounding area and the presence of vegetation.

The Department of Transport and Planning (a referral authority for the amendment application) required static lighting of the pole sign only, which is reflected in condition 76(c). Council recommended the illumination be limited to 9.30pm, being consistent with the hours of operation for the adventure park activities (but not the restaurant and function centre). This is reflected in the conditions of the Notice of Decision.

At the Hearing the Committee observed that a 'panel sign', defined as a sign with an advertisement area exceeding 10 square metres, is prohibited in the GWZ. Clause 52.05-2 (Sign categories) states that if a sign can be interpreted in more than one way, the most restrictive requirement must be met. The pylon sign has a total advertisement area of 18 square metres, and therefore falls within the definition of a 'panel sign' and is prohibited.

The Proponents proposed a condition to reduce the area of the pole sign to 10 square metres (by removing two of the four panels).

With this change and the conditions requiring static lighting and lighting to be switched off at 9.30pm, the Committee is satisfied that the signage is acceptable to allow for identification of the facility in a manner that is compatible with the amenity and appearance of the area. This is provided for in the Proponents' final preferred permit.

### 5.3 De facto urbanisation

Mr Stuart submitted the proposal amounts to a de facto urbanisation of the site, on the basis that recent changes to the *Residential Tenancies Act 1997* prohibit limiting permanent occupation of caravan parks.

The Notice of Decision includes a condition requiring a section 173 agreement that includes:

The means to restrict the use of accommodation to serve only casual holiday makers and tourists for a maximum of ninety (90) days in any calendar year and a maximum of 59 consecutive days of occupancy.

The existing section 173 agreement that applies to the land contains a similar condition, and Council explained that access to the existing caravan park sites are controlled with a swipe card, and length of stay is monitored to ensure the requirements of the section 173 agreement are met.

While the *Residential Tenancies Act 1997* may make it difficult to enforce limits on length of stays in the caravan park, the Committee does not consider that this amounts to a de facto urbanisation of the land.

## 6 Overall assessment

### 6.1 Context

The Minister's letter of referral asks the Committee to provide advice to the Minister on:

- whether the amended planning permit should be issued
- if so, the appropriate conditions that should be imposed.

Council's Part A and Part B submissions (D16 and D34) and Ms Rigo's evidence (D21) comprehensively set out the policies, zones and overlay controls that are relevant to the consideration of the amendment application. Key provisions are set out in Appendix A.

Council's Part A submission also provided a helpful summary of the permit triggers, application requirements and referral requirements for the Project under the Planning Scheme, and a summary of referral authority comments and responses. The Committee has been assisted by these in its deliberations.

### 6.2 Should the amended permit be issued?

#### (i) Evidence and submissions

Council highlighted that the GWZ explicitly identifies that recreation and tourism uses are encouraged, in contrast to other rural zones such as the Farming Zone, Rural Activity Zone and Green Wedge A Zone that don't list 'recreation and tourism opportunities' within their purposes. Council also considered that the extensive history of providing leisure and recreation activities on the site was relevant, with the proposal not being a new proposition for the site.

Ms Rigo considered the proposal would broaden the recreational and tourism opportunities already provided on the site, with positive economic impacts. She did not consider the proposal was inconsistent with provisions aimed at protecting agricultural land, noting that horse husbandry would continue, albeit at a reduced capacity.

Ms Rigo considered that given the size of the site and setbacks of the proposed buildings and structures from boundaries, the proposal would be unlikely to threaten the ongoing agricultural use of adjoining land. She highlighted that the area already supports a broad mix of tourism and recreation uses, including golf courses, hot springs, accommodation, restaurants, farm gate sales and breweries. She considered the proposal to be consistent with the promotion of nature-based recreation, aligned with a key attraction of the Peninsula for informal recreation.

Mr Stuart emphasised the focus in the Mornington Peninsula Green Wedge Plan on protecting natural systems and the quality and character of the landscape as the primary assets of the green wedge. He argued that tourism and leisure-based use and development are 'conditional' uses that may be compatible in certain circumstances but not to the extent proposed in the amendment application. He submitted:

- the size and scale of the proposal did not respect the rural landscape character and amenity of the area
- the site lacked the capability and capacity to support the proposal
- the proposal failed to protect and enhance the natural environment.

Mr Papworth expressed concern that the proposal would transform the current relatively rural setting to a resort style development and amusement park, introducing elements foreign to the landscape such as large water bodies, dry ski slopes and jumps, the Barn building, and other built form that is uncharacteristic of the existing environment.

## **(ii) Discussion**

Clause 71.02-3 of the Planning Scheme requires a responsible authority considering a permit application to take an integrated approach, and to balance competing objectives in favour of net community benefit and sustainable development.

The site forms part of the Mornington Peninsula Green Wedge, which is protected under the Planning Scheme for its agricultural, environmental and landscape values, as well as for its recreational and tourism opportunities. Land use and development must minimise impacts on the character and appearance of the area and protect the environment and agricultural uses in the area.

### **The proposed uses**

The GWZ encourages agricultural and tourism uses and limits non-rural uses to those that either support agriculture or tourism, or that are essential for urban development but cannot locate in urban areas for amenity or other constraints.<sup>9</sup> The zone contemplates a broad mix of land uses, subject to having proper regard to rural, environmental and design and siting issues.

The site has a long established use and development history for leisure, recreation and tourism uses,<sup>10</sup> including school camp activities such as flying fox, rock climbing and the 'leap of faith', together with accommodation cabins, dining facilities and horse riding. The rural setting is integral to the existing uses and its attraction as a school camp, and for the range of the other activities that take place on site.

The Committee considers that tourism and recreation uses are broadly appropriate uses in the GWZ and on the site. Like the existing activities on the site, most expanded or new activities rely on an outdoor or nature based setting. What is of key relevance in determining whether the proposal is consistent with policy is the scale, siting and impacts of these uses, and their impacts on landscape character, environmental and land management and agriculture.

### **Landscape character**

The Planning Scheme has a particular focus on maintaining visual landscape qualities from the public realm. As noted in Chapter 4.1, the Committee considers this extends more broadly to the visual qualities of the green wedge land within this distinctive area and landscape, particularly (but not exclusively) when viewed from the public realm.

The unique topography of the site and surrounds has the advantage of concealing or limiting the visibility of buildings and structures that are set back from the property boundaries from some viewpoints (particularly those at lower elevations). As a result, rather than expansive vistas and views of the various building, structures, and associated infrastructure, the Cups landform, together with established landscaping, help minimise the visual impact of the proposal on the landscape.

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<sup>9</sup> Planning Practice Note 42: Applying the Rural Zones, June 2024

<sup>10</sup> The Committee was advised that the Ranch has operated since the 1980's

The overall design of the proposed facility, including the siting of the proposed buildings and works, is responsive to the site's setting, topography and vegetation (with the exception of the Radiata Pines along the southern boundary). Buildings and works are generally designed and sited to ensure they are largely screened from public view points.

That said, the Committee considers some changes are required:

- The wakeboarding building (Building B01) should be reduced in height to respond to the SLO3 protecting views along Boneo Road.
- Adequate justification has not been provided for removing the stand of Radiata Pine trees that are protected by the VPO2. These should be retained, which will likely require a redesign of the southern wakeboarding lake.
- Further landscaping is required around the Barn as well as the proposed facilities that are located close to neighbouring property boundaries (the snow board/aerial sports zone, overflow car parking), to protect the landscape values of the area and reduce impacts on the visual amenity of neighbouring properties.

### **Environmental and land management impacts**

At a broad policy level the Committee is satisfied that, subject to the Committee's recommended permit conditions, the proposal will not have an unreasonable impact on the environment. Vegetation removal has been generally minimised (with the exception of the Radiata pines), and the Proponents are undertaking revegetation as part of their overall management strategy.

A preliminary land capability assessment has been undertaken which demonstrates the siting of the wastewater dam can be accommodated on the site with required threshold distances from groundwater bores. The Committee is satisfied the EPA approval and licensing process will ensure the wastewater treatment facilities do not have inappropriate impacts to groundwater or neighbouring agricultural uses.

The nature of the landform requires careful consideration of land and soil stability and erosion risks. While preliminary geotechnical assessments concluded the site is likely suitable for the proposed development, the Committee considers more detailed assessments should have been provided in support of the amendment application. That said, the Committee is satisfied that with some adjustments, the Proponents' proposed conditions 74 and 75 are sufficient to ensure geotechnical issues are appropriately assessed before works commence. If the geotechnical risks cannot be managed to Council's satisfaction, the development (or relevant stage) will not be able to proceed.

### **Impacts on agriculture**

The Committee is satisfied the proposal will not have an unreasonable impact on the agricultural use of the site or surrounding land. Agricultural uses on the site are limited, and expected to decrease as a result of the proposal with a reduced capacity for horse husbandry. It is not a policy requirement that all land in the GWZ be used for agriculture.

There was no evidence that noise or lighting impacts from the proposed development would adversely affect farming activities on adjoining land, and subject to appropriate wastewater management the Committee is satisfied that the agricultural and adventure park activities can successfully co-exist.

### (iii) Overall assessment

On balance, the Committee considers the permit should be amended. The proposal will expand the existing tourism and recreational uses, with social and economic benefits to the surrounding community. Conditions can manage the siting and design of development, to ensure it maintains the environmental and landscape values of the area. The proposal will not unreasonably affect the surrounding capacity of agricultural land and conditions of permit will ensure no unreasonable amenity impacts. Overall, the proposal will provide a net community benefit.

## 6.3 What conditions should apply?

The Committee has considered the various versions of proposed permit conditions put to it, including:

- the Notice of Decision
- the Proponents' Version 2 amended permit conditions (D29)
- Asher Nominees' response to the Proponents Day 2 proposed permit conditions (D30)
- Council's response to the Proponents' Day 2 proposed permit conditions (D31)
- the Proponents' final preferred permit conditions (D46 and D47)
- Council's response to the Proponents' final preferred permit conditions (D48).

The Committee provides its recommended conditions in Appendix C.

## 6.4 Recommendation

Based on its findings in the previous chapters, the Committee recommends:

1. **Amend Planning Permit P04/0289 issued by Mornington Peninsula Shire Council on 9 November 2004 in the form and subject to the conditions in Appendix C.**

## Appendix A Policy context

### Planning policy framework

#### Municipal Planning Strategy

The Mornington Peninsula Municipal Planning Strategy sets out a vision for future land use and development in the municipality. Its objectives are relevant to the proposed development, particularly Clauses 02.01 (Context), 02.02 (Vision), 02.03-1 (Settlement), 02.03-2 (Environmental and landscape values), 02.03-3 (Environmental risks and amenity), 02.03-4 (Natural resource management), 02.03-5 (Built environment and heritage), 02.03-6 (Economic development), and 02.04 (Strategic framework plan).

#### Local and state policy framework

Clauses 11 (Settlement), 12 (Environmental and Landscape Values), 13 (Environmental Risks and Amenity), 14 (Natural Resource Management), 15 (Built Environment and Heritage), 17 (Economic Development) and 19 (Infrastructure) of the Planning Scheme are relevant to the proposal.

#### Mornington Peninsula Green Wedge Management Plan (2018)

The Mornington Peninsula Green Wedge Management Plan (D17b) promotes the value of green wedge land and sets out a vision and planning principles for its use. The document has been adopted by Council, but is not incorporated into the Planning Scheme.

#### Mornington Peninsula Localised Planning Statement (2014)

The Mornington Peninsula Localised Planning Statement (D17c) supports the Mornington Peninsula's Distinctive Areas and Landscapes designation and is referenced in the Planning Scheme.

### Planning controls

#### Green Wedge Zone Schedule 4

The purpose of the GWZ is to guide sustainable use and development of green wedge land, including facilitating recreational and tourism uses while preserving its agricultural productivity, natural resources, landscape, cultural heritage and biodiversity. Schedule 4 provides a minimum subdivision area and a permit trigger for earthworks which:

- change the rate of flow or the discharge point of water across a property boundary
- increase the discharge of saline groundwater.

#### Environmental Significance Overlay

The purposes of the ESO include identifying areas where the development may be affected by environmental constraints, and ensuring that development is compatible with environmental values identified in a schedule to the clause.

#### Vegetation Protection Overlay

The purposes of the VPO include protecting significant vegetation. The VPO2 (Significant Tree Lines) applies to vegetation along the site's Boneo Road frontage and the row of Radiata pine trees along part of the southern boundary.

## Significant Landscape Overlay

The SLO serves to identify, protect and enhance the character of significant landscapes. SLO3, which applies to Boneo Road, aims to maintain a varied network of scenic roads and their aesthetic and recreational value

### Clause 51.02 – Metropolitan Green Wedge Land: Core Planning Provisions

Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions) applies to land in Metropolitan Melbourne that sits outside the Urban Growth Boundary, including the site. This provision encourages appropriate use and development of green wedge land, facilitating recreational and tourism uses while protecting its landscape, cultural heritage, environment, biodiversity and agricultural productivity. Some of the proposed uses of the site are subject to conditions under Clause 51.02.

## Other relevant considerations

As the site is within a Bushfire Prone Area, bushfire risk should be considered for planning applications including for accommodation and recreation facilities.

Clause 65.01 of the Planning Scheme requires the Responsible Authority to consider, as appropriate:

- the Planning Policy Framework
- the purpose of the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area
- factors likely to cause or contribute to land degradation, salinity or reduce water quality
- the extent and character of native vegetation, the likelihood of its destruction, and whether it can be protected, planted or allowed to regenerate
- the degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

Other matters to be considered include:

- objections
- comments and decisions of referral authorities
- other matters a Responsible Authority must and may consider under section 60 of the PE Act, including the Victorian planning objectives and the economic, social and environmental impacts of the proposed use and development
- adopted government policy.

Decision guidelines within the GWZ and applicable overlays include the need to:

- minimise adverse impacts on the character and appearance of the area including the unique topography of ‘the Cups’ landscape
- protect and retain land for future sustainable agricultural activities, maintain agricultural production and consider the impact on the rural economy
- protect and enhance the biodiversity of the area, including the retention of vegetation and habitat and the need to revegetate gullies, ridgelines and property boundaries
- locate on-site effluent disposal areas to minimise impact of nutrient loads on waterways and native vegetation

- consider the landscape impact of the proposed removal, destruction or lopping of vegetation
- minimise adverse impacts of new development on landscape features, major roads and vistas through siting, design, height, bulk, and colours and materials.

The ESO23 requires specific consideration of (among other things):

- reasonable alternative siting for the proposed buildings and works and effluent disposal and stormwater discharge areas outside of the overlay area
- alternative land management or construction practices that would better meet the objectives of this schedule
- the means of treatment and disposal of sewerage, sullage and other wastes where connections to reticulated services are not available (as is the case here)
- the existing use of the site and the purpose of the proposed buildings and works in relation to the existing use
- appropriate measures to prevent erosion.

## Appendix B Document list

Documents indicated \* were part of the referred VCAT documents

### Panel hearing documents

| No          | Date   | Description  | Provided by                          |
|-------------|--------|--|--------------------------------------|
| <b>2023</b> |        |  |                                      |
| 1           | 9 Sep  | Terms of Reference   | Minister for Planning                |
| <b>2025</b> |        |  |                                      |
| 2           | 15 Jan | Letter of Referral   | Minister for Planning                |
| 3           | 20 Jan | Referred VCAT documents (see below)  | Department of Transport and Planning |
| 4           | 23 Jan | Directions Hearing notification  | Planning Panels Victoria (PPV)       |
| 5           | 14 Feb | Statement of issues  | Simon Stuart                         |
| 6           | 18 Feb | Statement of issues  | Council                              |
| 7           | 18 Feb | Statement of issues  | Proponents                           |
| 8           | 18 Feb | Statement of issues  | Asher Nominees                       |
| 9           | 20 Feb | Letter from Bunurong Land Council approving Cultural Heritage Management Plan (26 June 2024)   | Proponents                           |
| 10          | 20 Feb | Cultural Heritage Management Plan (25 June 2024)*  | Proponents                           |
| 11          | 21 Feb | Directions and Hearing Timetable   | PPV                                  |
| 12          | 19 Mar | Email advising change of Committee Chair   | PPV                                  |
| 13          | 21 Mar | Site inspection location requests  | Simon Stuart                         |
| 14          | 21 Mar | Site inspection location requests, enclosing attachment:<br>a) Extract from Landscape Visual Impact Assessment   | Proponents                           |
| 15          | 24 Mar | Site inspection details  | PPV                                  |
| 16          | 25 Mar | Submission   | Council                              |
| 17          | 25 Mar | Submission, enclosing attachments:<br>1. NRE Map - SJ 55 - 9 - Queenscliff Ed 2<br>2. Green Wedge Management Plan<br>3. Mornington Peninsula Localised Planning Statement<br>4. Council officer report<br>5. Shire of Perth v O'Keefe (1964) 110 CLR 529 | Simon Stuart                         |

| No | Date   | Description   | Provided by            |
|----|--------|---|------------------------|
|    |        | 6. Cascone v Shire of Whittlesea (1993) 11 AATR 175                         |                        |
|    |        | 7. Mollica v Shire of Bulla (1992) 9 AATR 157                               |                        |
|    |        | 8. Pacific Seven Pty Ltd v City of Knox (1993) 11 AATR 325                  |                        |
|    |        | 9. Henshall v Shire of Flinders (1986) 4 PABR 350                           |                        |
|    |        | 10. Northcote Wholesalers v City of Northcote (1994) 13 AATR 175            |                        |
|    |        | 11. Parklea Developments Pty Ltd v Strathbogie SC (Red Dot) [2022] VCAT 938 |                        |
|    |        | 12. Letter from SRW to MPSC   |                        |
|    |        | 13. Letter to S&K Planning Law  |                        |
|    |        | 14. Email exchange between DSA and S&K                                      |                        |
| 18 | 25 Mar | Expert witness report of Brendan Papworth                                   | Simon Stuart           |
| 19 | 25 Mar | Part A Submission   | Proponents             |
| 20 | 25 Mar | Expert witness report of Peter Wilson                                       | Proponents             |
| 21 | 25 Mar | Expert witness report of Sandra Rigo  | Proponents             |
| 23 | 25 Mar | Affidavit of Will Stoyles   | Proponents             |
| 24 | 25 Mar | Version 1 permit conditions   | Proponents             |
| 25 | 26 Mar | Submission  | Asher Nominees Pty Ltd |
| 26 | 26 Mar | Site inspection photos  | PPV                    |
| 27 | 31 Mar | Notification of hearing adjournment and second Directions Hearing           | PPV                    |
| 28 | 1 Apr  | Further directions and Version 2 Hearing Timetable                          | PPV                    |
| 29 | 11 Apr | Version 2 amended permit conditions   | Proponents             |
| 30 | 16 Apr | Response to Proponents Version 2 permit conditions (marked up)              | Asher Nominees Pty Ltd |
| 31 | 16 Apr | Response to Proponents Version 2 permit conditions                          | Council                |
| 32 | 17 Apr | Evidence presentation of Peter Wilson                                       | Proponents             |
| 33 | 17 Apr | Peter Wilson response to evidence of Brendan Papworth                       | Proponents             |
| 34 | 17 Apr | Part B submission, enclosing attachments:                                   | Council                |
|    |        | 1. Extract of 9 September 2024 Council Meeting Agenda                       |                        |
|    |        | 2a. Extract of 9 September 2024 Council Meeting Agenda Attachments Book 1   |                        |
|    |        | 2b. Extract of 9 September 2024 Council Meeting Agenda Attachments Book 2   |                        |

| No | Date   | Description   | Provided by  |
|----|--------|---|--------------|
|    |        | 3. Mornington Peninsula Localised Planning Statement (July 2014)                  |              |
|    |        | 4. Mornington Peninsula Green Wedge Management Plan (April 2019)                  |              |
|    |        | 5. Japara Holdings Pty Ltd v Bayside CC [2022] VCAT 390                           |              |
| 35 | 22 Apr | Part B submission, enclosing attachments:   | Proponents   |
|    |        | a) 269 Stewart Street Pty Ltd v Moreland CC [2019] VCAT 495                       |              |
|    |        | b) Boroondara City Council v 1045 Burke Road [2015] VSCA 27                       |              |
|    |        | c) Cascone v Whittlesea Shire Council (1993) 80 LGERA 367                         |              |
|    |        | d) Hoe v Manningham City Council [2011] VSC 543                                   |              |
|    |        | e) Hoskin v Greater Bendigo City Council [2015] VSCA 350                          |              |
|    |        | f) Hu v Whitehorse CC [2023] VCAT 1336  |              |
|    |        | g) Knox City Council v Tulcan Pty Ltd [2004] VSC 375                              |              |
|    |        | h) Melton CC v Minister for Planning [2022] VCAT 179                              |              |
|    |        | i) Mildura RCC v Lando [2020] VCAT 793  |              |
|    |        | j) Nest Homes Pty Ltd v Ballarat CC [2024] VCAT 767                               |              |
|    |        | k) Northcote Food Wholesalers Pty Ltd v Northcote City Council (1994) 84 LGERA 54 |              |
|    |        | l) Panorama Garden Estate Tours Pty Ltd v Mornington Peninsula SC [2021] VCAT 622 |              |
|    |        | m) Rowcliffe v Stonnington CC [2004] VCAT 46                                      |              |
|    |        | n) Rozen Anor v Macedon Ranges Shire Council Anor 2010 VSC 583                    |              |
|    |        | o) Wellington v Surf Coast Shire Council & Ors (Red Dot) [2011] VCAT 2317         |              |
| 36 | 23 Apr | Land capability assessment*   | Proponents   |
| 37 | 23 Apr | Geotechnical desktop assessment*  | Proponents   |
| 38 | 23 Apr | Civil design plans (wakeboard lakes)*   | Proponents   |
| 39 | 23 Apr | Geotechnical Desk Top Study*  | Proponents   |
| 40 | 23 Apr | Lake Design Preliminary Assessment  | Proponents   |
| 41 | 23 Apr | Preliminary Geotechnical Risk Assessment*   | Proponents   |
| 42 | 23 Apr | Evidence presentation of Brendan Papworth   | Simon Stuart |
| 43 | 23 Apr | Instrument AE126036U (S173 Agreement)   | Proponents   |

| No | Date   | Description  | Provided by |
|----|--------|--|-------------|
| 44 | 23 Apr | Response to Committee questions  | Council     |
| 45 | 24 Apr | Response to Committee questions, enclosing attachments:<br>a) Proposed Woodward skate park design<br>b) Civil Test Soil Testing and Geotechnical Consultants quote for geotechnical work | Proponents  |
| 46 | 7 May  | Final preferred permit conditions (version 4A - adventure park)  | Proponent   |
| 47 | 7 May  | Final preferred permit conditions (version 4B - leisure and recreation)  | Proponent   |
| 48 | 16 May | Response to Proponent final preferred permit conditions  | Council     |

## Referred VCAT documents

| No  | Description   |
|---|---|
| <b>Objections to permit amendment</b>                   |   |
| 3.01  | Simon Stuart – Objection to permit amendment (6 July 2023) (P2024/1093)                   |
| 3.02  | Simon Stuart – Letter supporting objection to permit amendment (6 July 2023) (P2024/1093) |
| 3.03  | Asher Nominees Pty Ltd – Objection to permit amendment (12 July 2023) (P2024/1099)        |
| 3.04  | Objectors list (P2024/1093 & P2024/1099)  |
| <b>Referral authority responses to permit amendment</b> |   |
| 3.05  | Southern Rural Water referral response (27 July 2023)                                     |
| 3.06  | Head, Transport for Victoria referral response (15 September 2023)                        |
| 3.07  | List of referral authorities consulted  |
| <b>Council decision to grant amendment to permit</b>    |   |
| 3.08  | Council Notice of Decision to grant an amendment to a permit (18 September 2024)          |
| 3.09  | Notice of Decision form (18 September 2024)   |
| <b>Applications for review</b>                          |   |
| 3.10  | Application for review – Simon Stuart (1 October 2024) (P2024/1093)                       |
| 3.11  | Application for review – Asher Nominees Pty Ltd (2 October 2024) (P2024/1099)             |
| <b>VCAT orders</b>                                      |   |
| 3.12  | Initiating Order on 4 October 2024 (P2024/1093)   |
| 3.13  | Procedural Orders on 25 October 2024 (P2024/1093)   |
| 3.14  | Procedural Orders on 26 November 2024 (P2024/1093)  |
| 3.15  | Parties List (27 November 2024) (P2024/1093)  |

| No   | Description  |
|--|--|
| 3.16   | Initiating Order on 24 October 2024 (P2024/1099)   |
| 3.17   | Parties List (24 October 2024) (P2024/1099)  |
| 3.18   | Procedural Orders on 18 December 2024 (matters to be heard together) (P2024/1093 & P2024/1099) |
| <b>Background information (Information from Decision Makers) (P2024/1093 &amp; P2024/1099)</b> |  |
| 3.19   | Title Documents  |
| 3.20   | Notification letter to Applicant (18 September 2024)   |
| 3.21   | Zoning Map   |
| 3.22   | Contact details of persons notified of permit amendment  |
| 3.23   | Objectors to permit amendment  |
| 3.24   | Referral response from Department of Environment, Energy and Climate Action (10 July 2023)     |
| 3.25   | DTP Referral Response (15 September 2023)  |
| 3.26   | EPA Referral Response (10 July 2023)   |
| 3.27   | Acoustic Report  |
| 3.28   | Arborist Report (V3)   |
| 3.29   | Architectural Plans  |
| 3.30   | Biodiversity Assessment  |
| 3.31   | Cultural Heritage Management Plan (June 2024)  |
| 3.32   | Cultural Heritage Management Plan (superseded)   |
| 3.33   | Cut and Fill Plan  |
| 3.34   | Economic and Social Assessment FINAL   |
| 3.35   | Emergency Plan   |
| 3.36   | Equipment Specifications   |
| 3.37   | Farm Management Plan   |
| 3.38   | Lake Design Preliminary Assessment   |
| 3.39   | Lakes Dam – Geotechnical Investigation   |
| 3.40   | Land Management Plan   |
| 3.41   | Landscape Visual Impact Assessment   |
| 3.42   | Lighting details   |
| 3.43   | Masterplan   |
| 3.44   | Offset Quote – Vegetation Link   |
| 3.45   | Planning Submission  |
| 3.46   | Preliminary Geotech Assessment   |
| 3.47   | Preliminary Geotechnical Risk Assessment   |

| No                                       | Description   |
|--|---|
| 3.48                                     | Preliminary Land Capability Assessment Letter   |
| 3.49                                     | Preliminary Site Assessment (Ground Contamination)  |
| 3.50                                     | Site Survey   |
| 3.51                                     | Site Survey – No Contours   |
| 3.52                                     | Site Survey – No Imagery  |
| 3.53                                     | Traffic Impact Assessment   |
| 3.54                                     | Venue Operations Management Plan  |
| 3.55                                     | Application to Amend a Planning Application Form  |
| 3.56                                     | Council Meeting Agenda  |
| 3.57                                     | Council Report Attachment – Officer Assessment  |
| 3.58                                     | Corrected PNPE2 material (2 December 2024)  |
| 3.59                                     | Corrected PNPE2 material (5 December 2024)  |
| 3.60                                     | Council response to Practice Note PNPE2 (Information from Decision Makers) (22 October 2024)                    |
| <b>Statements of grounds</b>             |   |
| 3.61                                     | Statement of Grounds – Simon Stuart (P2024/1093)  |
| 3.62                                     | Statement of Grounds – Asher Nominees Pty Ltd (2 October 2024) (P2024/1099)                                     |
| 3.63                                     | Statement of Grounds – Jodi and Aaron Neary (6 November 2024) (P2024/1099)                                      |
| 3.64                                     | Statement of Grounds - Head, Transport for Victoria (18 November 2024) (P2024/1093)                             |
| <b>Practice day hearing (P2024/1093)</b> |   |
| 3.65                                     | Simon Stuart – Practice Day Hearing submission (6 December 2024)  |
| 3.66                                     | Simon Stuart – Attachment – Clause 35.04 (Green Wedge Zone)   |
| 3.67                                     | Simon Stuart – Attachment – Clause 51.02  |
| 3.68                                     | Simon Stuart – Attachment – Clause 72.06  |
| 3.69                                     | Simon Stuart – Attachment – Clause 73.01  |
| 3.70                                     | Simon Stuart – Attachment – L Bisinella Developments Pty Ltd v Environment Protection Authority [2024] VCAT 515 |
| 3.71                                     | Council – Practice Day Hearing submission (9 December 2024)   |
| 3.72                                     | Permit Applicant – Practice Day Hearing submission (9 December 2024)  |
| 3.73                                     | Permit Applicant – Attachment – Japara Holdings Pty Ltd v Bayside CC [2022] VCAT 390 (8 April 2022)             |
| 3.74                                     | Permit Applicant – Attachment – Pileggi v Macedon Ranges SC [2014] VCAT 906 (25 July 2014)                      |
| 3.75                                     | Permit Applicant – Attachment – Utiger v Brown and Venteb Pty Ltd [2002] VSC 306 (6 August 2002)                |

## Appendix C Recommended permit

Tracked against the Proponents' final preferred version based on the use being characterised as the innominate use of 'adventure park' (D46).

### PLANNING PERMIT

|                               |  |
|-------------------------------|--|
| <b>Permit No:</b>             | P04/0289.03  |
| <b>Planning Scheme:</b>       | Mornington Peninsula Planning Scheme   |
| <b>Responsible authority:</b> | Mornington Peninsula Shire Council   |
| <b>ADDRESS OF THE LAND:</b>   | 810 Boneo Road, Boneo (Lot 3, LP 121193) ( <b>Land</b> ) and adjacent Boneo Road reserve |

### THE PERMIT ALLOWS:

| <b>Planning Scheme<br/>Clause Name and No.</b>       | <b>Description of what is allowed</b>   |
|--|---|
| Green Wedge Zone<br>(Table of uses)<br>35.04-1       | Use of land for a camping and caravan park<br>Use of land for adventure park  |
| Green Wedge Zone<br>(Buildings and works)<br>35.04-5 | Construct buildings and construct or carry out works associated with a use in Section 2 of Clause 35.04-1 (camping and caravan park and adventure park) |
| Schedule 4 to Clause<br>35.04                        | Earthworks  |
| Environmental<br>Significance Overlay<br>42.01-2     | Construct buildings and construct or carry out works<br>Remove vegetation   |
| Vegetation Protection<br>Overlay<br>42.02-2          | Remove vegetation   |
| Signs<br>52.05-2                                     | Construct or put up for display a sign in Section 2 of Clause 52.05-13  |
| Native Vegetation<br>52.17                           | Remove, destroy or lop native vegetation  |
| Licensed Premises<br>52.27                           | Sell and consume liquor   |
| Land Adjacent to the<br>Principal Road<br>Network    | Alter access to a road in a Transport Zone 2  |

|   |   |
|---|---|
| 52.29-2                                     |   |
| Existing Uses<br>(Sections 2 and 3<br>uses) | Construct buildings and construct or carry out works for a use in Section 2<br>(dwelling) |
| 63.05                                       |   |

## THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

### Amended plans

- 1A) Before the use and development authorised under this amended permit P04/0289.03 starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved and endorsed accordingly, these plans will form part of this permit together with the plans already endorsed under condition 1 before this permit was amended on [insert the date of issue of the amended permit]. The plans are to be generally in accordance ~~with the plans submitted with the application but modified to show:~~
- a) The development plans entitled *The Ranch, 810 Boneo Rd, Cape Schanck* prepared by L.V.M and PWLA dated 7 May 2023, Sheet Nos TP-0.00 to TP-5.24E (37 sheets) (**Development Plans**) but modified to show:
    - i) A reduction in the height of Building B01 (Wake Park Facilities) to 8 metres above ground level.
    - ii) Details of internal accessways including material, width and maximum height of any cut or fill required.
    - iii) Dimensioned location of any works of wastewater dam from title boundaries.
    - iv) Notation of existing dwelling to be repurposed for staff accommodation.
    - v) Delineation of the dwelling curtilage for the replacement dwelling.
    - vi) Notation requiring all galvanised cladding to be treated to ensure it is muted and of low reflectivity.
    - vii) Details of earthworks required to facilitate a flat area for camping purposes within sites 91-98 that must not impact any vegetation outside the delineated site areas.
  - b) The plans included in the masterplan entitled *Action Sports Precinct – Site Masterplan dated November 2023*, Drawing Nos MP-100 to MP-800 (34 sheets) (**Site Masterplan**) but modified to show:
    - i) A Landscaping Plan generally in accordance with the Overall Plan Proposed Planting Sheet No MP303 but modified to show:
      - (1) Consistency with the Land Management Plan prepared by Beacon Ecology dated 10 May 2023, including the planting lists for re-vegetation at Appendix 1 of that document
      - (2) Retention of the stand of Radiata Pines along the southern boundary of the Land. If the Radiata Pines are removed (only with the consent of the Responsible Authority) appropriate replacement planting along the southern embankment of the southern wakeboarding lake and between the lake and the southern

boundary, having regard to the objectives and values to be protected under the Vegetation Protection Overlay Schedule 2.

- (3) Planting along the road frontage adjacent to the buildings within the boundaries of the Land.
  - (4) Additional planting ~~adjacent to~~ between the southern boundary ~~near lake embankment (subject to engineering advice) and further west near~~ and the snow board/aerial sports zone and overflow carparking area to soften the appearance of the structures in these areas and protect the landscape values of the area as well as the visual amenity of neighbouring properties.
  - (5) Additional planting around Building B06 (the Barn) to soften the appearance of the building and protect the landscape values of the area.
  - (6) Planting of dam embankments as guided by consulting engineers.
  - (7) A schedule of all proposed planting, including the location, species and size at maturity of all planting, including their botanical names.
  - (8) All planting to be indigenous species to the locality.
- ii) The plan entitled Entry Signage Details, Sheet MP-800 modified to show Sign 01 (re-purposed galvanised steel tower sign) with two panels only and a total advertisement area not exceeding 10 square metres.
- c) A Tree Management and Protection Plan (**TMPP**) prepared by a Level V (AQF) Arborist in accordance with Australian Standard AS 4970-2009 *Protection of trees on development sites*. The TMPP must include all retained trees on the Land, road reserve or adjoining land whose Tree Protection Zones (**TPZ**) fall within the proposed development footprint (including any associated buildings, works, excavation or fencing). The report must include a drawing, specification and certification procedure; and demonstrate how the retained trees will be protected during all stages of development being Stages 1, 2 and 3 (**Stage**) in the plan entitled Development Staging Plan, Sheet MP-301 of the Site Masterplan, or any amended version of it as may be endorsed from time to time under this permit.
  - d) The Venue Operations Management Plan amended to show:
    - i) Updated patron numbers as follows:
      - (1) Recreation activities: 320 patrons.
      - (2) Function centre and restaurant: 150 patrons.
      - (3) Accommodation cabins: 258 guests.
      - (4) Camping and caravan park: 448 patrons.
    - ii) Up to six times per year, the number of patrons associated with the approved adventure park use may be increased to 2,500 (in addition to guests accommodated at the camping and caravan park) to facilitate ancillary sporting events. No functions can occur on the Land at the same time as the ancillary sporting events.
    - iii) How patron number capacities will be managed.
    - iv) The method for recording patron quantities.
    - v) Access to the Land for ticketed and non-ticketed patrons.
    - vi) A method to ensure that no functions run concurrently with the 6 ancillary sporting events per year.

- vii) Methods to ensure compliance with the endorsed red line plan approved under this permit.
- viii) Security/management staff monitoring patron behaviour to ensure that patron behaviour does not have a detrimental impact on the amenity of the surrounding area.
- ix) A contact person for complaint management.
- e) A Lighting Management Plan which details lighting to car parking areas and ensures that lighting for the cable park, outdoor skate area and any other spotlighting in accordance with AS 4282—1997 - *Control of the obtrusive effects of outdoor lighting*.
- f) For the wastewater dam:
  - i) A plan drawn to an appropriate scale, clearly showing:
    - (1) Existing surface contour levels, with all contours clearly labelled;
    - (2) The locations of proposed dam embankments clearly shown, including the location of the toes of the dam embankments;
    - (3) Proposed embankment crest level;
    - (4) Location of proposed spillway;
    - (5) Proposed water surface level;
    - (6) The volume of water stored in the dam;
  - ii) Cross-sections in two different directions through the proposed wastewater treatment dam at the critical location showing:
    - (1) Proposed water surface level;
    - (2) Proposed top of embankment level;
    - (3) Proposed embankment upstream and downstream slopes;
    - (4) Proposed embankment crest width;
    - (5) Proposed freeboard;
    - (6) ~~vi)~~ Proposed dam cut slopes;
    - (7) Proposed level at base of lake/dam;
- g) A Waste Management Plan is required to be submitted to and approved by the responsible authority. The Waste Management Plan is to detail the following:
  - i) The Owner arranging for private collection of waste, recyclables and green waste bins from within the property including:
    - (1) Location of bin storage areas.
    - (2) Location of bin collection areas.
    - (3) Swept paths and turning movements of vehicle to be used for the collection of bins from the designated bin collection areas.
    - (4) Estimated volumes of waste and recyclables generated from the site, number and size of bins to be used and the associated storage area for the bins.
    - (5) Names of contractors able to provide the required service.
  - h) An acoustic report generally in accordance with the acoustic assessment report prepared by Renzo Tonin and Associates dated 2 November 2022 (**Acoustic Report**).

- i) A Land Management Plan generally in accordance with the plan prepared Beacon Ecological dated May 2022.
  - j) A Farm Management Plan generally in accordance with the plan prepared Ag-Challenge Consulting dated 3 May 2022.
  - k) An emergency plan generally in accordance with the plan entitled The Ranch Mornington Peninsula Emergency Plan and including specific procedures to be followed in the event of bushfire.
- 1) Before the use and development starts, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, and endorsed accordingly, these plans will form part of this permit. Such plans are to be drawn to scale with dimensions and three copies are to be provided. The plans are to be in accordance with the plans submitted with the application but modified to show to the satisfaction of the responsible authority:
- a) The location of all electricity and other services to the camp sites placed underground.
  - b) The accessway to the camp site constructed in a suitable crushed rock with areas where the grade exceeds 1 :6 to be in an all weather seal coat or similar to prevent erosion.
  - c) Deleted
  - d) Fencing that restricts access to existing vegetation in the camping area that will be retained and to prevent disturbance of erosion prone land. This must include details of the location, materials for construction and height of fences.
  - e) The proposed earthworks, noting cross sections, existing natural ground level, proposed finished ground level details of retaining walls including heights, locations and materials of construction.
  - f) The location of any proposed access paths for pedestrian or vehicle movements, including materials for construction and the location of bollards to restrict access solely to the proposed driveways and prevent vehicles from departing from the defined driveways.
  - g) Any proposed advertising signage, within the boundaries of the Land or otherwise. These plans must include the location, size and content of each advertising sign and elevation details.
  - h) The location of garbage collection areas, including all rubbish bins.
  - i) Deleted
  - j) The location of utilities servicing each camp site, including electricity, water and wastewater. All services must be provided underground.
  - k) The location, capacity and specifications of the proposed wastewater treatment plant including its connection to each camp site.
  - l) The maximum retention of existing vegetation and supplementary rehabilitation works to ensure the optimum environmental conditions for the retained vegetation (example rehabilitation of disturbed surfaces where tree roots have been exposed and restoration of soil).

#### **Endorsed plans to be complied with**

[There are two condition 1s. Renumber remaining conditions]

- 1) The layout of the Land, the hours of operation, size and type of the proposed buildings and works, including the materials of construction, the timing for completion of the proposed

buildings and works, on the endorsed plan must be complied with and not altered or modified without the consent of the responsible authority.

- 2) The layout and activities as indicated on the endorsed plans must not be altered without the consent of the responsible authority.

#### **Satisfactory continuation**

- 3) Once the works have commenced they must be continued and completed to the satisfaction of the responsible authority.

#### **Use of camp sites**

- 4) Prior to the use of the camp sites, the owner must prepare to the satisfaction of the responsible authority a lease agreement that will be used for leasing the camp sites to campers. The lease agreement must include the following conditions:
  - a) The camp site must not be occupied for more than 59 consecutive days of occupancy and for a total of 90 days in any calendar year by any person.
  - b) The lessee shall use the camp site for recreational or holiday purposes only and shall not occupy the Land or individual camp site as their only or main place of residence.
  - c) The lease shall not exceed a maximum term of twelve consecutive calendar months.
- 5) The camp sites may only be occupied for a maximum of 59 consecutive days of occupancy and a total of 90 days in any one calendar year. The owner shall ensure that an accurate register of all campers, camp sites, details of periods of occupancy and residential address of campers is maintained to the satisfaction of the responsible authority. The owner must make the register available to the responsible authority upon request.
- 6) Deleted
- 7) Deleted

#### **Section 173 Agreement**

- 8) Prior to the commencement of any works on the approved use and development, the owner must prepare an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The agreement must be prepared and registered on the Land's title to the satisfaction of the responsible authority and at the owner's expense. The agreement must provide for:
  - a) The implementation of a master plan prepared and approved to the satisfaction of the responsible authority.
  - b) The operation of an Environment Protection Authority (**EPA**) approved sewerage treatment plant for the total facility.
  - c) The landscaping of the Land and protection of vegetation in accordance with an environmental management plan approved by the responsible authority.
  - d) The layout of all existing activities on the Land including the frequency of use.
  - e) The layout of possible future activities, including their capacity, functional integration with the existing uses, staged development options and site coverage.
  - f) The means to restrict the use of accommodation to serve only casual holiday makers and tourists for a maximum of ninety (90) days in any calendar year and a maximum of 59 consecutive days of occupancy.
  - g) The responsibility for the continued implementation, management and compliance with the environmental management plan required by this permit is the ongoing responsibility of the owner and/or operator of this development.

- h) Deleted.
- i) A limitation on the number of horses that can be accommodated on the Land at any one time to a maximum of 50 horses.
- j) The owner must lodge with the responsible authority a bond or bank guarantee for an amount to the satisfaction of the responsible authority following an estimate of costs of landscaping to be submitted by the owner to the responsible authority and such estimate of costs must be submitted on or before 1 February 2006. The responsible authority may draw against the bond or bank guarantee for the purpose of carrying out any development works or maintenance works associated with the landscaping.

### **Native Vegetation**

- 9) Native vegetation (except as required for development shown on the endorsed plan) must not be felled, lopped, topped, ringbarked or otherwise destroyed or removed except with the consent of the responsible authority.

### **Sewerage**

- 10) All wastewater from the approved development must be disposed to the EPA approved sewerage system to the satisfaction of the responsible authority.

### **Infrastructure**

- 11) All telephone and electricity services must be installed via underground connections to the satisfaction of the responsible authority.
- 12) - 25) Deleted

### **Signage**

- 14) No sponsorship signage that is visible from outside the Land may be placed on the Land.
- 15) The location and details of signs, including those of the supporting structure, shown on the endorsed plans must not be altered without the written consent of the responsible authority.
- 16) Before the commencement of Stage 1 works, all signage, other than that approved by this permit or which is exempt from the requirement for a planning permit in accordance with the planning scheme must be removed to the satisfaction of the responsible authority.
- 17) All signs must be designed to a professional standard, constructed and maintained in good condition to the satisfaction of the responsible authority.
- 18) Lighting associated with the signs must be designed, baffled and located to the satisfaction of the responsible authority to prevent any adverse effect on adjoining land.
- 19) The signs must not be illuminated after 9.30pm, and not more than 60 minutes before the use opens to the public, to the satisfaction of the responsible authority.
- 20) Within 60 days of the associated use of the Land ceasing to operate, the signs hereby approved must be removed from the Land to the satisfaction of the responsible authority.
- 21) This permit as it relates to signage will expire in fifteen years after *insert the date of issue of the amended permit*. The responsible authority may consent in writing to vary these requirements.
- 22) On expiry of the permit as it relates to signage, the sign and structures built specifically to support and illuminate it must be removed.

### **Noise and amenity**

- 23) The use of the Land must comply with the endorsed Acoustic Report to the satisfaction of the Responsible Authority.

- 24) Noise levels associated with the use must at all times comply with the Environment Protection Regulations under the *Environment Protection Regulations 2021* (Vic) under the *Environment Protection Act 2017* (Vic) and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021, or as amended from time to time), or any other superseding regulation.

36A) Within six (6) months after the commencement of the use approved by this amended permit, or as otherwise agreed in writing by the Responsible Authority, a Post Commencement Acoustic Report is to be submitted to the Responsible Authority. The report must detail the following matters to the satisfaction of the Responsible Authority:

- a) Confirmation that all of the recommendations of the endorsed Acoustic Report have been implemented.
- b) Further testing that has been undertaken to ascertain whether the use complies with:
  - (i) The maximum noise levels prescribed by the Environment Protection Regulations 2021 (Vic) under the Environment Protection Act 2017 (Vic) and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021, as amended from time to time) or any other superseding regulation; and
  - (ii) Any patron noise levels as specified in the endorsed acoustic report.
- c) If non-compliance is measured, recommendations for additional acoustic measures to ensure compliance with the endorsed Acoustic Report.
- d) Confirmation that all acoustic testing required by this condition has been carried out at a function or event during night time hours with more than 50% of the maximum patron capacity by a suitably qualified acoustic engineer.

36B) The provisions, recommendations and requirements of the endorsed Post Commencement Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority within three (3) months of endorsement of that report, or as otherwise agreed in writing by the Responsible Authority. During the time any additional acoustic measures are being implemented, no operations which would cause non-compliance with the noise levels in the endorsed Acoustic Report are to take place.

- 25) Any air compressors associated with the ski jump landing pads must only be used during the operating hours of the recreation facilities associated with the approved adventure park use.
- 26) Amplified music is not permitted in the outdoor areas at any time, except at a background music level within the curtilage of the Kiosk and Restaurant/Function Centre.
- 27) Lighting associated with the approved adventure park use (excluding accommodation) must be turned off within an hour of the operating hours each day.

### **Environmental Health**

- 28) All wastewaters generated within the Land must be treated and retained by an EPA approved sewerage system to the satisfaction of the relevant authority.
- 29) Prior to occupation of any Stage of development, the associated wastewater system must be installed to the satisfaction of the responsible authority.
- 30) The food facilities will be required to install a suitably sized food and oil interceptor (grease trap) to service all proposed kitchen facilities satisfaction of the relevant authority. The food and oil

interceptor must be located outside of the food premises and have an accessible water supply provided.

### **Vegetation removal**

- 31) The extent of clearing of vegetation as shown on the endorsed plans must not be altered or modified without the written consent of the responsible authority.
- 32) All disturbed surfaces on the Land must be revegetated and stabilised to the satisfaction of the responsible authority.

### **Protection of fauna**

- 33) Prior to the removal of the vegetation, including fallen logs, hollow stumps or ground habitat, a suitably experienced person must inspect the vegetation for signs of habitation by fauna. If wildlife is present during vegetation removal works, only a suitably qualified wildlife handler or zoologist can handle wildlife to ensure it is not harmed. If displaced wildlife cannot be relocated within the Land, it must be relocated to an appropriate alternative location.

### **Tree protection**

- 34) Prior to the commencement of any demolition, excavation or works, and during all Stages of development, the TPZs, tree protection fencing, recommendations and tree protection measures identified in the approved TMPP must be implemented, complied with and certified; to the satisfaction of the responsible authority.
- 35) Prior to the commencement of buildings and works for any Stage, all contractors and tradespersons operating at the Land or within the adjacent Boneo Road reserve must be advised of:
  - a) the status of trees to be retained; and
  - b) any obligations in relation to the protection of those trees.
- 36) No trenching or soil excavation is to occur within the TPZ of retained trees during development unless shown on the endorsed plans, without the prior written consent of the responsible authority.

### **Landscaping**

- 37) Prior to the occupation of any Stage of the development (or other time agreed to in writing by the responsible authority) the landscaping works for that Stage shown on the endorsed Landscaping Plan must be carried out and completed to the satisfaction of the responsible authority. The landscaping must be maintained to the satisfaction of the responsible authority, including that any dead, diseased or damaged plants are to be replaced as soon as practicable.

### **Offset requirement**

- 38) To offset the removal of 0.942 hectares of native vegetation the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:
  - a) A general offset of 0.212 general habitat units:
    - i) located within the Port Phillip and Westernport CMA boundary or Mornington Peninsula Shire municipal district; and
    - ii) with a minimum strategic biodiversity score of at least 0.402.
- 39) Before any native vegetation is removed evidence that the required offset has been secured must be provided to the satisfaction of the responsible authority. This evidence is one or both of the following:

- a) 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
- b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Energy, Environment and Climate Action.

### **Amended Section 173 Agreement**

- 40) Prior to the commencement of any buildings and works associated with Stage 3, the owner must amend the Agreement AE126036U registered on the title of the Land pursuant to Subdivision 2, Division 2 of Part 9 of the *Planning and Environment Act 1987*. The amended agreement must be prepared and registered on the Land's title to the satisfaction of the responsible authority and at the owner's expense.
- 41) The amended agreement must provide for an increase in the maximum number of persons that can be accommodated at the Land at any one time from 200 to 706 (excluding staff).

### **Patron Management**

- 42) Patron management must be undertaken in accordance with the endorsed Venue Operations Management Plan.
- 43) Subject to condition 58, no more than 1396 patrons are allowed on the Land at any one time, based on:
  - a) Recreation activities: 320 patrons.
  - b) Function centre/restaurant: 150 patrons.
  - c) Accommodation cabins: 258 guests.
  - d) Camping and caravan park: 448 guests.
  - e) Dining hall (associated with the existing school camp use at the Land): 220 patrons.
- 44) At any one time, no more than:
  - a) 448 patrons may be accommodated overnight at the camping and caravan park;
  - b) 258 guests may be accommodated overnight in the accommodation cabins, being the cabins numbered:
    - i) V1, V2, V3, V5 and B4 on the plan entitled Site Plan Existing Conditions, Sheet MP-200 in the endorsed Site Masterplan; and
    - ii) B03a and B03b on the plan entitled Site Layout Plan, Sheet TP-1.10 in the endorsed Development Plans; and
  - c) 150 patrons may be present at the restaurant/function centre (within the Barn building).
- 45) For the avoidance of doubt the patron limit in condition 55 excludes staff.
- 46) Up to six times per year, the number of patrons at the Land may be increased to 2,500 (excluding guests of the camping and caravan park) to facilitate ancillary sporting events.
- 47) No functions can occur on the Land at the same time as the ancillary sporting events.

### **Hours of operation**

- 48) Unless with the consent of the responsible authority, the adventure park use approved by this permit must not operate outside the following hours:
- a) Recreation activities: Daily 9.00am to 9.00pm
  - b) Kiosk: Monday to Sunday 9.00am to 9.00pm
  - c) Restaurant/function centre (within the Barn building):
    - i) Sunday to Thursday 8.00am to 10.00pm
    - ii) Friday and Saturday (and Sunday proceeding a public holiday) 8.00am to 11.30pm

### **Ancillary Use**

- 49) After the operation of the restaurant/function centre commences, the restaurant contained within the Chapel building must cease being used as a restaurant and must only be used as a dining hall ancillary to the existing school camping use, to the satisfaction of the responsible authority.
- 50) If the school camps cease to operate, the dining hall must be decommissioned or demolished.
- 51) The kiosk and restaurant/function centre must only be used ancillary to the adventure park use hereby approved, to the satisfaction of the responsible authority.
- 52) The kiosk and restaurant/function centre must not be promoted or advertised independently of the adventure park at the Land.

### **Staff accommodation**

- 53) The existing dwelling to be repurposed for staff accommodation must only be used by persons employed by the permit holder in association with the use of the Land.

### **Sale and consumption of Liquor**

- 54) The seating and extent of the approved use as it relates to the sale and consumption of liquor as shown on the endorsed plan must not be altered or modified.
- 55) The approved use as it relates to the sale and consumption of liquor may only operate between the following hours:
- a) Restaurant/function centre (within the Barn building):
    - i) Sunday to Thursday 11.00am to 10.00pm
    - ii) Friday and Saturday (and Sunday proceeding a public holiday) 11.00am to 11.30pm
- 56) No alcohol sold at the Land is to be taken outside the area identified for the sale and consumption of liquor on the 'red line' plan endorsed under this permit.
- 57) The licensing of the venue must not cause any nuisance or annoyance to persons beyond the land because of the emission of noise, or otherwise, to the satisfaction of the responsible authority.

### **Decommissioning of existing dwelling**

- 58) Within 30 days of the occupation of the new dwelling approved by this permit, the existing dwelling must be only used for staff accommodation in accordance within the conditions of this permit.

### **Land Management Plan**

- 59) The endorsed Land Management Plan must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.

### **Farm Management Plan**

- 60) The endorsed Farm Management Plan must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.

### **Emergency Plan**

- 61) The endorsed Emergency Plan must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.

### **Geotechnical Report**

- 62) Prior to the commencement of each Stage, a Geotechnical Report for that Stage must be submitted to and approved by the Responsible Authority. The Geotechnical Report must, in respect of works to be undertaken on any part of the Land ~~affected by the Environmental Significance Overlay (Schedule 23)~~ within the applicable Stage:
- a) detail all erosion mitigation and land stability measures to be undertaken, based on finalised design levels for works across relevant part of the Land, that result in a proposed cut or fill batter slope steeper than 1V:6H;
  - b) provide for the following:
    - i) engineering solutions to keep earthworks (cut and fill) to a minimum, where practicable;
    - ii) drainage to be:
      - (1) designed by a suitably qualified civil engineer (with particular experience in land sensitive to landslide and erosion conditions); and
      - (2) provided for all areas of proposed and existing development to reduce the potential for landslide and erosion;
    - iii) a geotechnical investigation and global stability analysis to be undertaken where surcharge is proposed within 10m of the crest of any moderate to steeply sloping natural slopes, or within existing slopes;
    - iv) structures supported on footings and developed within existing slopes or near the crest of slopes to have suitable footing design, with footings to be designed generally to:
      - (1) a depth of weathered bedrock; or
      - (2) where the surcharge of the footings does not daylight within the slope,
    - v) re-vegetation of existing and proposed slopes to be provided where possible;
    - vi) [assessment of options to relocate the proposed wastewater dam entirely outside the area affected by the Environmental Significance Overlay \(Schedule 23\);](#)
  - c) require strict implementation of risk control measures where 'moderate' or 'high' risk levels are assessed, to decrease the landslide/ erosion risk to a tolerable 'Low' risk level;
  - d) specify any areas for further assessment and investigation, subject to the observed residual risk rating;
  - e) require design documents to be assessed by a suitably qualified geotechnical engineer or engineering geologist and, if necessary (in the opinion of the geotechnical engineer or engineering geologist):
    - i) further targeted geotechnical investigations must be conducted to:
      - (1) establish a robust geotechnical model; and

- (2) ensure that site-specific slope stability assessment is undertaken to assess both short-term and long-term risks; and
  - ii) a detailed landslide risk assessment must be undertaken generally accordance with the Australian Geomechanics Society (AGS) Practice Note Guidelines (2007).
- 63) Once approved, the Geotechnical Report will be endorsed to form part of the planning permit. The endorsed Geotechnical Report must be implemented to the satisfaction of the responsible authority.

#### **Head, Transport for Victoria**

- 64) Prior to commencement of Stage 1 of the development, amended plans must be submitted to and approved by the Head, Transport for Victoria. When approved by the Head, Transport for Victoria, the plans must be endorsed by the responsible authority and will then form part of the permit. The plans must be drawn to scale with dimensions and electronic copies must be provided. The plans must be generally in accordance with the plans prepared by One Mile Grid, Drawing no. CLP200 Rev C and annotated Boneo Road – The Ranch Access Treatment Concept Layout Plan but modified to show:
  - a) Channelised Right Turn Lane along Boneo Road in accordance with AustRoads guidelines to access the Land.
  - b) Road markings as required for the left deceleration land and right turn lane
  - c) Pylon Sign Lighting annotated as static lighting.
- 65) Prior to commencement of Stage 1 of the development, a Functional Layout Plan (**FLP**) along with a functional Road Safety Audit (**RSA**) must be submitted to and approved by the Head, Transport for Victoria. When approved by the Head, Transport for Victoria, the plans must be endorsed by the Responsible Authority and will then form part of the permit. The plans must be generally in accordance with the plans prepared by One Mile Grid, Drawing no. CLP200 Rev C and annotated Boneo Road – The Ranch Access Treatment Concept Layout Plan but modified to show:
  - a) Channelised Right Turn Lane along Boneo Road in accordance with AustRoads guidelines to access the Land
  - b) Road markings as required for the left deceleration land and right turn lane
- 66) Subsequent to the approval of the FLP and prior to the commencement of any roadworks within the arterial road reserve the applicant must submit the detailed engineering design plans and a detailed RSA to the Head, Transport for Victoria for review and approval. The detailed design plans must be prepared generally in accordance with the approved FLP to the satisfaction of the Head, Transport for Victoria.
- 67) Prior to the occupation of the development of Stage 1, all the roadworks as per the approved FLP must be constructed to the satisfaction of and at no cost to the Head, Transport for Victoria.
- 68) Lighting for the pylon sign near the entrance to the Land must be converted to static lighting only.

#### **Development Engineering**

- 69) After the endorsement of Condition 1A plans and before any works associated with each Stage of the development starts, a signed and completed 'Checklist for Development Engineering Plan Approval' along with engineering plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and shall be emailed to [devengadmin@mornpen.vic.gov.au](mailto:devengadmin@mornpen.vic.gov.au) in pdf format.  
The plans must show:

- a) All areas of the development being drained by means of an underground drainage system to retain a post-development 1% Annual Exceedance Probability storm event for the critical storm duration on the property and being based on a soil percolation test reports prepared by an appropriately qualified geotechnical consultant.
- b) The drainage system on the Land being designed to ensure that storm water runoff from the development meets the current best practice performance objectives for stormwater quality, as contained in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).
- c) Details, including levels, of all driveways and parking areas within the Land.
- d) A plan of the proposed wastewater storage dam showing the following:
  - i) Water surface level
  - ii) If an embankment is required, embankment crest level
  - iii) If a spillway is required, location of proposed spillway
  - iv) If a spillway is required, spillway invert level
  - v) If a spillway is required, spillway outlet channel or flow path from spillway
- e) Detailed cross-sections through the wastewater storage dam in two different directions, showing the following information, all in accordance with the recommendations of a site specific geotechnical investigation report:
  - i) Dam cut slopes
  - ii) Dam base level/s
  - iii) Water surface level
  - iv) If an embankment is required, top of embankment level
  - v) If an embankment is required, embankment upstream and downstream slopes
  - vi) If an embankment is required, embankment crest width
  - vii) Freeboard
  - viii) If an embankment is required, core trench to underside of embankment, including width and depth
  - ix) If an embankment is required, embankment materials
  - x) If an embankment is required, embankment compaction standards and compaction methodology
  - xi) Dam liner details
- f) If a spillway is required, a cross-section across proposed spillway to the wastewater storage dam showing spillway side slopes and spillway depth.
- g) All car parking areas and bus parking and drop off areas surfaced in accordance with the endorsed plans.
- h) All internal roadways and driveways providing access to car parking areas and bus parking and drop off areas surfaced to the satisfaction in accordance with the endorsed plans.
- i) All disability parking spaces surfaced with asphalt or reinforced concrete.
- j) All pathways providing access from disability parking spaces to an adjacent part of the development surfaced with asphalt or reinforced concrete.

- k) TPZs impacted by the works, or as shown on any other development plans and documents.
  - l) Drainage works designed to avoid TPZs where possible.
  - m) Proposed methodologies for complying with AS4970-2009 *Protection of trees on development sites* for any works that are required within TPZs.
- 70) Before the approval of engineering plans, drainage computations and documentation are required for:
  - a) The proposed drainage system.
  - b) A STORM and/or MUSIC Report, where applicable.
- 71) Before the approval of engineering plans for asphalt surfaced internal roads, driveways and car parking areas, a site specific geotechnical investigation report which includes pavement design for road and car parking areas is required.
- 72) Prior to the commencement of any works for any Stage, a project-specific Major Construction Management Plan (**CMP**) for that Stage must be endorsed by the Responsible Authority. This CMP is to be based on the standard Major CMP template found on the Mornington Peninsula Shire's website. When approved, the CMP will be endorsed and form part of the Planning Permit. The endorsed CMP must be implemented to the satisfaction of the responsible authority prior to, and during the applicable Stage of works.
- 73) Prior to the commencement of any works for any Stage, a project specific Construction Traffic Management Plan (**CTMP**) for that part of the works must be submitted to the responsible authority for approval. The CTMP must then be implemented to the satisfaction of the responsible authority prior to and during construction of the works.
- 74) Before the initial occupation of any Stage of the approved development, all drainage works associated with that Stage must be constructed in accordance with approved engineering plans, and to the satisfaction of the responsible authority.
- 75) Before the initial occupation of any Stage, the areas set aside for the parking of vehicles and driveways associated with that Stage as shown on the endorsed plans must be constructed in accordance with approved engineering plans, surfaced and drained to the satisfaction of the responsible authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.

#### **Expiry - use and development**

- 76) This permit will expire in respect of:
  - a) the development permitted in Stages 1, 2 and 3 if one of the following circumstances applies:
    - i) Stage 1 of the development is not completed within five years of *[insert date being the date of the amendment to this permit with reference P04/0289.03]*; or
    - ii) Stage 3 of the development is not completed within ten years of *[insert date being the date of the amendment to this permit with reference P04/0289.03]*; and
  - b) the adventure park use within respective Stages, if the use is not started within two years of completion of the respective developments of that Stage.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.